

WIT Oklahoma Bar JOURNAL

Volume 78 ♦ No. 12 ♦ April 14, 2007

Law Day

ALSO INSIDE

- Metadata and Electronic Discovery
- Re-Employment Rights for Returning Military
- Consumer Product Warranties
- Material Witness Laws

Calendar of Events

OBA CLE Seminars

Apr. 19 - OKC

Primer on Modern Payment Systems

6.5 hrs. of MCLE credit, including .5 hrs. of ethics
Oklahoma Bar Center,
1901 N. Lincoln Blvd.

Apr. 20 - OKC

Nursing Home Negligence in Oklahoma: Advanced Topics for Plaintiffs and Defendants

6 hrs. of MCLE credit, including 1 hr. of ethics
Oklahoma Bar Center,
1901 N. Lincoln Blvd.

May 3 - Tulsa

Trials of the Century: Part II

6 hrs. of MCLE credit, including 1 hr. of ethics
Crowne Plaza Hotel,
100 E. 2nd St.

May 4 - Ardmore

13th Annual Legal Institute of Pickens County, I.T.

7 hrs. of MCLE credit, including 1 hr. of ethics
Dornick Hills Golf and Country Club,
519 Country Club Rd.

May 4 - OKC

Trials of the Century: Part II

6 hrs. of MCLE credit, including 1 hr. of ethics
Oklahoma Bar Center,
1901 N. Lincoln Blvd.

May 8 - Tulsa

The New Lawyer Experience: Hit the Ground Running

This course is not eligible for mandatory CLE credit. This is an informational course.
Tulsa County Bar Association,
1446 S. Boston

May 10 - OKC

The New Lawyer Experience: Hit the Ground Running

This course is not eligible for mandatory CLE credit. This is an informational course.
Oklahoma Bar Center,
1901 N. Lincoln Blvd.

May 11 - OKC

The 24th Annual Basic Bankruptcy Seminar: Basic Chapter 13 One Year after BAPCPA

6 hrs. of MCLE credit, including 1 hr. of ethics
Oklahoma Bar Center,
1901 N. Lincoln Blvd.

The Winner's Circle: An Evening of Ethics, Food and Racing Fun!

1 hr. of MCLE credit, including 1 hr. of ethics
Remington Park,
One Remington Place

May 11 - Tulsa

Oklahoma Insurance Law Update 2007

6 hrs. of MCLE credit, including 1 hr. of ethics
Crowne Plaza Hotel,
100 E. 2nd St.

May 15 - Tulsa

Cutting Edge Issues and Ethics of Adoption Law

7 hrs. of MCLE credit, including 1 hr. of ethics
Crowne Plaza Hotel,
100 E. 2nd St.

May 16 - OKC

Cutting Edge Issues and Ethics of Adoption Law

7 hrs. of MCLE credit, including 1 hr. of ethics
Oklahoma Bar Center,
1901 N. Lincoln Blvd.

May 17 - Webcast

Representing the Client with Dementia: Legal and Medical Aspects

3.5 hrs. of MCLE credit, including .5 hrs. of ethics
www.legalspan.com/okbar/webcasts.asp

May 18 - OKC

Oklahoma Insurance Law Update 2007

6 hrs. of MCLE credit, including 1 hr. of ethics
Oklahoma Bar Center,
1901 N. Lincoln Blvd.

May 23 - OKC

Auto Accidents - Perspectives from Both Sides

6 hrs. of MCLE credit, including 1 hr. of ethics
Oklahoma Bar Center,
1901 N. Lincoln Blvd.

May 23 - Tulsa

Basic Probate Procedure

6 hrs. of MCLE credit, including 1 hr. of ethics
Crowne Plaza Hotel,
100 E. 2nd St.

May 24 - OKC

Basic Probate Procedure

6 hrs. of MCLE credit, including 1 hr. of ethics
Oklahoma Bar Center,
1901 N. Lincoln Blvd.

May 24 - Tulsa

Auto Accidents - Perspectives from Both Sides

6 hrs. of MCLE credit, including 1 hr. of ethics
Crowne Plaza Hotel,
100 E. 2nd St.

You may register online at www.okbar.org or call (405) 416-7006

Check registration times at www.okbar.org

April/May

THE OBA SUMMER GET-A-WAY



Special Guest Speaker

Jay G. Foonberg,
Attorney & Author

"How To Start & Build
A Law Practice"

Register online at
www.okbar.org

Join Us!
June 21-23, 2007
Tanglewood Resort
on Lake Texoma

OBA Solo & Small Firm Conference

YLD Midyear Meeting

**Estate Planning, Probate and
Trust Section Midyear Meeting**

Plan a get-a-way with the OBA!



**Spend some vacation time with your family
and still get all your CLE for the year!**



Free Training Sessions

Get the most out of your free OBA legal research member benefit. Sign up today for a one-hour class.

Monday, April 23

2 – 3 p.m. Oklahoma Bar Center, OKC
4 – 5 p.m. Oklahoma Bar Center, OKC

Tuesday, April 24

9 – 10 a.m. Oklahoma Bar Center, OKC
11 a.m. – Noon Oklahoma Bar Center, OKC
2 – 3 p.m. Oklahoma Bar Center, OKC
4 – 5 p.m. Oklahoma Bar Center, OKC
6:30 – 7:30 p.m. OU College of Law, Norman
Classroom 2

Wednesday, April 25

9 – 10 a.m. Tulsa County Bar Center
11 a.m. – Noon Tulsa County Bar Center
1:30 – 2:30 p.m. Tulsa County Bar Center

To sign up

for a class in Oklahoma City or Norman,
e-mail marks@okbar.org
or call (405) 416-7026
for a class in Tulsa,
e-mail scousins@tulsabar.com

Reminder – Be sure to include the class date & time and your bar number on your e-mail.

For more info about this member benefit, see the Fastcase story on www.okbar.org



THEME:
LAW DAY 2007

contents

Apr. 14, 2007 • Vol. 78 • No. 12



pg. 959
EMPOWERING YOUTH

FEATURES

- 959 LAW DAY CELEBRATION FOCUSES ON
EMPOWERING YOUTH
- 964 LAW DAY CONTEST WINNERS
- 982 COUNTY LAW DAY CHAIRPERSONS
- 984 COUNTY BAR ASSOCIATION ACTIVITIES
- 991 SUPREME COURT LAW DAY DIRECTIVE
- 992 GOVERNOR SIGNS LAW DAY
PROCLAMATION

pg. 1012

**MATERIAL
WITNESS LAW**



DEPARTMENTS

- 956 FROM THE PRESIDENT
- 1020 FROM THE EXECUTIVE DIRECTOR
- 1021 LAW PRACTICE TIPS
- 1024 ETHICS/PROFESSIONAL RESPONSIBILITY
- 1025 OBA BOARD OF GOVERNORS ACTIONS
- 1029 OKLAHOMA BAR FOUNDATION NEWS
- 1032 ACCESS TO JUSTICE
- 1034 YOUNG LAWYERS DIVISION
- 1035 CALENDAR
- 1037 FOR YOUR INFORMATION
- 1040 BENCH AND BAR BRIEFS
- 1044 IN MEMORIAM
- 1033 EDITORIAL CALENDAR
- 1048 THE BACK PAGE

pg. 994

RETURNING MILITARY



PLUS

- 994 EMPLOYMENT ALERT: ENSURING
RE-EMPLOYMENT RIGHTS FOR
RETURNING MILITARY
- 999 WHAT LIES BENEATH: NATIVE
FORMAT PRODUCTION AND
DISCOVERY OF METADATA IN
FEDERAL COURT
- 1006 DON'T FORGET ABOUT
MAGNUSON-MOSS
- 1012 OKLAHOMA'S MATERIAL WITNESS
LAW: TIME FOR CHANGE
- 954 FASTCASE TRAINING SESSIONS
- 1018 LEGISLATIVE REPORT
- 1019 DAY AT THE CAPITOL
PHOTO HIGHLIGHTS

One of the Best Things the OBA Does

By Stephen Beam

One of the best things the OBA does is the Solo and Small Firm Conference. This year marks the 10th anniversary of this conference, which also hosts the Young Lawyers Division and the Estate Planning, Probate and Trust Section midyear meetings.

This year's conference will take place on June 23 - 25 at Tanglewood Resort at Lake Texoma. You can get all of your CLE for 2007, meals and entertainment for \$175 — an impossible deal to beat.

The CLE this year will be outstanding. The featured speaker is Jay Foonberg. As many of you know, Mr. Foonberg has written "How to Start and Build a Law Practice" and "How to Get and Keep Good Clients." I have both of those books and still refer to them regularly. Mr. Foonberg's topic will be "The Nine Steps for Making Money and Staying out of Trouble from Womb to Tomb." What more do you need to know than how to make money and stay out of trouble?

This is truly a family-oriented event. My family can't wait to go each year. The resort provides many great supervised children's activities such as story time, swimming, movies and arts and crafts. Your children will be kept occupied while you enjoy the CLE and have fun. There will be a nine-hole scramble golf tournament on Friday afternoon and golf with the Board of Governors on Thursday. The entertainment Friday night is a Las Vegas-style magician. There will be face painters, fire breathers, jugglers and bounce toys for the children. There will even be a mechanical bull. Can you imagine Jim Calloway riding a mechanical bull? I can't wait to see that!

All of the CLE will be practical, how to do it, type topics. If you are a new lawyer, you should not miss this event. This is a great opportunity to network. New lawyers should not miss "Nuts and Bolts of Handling a DUI" and "Trying the Automobile Accident Case."

Some of the CLE will be cutting-edge topics. Eric Eissenstat and Brooks Richardson will present "Electronic Evidence & Electronic Discovery." In addition, there is a presentation called "Who's Your Daddy? Nuts and Bolts of the Uniform Parentage Act." I personally can't wait to hear Creekmore

Wallace speak on jury selection. You will be able to learn about pet law from Oklahoma's foremost authority on the topic, Faith Orłowski.

As always, Oklahoma Attorneys Mutual Insurance Co. will be co-producer. OAMIC has helped generously with the conference from the beginning. I want to thank the other major sponsors, OBA Estate Planning, Probate and Trust Section, Legal Directories Publishing Co. Inc., Beale Professional Services and the OBA Family Law Section.

There will be several hospitality suites. Jon Parsley will have a suite as he continues his

campaign for OBA president. The Family Law Section, YLD and Estate Planning, Probate and Trust Section will have suites. This year the YLD will sponsor a party bus to Deep Ellum in Dallas on Friday evening. E-mail Roy Tucker at roy@coultertucker.com to reserve a seat.

The conference is not strictly for solo and small firm lawyers. Ask past presidents Gary Clark or Harry Woods what they think about the conference. I bet they will tell you it is fun, worthwhile and that you should attend. I have attended the conference all 10 years. In fact, I'm turning down a trip to the Texas Bar Association Annual Meeting in San Antonio to attend the conference. Please come. I know you will be glad you did.

If you are a new lawyer, you should not miss this event.



Stephen Beam

President Beam
practices in
Weatherford.
sbeam@ionet.net
(580) 772-2900

OFFICERS & BOARD OF GOVERNORS

Stephen D. Beam, *President*, Weatherford
J. William Conger, *President-Elect*, Oklahoma City
Jack S. Dawson, *Vice President*, Oklahoma City
William R. Grimm, *Immediate Past President*, Tulsa
Julie E. Bates, Oklahoma City
Dietmar K. Caudle, Lawton
Cathy M. Christensen, Oklahoma City
Donna L. Dirickson, Weatherford
Robert S. Farris, Tulsa
Brian T. Hermanson, Ponca City
Michael W. Hogan, McAlester
R. Victor Kennemer III, Wewoka
Deborah A. Reheard, Eufaula
Robert B. Sartin, Tulsa
Alan Souter, Bristow
Peggy Stockwell, Norman
Christopher L. Camp, Tulsa, *Chairperson*,
OBA/Young Lawyers Division

BAR CENTER STAFF

John Morris Williams, *Executive Director*;
Dan Murdock, *General Counsel*; Donita Bourns
Douglas, *Director of Educational Programs*;
Carol A. Manning, *Director of Public Information*;
Craig D. Combs, *Director of Administration*;
Gina L. Hendryx, *Ethics Counsel*; Jim Calloway,
Director of Management Assistance Program; Rick
Loomis, *Director of Information Systems*; Beverly S.
Petty, *Administrator MCLE Commission*; Jane
McConnell, *Coordinator Law-related Education*; Janis
Hubbard, *First Assistant General Counsel*; Loraine
Dillinder Farabow, Janna D. Hall, Mike Speegle,
Assistant General Counsel; Robert D. Hanks, *Senior
Investigator*; Sharon Orth, Ray Page and Dorothy
Walos, *Investigators*

Nina Anderson, Manni Arzola, Jenn Barrett,
Melissa Brown, Brenda Card, Sharon Dotson,
Johnny Marie Floyd, Matt Gayle, Susan Hall, Suzi
Hendrix, Misty Hill, Durrel Lattimore, Heidi
McComb, Jeanne Minson, Renee Montgomery,
Wanda Reece-Murray, Sandy Neal, Tim Priebe, Lori
Rasmussen, Tracy Sanders, Mark Schneidewent,
Dana Shelburne, Laura Willis & Roberta Yarbrough

EDITORIAL BOARD

Editor in Chief, John Morris Williams
News & Layout Editor, Carol A. Manning
Editor, Melissa DeLacerda, Stillwater
Associate Editors: Steve Barnes, Poteau; Martha
Rupp Carter, Tulsa; Mark Curnutte, Vinita;
Luke Gaither, Henryetta; D. Renee Hildebrandt,
Oklahoma City; John Munkacsy, Lawton; Julia
Rieman, Enid; James Stuart, Shawnee and
Judge Lori M. Walkley, Norman

NOTICE of change of address (which must be in
writing and signed by the OBA member), undeliv-
erable copies, orders for subscriptions or ads, news
stories, articles and all mail items should be sent to
the **Oklahoma Bar Association, P.O. Box 53036,**
Oklahoma City, OK 73152-3036.

Oklahoma Bar Association (405) 416-7000
Toll Free (800) 522-8065 FAX (405) 416-7001
Continuing Legal Education (405) 416-7006
Ethics Counsel (405) 416-7083
General Counsel (405) 416-7007
Law-related Education (405) 416-7005
Lawyers Helping Lawyers (800) 364-7886
Mgmt. Assistance Program (405) 416-7008
Mandatory CLE (405) 416-7009
OBJ & Public Information (405) 416-7004
Board of Bar Examiners (405) 416-7075
Oklahoma Bar Foundation (405) 416-7070

EVENTS CALENDAR

APRIL

- 17 **Death Oral Argument, Scott James Eizember v. State – D-05-319**; 10 a.m.; Price Turpen Courtroom, University of Tulsa College of Law
- 18 **OBA Clients' Security Fund Committee Meeting**; 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Micheal Salem (405) 366-1234
- 100 Great Ideas**; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- 19 **OBA Work/Life Balance Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Melanie Jester (405) 609-5280
- 20 **OBA Board of Governors Meeting**; 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- 20-22 **YLD South Central Regional Conference**; Sheraton Hotel, Oklahoma City; Contact: Keri Williams (405) 385-5148
- 23 **OBA Advertising Task Force Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jack Dawson (405) 236-8541
- 24 **Death Oral Argument, Ricky Malone v. State – D-2005-600**; 10 a.m.; Court of Criminal Appeals Courtroom
- OBA Women in Law Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Elizabeth Joyner (918) 573-1143
- 27 **New Attorney Admission Ceremony**; 10 a.m.; House of Representatives, State Capitol, Oklahoma City; Contact: Board of Bar Examiners (405) 416-7075
- OBF Trustees Meeting**; 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070

MAY

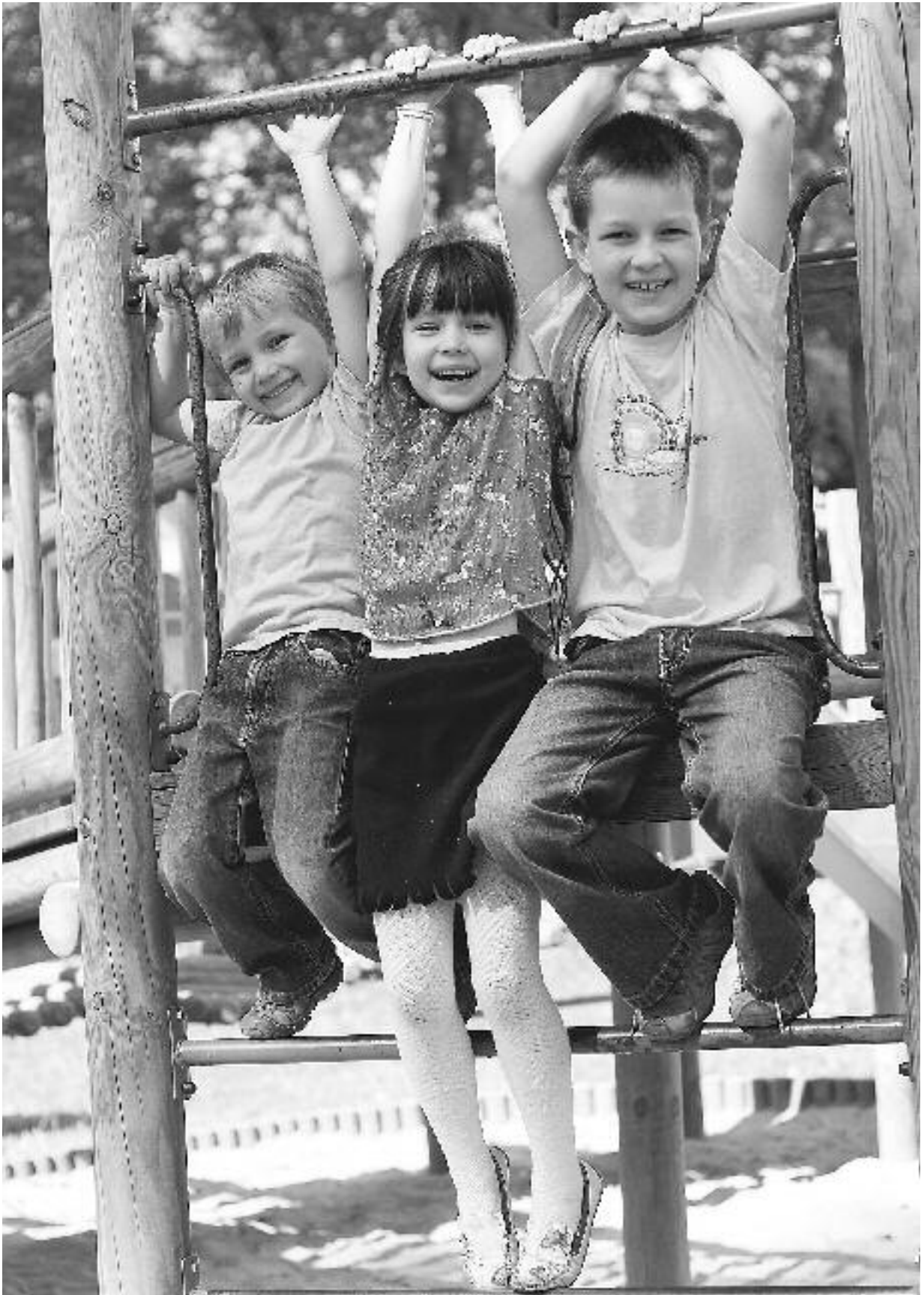
- 1 **OBA Ask A Lawyer Day**; Oklahoma City and Tulsa; Contact: Lori Rasmussen (405) 416-7018

For more events go to www.okbar.org/news/calendar.htm

The Oklahoma Bar Association's official Web site: **www.okbar.org**

THE OKLAHOMA BAR JOURNAL is a publication of the Oklahoma Bar Association. All rights reserved. Copyright© 2007 Oklahoma Bar Association. The design of the scales and the "Oklahoma Bar Association" encircling the scales are trademarks of the Oklahoma Bar Association. Legal articles carried in THE OKLAHOMA BAR JOURNAL are selected by the Board of Editors.

THE OKLAHOMA BAR JOURNAL (ISSN 0030-1655) IS PUBLISHED FOUR TIMES A MONTH IN JANUARY, THREE TIMES A MONTH IN FEBRUARY, MARCH, APRIL, MAY, AUGUST, SEPTEMBER, OCTOBER, NOVEMBER AND DECEMBER AND BIMONTHLY IN JUNE AND JULY EFFECTIVE JAN. 1, 2003. BY THE OKLAHOMA BAR ASSOCIATION, 1901 N. LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA 73105. PERIODICALS POSTAGE PAID AT OKLAHOMA CITY, OK. POSTMASTER: SEND ADDRESS CHANGES TO THE OKLAHOMA BAR ASSOCIATION, P.O. BOX 53036, OKLAHOMA CITY, OK 73152-3036. SUBSCRIPTIONS ARE \$55 PER YEAR EXCEPT FOR LAW STUDENTS REGISTERED WITH THE OKLAHOMA BAR ASSOCIATION, WHO MAY SUBSCRIBE FOR \$25. ACTIVE MEMBER SUBSCRIPTIONS ARE INCLUDED AS A PORTION OF ANNUAL DUES. ANY OPINION EXPRESSED HEREIN IS THAT OF THE AUTHOR AND NOT NECESSARILY THAT OF THE OKLAHOMA BAR ASSOCIATION, OR THE OKLAHOMA BAR JOURNAL BOARD OF EDITORS.



LAW DAY 2007

OBA Annual Celebration to Focus on Youth

By Giovanni Perry, Law Day Committee Chair

As communities across Oklahoma gear up for the national celebration of Law Day 2007, the Law Day Committee invites you to help celebrate with us May 1, when our members will find we have a great opportunity to show the public the important work we as lawyers do every day. The committee is very proud of the many programs it sponsors to showcase these efforts.

Here in Oklahoma, we are very proud of our Law Day tradition. The national celebration started right here in Oklahoma. Hicks Epton, an attorney from Wewoka, had the idea in 1953 that Oklahomans should celebrate the law and learn about what the law means to us in this country. President Dwight D. Eisenhower established Law Day nationally by proclamation in 1958. In 1961 Congress set aside May 1 of each year as the day for Americans to celebrate their liberties.

ASK A LAWYER TV SHOW

This year's Ask A Lawyer television program will air May 1 at 7 p.m. on OETA stations across the state. This year we have kept the revamped format Ask A Lawyer television program, featuring vignettes relating personal stories to legal issues. We have found that the new format for the show appeals to a wider audience and results in increased participation. In another bid to branch out to a larger audience, we will for the second time provide the hour-long Ask A Lawyer TV show in Spanish. In the next few weeks prior to Law Day, volunteers who are fluent in Spanish will meet at OETA to translate and voice-over the entire show.

This year's show glimpses into the lives of three Oklahomans who found their rights in jeopardy, and how lawyers and our legal system helped them. Dennis Fritz, a subject of the recent John Grisham book "The Innocent Man," spent nearly 12 years in prison for a murder he didn't commit. He shares the story of his exoneration through DNA evidence. Viewers will also meet Chloe Smith, a young girl who faced expulsion from school after a drug dog sniffed out legal, prescribed medication in her purse, as well as Don Johnson, a firefighter hurt on the job, who needed an attorney after his workers' compensation claim was denied.

CONTESTS AND ACTIVITIES

This year we continued to offer expanded activities and contests for school-aged children. Participation in the contests has steadily risen. We believe the changes we've implemented over the last few years will continue to lead to a greater awareness among school children of our rights and responsibilities as citizens.

The Law Day theme this year is, "Empowering Youth, Assuring Democracy." This theme provided the inspiration for Oklahoma school children

Ask A Lawyer

Tuesday, May 1
7-8 p.m.

OETA stations

FEATURING
SEGMENTS ON:

- ☆ Privacy Rights in Public Schools
- ☆ Workers' Compensation
- ☆ DNA Evidence: How it Freed an Innocent Man

Hosted by Melissa DeLacerda

Moderated by Douglas Dodd

Special Guests:

Oklahoma Supreme Court Chief
Justice James Winchester

OBA President Stephen Beam



to participate in the annual Law Day contests organized by the committee and sponsored by the OBA.

The committee offers a wide variety of contests, which we believe keeps Oklahoma school children interested in participating as they progress in school. This year, more than 1,900 students from across Oklahoma submitted entries in the OBA Law Day contests. We have completed judging the entries. The winners can be viewed at www.okbar.org and on page 965 of this issue.

In addition to the contests, we also targeted ninth and tenth graders with an online citizenship test. This is a 25-question, multiple-choice quiz using questions taken from the actual U.S. citizenship test. Students automatically receive scores and an explanation about the questions they missed.

High school juniors and seniors were encouraged to learn more about how the law changes after they reach their 18th birthday. On the Law Day Web site, the committee has provided the Legal Guide for Young Adults in Oklahoma, which is prepared by the OBA's Law-related Education Committee.

FREE LEGAL ADVICE

Final preparations are underway for the statewide Ask A Lawyer call-in event, to be held May 1. This may be one of the best ways all Oklahoma bar members can participate in the national celebration of Law Day. This annual event gives us a unique opportunity to provide a valuable community service while promoting positive public relations for bar members.

Callers statewide will be able to reach an attorney by calling (800) 456-8525 throughout the day on May 1. The OBA and the committee work with each county Law Day chairperson in setting up a network of local phone numbers so that those who prefer to speak to a local attorney will be able to see and call those numbers during the broadcast. Volunteer attorneys in each participating county staff the phones and answer questions for a predetermined time period. Oklahoma and Tulsa County attorneys work together to staff the toll-free, statewide phone number from 9 a.m. to 9 p.m.

To make this community service project a success, the Law Day Committee needs your help. It takes a total of 30 attorneys for each two-hour shift to fully staff the statewide number. That effort, combined with the local county bars creates a huge need for attorneys to step forward. To volunteer in Oklahoma County, contact Connie

Creed at (405) 236-8421, or send e-mail to c creed@okcbar.org. In Tulsa County, contact Susan Howe, (918) 645-4307, e-mail smhowe1@sbcglobal.net; Jason Bashforth, (918) 591-5296, e-mail jbashforth@dsda.com; or Dan Crawford, (918) 749-8400, e-mail liondc@gmail.com. Those of you wishing to volunteer in other counties should call your Law Day Chairperson. You can find that person's name in the related story in this issue of the *Oklahoma Bar Journal*. Phone banks are located at the OETA studios in Oklahoma City and Tulsa. Because of the emphasis on reaching a wider audience, there is a great need for Spanish-speaking attorneys to volunteer as well. If you speak Spanish or know non-attorneys who would volunteer to translate, we need your help!

DIRECTIVE AND PROCLAMATION

Another important aspect of Law Day includes a directive, which this year was signed by Oklahoma Supreme Court Chief Justice James Winchester on March 15. By signing the directive, the chief justice encourages courts to host Law Day events. This year, almost all of our contest first-

place winners were present to have their photos taken with Chief Justice Winchester and OBA President Stephen Beam. We once again filmed a segment with the chief justice talking to the contest winners about this year's theme and fielding questions from the students. Also, this year Gov. Brad Henry has signed a proclamation designating May 1, 2007, as Law Day in Oklahoma.

GET INVOLVED

We hope all Oklahoma lawyers will participate in some way in Law Day, whether it's volunteering to provide free legal advice in your county, making a presentation to a local school group or organization, or joining us on the Law Day Committee. Planning for the 2008 celebration begins almost as soon as the 2007 celebration ends, and we need your ideas! If you'd like to join this fun, yet very hardworking committee, contact me at (405) 601-2222 or e-mail me at giovanni.perry@cox.net. We would love for you to join us. Happy Law Day!



Law Day contest winners display their artwork at a state Capitol ceremony attended by Law Committee Vice Chair Kim Spady and Chair Giovanni Perry (back row, left) along with OBA President Stephen Beam and Oklahoma Supreme Court Chief Justice James Winchester (back row, right). Photo: Legislative Service Bureau Photo Division



Volunteer Lawyers Needed to Give Free Legal Advice

- Several hundred attorneys needed in Tulsa and Oklahoma City
- Tuesday, May 1
- 9 a.m. to 9 p.m.
- Location: OETA Studios in Tulsa and Oklahoma City
- Two-hour shifts.
- OBA provides reference guides for commonly asked questions
- Food and snacks will be served

To sign up, contact:

- Oklahoma County:
Connie Creed
(405) 236-8421
ccreed@okcbar.org
- Tulsa County:
Susan Howe
(918) 631-2423
smhowe1@sbcglobal.net
- Jason Bashforth
(918) 591-5296
jbashforth@dsda.com
- Dan Crawford
(918) 749-8400
liondc@gmail.com

- Other Counties:
Call your Law Day Chairperson to help answer phones.

Ask A Lawyer





¿Habla Español?

We need you!

Spanish-speaking attorneys are needed to give free legal advice on Ask A Lawyer day.

Non-attorney translators are also needed.

The OBA is making a greater effort this year to reach out to the Latino community, so we expect to hear from Spanish-speaking callers.

When: Tuesday, May 1

9 a.m. – 9 p.m. (two-hour shifts)

OETA Studios in Oklahoma City and Tulsa

To sign up:

Oklahoma City

**Connie Creed • (405) 236-8421
ccreed@okcbar.org**

Tulsa

**Susan Howe • (918) 631-2423
smhowe1@sbcglobal.net
Jason Bashforth • (918) 591-5296
jbashforth@dsda.com
Dan Crawford • (918) 749-8400
liondc@gmail.com**

¡Alli los miramos!

Law Day 2007

Contest Winners

“Empowering Youth, Assuring Democracy”

The OBA Law Day Committee would like to thank Oklahoma educators, students and their families for participating in the 2007 Law Day contests. More than 1,900 entries were received from across the state.

This year’s theme, “Empowering Youth, Assuring Democracy,” encouraged children to learn about and become active in our government.

Art contests were offered to the younger students. The coloring contests for pre-kindergarteners, kindergarteners and transitional first graders were again a tremendous success. More than half of the total entries were coloring contest entries. First and second grade students could enter a drawing contest. A collage contest was offered to third and fourth graders, while fifth graders could choose between entering a diorama or a poem.

Sixth through ninth graders expressed the Law Day theme through poetry.

The art free for all category for 10th through 12th graders invited students to use their imaginations and choose any medium to demonstrate the Law Day theme. The students took on the challenge and came through with outstanding results: some examples were pastel drawings, creative writing and performing original songs.

One student was designated the “grand prize winner” for having submitted the best overall entry from all grades.

Finally, two fun activities were available for high school students: an online quiz based on the actual U.S. citizenship test, and the Legal Guide for Young Adults in Oklahoma, which helps teenagers understand the rights and responsibilities that they are granted upon reaching their 18th birthday. Teachers were given access to a test over the guide online.

County bar associations will officially present the contest winners in their county with plaques and prize money later this school year.

The *Oklahoma Bar Journal* is proud to present the 2007 contest winners...

COLORING CONTEST

WINNERS

★★★★★★★ *Pre-Kindergarten*

1ST PLACE

PAYTON SHEARS
Villa Teresa Catholic
School, Oklahoma City
Teacher: Mary Lewis



Nicolas Bermudez, Christian Heritage Academy, Del City
Cortez Bivens, Patrick Henry Elementary, Tulsa
Schelbye Blankenship, George Early Childhood Center, Idabel
Bailey Boren, Patrick Henry Elementary, Tulsa
Megan Brown, Christian Heritage Academy, Del City
Ana Cherry, Granny and PaPa School, Tulsa
Lauren Cyriacks, Maud Elementary School
Hannah DeMoss, Christian Heritage Academy, Del City
Morgan Dennis, Morrison Elementary School
Ashley Lynn Garcia, Christian Heritage Academy, Del City
Carson Garrett, Owasso 4-Year-Old Program
Lauren Goebel, Villa Theresa Catholic School, Oklahoma City
Lexi Haynes, Taloga Elementary
Ian Kirkland, Jenks West Elementary, Tulsa
Catheryne Martin, Covenant Community Center, Stillwater
Gracie Newton, Mission Elementary, Anadarko
Danny Pena, Villa Teresa Catholic School, Oklahoma City
Morgan Phillips, Plainview Elementary, Ardmore
Kate Pope, Villa Teresa Catholic School, Oklahoma City
Denver James Rhymer, Christian Heritage Academy, Del City
Holly Noel Ronan, Nance Elementary, Clinton

★★★★★★★★★★★★★★★★

HONORABLE MENTIONS:

★★★★★★★★★★★★★★★★

Kyle Avery, Christian Heritage Academy, Del City
Cole Allen, Villa Teresa Catholic School, Oklahoma City
Damion Bazwell, Patrick Henry Elementary, Tulsa
Madison Belmear, Owasso 4-Year-Old Program

Erica Strader, Perkins-Tryon Elementary
Felicity Villines, Patrick Henry Elementary, Tulsa
Parker Wallace, Plainview Primary, Ardmore
Mark Wanenmacher II, Patrick Henry Elementary, Tulsa
Jolie Whitley, Taloga Elementary
Kalissa Wile, Taloga Elementary
Shayci Wile, Taloga Elementary



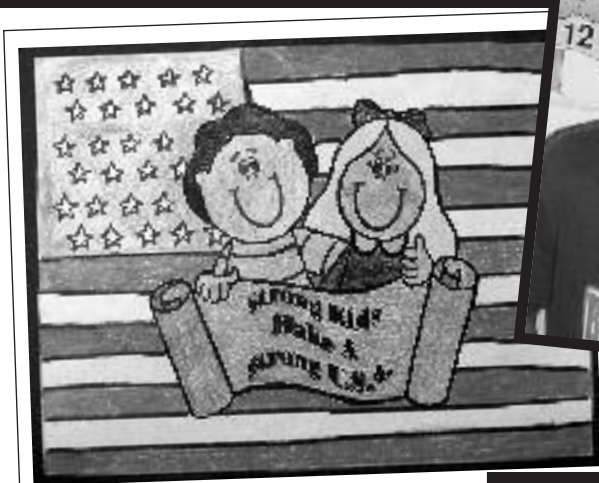
2ND PLACE
CHLOIE ROBERSON
 Okmulgee Primary
 School
 Teacher: Beverly Jackson

**LAW
 DAY**
 ★★★★★★
2007



COLORING CONTEST WINNERS

★★★★ Kindergarten



1ST PLACE

**MIGUEL ANGEL
 OCHOA**
 Seiling Elementary School
 Teacher: Jan Smart

★★★★★★★★★★
**HONORABLE
 MENTIONS:**

★★★★★★★★★★

Payton Archer, Seiling Elementary
Quinlan Byrd, Graham Elementary, Weleetka
Zach Frazier, Perkins-Tryon Elementary
Jadon Daniel Henderson, Seiling Elementary
James David Hisaw, Seiling Elementary
Darla Mae Nelson, Seiling Elementary
Sixto Luis Ortega, Seiling Elementary
Devon Padgett, Graham Elementary School, Weleetka
Nancy Rosio Rivas, Seiling Elementary
Selena Russell, Seiling Elementary
Bailey Ann White, Seiling Elementary

**VICTORIA
 ELIZABETH WHITE**
 Seiling Elementary
 School
 Teacher: Jan Smart



**KAITLYN
 ARTUSSEE**
 Graham Elementary
 School
 Teacher: Barbara Neal

2ND PLACE
 WINNERS

“Empowering Youth, Assuring Democracy”



★ ★ ★ ★ ★ ★ ★ ★ ★ ★

HONORABLE MENTIONS:

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

Hailey Kay Boyd, Davis Elementary
 Nathan Bryant, Cordell Elementary
 Caiden Coleman, Davis Elementary
 Brittany Dudgeon, Cordell Elementary
 John Eldridge, Davis Elementary
 Brendon Hobbs, Davis Elementary
 Destiny Nicole Jackson, Davis Elementary
 Ryan King, Cordell Elementary
 Perla Martinez, Hinton Elementary
 Chase Merkey, Cordell Elementary
 Kendal Romine, Cordell Elementary
 Anthony Sperle, Cordell Elementary
 Toby Taliaferro, Davis Elementary
 Mark Treadway, Cordell Elementary
 Ashley Walker, Cordell Elementary

1ST PLACE

PANTERA BROTHERS
 Cordell Elementary
 Teacher: Sherri Goeringer



2ND PLACE

KEYTON MERKEY
 Cordell Elementary
 Teacher:
 Sherri Goeringer



COLORING CONTEST WINNERS

★ ★ ★ *Transitional First Grade* ★ ★ ★



1ST PLACE

PLIZIA BISHOP

Maryetta School,
Stilwell

Teacher: Samilou Smith



★ ★ ★ ★ ★ ★ ★ ★ ★ ★

HONORABLE MENTIONS:

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

*Tyler Busby, Jonas Salk
Elementary, Tulsa*

*Jacob Christie, Maryetta
School, Stilwell*

*Kira Ferlazzo, Jonas Salk
Elementary, Tulsa*

*Ashlynn Hood, Jonas Salk
Elementary, Tulsa*

*Bailey Hooper, Temple
Elementary*

*Veronica Kirk, Maryetta
School, Stilwell*

*Tenille Leatherwood, Maryetta
School, Stilwell*

*Jose Perez, Jonas Salk
Elementary, Tulsa*

*Halle Teehee, Maryetta
School, Stilwell*

*Landon Unger, Maryetta
School, Stilwell*

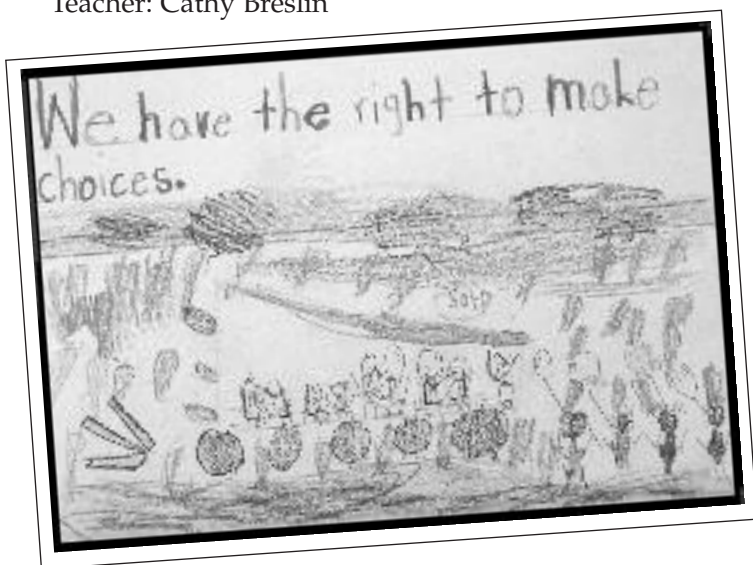


2ND PLACE

KYLE LOGSDON

Jonas Salk Elementary, Tulsa

Teacher: Cathy Breslin



**LAW
DAY
★ ★ ★ ★ ★
2007**

DRAWING CONTEST WINNERS

★ ★ ★ ★ *First Grade* ★ ★ ★ ★

DRAWING CONTEST WINNERS

★ ★ ★ ★ *Second Grade* ★ ★ ★ ★



1ST PLACE

BAYLI HYDE
Burlington Public School
Teacher: Frances Tanner

**“Empowering
Youth,
Assuring
Democracy”**

2ND PLACE

JILLIAN CAMPBELL
Maryetta School, Stilwell
Teacher: Samilou Smith



★ ★ ★ ★ ★ ★ ★ ★ ★ ★

HONORABLE MENTIONS:

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

Bodie Dupuy, Maryetta School, Stilwell

Brianna Hammer, Maryetta School, Stilwell

Kyndle Kirby, Maryetta School, Stilwell

Dalton Lee, Maryetta School, Stilwell

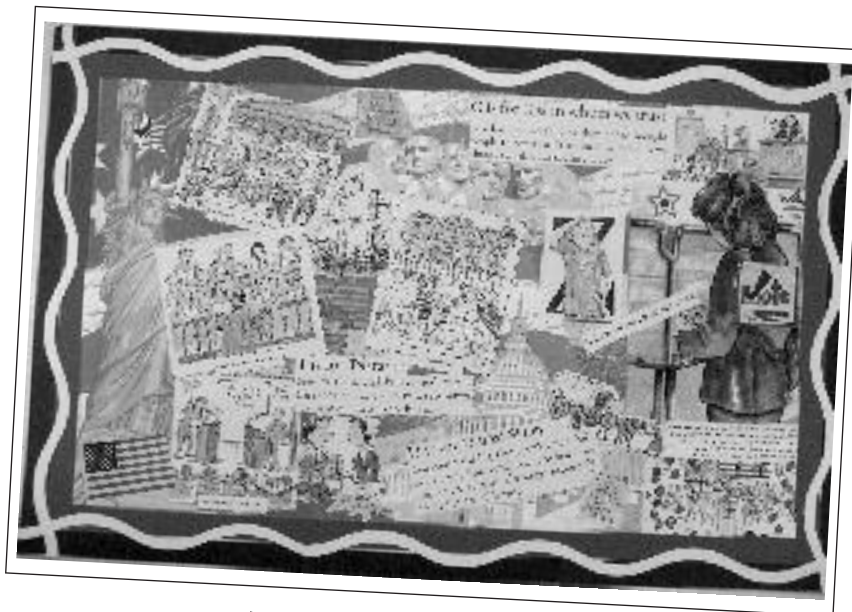
Sareyea Royal, Plainview Primary, Ardmore

Caden Unger, Maryetta School, Stilwell



Collage Contest Winners

★ Third Grade ★



1ST PLACE

JOY RONG

Community Covenant
School, Stillwater
Teacher: Ronda Peek

**LAW
DAY
★ ★ ★ ★ ★
2007**

2ND PLACE

MILLIE LENARD

Coleman Elementary
Teacher: Rhonda Stephens



★ ★ ★ ★ ★ ★ ★ ★ ★ ★

**HONORABLE
MENTIONS:**

★ ★ ★ ★ ★ ★ ★ ★ ★ ★

*Hailey G. Brown, Empire
Public School, Duncan*

*Brianna Findley, Covenant
Community Center, Stillwater*

*Thomas Patterson, Covenant
Community Center, Stillwater*

Bo Riggs, Prague Elementary

*Taylor Rollins, Washington
Elementary*

*Paula Tran, Earlywine
Elementary, Oklahoma City*

Collage Contest Winners

★ Fourth Grade ★



1ST PLACE

BLAKE WILLIAMS
Mustang Elementary
Teacher: Carol Smith



★★★★★★★★★★★★★
**HONORABLE
MENTION:**

★★★★★★★★★★★★★
*Cayla Robison,
Mustang Elementary*



2ND PLACE

LUCAS HAYWORTH
Mustang Elementary
Teacher: Carol Smith



Diorama Contest Winners

★ Fifth Grade ★



1ST PLACE

**ATTICUS CHRISTIAN
WADE**

Sulphur Intermediate
School

Teachers: Rhonda Russell
and Lauren Johnson



2ND PLACE

JACOB SPADY
Hinton Elementary
Teacher:
Jennifer Hohmann



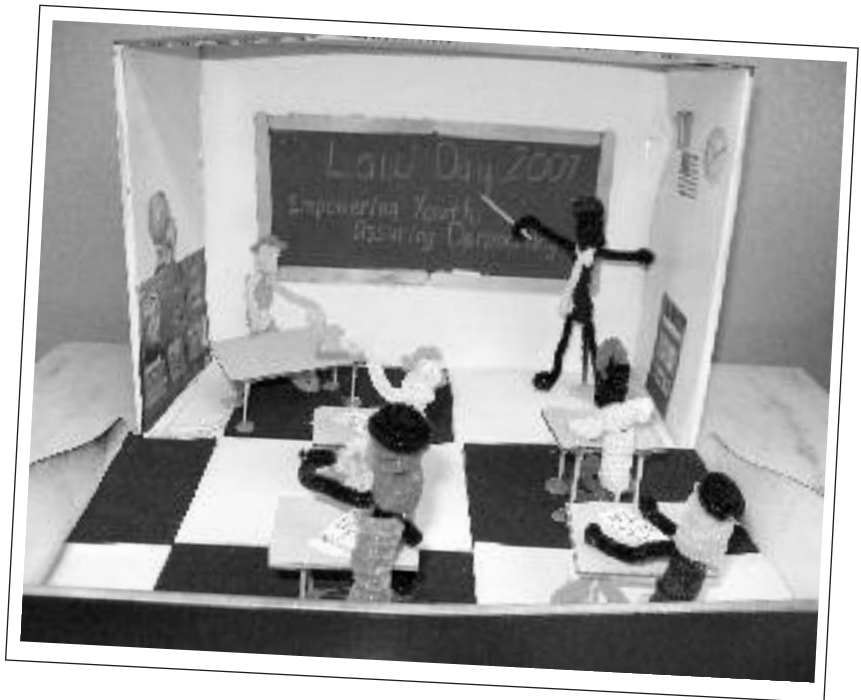
HONORABLE MENTIONS:



*Racime Cleveland, Prague
Elementary*

*Micah Ripley, Prague
Elementary*

Lucas Tapp, Prague Elementary



Poetry Contest Winners

★ Fifth Grade ★



1ST PLACE

PRESLEY NICHOLS
Davis Middle School
Teacher: Shelly Thompson

2ND PLACE

**ATTICUS CHRISTIAN
WADE**
Sulphur Intermediate
School
Teachers: Rhonda Russell
and Lauren Johnson

*To read Atticus's poem,
go to www.okbar.org.*

Empowering Youth, Assuring Democracy

BY PRESLEY NICHOLS

Empowering Youth giving authority to all,
Assuring Democracy in those great and small.
The system works well in the U.S.A.,
Giving children who live here their own special say.
Children learn early that majority rules,
Not just in justice but also at school.
Even the children have issues and needs,
Having a democracy helps us all indeed.
To give our opinions and ask for more,
Giving us knowledge to spread our wings and soar.
Our civic responsibilities don't go unseen,
From the littlest toddlers, on up to our teens.
We're learning the laws and climbing the stairs.
To be homeless, helpless or in foster care,
We all have rights and crosses to bear.
Our freedom deserves for us to be vested,
Our authority as children will always be tested.
Government by the people will be safe for you and me.

HONORABLE MENTION:

★ Virginia Glaze, Prague Elementary



Poetry Contest Winners

★ Seventh Grade ★



★ Sixth Grade ★

1ST PLACE

JAYMEE BELL
Empire Elementary, Duncan
Teacher: Candace Womack

Empowering Youth, Assuring Democracy

BY JAYMEE BELL

We the youth of our country
Need to continue the way
of our democracy
We the youth of our country
Should represent our nation
We the youth of our country
Should respect the government
of the United States
We the youth of our country
Will soon lead our powerful
democracy
We the youth of our country
Are the key to the future

1ST PLACE

ALI BURKMAN
Union 6th/7th Grade
Center, Tulsa
Teacher:
Janet Schonefeld



So Proud To Be, In a Land That Is Free

BY ALI BURKMAN

For every young person should definitely know,
About the rights that allow us to live and to grow,
The Amendments of the Constitution are grand,
So you better learn to know them like the back of your hand,
If you dislike a law and you want it to change,
You should know that this power is still in your range,
Do not let it bother you while you just sit around,
Get out of your seat; get your feet off the ground!
There are plenty of rights that you can use,
That will help to cure your miserable blues,
You can have all your friends sign a petition,
And help you to conquer your important mission,
You can use your rights, like the freedom of press,
To let people know about your awful distress,
If you want to use freedom of speech,
You can be sure you have this right to teach,
But these Amendments are only a few of America's laws,
That help this country run smoothly, without any flaws,
Do not take them for granted and follow their rules,
Because one day you'll use them as important tools,
America is great,

cont'd on next page



cont'd from previous page

No need to debate,
Use these rights carefully and always
remember to be proud,
Because in other countries these privileges
simply aren't allowed,
If many of your tries haven't ended successfully,
You know you have the right to the freedom
of assembly,
When you disagree and you want to protest,
You should carry on the fight until the people request,
That the law you dislike should and can be removed,
It can be rewritten and even improved,
But sometimes these laws require a few votes,
So here's how that idea came afloat:
When soldiers in the army were old enough to fight,
They thought to themselves, "We should have
the rights,
To make our country's decisions and
earn the right to vote,
We should all have equal rights, "they said, "
one man, one vote"
So now each citizen has the privilege,
From young adults to those of old age,
To choose and to vote (or as some say, "elect"),
The president, and governors of the ut-most respect,
I do have to say, our country is grand,
From coast to coast, and across the land,
Our democracy is better,
Than the whole world's put together,
We aren't run by a tyrant, a king, nor a queen,
We're simply the best nation this world's ever seen,
It's a rule by the people here, so do as we say,
Because it's our government and it's run our own way,
This country is free and I'm so lucky to be,
In a place that is based on democracy,
And so now our children, grandchildren,
and their kids,
Can have the same chances as their
ancestors did,
When our Founding
Fathers made this
decree,
It was intended to
give freedom to you
and to me,
Empowering Youth,
Assuring Democracy,
And that's exactly
how this generation
can carry on the
legacy.

2ND PLACE

OMAR NUNEZ
Union 6th/7th Grade
Center, Tulsa
Teacher:
Janet Schonefeld

*To read Omar's poem,
go to www.okbar.org.*

1ST PLACE

★ Eighth Grade ★

STAN HICKS
Edison Preparatory
Middle School, Tulsa
Teacher:
Linda Lance



I Pledged Allegiance BY STAN HICKS

*I pledged allegiance to the flag,
While waving in the wind.
I thought of how it made me sad,
For all that had been.*

*I thought of those young boys at Valley Forge,
They really weren't much older than me.
They won our nation following George,
These youths died to make me free.*

*With bullets ricocheting around their heads,
Boys fought at Gettysburg.
They saved the Union with their lives,
And lay forgotten in the fields.*

*An Oklahoma farm boy,
Was a pilot in World War II.
This nineteen year old was my grandpa,
And for me I know he flew.*

*A young girl got on a city bus,
And refused to take her place.
Our civil rights were won by those,
In another time and place.*

*As fireworks burst across the sky,
The colors became quite bolder.
The flag is really so much more,
And the rest is on my shoulders.*

HONORABLE MENTIONS:

- ★ Jake Chapman, Edison Preparatory Middle School, Tulsa
- ★ Falyen Embry, Bishop John Carroll, Oklahoma City
- ★ Marinna Wolf, Bishop John Carroll, Oklahoma City

2ND PLACE

★ Eighth Grade ★

REBECCA ROACH
Grove School, Shawnee
Teacher: Karen Buss

and

EVA TRAMMELL
Bixby Middle School
Teacher: Denver Boren

To read Rebecca's and Eva's poems, go to www.okbar.org.



Poetry Contest Winners

★ Ninth Grade ★

1ST PLACE

PATRISHA BAKER
Gore High School
Teacher: Lisa Ward



America's True Legacy

BY PATRISHA BAKER

In 1776 the legacy of America would start,
Who guaranteed it would not depart?
The most important segment of our nation,
Was not simply proclaiming declaration.
Youth is keeping democracy going,
Ensuring strength as we are growing.
Our country relies on the upcoming youth,
Preserving freedom and encompassing truth.
Our only hope to maintain independence,
Is empowering young to aim for transcendence.
Our youth are soon to be in charge,
With this power we will further enlarge.
What is to come in future years,
Securing us from our worst fears?
Does America stand a chance?
Will freedom and justice continue their advance?
Each generation must make their impact,
Holding our nation's democracy intact.

2ND PLACE

KYLE RESSEL
Comanche High School
Teacher: Sarah Rucker

*To read Kyle's poem,
go to www.okbar.org.*

HONORABLE MENTION:

- ★ Tavia Zarubin, Evangelistic Temple School, Tulsa

Art Free for All **CONTEST WINNERS** **10th Grade** ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★

1ST PLACE

HAYLEY ERWIN
Lawton High School
Teacher: Terrance Freeman



Sounds of Democracy

BY HAYLEY ERWIN

The first Amendment RAPS
Religion, Assembly, Press Speech
Now Speak Up.

One Man One Vote.
Your Vote is your Voice.
Now Speak Up.

Democracy is Loud.
It's a thunderstorm where clouds of ideas smash together.
See the lightening flash of an idea.
Count—one thousand one, one thousand two...
And know that the change is coming soon.

Be the lightening.
Be the change.
Now Speak Up.

Speaking up means knowing what you believe and why
you believe it.

Defend your position but be open to other ideas.

Don't be deaf to other voices.

Speaking up means you must be sincere at the risk of
being sincerely wrong.

If you stand for nothing then you will fall for anything.

My generation will soon lead.
Empowered Youth – Electric Youth.
Determined to chase the storm.

The youth nation will lead – not follow.
Devolution not revolution.

Respect not Contempt.

Youthful Millions.

Speaking Up – Taking a Stand – Assuring Democracy.

2ND PLACE

Seeds of the Future

CALLI VAUGHAN
Lawton High School
Teacher: Terrance Freeman

**To read Calli's poem,
go to www.okbar.org.**



HONORABLE MENTIONS:

★ **For Poetry:**

Alexander Rosa-Figueroa,
Lawton High School

Austin Hailman, Evangelistic Temple School, Tulsa

★ **For Artwork:**

Uyla Daniels, Ponca City High School

Cameron Lincoln, Ponca City High School

Art Free for All **CONTEST WINNERS** ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ ★ **11th Grade**

Empower Our Youth and Insure Them Democracy

BY SARAH HANSON

*Tempest storms and waves a mass
 Today our youth is unsure of their past.
 What must we do to end their confusion?
 But assure them of their freedom that was
 fought for and earned.
 Assure them of democracy,
 Give them your word,
 Grant them the life they have to live,
 Make sure we're heard!
 Let them know they have chance,
 But do not allow them to mock your stance.
 Remind them of their choice to choose.
 Remind them of the cost it took
 It's too much for them to loose.
 Take them to the house which allows them to pray,
 Show them a father which will give them grace.
 Give them a reason to stand face to face.
 So they may share their views and speak their mind
 To begin to untie the ropes that hate can bind.
 Ensure their desire to succeed
 Freedom and choice is all they need.
 The road may be rough
 The journey difficult
 Don't question, don't even ask
 "Is it too late? Is it enough?"
 Tell them of the State within a State
 That they may go in with their minds wide open
 So they can se and understand their
 founding fathers fate.
 Our youth is misunderstood because of their ways,
 We must begin to show them that this is,
 indeed their day.
 Take them to the house which allows them to pray,
 Show them a father which will give them grace.
 Give them a reason to stand face to face.
 So they may share their views and speak their mind
 To begin to untie the ropes that hate can bind.
 Ensure their desire to succeed*

1ST PLACE

SARAH HANSON
 Lawton High School
 Teacher: Terrance Freeman



*Freedom and choice is all they need.
 The road may be rough
 The journey difficult
 Don't question, don't even ask
 "Is it too late? Is it enough?"
 Take them to a wondrous place
 Don't push, just give them space.
 So they may begin to love instead of hate.
 Give them a chance to present their case
 The time is now, it's not too late.
 The road may be rough
 The journey difficult
 Empower our youth
 and insure them
 democracy.
 It's not too late!
 We must insure!
 We must empower!
 We must insure!
 And I promise that
 you will find,
 And yes! It is
 enough!*

**LAW
 DAY
 ★ ★ ★ ★ ★
 2007**

★ 11th Grade cont'd ★

2ND PLACE

MEGAN LAWSON

Perry High School
Teacher: Heather Lovell

HONORABLE MENTIONS:

★ *For Poetry:*

Marshall Taylor, Lawton High School
McAllister Vaughan, Lawton High School

★ *For Artwork:*

Mariah Jones, Ponca City High School; Megan Lawson, Perry High School



Art Free for All **CONTEST WINNERS** ★★★★★★★★★★★★★★★★★★★★ **12th Grade**

The Gardener

BY JENA CARPER

Youth are fragile buds, holding the promise of tomorrow;
Small seeds waiting for their sudden effloresce.
They are discerning eyes soon to diminish every fear and sorrow.
Yes, the hope that the world so desperately needs.
But who will tend this potential garden?
Who shall boldly stand, a leader, to plant these delicate seeds?
For this man has no easy task, no small endeavor to uphold.
He is to be the inspiring light to guide their growth,
The potter with clay in which to mold.
With this role he will charge, educate persuade, and enliven
For these little buds' leadership conception.
As he gardens, futures will brighten
And the world will continue to spin.
This position is not of any light consequence
For the very weight of the world rests upon it,
Depending on the Gardener in some form or sense.
Gardening is open for all who take hold;
All can water and weed the budding flowers of today,
Being the instruments to transform futures untold.
Spectators shall be revolutionized by this caring shepherd,
This chosen one to imprint his life on every young seed.
By him, America will continue a government unperturbed,
A free nation by this Gardener's dutiful deed.

1ST PLACE

JENA CARPER
Mingo Valley Christian
School, Tulsa
Teacher: Ruth Johnson



2ND PLACE

Tomorrow's America

MINDY NELSON
Mingo Valley Christian School,
Tulsa

Teacher: Ruth Johnson

**To read Mindy's poem, go to
www.okbar.org.**

★ 12th Grade cont'd ★

HONORABLE MENTIONS:

★ **For Poetry:**

Adam Dwyer, Mingo Valley Christian School, Tulsa

★ **For Artwork:**

Robyn Barker, Ponca City High School

GRAND PRIZE WINNER



ERIC MOFFITT

Mingo Valley Christian School, Tulsa

Teacher: Ruth Johnson

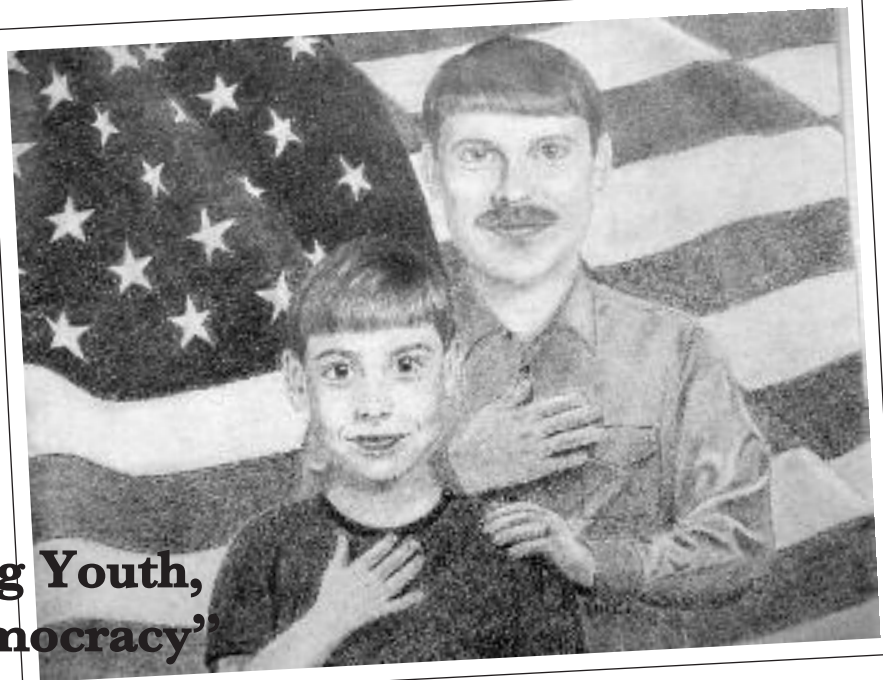
Mr. Moffitt, a junior at Mingo Valley Christian School, was declared the grand prize winner of the 2007 Law Day contest for his pencil drawing, which is a portrait of his father and brother, Joel. In the picture, his father is encouraging Joel to be loyal to our nation and believe in the ideals of its foundation.

The pencil drawing took Mr. Moffitt about a month to complete. He has been drawing since a small child and became more serious at the age of 10.

"I am grateful to the Lord for giving me this artistic ability," he said.

Mr. Moffitt has not decided what his focus will be in college, but he is considering architecture and interior design. He wants to continue to focus on the arts so that he may improve in those areas.

**"Empowering Youth,
Assuring Democracy"**



Legal Aid Services of Oklahoma, Inc.
DISSOLUTION OF MARRIAGE – THE BASICS
A Seminar for New Attorneys • Wednesday, May 2, 2006
Conference Center, OSU Tulsa, 700 North Greenwood, Room 150• MCLE Credit of 7 Hours
FREE for Attorneys Actively Serving on a Pro Bono Panel

AGENDA

- 8:30 a.m. Registration
- 9:00 - 9:55 Domestic Violence: Donna Matthews, DVIS, Inc. Tulsa
- 9:55-10:45 *A Nuts and Bolts of a Dissolution Case 1 by Julie Goree, Attorney,
Legal Aid Services of Oklahoma, Inc.
- **B Advanced Child Support by Laura Frossard, Attorney, Humphreys,
Wallace & Humphreys
- 10:45 - 11:00 BREAK
- 11:00 - 11:50 *A Nuts and Bolts of a Dissolution Case 2 by Julie Goree, Attorney,
Legal Aid Services of Oklahoma, Inc.
- **B The impact of Bankruptcy on a divorce case by The Honorable Dana L. Rasure,
U. S. Bankruptcy Court for the Northern District of Oklahoma
- 11:50 – 1:15 LUNCH (On your Own)
- 1:15 – 2:05 *A Basic Custody by C. Michael Zacharias, Attorney
- **B Advanced Custody – by Robert Fry, Attorney, Fry & Elder
- 2:05 – 2:55 Post Decree Matters by Melissa Cornell, Attorney, Wagner & Cornell
- 2:55 – 3:15 BREAK
- 3:15 – 4:05 International Custody Disputes: Marianne Blair, Profession
University Of Tulsa College of Law
- 4:05 – 5:00 Mediation Panel: J. Kenton Francy, Attorney, Francy Law Firm; Norma Eagleton,
Attorney, Eagleton Eagleton & Harrison; Daniel Boudreau, Former
Justice of the Oklahoma Supreme Court

***A – Basic Track **B – Advanced Track**

Seminar Registration – Dissolution of Marriage – The Basics

- ☐ Please register me. I am an active member of my local Pro Bono Panel
- ☐ Sign me up as a Pro Bono Attorney and register me for the seminar

Name _____ Phone () _____ FAX () _____

E-MAIL _____ Firm _____ OBA No. _____

Address _____
Street City Zip County

- Pick One: ☐ Option A: Basic custody and child support
- ☐ Option B: Advanced custody and child support

Mail Your Registration to:
Legal Aid Services of OK
423 S. Boulder Ave., # 200
Tulsa, OK 74103
or FAX 918-584-3060

Questions? Karen Langdon, 918-295-9422 or 1-800-299-3338

COUNTY LAW DAY



CHAIRPERSONS

**Adair**

Joe Adair
(918) 696-2172

Alfalfa

Marcus Jungman
(580) 596-3591

Atoka

Richard Mayfield
(580) 889-7325

Beaver

Todd Trippet
(580) 625-4597

Beckham

Gary McGinn
(405) 225-1412

Blaine

Michael Cunningham
(580) 623-7515

Bryan

Micah Knight
(580) 924-1849
and
Jeff Clark
(580) 924-7993

Caddo

Amos Black IV
(405) 247-2548

Canadian

Paul Hesse
(405) 262-1872

Carter

Andrew Harlow
(580) 226-6060

Cherokee

Crystal Jackson
(918) 931-2379

Choctaw

John Hill
(580) 326-4000

Cimarron

George Leach
(580) 544-3624

Cleveland

Bethany Stanley
(405) 321-8268
and
Ashley Tate
(405) 321-8268

Coal

Trae Gray
(580) 927-2314

Comanche

Chandra Holmes
(580) 248-4675

Cotton

Kathleen Flanagan
(580) 875-2136

Craig

Sofia Goodin
(918) 596-5530

Creek

Jennifer Ward
(918) 227-4682

Custer

Abbie Fisher
(405) 401-0277
and
Juan Garcia
(580) 323-3232

Delaware

Christianna Wright
(918) 253-4215

Dewey

Judge Rick Bozarth
(580) 328-5521

Ellis

Laurie Hays
(580) 885-7503

Garfield

Chad Davis
(580) 233-2833

Garvin

Kristin Jarman
(405) 238-7368

Grady

John Graves
(405) 360-7555

Grant

Melissa Blanton
(580) 395-2156

Greer

Eric Yarborough
(580) 782-3653

Harmon

David Cummins
(580) 688-9276

Harper

Judge G. Wayne Olmstead
(580) 921-5262

Haskell

Chris Blankenship
(918) 967-8542

Hughes

Robert Irby
(405) 379-5429

Jackson

Tabitha Mills
(580) 318-4225

Jefferson

Phillip Scott
(580) 228-2784

Johnston

Dustin Rowe
(580) 371-9561

Kay

Andrew Ihrig
(580) 363-4300

Kingfisher

Rick Goralewicz
(405) 521-1302

Kiowa

Rick Marsh
(580) 726-2301

Latimer

Frank Raunika
(918) 465-1000

LeFlore
Gary Briggs
(918) 647-8136

Lincoln
Craig Key
(405) 258-1900

Logan
William Wheeler Jr.
(405) 808-1131

Love
Kenneth Delashaw Jr.
(580) 276-3136

Major
William Scott Church
(580) 227-4424

Marshall
Millicent Watson
(580) 795-7328

Mayes
James Hadley II
(918) 825-0910

McClain
Andrew Schill
(405) 527-3030

McCurtain
Emily Herron
(580) 286-9834

McIntosh
Christopher Bone
(918) 473-4404

Murray
Aaron Scott Duck
(580) 622-3218

Muskogee
Justin Stout
(918) 682-1121

Noble
Vicky Beier
(580) 336-2712

Nowata
Linda Gambill-Branstetter
(918) 273-2200

Okfuskee
Donald McFarland
(918) 623-2717

Oklahoma
John Heatly
(405) 232-0621

Okmulgee
Lou Ann Moudy
(918) 652-3328

Osage
Steven Venturi
(918) 287-1700

Ottawa
Ken Gallon
(918) 540-1818

Pawnee
Pat Pickerill
(918) 358-2244

Payne
Jodie Gage
(405) 533-1220
and
Mozella Irwin-Smith
(405) 612-3965

Pittsburg
James Miller
(918) 302-1000

Pontotoc
Kaycie Sheppard
(405) 255-3189

Pottawatomie
Jim Pettis
(405) 275-6400

Pushmataha
Sean Huffman
(580) 298-5082

Roger Mills
Julia O'Neal
(580) 497-3555

Rogers
Ben Chapman
(918) 485-5551

Seminole
Timothy Olsen
(405) 257-3386

Sequoyah
Kent Ghahremani
(918) 775-5900

Stephens
Josh Creekmore
(580) 255-8726

Texas
Megan Kennedy
(580) 338-3388

Tillman
Ty Johnson
(580) 335-5531
and
Daniel Medlock
(580) 335-2458

Tulsa
Chad McLain
(918) 582-6900

Wagoner
Terri Craig
(918) 485-1529

Washington
Kristi Sanders
(918) 336-1300

Washita
Scott Mason
(580) 832-3848

Woods
Westline Ritter
(580) 596-3109

Woodward
Michael Meinders
(580) 254-5551

*If your county
information has
changed, please contact
Lori Rasmussen,
lorir@okbar.org.*



☆ 2007 ☆

LAW DAY 2007

County Bar Association Activities

★ ★ Adair County Bar Association

The Adair County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Alfalfa County Bar Association

The Alfalfa County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Atoka County Bar Association

The Atoka County Bar Association will participate in the Ask A Lawyer Program in conjunction with the statewide campaign to answer legal questions by phone from 6 to 9 p.m. May 1. Additionally, local lawyers will be making legal topic-related presentations at various civic organizations and schools throughout the community, and a local lawyer and his "law-school-student child" will be involved in various student activities and presentations at the local high school.

★ ★ Beaver County Bar Association

The Beaver County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Beckham County Bar Association

OU College of Law Dean Andy Coats will speak to Elk City High School students at 10 a.m. on April 26. At noon that day, Dean Coats will be the Law Day speaker for the Centenni-

al at the Elks City Elks Lodge. Members of surrounding county bar associations as well as the public are invited to the luncheon. RSVP to (580) 225-1412 by 5 p.m. April 20 to attend. The association will participate in the Ask A Lawyer program from 6 – 8 p.m. May 1 in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Bryan County Bar Association

The Bryan County Bar will publish articles, ads and public notices in the local newspaper addressing legal issues relevant to the 2007 Law Day theme. The bar also will make presentations to local high schools students addressing issues relevant to youth today. Children from local elementary schools will be participating in coloring contests, with their work displayed at the Bryan County Courthouse. The Bryan County bar will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal related questions by phone.

★ ★ Canadian County Bar Association

The Canadian County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Carter County Bar Association

The Carter County Bar Association will conduct Law Day activities during the first week in May. With this year's theme of "Liberty Under Law: Empowering Youth, Assuring Democracy," several local high schools have



agreed to host members of the association to speak with graduating students. The lawyers will address the importance of understanding one's rights and roles in society when they reach the age of majority as well as on topics such as constitutional rights, family law, criminal law and contract law. In addition to the school information sessions, the association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone. The county bar will take calls from 7 – 8 p.m. on May 1; those who would like to volunteer may contact Andy Harlow at (580) 226-6060.

★ ★ Cherokee County Bar Association

The Cherokee County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 6 – 8 p.m. on May 1.

★ ★ Cimarron County Bar Association

The Cimarron County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Cleveland County Bar Association

The Cleveland County Bar Association has planned Law Day events taking place throughout the week of April 30 – May 4. Their goal for Law Day 2007 is to target the youth in the community by educating them about the law and how it affects their everyday lives as well as their future.

They will set up voter registrations at local high school campuses throughout Law Week. Also, local lawyers will go to high schools to educate seniors about the consequences of becoming an adult and what that means in terms of the law. The OBA has created a guide that educates teenagers on the rights and responsibilities of becoming an adult which will be distributed to students at the speaking events.

For the local middle schools, the Cleveland County Bar Association is sponsoring an essay contest for sixth, seventh and eighth grade students. The topic of the essays is based on the 2007 Law Day theme, "Empowering Youth, Assuring Democracy." The association has donated over \$500 in prize money to be given to the winners, and the *Norman Transcript* will be publishing winning essays in the paper and on its Web site throughout Law Week.

Further, Judge Jequita Napoli has been speaking on numerous occasions to local elementary students on law-related topics throughout the weeks leading up to Law Day.

The Cleveland County Bar Association will also be participating in the Ask A Lawyer program from 6:30 – 8:30 p.m. on May 1 in conjunction with the statewide campaign to answer legal-related questions by phone. Finally, to conclude the events of the week, a Law Day reception will be held on May 3, in honor of Law Day.

★ ★ Comanche County Bar Association

The Comanche County Bar Association will host a Law Day luncheon on Friday, April 27 at 11:30 a.m. at the Lawton Country Club on Gore Boulevard. The featured speaker is Judge David B. Lewis of the Court of Criminal Appeals. Each year the association awards scholarships to deserving high school students. The winners are announced at the luncheon. A Law Day proclamation to be issued jointly by the Lawton mayor and Fort Sill commander will also be revealed during the luncheon. In addition, the association will announce the winner of the Pro Bono Award and the Professionalism Award. Please contact Chandra Holmes Ray at (580) 248-4844 for more information.

On May 1, the association will participate in the Ask A Lawyer Program from 6:30 until 8 p.m. at the Lawton office of Legal Aid Services of Oklahoma Inc. Those with questions or who would like to volunteer should contact Paul Sowinski at (580) 248-4675.

During the month of April, local attorneys will present the Legal Guide for Young Adults in Oklahoma to over 1,200 local high school seniors. The guide provides a reference for high school seniors and young adults about their rights and responsibilities as adults. Those with questions should contact Judge Shon Erwin at (580) 353-6700.

The association will host a Law Day golf tournament on May 24 at the Lawton Country Club. Contact Dietmar Caudle at (580) 248-0202 for further information.

The association will also host a Law Day barbecue picnic on May 24 at the home of Ken Sue Doerfel. For more information contact Ms. Doerfel at (580) 248-2681.

★ ★ Craig County Bar Association

The Craig County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer

legal questions by telephone. Members of the association will accept phone calls and offer free legal advice from 6 – 8 p.m. on May 1.

★ ★ Custer County Bar Association

The Custer County Bar Association will participate in the Ask A Lawyer program May 1 in conjunction with the statewide campaign to answer legal questions by phone. Custer County attorneys will provide free legal advice to area residents from 6 – 9 p.m.

★ ★ Delaware County Bar Association

The Delaware County Bar Association will be active in its local schools with numerous events on Law Day. A kindergarten class from Grove Lower Elementary will be touring the courthouse on the morning of May 1. They will also participate in a coloring contest. Members of the bar association will also be speaking at many local schools.

★ ★ Dewey County Bar Association

The Dewey County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Garfield County Bar Association

The Garfield County Bar Association is cosponsoring along with the Grant County Bar Association the fourth annual essay and poster contest for local school children. The association will also participate in the Wills for Heroes program and make Law Day presentations at local schools.

★ ★ Grant County Bar Association

The Grant County Bar Association is cosponsoring along with the Garfield County Bar Association the fourth annual essay and poster contest for local school children.

★ ★ Harmon County Bar Association

The Harmon County Bar Association will join the Jackson County bar in participating in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by telephone.

★ ★ Jackson County Bar Association

The Jackson County Bar Association will be joined by the Harmon County bar in participating in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by telephone. The phone lines will be open from 7 – 8 p.m. at (580) 482-7134, and multiple attorneys will be on hand to answer questions.

★ ★ Jefferson County Bar Association

The Jefferson County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone. They are also planning to make Law Day presentation to various local organizations.

★ ★ Johnston County Bar Association

The Johnston County Bar Association will host an essay contest for third graders. Savings bonds will be awarded to first-, second- and third-place winners.

★ ★ Hughes County Bar Association

The Hughes County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Kay County Bar Association

The Kay County Bar Association will participate in the Ask A Lawyer Program in conjunction with the statewide campaign to answer legal questions by phone. Lawyers and judges will travel to the local middle schools to present an informative session on the dangers of MySpace, an online Web community.

Lawyers and judges, in conjunction with the local police departments, will travel to the local high schools to present an informative session on the dangers of drunk driving, as well as consumer issues that will affect them as new adults.

★ ★ Kingfisher County Bar Association

The Kingfisher County Bar Association will officially celebrate Law Day on May 7 with a noon luncheon and address by Oklahoma Supreme Court Justice Tom Colbert. The bar will also award a Liberty Bell Prize to the non-lawyer deemed most helpful and supportive of the legal profession. The association will also participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone. For further information, contact Kingfisher County Bar President Rick Goralewicz at (405) 488-6812.

★ ★ Latimer County Bar Association

The Latimer County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ LeFlore County Bar Association

The LeFlore County Bar Association will participate in the Ask A Lawyer program in con-

junction with the statewide campaign to answer legal questions by phone.

★ ★ Marshall County Bar Association

On April 30, the Madill Elementary School fifth grade social studies classes will participate in Law Day activities at the Marshall County Courthouse. Marshall County District Judge John H. Scaggs will speak with the students on topics relating to this year's theme. Local attorney Jeff Landgraf will be in charge of a mock trial for the students. Joining him in those efforts will be representatives from the district attorney's office, the sheriff's office, Judge Scaggs and his staff, and Marshall County Court Clerk Wanda Pearce. Other representatives from the Marshall County Election Board, the Marshall County Family Support Services Office and the Marshall County Commissioner's Office will also present topics of interest to the students. This year's activities will include a special memorial to all veterans and those currently serving in our military home and abroad. Parents and other interested citizens are invited to attend the program as well. The time schedule will appear in the *Madill Record* the week before the activities.

The association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7 – 8 p.m. on May 1.

★ ★ McCurtain Bar Association

On April 28, the Tri-County Bar Association (Choctaw, McCurtain and Pushmataha county bars) will host an 18-hole golf scramble set to begin at 12:30 p.m. at the Idabel Country Club. A Law Day banquet will also be hosted at the Idabel Country Club on the evening of April 28 at 6:30 p.m. Cost for the dinner is \$25 per person. Please RSVP to Emily Herron at (580) 286-6636.

Local attorneys will speak at schools throughout the month of April.

Also, on April 28 beginning at 8:30 a.m., the public is invited to call KKBI where local attorneys will be answering questions. The question and answer show will be broadcasted live on KKBI 106.1 FM.

On May 1, the McCurtain County Bar Association will participate in the Ask A Lawyer program locally and in conjunction with the statewide campaign to answer legal questions by phone from 7 – 8 p.m.

★ ★ McIntosh County Bar Association

The McIntosh County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Murray County Bar Association

The Murray County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Noble County Bar Association

The Noble County Bar Association has several activities planned for Law Day 2007. Perry High School student Megan Lawson entered and won second place for her collage in the statewide Law Day art contest. The bar will present her a certificate for her honor as part of its Law Day activities. Noble County Bar President Sherry DeBord plans to present a PowerPoint presentation to the Perry High School government classes and tentatively to the Morrison, Billings and Frontier Schools.

The association will provide free legal services at its annual Ask A Lawyer night May 1. They will offer free advance directives to those who come to Ms. DeBord's office that evening.

Other activities include a luncheon presentation by Oklahoma Supreme Court Chief Justice James Winchester is tentatively scheduled for a date to be announced. Sarah Kennedy and Associate District Judge Dan Allen will present informative talks to Perry school children. Robert L. Kasper will present talks at the Perry Senior Citizens Center to discuss wills, trusts, durable powers, etc.

Additionally, the local bar will provide a presentation on the Perry local TV channel to inform Perry citizens about Law Day and what it means, and what the local bar is doing to observe Law Day as well as to provide attention to the Ask A Lawyer program. Vicky J. Beier is committee chair. The association will again provide a \$500 scholarship to the deserving high school senior for his or her college education. This is the fifth year to present a scholarship. Dan Allen and Robert Kasper are committee chairs for this event.

★ ★ Oklahoma County Bar Association

The Oklahoma County Law Day luncheon is set for Tuesday, May 1 at noon at the Sheraton Hotel in Downtown Oklahoma City. The luncheon will feature Bob Burke, noted Oklahoma author and historian. There will also be a recognition of the *Journal Record's* "Lawyers in Lead-

ership," presentation of the *Journal Record* Award and presentation of the Liberty Bell Award. Tickets are available by calling the OCBA at (405) 236-8421.

The Ask A Lawyer program will be handling phone calls from 8:45 a.m. to 9 p.m. on May 1. Mike Blaschke will be chairing this subcommittee with assistance from Mike Krasnow, Heidi Long, Giovanni Perry and Mike Brown.

The Central Oklahoma Association of Legal Assistants (COALA) will be sponsoring approximately 20 high school students who will mentor with judges, attorneys and legal assistants during the morning of May 1. Students will then attend the Law Day luncheon, attend a law-related education program at the OCBA offices and then tour the Oklahoma County Courthouse.

The Oklahoma County Law Library is celebrating a week of special events. Law Library Administrator Venita Hoover is working to provide a variety of services and daily presentations.

The OCBA Douglass High School Task Force will sponsor the moot court team members at the Law Day luncheon, where they will be recognized for their outstanding efforts this year.

OCBA Law Day Committee members Jim Howell, Hugh Baysinger and Steve Coleman are providing lists of speakers at various civic clubs and other venues in Oklahoma County. These groups have been contacted in an attempt to provide legal speakers during the Law Day week.

★ ★ Okfuskee County Bar Association

The Okfuskee County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone. Okfuskee County attorneys will accept calls and provide legal advice to area residents from 7 – 8 p.m.

★ ★ Okmulgee County Bar Association

The Okmulgee County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Osage County Bar Association

The Osage County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Ottawa County Bar Association

The Ottawa County Bar Association will host a Law Clinic, free to the public, on May 1 from 12 – 4 p.m. at the Miami Civic Center in conjunction with the Ask A Lawyer program. Several Ottawa attorneys will be available in person to answer questions and provide free legal service to any Ottawa County citizen who wishes to utilize this service.

★ ★ Payne County Bar Association

The Payne County Bar Association is sponsoring a local student art contest, which piggybacks on the OBA's student art contests. Winners of the local contest will be recognized at an honor docket on May 3 at the Payne County Courthouse by District Judge D. The Payne County Bar Association will host Ask A Lawyer at the Stillwater Public Library on May 1 from 10 a.m. – 6 p.m. Citizens of Payne County will be invited to the library to meet with local attorneys face to face. Local attorneys will be on hand to answer generic legal questions. The association will also participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

On May 15 the Payne County Bar Association will host a Law Day bowling tournament with proceeds benefiting a charitable organization. Law Day activities will conclude with an annual banquet.

★ ★ Pontotoc County Bar Association

The Pontotoc County Bar Association will host a Law Day blood drive in conjunction with East Central University's Legal Professionals Association on April 11 to benefit the Oklahoma Blood Institute. The blood drive will be held on ECU's campus in the Memorial Student Union's North Lounge from 10 a.m. – 4 p.m. Members of the Pontotoc County Bar Association will also visit all Pontotoc County schools in the month of April to speak to junior high students. Their message will focus on aspects of the legal profession and how law and the legal process have contributed to the freedoms that all Americans share.

★ ★ Pottawatomie County Bar Association

The Pottawatomie County Bar Association will hold art contests aimed at school children. They will also participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Pushmataha County Bar Association

The Pushmataha County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Seminole County Bar Association

Seminole County will have its annual Law Day activities on May 2. There will be CLE beginning at 8:30 a.m. in the Seminole County Courthouse in Wewoka. At noon, a Law Day luncheon will be held at the Rudolph Hargrave Community Center. Several Supreme Court justices are expected to attend. OBA President Stephen Beam will be the featured speaker.

★ ★ Sequoyah County Bar Association

The Sequoyah County Bar Association is planning two events for Law Day 2007. Judge A.J. Henshaw and Kent Ghahremani will participate in a Sallisaw High School assembly on "Separation of Powers in Government." Judge Henshaw will give a talk on "Powers and Limitations of the Judicial Branch," and Mr. Ghahremani will speak on "Powers and Limitations of the Executive Branch." The talks will be followed by a question and answer session with the students. Sequoyah County will also participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Stephens County Bar Association

On Friday, May 4, the Stephens County Bar Association will hold its annual Law Day luncheon and golf tournament at the Elks Golf and Country Club in Duncan. The luncheon will begin at 11:45 a.m. and the golf tournament at 1:30 p.m. During the luncheon, the annual Liberty Bell Award for outstanding civic leadership in Duncan and the James C. Benson Award for outstanding service to Stephens County will both be presented. Tickets for the luncheon are \$15.

★ ★ Texas County Bar Association

The Texas County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Tillman County Bar Association

The Tillman County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ ★ Tulsa County Bar Association

To open Law Week celebrations, the Tulsa County Bar Association and Tulsa County Bar Foundation hosted the Naturalization Ceremony of the United States District Court, Northern District of Oklahoma. The ceremony was April 11 at the Tulsa Bar Center. Twenty-six new citizens from diverse countries including the British Virgin Islands, Vietnam, Mexico, Pakistan, Gambia, El Salvador, India, the United Kingdom, Zaire, Taiwan, Ecuador, Peru, Nicaragua, South Africa and Ethiopia were administered the Oath of Allegiance. One new citizen is an attorney who practices immigration law.

The association and foundation hosted 10 Hamilton Middle School students at the ceremony. Representatives of the Disabled American Veterans presented the colors. Booker Gillespie, who sings with Signature Symphony, led new citizens and attendees in the "Star-Spangled Banner."

Student Art and Poetry Contest

The contests are held in conjunction with the Tulsa-area schools with prizes awarded for each grade K-12 by TCBA. Visit Web site www.tulsabar.com for rules and entry form. Entries are due at the bar center by April 19. Awards will be presented at Community Law Fair on April 28. Contact: Rodney Buck at (918) 494-2483, e-mail: rlbuck@saintfrancis.com.

Tulsa Attorneys Supporting Kids (TASK) Project

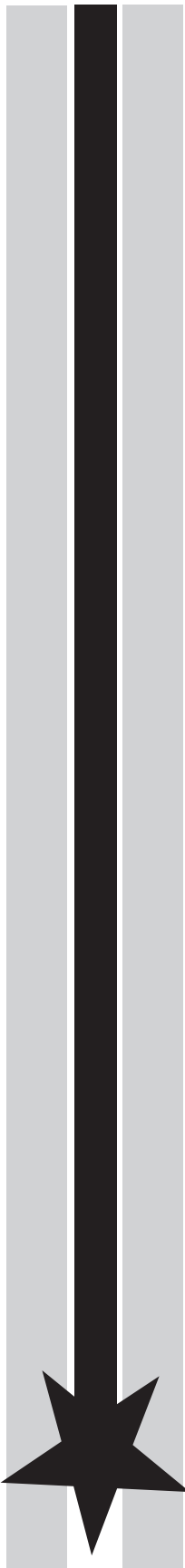
Committee members have selected Hamilton Middle School's sixth grade and Tulsa Lawyers For Children Inc. to benefit from this effort. Both cash and in-kind donations are needed. For details on specific needs, or how to contribute, contact: Cheryl Baber, (918) 747-9846, e-mail: chb1999@cox.net; or Chad McLain, (918) 582-6900, e-mail: chadmclain@gblaw.org.

Free CLE for Pro Bono Panel Members

Provided by Legal Aid Services of Oklahoma Inc. on Wednesday, May 2, at OSU Tulsa. Additional details to be provided. Contact: Karen Langdon at (918) 295-9422, e-mail: karen.langdon@laok.org.

Lawyers in the Library

A legal advice and referral service organized by the TCBA and the Tulsa County Law Library. Staffed by TCBA members who give 15-minute consultations to library patrons on a walk-in basis. To be held April 30 from 9 a.m. – 4:30 p.m. at the Tulsa County Law Library, second floor, Tulsa County Courthouse. Contact: Leonard Pataki at (918) 582-1211, e-mail: lpataki@tulsabar.com.



ki@dsda.com; or Joyce Pacenza at (918) 596-5404, e-mail: jpacenza@tulsacounty.org.

Ask A Lawyer

The Ask A Lawyer program provides free legal phone consultation with the members of the bar association as a public service to the community and to maintain goodwill with the public. To be held May 1 from 9 a.m. – 9 p.m. The Ask A Lawyer TV show will air that night on OETA from 7 – 8 p.m. The Tulsa County call in will be held at the OETA Studios, 811 N. Sheridan Road. To volunteer (two-hour shifts, but longer or shorter times are okay, if that's all your schedule permits), contact: Susan Howe at (918) 645-4307, e-mail: smhowe1@sbcglobal.net; Jason Bashforth, (918) 591-5296, e-mail: jbashforth@dsda.com; or Dan Crawford, (918) 749-8400, e-mail: liondc@gmail.com.

Liberty Bell Award

This award recognizes a non-lawyer for his or her outstanding community service in service of the law. Award will be presented at the Law Week luncheon May 1. Contact: Judge Richard Woolery at (918) 227-4080, e-mail: richard.woolery@oscn.net; or Sandra Cousins at (918) 584-5243 ext. 222, e-mail: scousins@tulsabar.com.

Law Week Luncheon

This year's keynote speaker will be Mr. Kenneth Feinberg, special master of the Federal 9/11 Victim Compensation Fund. To be held May 1 at noon at the Downtown DoubleTree, 616 W. 7th Street, seating at 11:30 a.m., lunch at noon - 1:30 p.m. Online reservations available at www.tulsabar.com.

Community Law Fair

The purpose of Law Fair is to assemble charitable organizations and legal service organizations from surrounding areas together in one place. The Law Fair permits these organizations to put a face on their organization and to inform the public about the services they provide. The Law Fair also provides the public with an opportunity to ask questions and discover what services are available throughout our community. To be

held April 28 from 11 a.m. – 3 p.m. at Promenade Mall. Contact: Lindsay McDowell at (918) 582-1173, e-mail: ljmcowell@rhodesokla.com.

Juvenile Justice Presentation for Middle School Students

Lakeside Home Mock Trial team members will present mock trials and discuss their experiences in the juvenile system. Reservation only, date is to be announced. Contact: Charles Woodstock at (918) 583-1511, e-mail: woodstocklaw@aol.com.

Mock Trial for Elementary Students

Students have an opportunity to witness a mock trial conducted at the courthouse. Reservation only, date is to be announced, at the Tulsa County Courthouse, Judge Gassett's Courtroom. Contact: Charles Woodstock at (918) 583-1511, e-mail: woodstocklaw@aol.com

At-Risk Youth Roundtable

A roundtable discussion among Tulsa County organizations who offer services directly to or for the benefit of at-risk youth in our community. Contact: Chad McLain (918) 582-6900, e-mail: chadmclain@gblaw.org.

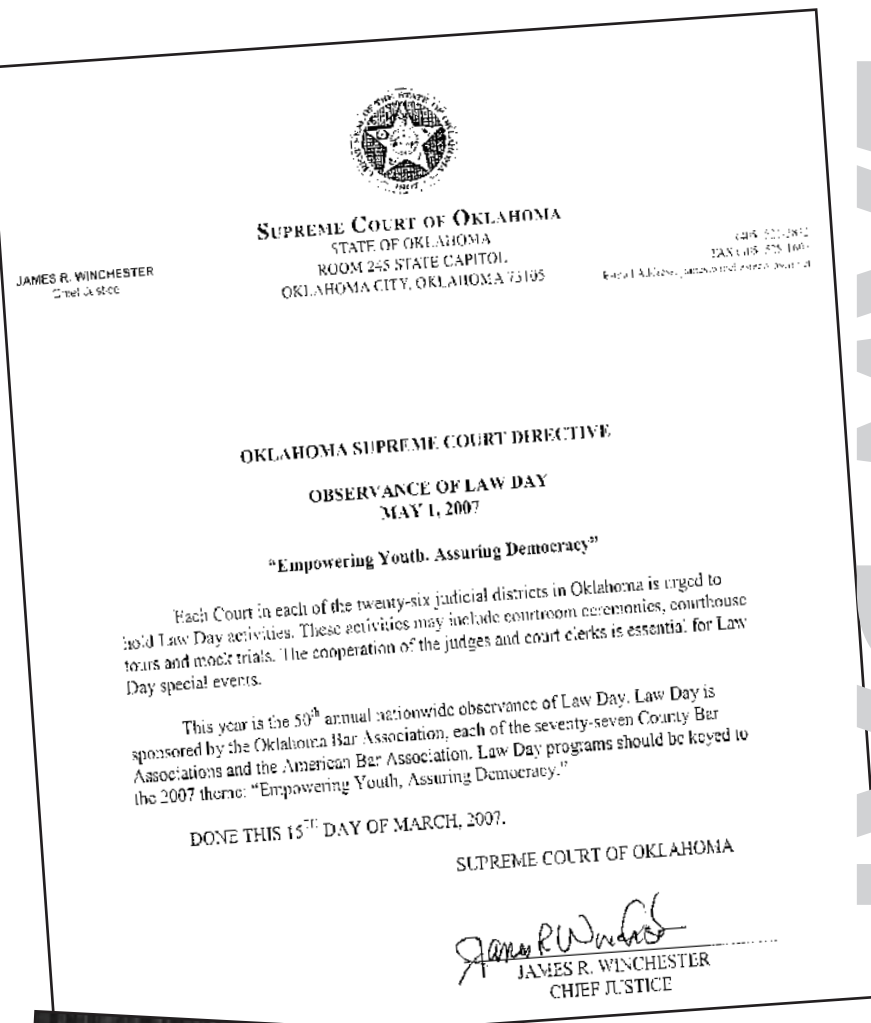
★ ★ Wagoner County Bar Association

The Wagoner County Bar Association will be participating in the OBA's Ask A Lawyer program sponsored by OETA. The association will be answering phones from 6 – 8 p.m. The association will also have a luncheon at noon on May 1 at Pizza Hut for all who would like to attend.

★ ★ Woodward County Bar Association

The Woodward County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7 – 8 p.m. on May 1. Also, local lawyers will be visiting county high school seniors to discuss legal issues and ramifications as they reach adulthood. These topics include but are not limited to: contracts, banking, criminal law, family law (including paternity and child support), buying a car, torts and voting.

Chief Justice Encourages Law Day Activities



OBA Law Day Committee Vice Chair Kim Spady, (second from right) and Chair Giovanni Perry witness Chief Justice James Winchester signing the directive along with President Stephen Beam. Photo: Legislative Service Bureau Photo Division

LAW DAY 2007

STATE OF OKLAHOMA



EXECUTIVE DEPARTMENT

Proclamation

Whereas, Law Day is a celebration of our nation's great heritage of liberty, justice and equality under law; and

Whereas, all youth need to understand their rights and responsibilities under the law to become effective participants in our nation's civic life; and

Whereas, the Law Day 2007 theme of "Empowering Youth, Assuring Democracy" encourages us to assure that our youth are equipped with the knowledge and skills necessary to effectively make their voices heard within our democracy;

Now, therefore, I, Brad Henry, Governor of the State of Oklahoma, do hereby proclaim Tuesday, May 1, 2007, as

"Law Day"

in the State of Oklahoma,

and urge the citizens, schools, businesses and media to use this occasion to preserve and strengthen the rule of law

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed.



Given at the Capitol, in the City of Oklahoma City, this 12th day of March in the Year of our Lord two thousand and seven, and of the State of Oklahoma in the ninety-ninth year.

Michael L. Gandy
M. L. GANDY

Brad Henry
BRAD HENRY

13th Annual Legal Institute of Pickens County, I.T.

DATE & LOCATION: **Ardmore**
May 4, 2007
Dornick Hills Golf and Country Club
519 Country Club Rd.

CLE CREDIT This Course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 7 hours of mandatory CLE credit, including 1 hour of ethics.

TUITION: \$150 tuition for early-bird registrations with payment received at least four full business days prior to the seminar date; \$175 for registrations with payment received within four full business days of the seminar date.

CANCELLATION POLICY: Cancellations will be accepted at any time prior to the seminar date; however, a \$25 fee will be charged for cancellations made within four full business days of the seminar date. Cancellations, refunds, or transfers will not be accepted on or after the seminar date.

Program:
Program Planner/Moderator
The Honorable Thomas S. Walker
District Judge, 20th Judicial District of Oklahoma, Ardmore

- 8:30 a.m. Registration & Continental Breakfast
- 9:00 **Family Law Update**
Julie Rivers, Family Law Solutions, P.C., Oklahoma City
- 9:50 **Break**
- 10:00 **It Was Just a Simple DUI and Now I Have a Bar Complaint/Malpractice Charge: What You Don't Know Can Hurt You**
John Hunsucker, Hunsucker DUI Defense Firm, Oklahoma City
- 10:50 **The Current Status of Bad Faith Law in Oklahoma**
Rex K. Travis, Rex Travis and Associates, Oklahoma City
- 11:40 **Lunch** (included in registration)
- 12:10 p.m. **Whose Water is it Anyway? The Arbuckle-Simpson Aquifer Case**
Mark S. Grossman, Crowe & Dunlevy, P.C., Oklahoma City
- 1:00 **Break**
- 1:10 **Estate Planning and Probate Law Update**
Susan B. Shields, Hartzog Conger Cason & Neville LLP, Oklahoma City
Kent Gardner, Hartzog Conger Cason & Neville LLP, Oklahoma City
- 2:00 **Tort Claims Arising from the Operation of Tribal Casinos - The Future is Here**
Todd Goolsby, Goolsby Olson & Proctor, P.C., Oklahoma City
David Proctor, Goolsby Olson & Proctor, P.C., Oklahoma City
- 2:50 **Ethical Issues in Criminal Defense**
Dan Murdock, OBA General Counsel, Oklahoma City
Mack Martin, Martin Law Office, Oklahoma City (tentative)
- 3:40 **Adjourn**

13th Annual Legal Institute of Pickens County, I.T.

Ardmore
☐ May 04, 2007

☐ Materials only
\$80

Register online at www.okbar.org

Full Name _____
Firm _____
Address _____
City _____ State _____ Zip _____
Phone () _____ E-Mail _____

Are you a Member of OBA? ☐ Yes ☐ No OBA Bar# _____

Make Check payable to the Oklahoma Bar Association and mail entire page to: CLE REGISTRAR, P.O. Box 960063 Oklahoma City, OK 73196-0063

For ☐ Visa or ☐ Master Card Fax (405) 416-7088, Phone or Mail (405) 416-7006

Credit Card# _____ Exp.date _____

Authorized Signature _____

Employment Alert

Ensuring Re-employment Rights for Returning Military

By Lynn P. Mattson

In the middle 1990s, I wrote several client memos on the newly minted Uniformed Services Employment and Reemployment Rights Act (USERRA).¹ The law was an attempt by Congress to clear up the mass confusion over the hodgepodge of federal and state regulations concerning the employment and re-employment rights of men and women in the active services and reserves. While it helped, it left a number of issues open, especially the relationship to other federal and state uniformed services protection acts such as the Soldiers' and Sailors' Civil Relief Act of 1940 (SSCRA).

Then on Sept. 11, 2001, the unthinkable happened. We have since had "incursions" into Afghanistan, Iraq, and a few other unknown places that involved the call up of 530,000 members of the reserves and the guard. Some 390,000 of these have already been released. Throw in a few national disasters like Katrina, and soon we had all new "regulations" which "clarified" the supposedly open and ambiguous sections of USERRA and rewrote SSCRA (now SCRA). These became effective in 2005 and 2003 respectively.

In fact what we were given was USERRA and SCRA after several courses of serious steroids with complete federal backing for servicemen when requested. The members of the armed forces have pooled their knowledge, coordinated the information, and it is now on the Internet along with help line numbers complete with constantly updated references to new and interesting cases. For example, the Reserve Officers Association Web site,

www.roa.org, features not only complete explanations of USERRA, but also all of its related laws. The user of these materials needs only to click on to the latest interpretive cases from all jurisdictions in the United States.

These sites include an explanation as well as case law interpretations of the new Soldiers and Sailor's Civil Relief Act signed by President Bush in 2003, and the interrelationship between Reserve Retirement laws and Civilian Employment. The short of it is this, after Vietnam and the horrific treatment meted out to some veterans of that unpopular war, veterans' groups banded together to make sure returning vets are able to receive legal assistance in solving intentional or unintentional wrongs to returning vets. While writing this article, it became painfully clear that there is no better way to demonstrate the complexity to practitioners than to visit the Web sites and let the click of a mouse demonstrate the formidable array of laws, case and regulations that we will

all soon be dealing with on a daily basis, assuming this war does not go on forever.

As further example, anyone that doubts the governments' resolve need only look at the Department of Labor-Department of Justice's new Web site found at www.dol.gov, from which the facts in most of this note are taken. Just look at the poster which must be displayed in your workplace and the requirement therein that if your employees don't get the poster you must send the information to them by letter or other means.

USERRA BASICS

The Act Applies To

On the poster, the free phone lines to real DOJ or DOL lawyers are pretty obvious, and indicative of how serious the government is. Thus, we only need to hit the highlights and point out some of the more obvious issues. First, the law applies whether you have one or 1,000 employees. Different from nearly all other federal labor laws, this one cares not whether you're one, 20 or 50,000 people. You're covered, unless of course your firm is a civilian contractor hired to keep records, a religious institution or an Indian tribe.

Who is Covered?

What kind of service is covered? Everything and more. Here's the list: Army, Navy, Marines, Coast Guard, Reserves (both Army and Air National Guards), Commissioned Corps of the Public Health Service and certain types of National Disaster Medical Systems (remember Katrina). Finally, there's no exclusion for managers, executives, part-timers or temps.

What is Prohibited/Required?

Any failure to re-employ, retain, promote, or any denial of benefits to an individual because she or he has been a member of the protected class is prohibited. Anyone who uses the protections of the statute is also protected. Perhaps the most unusual feature is that a prospective employer may be permitted to ask prospects about their military experiences under the assumption that service will make them a more valuable applicant, though care must be taken not to misuse the information. (Note: suits against local governments and states must be brought by the Department of Justice.)

Preparation to Go Time

Time off necessary to get a soldier's affairs in order must be granted, though this time may vary from applicant to applicant and with the nature of their call up.

Compensation

USERRA is a floor, not a ceiling. Thus, while not discouraged, employers are not required to pay "a differential" to employees while gone. Employees are allowed to use any accrued and otherwise available vacation time, but are not required to do so. Usually this means more thought needs to be given to handbook drafting on these issues. Is eligibility makeup earned by seniority or by work? Sick leave is not required unless other employees are regularly allowed to use it. Policy changes or modifications while soldiers are gone are also to be applied as if employees would otherwise be eligible and present.

Insurance

Employees are allowed to continue their health plan coverage. If the employee has coverage in connection with employment, employees and dependents are permitted to elect the coverage for the 24 months beginning with the absence. It ends on the date when the employee fails to return or fails to reapply. This is new, and requires plan administrators to develop reasonable (read favorable) requirements for the continuation of coverage. Note: The COBRA rules were not adopted except the 102 percent. If service is less than 30 days, the premium stays the same.

If the employee leaves and does not elect continued coverage the employer can cancel health coverage unless the nature of the call up was such that it would have been impossible for notice to be given. If termination does occur, he must be reinstated upon return. In essence you carry the load. The amount paid (usually 102 percent of the total if the employee serves for more than 31 days) that's 102 percent of the employers' share plus the employees' share. Upon return, insurance coverage is automatic except for service-related problems.

The Employee's Reinstatement Criteria

The service member need only have been absent because of his service for everything except state guard service, and served honorably. (No court martial or being "dropped from the rolls."²)

Wait to Decide

The decision to return can be delayed, and the employer cannot press or threaten the employee for a decision. Moreover, the employer must hold the position open with risk of the employee changing his mind unless written notice of acceptance is given.

Notification of Service Where Possible

If an employee simply leaves with no notice the employer can terminate, unless the employee cannot give notice. Thirty days is the expected rule.

How Long?

Up to five years inclusive only if the time spent was spent in the active service. Time before reporting or after return, within the limits is not counted toward the five years.

Special Cases for Return

In certain cases an employee may spend more than five years in the military with full re-employment rights. Some specialties require more than five years.

What Are the Return Dates?

If there have been less than thirty one days: no later than the first full regularly scheduled work period on the first day plus transport time.

If more than 30 but less than 180: employee must submit an application for re-employment (written or oral) no later than 14 days from discharge. If it's not possible, then the first calendar day it is possible.

If more than 180 days: an application must be submitted no later than 90 days after completion.

Odd Cases

If illness or wounds prevent return, employers must wait to see if a recovery can be made. Also, if the employee wants to negotiate with another employer and you find out, you wait (unless that negotiation would otherwise violate an extant policy like non-compete, etc.). If the employees change in circumstance (physical or mental) makes employment accommodation impossible...the employer does NOT have to make up a job or create one if a line was closed. However, if you have hired temps or replacements, they must be fired or reasigned.

How Soon Do They Return?

Re-employment must occur within two weeks of application, except for unusual circumstances usually related to the time someone was gone. Retraining is required if necessary.

The Escalator Principle

Most misunderstood of all is the so called "escalator principle" e.g., put them where they would have been had they not dropped off the escalator of job movement but for military service. The exception here is the person who was gone for 90 days or less. Here they return to the point they were when they left. All reasonable efforts must be made to assist the employee in becoming qualified for more responsibility he would have been given. However, if they can't do the training, they stay where they were when they left.

For service of more than 90 days the person is entitled to reinstatement in the escalator position. However, the employer may choose to put the employee in any position for which he is qualified, if that position has the same seniority status and pay as the escalator position. The employer must make reasonable efforts to get the employee qualified for the escalator position, but if the newer skills cannot be learned the next best or next-next best job is acceptable. But the effort must be made.

The escalator principle may cause re-employment in a higher or lower position, lay-off, or even termination depending on the events of each case. Undoubtedly this will cause much litigation as in some cases jobs are gone.

Seniority/Pay

Pay and seniority must be set as though the employee never left. If there were skill sets involved, special training and a reasonable time to pass must be given, NOTE there is a huge difference between those promotions and raises that were primarily seniority based or as in the case of executives discretionary. In the latter case it must have been a reasonable certainty that the employee would have qualified. These are not automatic.

Interpretive Note

Courts are *required* to give the employee the most liberal view of the statutory principles under USERRA. No surprises here.

CASELAW

The Reserve Officers law Review Subject Index is set forth in both a subject matter and a numerical format. Both are easy to access and are kept up to date by the retired Judge Advocate General and Justice Department attorneys who write the Web site. A brief look at the subject matter demonstrates that few areas of the law and the developing case law are not reported.

For example in item 172, reported June 2005, a case involving Lt. Col. Joseph Steven Duarte against Agilent Technologies Inc. was summarized. Duarte claimed that after a mere four months back on the job his employer, Agilent fired him because of his military service. There, the U.S. District Court applying the escalator principle awarded Duarte \$383,761 on March 31, 2005, against Agilent. Cleverly, the officer writing the summary explained how the court broke down back pay, front pay, and the "time value of money" principles behind prejudgment interest. The author then gave his e-mail, not a case citation, but his e-mail explaining that as a member of the Reserve Officers Association, he would be happy to explain each step of the process and provide the caller with the necessary tools to bring the same kind of claim. Thus, connection with vet groups is encouraged.

So too, in item number 309, the ROA reported on the Eighth Circuit decision in *Maxfield v. Cintas Corp.* Westlaw 2839762 (8th Cir., Oct. 31, 2005) Maxfield was fired for exercising his right to leave 15 times in three years. The district court concluded that hasty and rushed notices alone could not warrant a valid inference of discrimination. The case was overturned on appeal because the Eighth Circuit concluded that timing could warrant a valid jury inference of discrimination, and the case is now back in District Court.

The interesting thing about the ROA's legal report about this case is that its author criticized the plaintiff in that case warning that hasty and needlessly rushed notices of absence to employees about time off would pretty well guarantee some kind of retaliation. These Web sites are much more than simple recitations of the law.

In case 0606, February 2006, the ROA reported on how USERRA victims could and should go about the process of requesting legal fees and representation. Fees are only for those persons who have made formal DOJ requests and allowed the DOJ to attempt mediation. Bottom line, the DOJ will provide free legal representation, but you may forfeit that right if you hire private counsel. The ROA explained also that firing private counsel, refiling with the DOJ and requesting legal assistance probably won't work either. The process has a strict and clear road for obtaining government representation, and it must be followed. This author can also attest to the reasonableness of the DOL-DOJ mediation efforts.

The Criminal Side

In one very early case, *LTC Cathey v. Bancorp. South*, an ex Judge Advocate General judge wrote quite lucidly on the point that USERRA is a federal law but SSCRA (now SCRA) is also a criminal law. While the facts are quite complicated the bottom line here was that Cathey, the plaintiff, had built a business on gas station-convenience stores. He went to Bosnia and returned to find his business in ruins. He quickly discovered that under SSCRA, the bank had never lowered his loan rate as required by law. When he pointed out SSCRA and its obligations, the bank argued that the provision only applied to individuals, not a soldier's corporation. After a two-year struggle involving two bankruptcies, Cathey finally went to the ROA and the DOJ. They took the case, and in a motion for summary judgment, the U.S. District Court in Louisiana granted plaintiff's motion and a hearing was set for damages.

Among other cases summarized and explained is *Hannah v. American Motors*, holding that withholding of prejudgment interest was an abuse of judicial discretion: that while USERRA does not provide for punitive damages, it does provide for liquidated damages at 38 USC 4323(d)(1)(c) for willful violations.

The ROA Web site also talks at length about the pros and cons of dealing through private counsel versus the DOL-DOJ which is free. Principally the benefit of private counsel is that the government is swamped with these cases

“ These Web sites are much more than simple recitation of the law. ”

and private counsel is often faster, and if the plaintiff wins, fees are granted: The ROA cautions, however, that written retainer agreements be drafted.

But perhaps of most interest is the ROA's explanation of the history of the escalator clause which came from a nearly 60-year-old case titled *Fisgold v. Sullivan Drydock & Repair*, 328 US 275, 284-85 (1946). The issue is "what would have happened had the individual remained continually employed?" This may be good, bad, or relatively neutral depending on the fortunes of the company. The point is, this is not a law without teeth and while the private bar gets up to speed the DOL-DOJ will proceed to make new precedent.

What's the point of all this? Very simple. Half a million men and women are going to be returning from overseas and expecting the jobs to which they believe they are entitled. Their resources are not limited because of these laws, and they will often be assisted by lawyers that know these laws inside-out. We as private counsel need to understand on both sides of the fence when to call in the services of the DOL-DOJ for mediation or legal representation even if that sometimes means forfeiture of

fees and business. Assimilation of returning armies is always difficult. Here, there are now laws demanding it be done as soon as possible and in a measured way backed by stiff penalties.

1. 38 U.S.C. § 4301-4333
2. See 38 U.S.C. 4304

Author's note: Special thanks to Reserve Officers Association Executive Director Dennis M. McCarthy, lieutenant general USMC (ret.).

ABOUT THE AUTHOR



Lynn P. Mattson, of-counsel for Conner & Winters, has been in private law practice for more than 30 years. He concentrates his practice in the areas of management, labor and employment law. He is a past chairman of the OBA Labor Section and frequent bar journal contributor. He received his B.A. from the University of Minnesota in 1969 and his J.D. from Southern Methodist University in 1973 and is also admitted to practice in Texas.

"Even my shorts are whiter since I started using LawWare."
—Larry Clark, Tulsa Attorney

LAWWare™
SUBSCRIPTION SOFTWARE
Document Assembly • Document Management
Client Management

SUBSCRIBE TODAY
NEW! OBA Member Benefit
\$49/mo first copy
\$10/mo additional office copies

OBA ENDORSED

www.LawWare.com

See why more Oklahoma Attorneys are choosing
LAWWare™

FAX THIS FACT TO 918-627-5782 and we'll tell you how easy it is to subscribe to LawWare.

Name _____
Phone _____
Email _____

Basic and Advanced Mediation Training!

Take Two Courses and Earn Up To
40 Hours CLE Credit (approval pending)
May 3,4,5 & 18,19
Oklahoma City

For More Info Contact:

The Institute for Dispute Resolution



800-248-5465



online at:

<http://mediation.okstate.edu>

or by email

mediation@okstate.edu

What Lies Beneath

Native Format Production and Discovery of Metadata in Federal Court

By Elliot Paul Anderson

When it comes to producing electronically stored information (“ESI”), the question of format can be crucial. Electronic documents may be produced in their native format, such as an active WordPerfect file or an Excel spreadsheet. On the other hand, electronic documents can also be converted to image files, most commonly a .pdf or .tiff format. Given the option, many litigants would prefer to produce ESI as images rather than as native files. With image files, what you see is what you get — the information produced is visible on the page. Native documents, in contrast, might contain multiple layers of hidden information.

This hidden information, often referred to as “metadata,” can be problematic from a production standpoint.¹ Metadata does not normally appear on a printed page, but nonetheless can reveal information concerning the authorship of the document, previous versions and revisions to the document, and comments embedded in the text. This hidden data may be privileged, confidential or simply irrelevant, and reviewing it prior to production can be costly and time-consuming. And metadata is not the only concern with native format production. Native documents can be difficult, if not impossible, to redact when privileged material is present. Moreover, native files are easily opened and modified, thus creating a greater hazard of evidence tampering. These and other difficulties explain why a litigant may prefer to convert native documents to images before producing them.

Despite these concerns, federal courts have been willing to order native format production on a regular basis. Under the amended Federal Rules of Civil Procedure, a party may request production of ESI in a particular form, including native format.² This request is not dispositive, but courts do have the authority to order native format production when they are convinced it is necessary. Moreover, some courts interpret Rule 34(b)(i) to mean that a party producing electronic documents “as they are kept in the usual course of business” must provide them in native format, with metadata intact.³

Under the right circumstances, a party may be able to avoid native format production, but litigants should be aware that boilerplate objections are largely ineffective. When a court denies a request to order native format discovery, it is almost always in response to a timely,

LIST OF CASES

This is a sampling of opinions, as of the writing of this article, that discuss native format or metadata production. The list is divided into cases generally “for” and “against” native format production, with the most recent decisions at the top. There is also a third category of opinions, illustrating the use of metadata at trial.

CASES “FOR” NATIVE FORMAT OR METADATA PRODUCTION

In re Payment Card Interchange Fee and Merch. Disc. Antitrust Lit., No. MD-05-1720, 2007 WL 121426 (E.D.N.Y. Jan. 12, 2007)

- A producing party may provide ESI as maintained in the ordinary course of business, or in a form “reasonably usable,” but per advisory committee’s note, the alternate format cannot “significantly degrade” searchability, if native format is otherwise searchable.
- Here, conversion of native files to .tiff or .pdf format and use of OCR would degrade searchability. Court indicates it likely would grant a motion to compel production in native format, if one were made.

Palgut v. City of Colo. Springs, No. 06-CV-01142, 2006 WL 3483442 (D. Colo. Nov. 29, 2006)

- Discovery order providing native format is the default form of production, though the producing party has the right to object.

United Med. Supply Co. v. United States, 73 Fed. Cl. 35 (2006)

- Preservation order defining “documents, data, and tangible things” to include metadata.

In re NYSE Specialists Sec. Lit., No. 03-CV-8246, 2006 WL 1704447 (S.D.N.Y. June 14, 2006)

- Production order specifying that hard copy documents are to be produced in .tiff format, and ESI is to be produced in native format, with metadata intact.

Rodriguez v. City of Fresno, No. 1:05-CV-1017, 2006 WL 903675 (E.D. Cal. Apr. 7, 2006)

- Order requiring city to gather and produce requested metadata. City estimated it would take eight hours to do so, and court found this was not an unreasonable burden.

well-founded objection that leaves room for a reasonable alternative. Following are some of the more common objections to native format production, along with various rulings on those objections.

OBJECTIONS TO NATIVE FORMAT PRODUCTION

Privilege Review and Redaction

Producing parties commonly argue that it would be unduly burdensome, if not impossible, to review all of the metadata in a set of native files and redact privileged information. At least one court has agreed in principle, stating, “Most metadata is of limited evidentiary value, and reviewing it can waste litigation resources.”⁴ Nevertheless, the facts vary from case to case, and the evidentiary value of native documents may outweigh the burden of privilege review.

Privilege review and redaction can be particularly difficult where e-mails are produced in a native .pst format, as an “entire mailbox.”⁵ While a printed e-mail can easily be redacted by covering up privileged content, at least two courts have been sympathetic to the argument that it would be impossible to separate out individual documents (or portions of documents) from an integrated .pst mailbox.⁶

Despite these difficulties, some courts have ordered native format e-mail production. The court in *In re Verisign, Inc. Securities Litigation* recognized that it may be difficult to redact information from a .pst file, but the court was “not convinced that the responsive documents are so replete with privilege redactions that such a task would transcend all reasonableness.”⁷

Security and Tamper-Proofing

Another concern with native format production is the possibility that a file may be tampered with. At least one court has ordered the production of electronic documents as images, describing this as “the most secure format” for production.⁸ According to the court in *In re Priceline.com Securities Litigation*, numbered image files were the best way to guard against alteration of documents (and any accusation of alteration). In so ruling, the court noted that exceptions would be made if native format production was necessary to “view or comprehend the information in the file.”

Other courts, however, have reached different conclusions. One court rejected the argument that image files were necessary to guard against evidence tampering, stating that “both parties will be double checking the authenticity of any documents relied upon by the other side.”⁹ And there appear to be other means of securing electronic documents against alteration, such as the use of an algorithm to assign each document a unique digital signature, called a “hash mark.” Under this system, if the underlying document is altered in any way, the new document’s “hash mark” will differ from the original.¹⁰

Reasonably Usable Form

As mentioned above, some courts resolve the question of production format in the context of Rule 34(b)(i), which states, “a party who produces documents for inspection shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.” At least one court has interpreted “as they are kept in the usual course of business” to mean native format.¹¹ Under this reasoning, a party must either label its production documents to correspond to the requests, or must produce electronic documents in their native format.¹²

Other courts, however, address the question of production format in terms of Rule 34(b)(ii), which states that “if a request does not specify the form... a responding party must produce the information in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable...” (emphasis added).¹³ Under this approach, a producing party need not provide ESI in native format, so long as the alternative format is “reasonably useable.”

The advisory committee notes to Rule 34 support the latter approach, explaining that “The rule does not require a party to produce electronically stored information in the form in which it is ordinarily maintained, as long as it is produced in a reasonably usable form.”¹⁴ A producing party should be careful, though, to demonstrate that the alternative form is not significantly inferior to a native file. For example, if a document in its native form is searchable, the production format should not “significantly degrade” the searchability feature.¹⁵

It bears noting that if parties cannot agree on a production format, the court has great latitude to order a compromise format of its

Hagenbuch v. 3B6 Sistemi Elettronici Industriali, No. 04-C3109, 2006 WL 665005 (N.D. Ill. Mar. 8, 2006)

- Production of ESI (including email) in .tiff format was unacceptable due to lack of metadata, impaired search abilities, and muddled organization (images made it difficult to tell where one document ends and another begins).
- Metadata meets the discovery relevance standard, especially in this patent infringement case, where plaintiff needed to prove what information defendant had, and when.
- Anti-tampering concerns and difficulty in applying Bates numbers to native files were insufficient to justify production in .tiff format.

Nova Measuring Instruments, Ltd. v. Nanometrics, Inc., 417 F. Supp. 2d 1121 (N.D. Cal. 2006)

- Discovery order in patent infringement action. Production must be in native format, with metadata intact.

Williams v. Sprint/United Mgmt. Co., 230 F.R.D. 640 (D. Kan. 2005)

- Blanket ruling that a court order to produce documents as maintained in the “ordinary course of business” includes metadata production, absent a timely objection, protective order, or agreement between the parties.
- Cites Sedona presumption against discovery of metadata, but then requires production of metadata.
- Holds that producing party may not “lock” produced spreadsheets to prevent tampering, but rather should use alternative authentication method, such as algorithmic “hash marks.”

Jicarilla Apache Nation v. United States, 60 Fed. Cl. 413 (2004)

- Confidentiality and protective order defining “records” to include metadata.

Pueblo of Laguna v. United States, 60 Fed. Cl. 133 (2004)

- Preservation order defining “documents, data, and tangible things” to include metadata

In re Verisign, Inc. Sec. Lit., No. 02-02270, 2004 WL 2445243 (Mar. 10, 2004)

- Magistrate judge had ordered production of emails in native .pst format, finding no undue burden. District court reviewed this finding of fact for clear error, and found none, despite producing party’s objections concerning difficulty of numbering documents and conducting privilege review/redaction in native format.

CASES “AGAINST” NATIVE FORMAT OR METADATA PRODUCTION

Williams v. Sprint/United Mgmt. Co., No. 03-2200, 2006 WL 3691604 (D. Kan. Dec. 12, 2006)

- Though defendant had already been ordered to produce spreadsheets in native format, court would not order production of emails in native format citing: (a) plaintiff's waiver by already agreeing to accept non-native e-mails, (b) possible privilege/redaction difficulties with native e-mail files, and (c) fact that defendant had already produced emails in .tiff format, and Rule 34(b)(iii) precludes duplicate production.

Wyeth v. Impax Labs, Inc., No. 06-222, 2006 WL 3091331 (D. Del. Oct. 26, 2006)

- Notes an emerging presumption against production of metadata, absent clear need or relevance (but producing party must produce metadata if it knows or should know it is relevant) - Citing *Williams*, 230 F.R.D. 640.
- Cites D. Del. rule for electronic discovery, establishing that default production format is .tiff or .pdf, unless parties agree otherwise (or a special need for native format is shown).
- “Most metadata is of limited evidentiary value, and reviewing it can waste litigation resources.”

CP Solutions PTE, Ltd. v. Gen. Elec. Co., No. 3:04-CV-2150, 2006 WL 1272615 (D. Conn. Feb. 6, 2006)

- E-mails need not be produced in native .pst format, due to privilege/redaction concerns (subject to further exploration by parties).
- Printouts of emails sufficient, so long as emails and attachments can be matched up.
- Image files of e-mails are “reasonably usable,” as required by Rule 34(a).
- Producing party need not “organize and label” documents to requests, so long as they are produced as maintained in the ordinary course of business (Rule 34(b)(i)). Image files meet this criteria.

In re Priceline.com Sec. Lit., 233 F.R.D. 88 (D. Conn. 2005)

- Interesting compromise situation. Generally speaking, production ordered in .tiff or .pdf format, with searchable metadata databases.
- Image-format production provides for ease of identification (Bates numbering) and protects against alteration of documents (and accusations thereof).

own choosing. As explained in the advisory committee's note to Rule 34, [T]he court is not limited to the forms initially chosen by the requesting party, stated by the responding party, or specified in this rule ...” In at least one case the court ordered the production of electronic documents in an imaged format, accompanied by “searchable metadata databases.”¹⁶

Presumption Against Production of Metadata

Finally, at least two courts have recognized an emerging, weak presumption against the production of metadata. The idea seems to originate with the *Sedona Principles for Electronic Document Production*, which provide, in part, that “[u]nless it is material to resolving the dispute, there is no obligation to preserve and produce metadata absent agreement of the parties or order of the court.”¹⁷ Based on this principle, the court in *Williams v. Sprint/United Management Co.* observed that “emerging standards of electronic discovery appear to articulate a general presumption against the production of metadata, but provide a clear caveat when the producing party is aware or should be reasonably aware that particular metadata is relevant to the dispute.”¹⁸ Despite this observation, the *Williams* court issued a blanket ruling that an order to produce documents “as maintained in the ordinary course of business” would include metadata production, unless there was a timely objection, a protective order, or an agreement between the parties.

In another opinion, *Wyeth v. Impax Labs, Inc.*, the court noted the same emerging presumption against the production of metadata.¹⁹ Additionally, the *Wyeth* court applied the District of Delaware's Default Standards for Discovery of Electronic Documents, which require parties to produce electronic documents as image files if they cannot agree on a different format. In light of the emerging presumption and the local production rules, the *Wyeth* court did not order native format production, but noted that it could do so later if the requesting party demonstrated a “particularized need.”

CONCLUSION

Whether or not a court will order native format production depends heavily on the facts of the case: the severity of the requesting party's

need, the strength of the producing party's interest, and the availability of reasonable alternatives. In some cases, native format discovery may be essential to the merits of the litigation. In other cases a party may be able to avoid native format production by making a well-reasoned objection and providing an alternative format that is reasonably usable by the opposing side.

1. See generally ABA Comm. on Ethics and Prof'l Responsibility, Formal Op. 06-442 (2006) ("Review and Use of Metadata").
2. Fed. R. Civ. P. 34(b).
3. See, e.g., *In re Verisign, Inc. Sec. Lit.*, No. C-02-02270, 2004 WL 2445243 (N.D. Cal. March 10, 2004).
4. *Wyeth v. Impax Labs., Inc.*, No. 06-222, 2006 WL 3091331, at *2 (D. Del. Oct. 26, 2006) (citing *Williams v. Sprint/United Mgmt. Co.*, 230 F.R.D. 640, 651 (D. Kan. 2005)).
5. See *CP Solutions PTE, Ltd. v. Gen. Elec. Co.*, No. 3:04-CV-2150, 2006 WL 1272615, at *4 (D. Conn. Feb. 6, 2006).
6. *Id.*; see also *Williams v. Sprint/United Mgmt. Co.*, No. 03-2200, 2006 WL 3691604 at *6 - *7 (D. Kan. Dec. 12, 2006) (recognizing that it may be "technologically impossible to redact the actual text of e-mails while maintaining them in native format," and denying plaintiff's request for native-format production).
7. 2004 WL 2445243, at *3; see also *Hagenbuch v. 3B6 Sistemi Elettronici Industriali*, No. 04-C-3109, 2006 WL 665005 (N.D. Ill. March 8, 2006) (ordering native production of .pst files).
8. *In re Priceline.com Sec. Lit.*, 233 F.R.D. 88, 91 (D. Conn. 2005).
9. *Hagenbuch*, 2006 WL 665005 at *4.
10. See generally *Williams*, 230 F.R.D. at 655.
11. *Verisign*, 2004 WL 2445243 at *2.
12. *Id.* Arguably, section (i) of Rule 34(b) concerns organization of data more than it does format, in which case section (ii) (which specifically addresses format) is the better rule for deciding whether native format production is appropriate.
13. See *In re Payment Card Interchange Fee and Merch. Disc. Antitrust Lit.*, No. MD-05-1720, 2007 WL 121426, at *4 (E.D.N.Y. Jan. 12, 2007).
14. Fed. R. Civ. P. 34 advisory committee's note; see also *CP Solutions*, 2006 WL 1272615 at *3 (holding that .tiff images of email files were acceptable under Rule 34, so long as they were in a "readable, usable format").
15. *Payment Card Interchange*, 2007 WL 121426 at *4 (quoting advisory committee notes to Rule 34); see also *Hagenbuch*, 2006 WL 665005 at *2 (granting motion for native format production, based upon plaintiff's claims that .tiff images muddled the organization of documents and impeded searchability).
16. *Priceline*, 233 F.R.D. at 91.
17. The Sedona Conference; *The Sedona Principles: Best Practices Recommendations & Principles for Addressing Electronic Document Production* (Jonathan M. Redgrave et al. eds., 2005), Principle 12, quoted in *Williams*, 230 F.R.D. at 650.
18. *Williams*, 230 F.R.D. at 652.
19. *Wyeth*, 2006 WL 3091331 at *2 (citing *Williams*, 230 F.R.D. at 652).

ABOUT THE AUTHOR



Elliot Paul Anderson is an associate with the Tulsa offices of Crowe & Dunlevy. His practice focuses on business and commercial litigation, and more recently, electronic discovery under the amended Federal Rules of Civil Procedure. He earned his B.A. from OU and his J.D. from Pepperdine University School of Law.

- Defendant (producing party) required to retain native format documents through duration of litigation.

CASES DETAILING USE OF METADATA AT TRIAL

Williams v. Sprint/United Mgmt. Co., No. 03-2200, 2007 WL 38397 (D. Kan. Jan. 5, 2007)

- Metadata used to confirm that attorney authored document, and privilege applied (though court ultimately found it had been waived).

PML N. Am., LLC v. Hartford Underwriters Ins. Co., No. 05-CV-70404, 2006 WL 3759914 (E.D. Mich. Dec. 20, 2006)

- Metadata proved defendant accessed backup folders, which he had later claimed never existed.

Williams v. Sprint/United Mgmt. Co., No. 03-2200, 2006 WL 2631938 (D. Kan. Sep. 13, 2006)

- Metadata indicating creation date of spreadsheet did not prove creation date of individual worksheets, or "tabs," on spreadsheet.

Plasse v. Tyco Elecs. Corp., 448 F. Supp. 2d 302 (D. Mass. 2006)

- Employment action. Metadata used to prove plaintiff's extensive, willful spoliation of evidence that he had falsified his qualifications on his resume. Case dismissed.
- Very good discussion of forensic techniques for the recovery of "deleted" info.

Krumweide v. Brighton Assocs., No. 05-C-3003, 2006 WL 1308629 (N.D. Ill. May 8, 2006)

- Employment action. Metadata proves plaintiff's deletion of relevant files. Default judgment and attorneys' fees for defendant employer.

Michael J. v. Derry Tp. Indep. Sch. Dist., No. 103-CV-1104, 2006 WL 148882 (M.D. Pa. Jan. 19, 2006)

- Metadata indicating creation date of IEP did not prove that plan was written prior to hearing, especially because metadata showed post-hearing modification date.

Turner v. Resort Condos. Int'l, No. 1:03-CV-2025, 2006 WL 1990379 (S.D. Ind. July 13, 2006)

- Employment action. Defendant employer used metadata to prove plaintiff was on RIF list prior to advising she was pregnant.

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 2008 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 2008 (July 1, 2007 through June 30, 2008) in the following counties: **100% of the Indigent Defense System caseload in Cherokee and LeFlore Counties; and 25% of the Indigent Defense System caseload in Blaine County.**

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 and traffic cases in the above counties during FY-2008 (July 1, 2007 through June 30, 2008). Offers may be submitted for partial or complete coverage 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 p.m., Thursday, May 3, 2007.**

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-2008 OFFER TO CONTRACT
_____ COUNTY / COUNTIES

TIME RECEIVED:
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-2008 OFFER TO CONTRACT, 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 1070 Griffin Drive, Norman, OK 73071. **Please note that the Griffin Drive 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 P.M., THURSDAY, MAY 3, 2007 TO BE CONSIDERED TIMELY SUBMITTED.**

Sealed Offers will be opened at the OIDS Norman Offices on Friday, May 4, 2007, beginning at 9:00 a.m., and reviewed by the Executive Director or his designee for conformity with the instructions and statutory qualifications set forth in this notice. Nonconforming Offers will be rejected on Friday, May 4, 2007, with notification forwarded to the Offeror. Each rejected Offer shall be maintained by OIDS with a copy of the rejection statement.

Copies of qualified Offers will be presented for the Board's consideration at its meeting on **Friday, May 18, 2007**, at Griffin Memorial Hospital, Patient Activity Center (Building 40), 900 East Main, Norman, Oklahoma 73071.

NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

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-2008 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-2003, FY-2004, FY-2005, FY-2006, and FY-2007, 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, Box 926, Norman, OK 73070-0926, or hand delivered to OIDS at 1070 Griffin Drive, Norman, OK 73071 or submitted by facsimile to OIDS at (405) 801-2661.

* * * * *

REQUEST FOR OIDS FY-2008 OFFER-TO-CONTRACT PACKET

Name: _____ OBA #: _____

Street Address: _____ Phone: _____

City, State, Zip: _____ Fax: _____

County / Counties of Interest: _____

Don't Forget about Magnuson-Moss

By Adam K. Marshall

Enacted in 1975, the Magnuson-Moss Warranty Federal Trade Commission Improvement Act¹ is the federal statute that governs written warranties on consumer products. The act, along with its counterpart Federal Trade Commission regulations², provides specific requirements and guidelines for terms of written warranties as well as private causes of action that a consumer may bring in state court. Although the act has been codified for more than 30 years, Oklahoma has only one reported decision concerning a state claim under the act.

This decision was handed down by the Oklahoma Court of Civil Appeals in the case of *Cline v. DaimlerChrysler Co. Corp.*,³ in March 2005. Despite the age of the act, its protections remain ripe for invocation by consumer-plaintiffs, and business-warrantors should be mindful of the specific requirements of the act and regulations to avoid such claims.

The act was designed to prevent manufacturers from drafting grossly unfair consumer warranties and to make it economically viable for consumers to bring warranty suits by providing for the award of attorney's fees.⁴ The law is aimed at written warranties and service contracts made in connection with the sale of "consumer products." The purposes of the act are to improve the adequacy of information available to consumers, prevent deception and improve competition in the marketing of consumer products.⁵

The act is based upon the premise that suppliers of consumer goods vigorously use written express warranties as advertising and merchandising devices. If they are to be so used,

they must meet federal standards in terms of disclosure and remedies provided to an aggrieved consumer. Under the act, no seller is forced to offer an express written warranty to consumers, however, if one is offered, it must comply with the standards set forth in the law.

Congress was particularly concerned with unfair and inequitable automobile warranties when drafting the act. States built on this concern by later passing their own lemon laws. However, the Magnuson-Moss Act covers "consumer products" broadly and, while the language of the act and regulations is the language of hard goods, in recent years the act provisions have been applied to software programs and information products.⁶ The application of the act to such digital consumer products seems to be pushing the envelope of the act's applicability, as neither the FTC nor case law decisions have determined if the act applies to computer information transactions such as software licensing, online access and other information technology transactions.⁷

SCOPE OF THE ACT

The act applies only to “consumer products” costing the consumer more than \$10 where a warrantor uses a written warranty.⁸ The term “consumer product” means “any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes (including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed.).”⁹ Two regulations define the term more precisely. 16 C.F.R. 700.1(a) provides:

The Act applies to written warranties on tangible personal property which is normally used for personal, family, or household purposes. This definition includes property which is intended to be attached to or installed in any real property without regard to whether it is so attached or installed. This means that a product is a “consumer product” if the use of that type of product is not uncommon. The percentage of sales or the use to which a product is put by any individual buyer is not determinative. For example, products such as automobiles and typewriters which are used for both personal and commercial purposes come within the definition of consumer product. Where it is unclear whether a particular product is covered under the definition of consumer product, any ambiguity will be resolved in favor of coverage.

The second regulation covering the definition of “consumer product” repeats the statutory definition.¹⁰

The act applies to “separate items of equipment attached to real property, such as air conditioners, furnaces, and water heaters,” as well as “appliances, other thermal, mechanical and electrical equipment.”¹¹ The act excludes certain agricultural products and building materials integrated into the structure of the building at the time of sale.¹²

Because the term “goods” as defined under UCC § 2-102 makes no distinction between new and used goods, implied warranties have been found to arise in the sale of used goods, unless expressly excluded or modified in accordance with UCC § 2-316.¹³ Likewise, case law has also held that the language of § 2310(d)

creating the private causes of action under the act applies to the sale of used goods.¹⁴

The act defines “consumer” as:

a buyer (other than for purposes of resale) of any consumer product, any person to whom such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligations of the warranty (or service contract).¹⁵

However, the FTC has ruled that warranties may be limited to first purchasers, provided explicit limiting language is used. Noteworthy is the fact that the term “consumer” also extends to commercial parties purchasing consumer products.

The term “written warranty” means a fact or promise relating to the nature of the material or workmanship and affirming that the material or workmanship is defect free or meets a certain level of performance over a specified period of time.¹⁶ Or, a written warranty is a written undertaking relating to refund, repair, replacement or remedial action in the event the consumer product fails to meet the specifications of the undertaking. In each case, the promise or undertaking must be part of the basis of the bargain.¹⁷ “Written warranty” under the act (defined in § 301(6)) is not identical to “express warranty” under the UCC. For example, “written warranty” does not include mere product claims, such as “waterproof,” made without regard to any time period. Moreover, oral guarantees are not written warranties under the act, although these are normally express warranties under UCC § 2-313.

For sellers offering consumer product warranties, the act creates minimum disclosure standards for written warranties and defines minimum content standards for such warranties. Where written warranties are given, the act invalidates attempts to disclaim implied warranties.¹⁸ Any written warranty shall fully and conspicuously disclose in simple and readily-understood language the terms and conditions of the warranty.¹⁹ The act requires that warranty information be available to consumers prior to sale.²⁰

MINIMUM STANDARDS FOR WRITTEN WARRANTIES

The act recognized two types of warranties — a “full (statement of duration) warranty” and a “limited warranty.”²¹ A “full (statement of duration) warranty” is a written warranty that meets the federal minimum standards for warranty set forth in the act.²² The federal minimum standards generally require that the warranty provide remedial terms and prohibit the limitation of implied warranties or exclusion or limitation of consequential damages for breach.²³ A “limited warranty” is any warranty that does not meet the federal minimum standards.²⁴ All written warranties must conspicuously designate the applicable type of warranty as a caption or prominent title and be clearly separated from the text of the warranty.²⁵

DRAFTING ACT-COMPLIANT WARRANTIES

The FTC’s guidance for act-compliant written warranties is found at 16 C.F.R. § 701.3. Section 701.3 contains both guidelines and specific language that must appear in a written warranty. Generally, § 701.3 requires that a warrantor granting a written warranty on a product costing the consumer more than \$15 shall clearly and conspicuously disclose certain items of information, such as, 1) to whom the warranty extends; 2) a description of the parts or components covered; 3) what the warrantor will do in the event of a defect; 4) the point in time or the event on which the warranty term commences; 5) an explanation of the procedures a consumer should follow to obtain performance of any warranty obligation; and 6) the availability of any information dispute mechanism chosen by the warrantor.²⁶ The regulations do not require specific language for the disclosure of the aforementioned items; however, the regulations do prescribe that certain specific statements set forth in § 701.3 accompany the disclosure of: 1) any limitation on the duration of implied warranties; and 2) any exclusions of or limitations on relief such as incidental or consequential damages.²⁷ Finally, all act-compliant warranties must con-

tain the statement, “This warranty gives you specific legal rights, and you may also have other rights which vary from State to State.”²⁸

PRE-SALE AVAILABILITY OF WRITTEN WARRANTY TERMS

The act also provides that the term of a written warranty must be available to the consumer prior to the sale of a consumer product.²⁹ Regulations set forth very specific provisions instructing warrantors on how to make written warranties available for consumer products costing more than \$15.³⁰ Sellers, who may or may not be “warrantors,” must either display the written warranty in close proximity to the product or place signs in prominent locations indicating that the written warranty is available upon request.³¹ Warrantors are subject to specific regulations regarding the provision of written warranties to sellers.³² More specifically, the regulations address the provision of written warranties in coordination with

catalog and mail-order sales and door-to-door sales.³³ Internet sales of consumer products are not addressed by the regulations; however, a close parallel may be drawn between such sales, and catalog and mail-order sales. Therefore, compliance with the catalog and mail-order sales regulations for online sales is advisable.

NON-COMPLIANCE CONSEQUENCES

Failure to comply with the requirements above is a general violation of 15 U.S.C. § 45(a)(1).³⁴ Section 45(a)(1) considers such violations “unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce” and are unlawful.³⁵ It is the exclusive province of the FTC to prevent and/or enjoin such unlawful acts through administrative proceedings.³⁶ However, a consumer who is damaged by such failure to comply with the act may bring suit for damages or other legal and equitable relief.³⁷

CAUSES OF ACTION

The jurisdictional requirements of the private causes of action under the act are aimed at channeling the act’s litigation primarily into state courts.³⁸ For federal jurisdiction, the act

“ Internet sales of consumer products are not addressed by the regulation...”

generally requires that the amount in controversy must be at least \$50,000.³⁹ The act's provisions for private enforcement of rights and remedies must be read in conjunction with the rights, remedies and defenses of the Uniform Commercial Code. However, the act creates four separate private causes of action:

- 1) Breach of written warranty;⁴⁰
- 2) Breach of implied warranty;⁴¹
- 3) Breach of service contract;⁴² and
- 4) Failure to comply with obligations.⁴³

The act gives consumers these private rights of action against warrantors for both violations of substantive provisions of the statute and breaches of warranties, written and implied.⁴⁴ To invoke the remedial protection of the act, a consumer must "allege specific violations of the standards set forth in the act."⁴⁵ Furthermore, although an overlap between the act and state law exists, the separate nature of the rights and remedies provided by each is discussed extensively in *Walsh v. Ford Motor Company*,⁴⁶ wherein the court held that the act:

[P]reserves the rights and remedies under state and federal law. The consumer is thus free to ignore Magnuson-Moss and seek redress through more traditional avenues, such as breach of warranty, fraud, or rescission.

...if a suit is brought under state law, state law controls the nature of relief to which the consumer is entitled.⁴⁷

In *Gilbert v. Monaco Coach Corporation*,⁴⁸ the plaintiff therein properly alleged separate claims under state law and federal law. The court recognized that the plaintiffs specifically alleged both substantive violations of the act and breaches of both written and implied warranties.⁴⁹ Furthermore, the court noted that plaintiffs therein alleged all their claims separately under the U.C.C., Georgia law and the act.⁵⁰ If, for example, a plaintiff only alleges a substantive violation of the act for "refund" asserting generally that defendant breached the provisions of 15 U.S.C. § 2304, such allegations are insufficient to invoke the protections of the act; thus, dismissal of a plaintiff's act claim is proper. As a result, a plaintiff's claims for breach of warranty would be evaluated under often less stringent state law without reference to the act. Therefore, a plaintiff must

independently assert its warranty claims under the act for the protection of the act to apply.

Breach of Written Warranty

The act provides a cause of action for breach of any written warranty, whether "full" or "limited."⁵¹ The cause of action is valid even where written warranty has already expired, as long as the defects appeared during the warranty period.⁵² When a warranty is "limited," proving breach of warranty under the act is similar to proving a breach under the UCC. The consumer must prove 1) the existence of a warranty; 2) the warranty was breached; and 3) the breach of warranty caused the injury.⁵³

The act's "lemon provision" is available in the case of a "full" warranty. A consumer suing under a "full" warranty does not need to prove a breach of the written warranty, but only show the existence of a "defect, malfunction, or failure to conform with such written warranty" which existed after the warrantor had a reasonable number of attempts to remedy the product.

The 7th Circuit has ruled that a claim for breach of a written warranty as contained in advertising is not cognizable under the act. In *Skelton v. General Motors Corporation*,⁵⁴ the consumers alleged that GM created a written warranty under the act through brochures, manuals and consumer advertising, which was then breached by substituting transmissions. The 7th Circuit held that only those written warranties specifically defined in § 2301(6) are actionable under Magnuson-Moss.

Breach of Implied Warranty

The implied warranties covered by the act are those created by state law. Although the act creates no new implied warranties, it both alters the ability of a seller to exclude them and provides a federal cause of action for their breach. This cause of action appears to be available even where there is no written warranty involved. Most cases brought to date are based on breaches of both written and implied warranties. However, a few involve breach of implied warranties without alleging breach of a written warranty.

For example, *General Motors Corp. Engine Interchange Litigation*⁵⁵ was filed in federal court under the act. The plaintiffs alleged that the

undisclosed use of Chevrolet engines in Oldsmobiles breached both written warranties and the implied warranty of merchantability (UCC § 2-314). The jury returned a general verdict in favor of a sub-class of plaintiffs and awarded each of these plaintiffs \$550. In light of the 7th Circuit's decision in *Skelton v. General Motors*,⁵⁶ invalidating the written warranty theory upon which at least part of the case was tried, the district court granted GM's motion for a new trial.

Breach of Service Contract

The act provides a cause of action for breach of a "service contract" as defined in § 2301(8). The optional "extended warranty" offered through many dealerships by auto manufacturers and independent insurance companies is a "service contract" as defined by the act. Under § 2308(a), the sale of a service contract within 90 days of the sale of a new car may have the effect of barring any contractual limitation on implied warranty duration. When a consumer purchases a service contract, and the written warranty expired before any defects appeared, an attorney may want to plead breach of service contract as well as breach of the implied warranty of merchantability.⁵⁷

Failure To Comply With Obligations

The fourth cause of action under the act is for damage caused by "the failure of a supplier, warrantor, or service contractor to comply with any obligation under this title."⁵⁸ "Title" refers to the act generally, which, as discussed above, contains all the provisions relating to warranties and service contracts, and which authorizes the FTC to issue rules in specified areas to implement the act. The obligations under the Act pertain to disclosure of warranty, ready availability of the warranty prior to sale and restrictions on the use of disclaimers and limitations.

The act does not provide for minimum or statutory penalties for violation of the act. A private action based on violation of the act must allege actual damages from the violation to justify a recovery.⁵⁹

REMEDIES/DAMAGES

The act does not restrict or invalidate any right or remedy of any consumer under state law or other federal law.⁶⁰ However, state requirements are not applicable if they are

within the scope of, or not identical to, the content, designation and federal minimum standards of written warranties. In addition, state warranty laws dealing with labeling or disclosure with respect to written warranties or performance are pre-empted. The act is intended to complement, not displace, state warranty law. Furthermore, the Oklahoma Court of Civil Appeals has recognized that state law governs the amount and type of damages which may be awarded for a violation of the act.⁶¹

INFORMAL DISPUTE RESOLUTION

The act specifically declares a congressional policy to encourage warrantors to establish procedures for informal dispute resolution and incorporate such procedures in a written warranty.⁶² The act directs the FTC to promulgate rules providing for minimum requirements of establishment and incorporation of such procedures.⁶³ The regulations setting forth such rules extensively detail the required operation of the informal dispute "mechanism" to be used by the warrantor and provide for somewhat cumbersome recordkeeping and annual self-auditing of the mechanism by the warrantor.⁶⁴

CONCLUSION

Oklahoma's lack of reported cases involving the act does not necessarily indicate the extent to which its protections are invoked by consumers in Oklahoma state courts. However, the act has remained relatively unchanged over its 30-year history and has spawned a developed body of law that is instructive to legal counsel for both warrantors and consumers. The act's extensive and detailed regulation of warranty terms leaves much room for errors in compliance and potentially exposes warrantors to resulting risks. For consumers, the act's coordination with state law rights and remedies provides added rights and remedies in consumer product warranty disputes.

1. 15 U.S.C. § 2301 *et seq.*

2. 16 C.F.R. §§ 700.1 through 16 C.F.R. 703.8.

3. 2005 OK CIV APP 31, 114 P.3d 468.

4. 15 U.S.C. § 2310(d)(2).

5. *Walsh v. Ford Motor Co.*, 6 Fed. R. Serv. 3d (Callaghan) 536 (D.C. Cir. 1986)

6. See *Microsoft Corp. v. Manning*, 914 S.W.2d 602 (Tex.App. 1995), writ dismissed on other ground. *Stuessy v. Microsoft Corp.*, 837 F.Supp. 690 (E.D.Pa. 1993), declined to follow on other grounds, *Samuel-Basset v. Kia Motors America, Inc.*, 357 F.3d 392 (3rd Cir 2004).

7. The controversial proposed UCC Article 2B, renamed the Uniform Computer Information Transactions Act ("UCITA"), adopted only by Virginia and Maryland, attempts to address consumer warranties and remedies for "computer information transaction."

8. 15 U.S.C. § 2301(d)(3)(A).

9. 15 U.S.C. § 2301(1).
 10. 16 C.F.R. 702.1(b).
 11. 16 C.F.R. 700.1(c), (d).
 12. 16 C.F.R. 700.1(b), (e).
 13. See *Gast v. Rogers-Dingus Chevrolet*, 585 So.2d 725 (Miss. 1991).
Moore v. Burt Chevrolet, Inc., 39 Colo. App. 11, 563 P.2d 369 (1977). *Jackson v. H. Frank Olds, Inc.*, 65 Ill. App. 3d 571, 382 N.E.2d 550 (1978).
 14. See *Patton v. McHone*, 822 S.W.2d 608 (Tenn. Ct. App. 1991). *Currrier v. Spencer*, 772 S.W.2d 309 (Ark. 1989). *Vieweg v. Friedman*, 526 N.E.2d 364, 173 Ill. App.3d 471, (Ill. App. Ct. 1988).
 15. 15 U.S.C. § 2301(3).
 16. The Act also applies to "service contracts"; these are contracts in writing to perform, over a fixed period of time or for a specified duration, services relating to the maintenance, repair (or both) of a consumer product." 15 U.S.C. § 2301(8).
 17. 15 U.S.C. § 2301(6).
 18. 15 U.S.C. § 2308(a).
 19. 15 U.S.C. § 2302(a).
 20. 15 U.S.C. § 2302(b)(1)(A).
 21. 15 U.S.C. § 2303(a).
 22. *Id.*
 23. 15 U.S.C. § 2304
 24. *Id.*
 25. *Id.* 16 C.F.R. § 700.6.
 26. 16 C.F.R. § 701.3 (a)(1) through (6).
 27. 16 C.F.R. § 701.3 (a)(7), (8)
 28. 16 C.F.R. § 701.3 (a)(9).
 29. 15 U.S.C. §2302(b).
 30. 16 C.F.R. § 702.3.
 31. *Id.*
 32. 16 C.F.R. § 702.3(b).
 33. 16 C.F.R. § 702.3(c), (d).
 34. 15 U.S.C. § 2310(b).
 35. 15 U.S.C. § 45(a)(1).
 36. 15 U.S.C. § 45 (b) through (n).
 37. 15 U.S.C. § 2310(d)(1).
 38. *Walsh v. Ford Motor Co.*, 588 F.Supp. 1513, 1521 (D.D.C.1984), as amended, 592 F.Supp. 1359 (D.D.C.1984).
 39. 15 U.S.C. § 2310(d)(3).
 40. *Id.*
 41. *Id.*
 42. *Id.*
 43. *Id.*
 44. *Boelens v. Redman Homes, Inc.*, 748 F.2d 1058, 1062-63 (5th Cir. 1984); *Gilbert v. Monaco Coach Corporation*, 352 F.Supp.2d 1323, 1329-30 (N.D. Ga. 2004); *Walsh v. Ford Motor Company*, 627 F. Supp. 1519, 1522 (DCC 1986); *Bush v. American Motors Sales Corporation*, 575 F. Supp. 1581, 1582 (D. Colo 1984).

45. *Bush*, 575 F. Supp. at 1582.
 46. *Walsh*, 627 F. Supp. at 1524-26.
 47. *Id.* at 1524-25.
 48. 352 F.Supp.2d 1323 (N.D. Ga. 2004).
 49. *Id.* at 1329-30.
 50. *Id.* at 1329.
 51. 15 U.S.C. § 2310(d)(1).
 52. *Alvine v. Mercedes-Benz of North America*, 620 N.W.2d 608, 611.
 53. *Davis v. Pumpco, Inc.*, 1974 OK CIV APP 3, ¶ 9, 519 P.2d 557, 559.
 54. 660 F.2d 331 (7th Cir. 1981), rev'g 500 F. Supp. 3181 (N.D. Ill. 1981)
 55. MDL No. 308 (N.D. Ill.), rev'd, 594 F.2d 1106 (7th Cir.), cert. denied, 444 U.S. 870 (1979), aff'd after remand, 620 F.2d 1190 (1980)
 56. *Supra.*, n. 54.
 57. Very few reported cases involve breach of service contract. However, note *Britton v. Bill Anselmi Pontiac-Buick-GMC, Inc.*, 786 P.2d 855 (Wyo. 1990) and *Illinois v. Hunt International Resources Corp.*, 481 F. Supp. 71 (N.D. Ill. 1979).
 58. 15 U.S.C. 2310(d)(1).
 59. *Id.*
 60. 15 U.S.C. § 2311(b)(1).
 61. *Cline v. DaimlerChrysler Co., Corp.*, 2005 OK CIV APP 31, ¶ 36, 114 P.3d 468, 478.
 62. 15 U.S.C. § 2310(a)(1).
 63. 15 U.S.C. § 2310(a)(2).
 64. 16 C.F.R. §§ 703.1 through 703.8.

ABOUT THE AUTHOR



Adam K. Marshall is a member of the firm Barrow & Grimm PC in Tulsa. He received his undergraduate degree from the University of Tulsa and his M.B.A. and J.D. from the University of Oklahoma in May 2003. Mr. Marshall focuses his practice on representing closely-held businesses and tribal business entities in transactions and litigation.

OBA Nominating Petitions

(See Article II and Article III of the OBA Bylaws)

BOARD OF GOVERNORS

SUPREME COURT JUDICIAL DISTRICT NINE

O. CHRISTOPHER MEYERS II, LAWTON

Petitions have been filed nominating O. Christopher Meyers II for election of the Board of Governors representing Supreme Court Judicial District 9 of the Oklahoma Bar Association for a three-year term beginning January 1, 2008.

A total of 33 signatures appear on the petitions.

County Bar Resolutions Endorsing Nominee: Comanche County

Oklahoma's Material Witness Law: Time for Change

By Karen Youngblood

On a cold day in January 1923, Joe Riddle was detained in the Choctaw County jail in Oklahoma where he remained until the Oklahoma Court of Criminal Appeals ordered his release the following October.¹ Never charged with a criminal act, Riddle's stay in the county jail came about because he witnessed Bill Johnson's unlawful sale of intoxicating liquor. Riddle probably did not realize it at the time, but he was one of Oklahoma's more fortunate material witnesses. Once his case went to the Oklahoma Court of Criminal Appeals, the attorney general sided with Riddle and agreed his detention was unlawful because Johnson's liquor violation was not a felony.

In 1911, *Little v. Territory* had determined that statutory authorization was required before a court had the power to bind witnesses by recognizance to appear and give testimony, and that such authority existed solely for felonies in the Oklahoma statutes.² Recognizing that no statutory modifications had been passed since the *Little* case, Assistant Attorney General N.W. Gore agreed that any order holding Riddle under bond or in jail would be void and paved the way for the Court of Criminal Appeals to order the immediate release of Riddle.

At the time of the *Riddle* decision, Oklahoma had six statutes governing the state's treatment of material witnesses. These six statutes, 22 Okla.Stat. §§ 270-275 (2001), were included as part of the criminal code adopted in 1910.³ Except for the 1973 repeal of 22 Okla. Stat. § 272 covering requirements for married women and infants to procure sureties, Oklahoma has not amended the material witness

statutes in effect at the time of Riddle's detention. Two new statutes, however, were added to the criminal code in 1970 and 2004.⁴ The new additions to material witness law were not placed in the same chapter (Chapter 3, Jurisdiction and Commitment) of Title 22 as the original six statutes. Instead, they were codified in Chapter 9, Witnesses. Another statute peripherally affecting material witnesses is located in 28 Okla. Stat. § 81 (Supp. 2005) and specifies the witness fee to be paid (\$10 per day). Considering the significant changes made to civil liberties and criminal procedure during the decades since *Riddle* was decided, it is surprising that Oklahoma has generated few statutory amendments and minimal case law addressing the charging and detention of material witnesses. The few existing precedents do little to illuminate a confusing area of law that appears to deny the material witness the same protections given the criminal defendant. This paper will examine the current state of Oklahoma law on material witnesses to

determine what issues have been addressed and what issues remain unanswered since the state's illegal detention of Mr. Riddle before concluding with a call to replace the current maze with a modern, cohesive material witness law.⁵

Had his case not been decided on the misdemeanor technicality, Riddle's appeal raised several troubling issues. Riddle's initial petition for the writ of *habeas corpus* alleged that no judge had ordered his detention in jail. The sheriff's pleadings justified the detention as having been authorized by order of the county attorney of Choctaw County.⁶ However, in response to later pleadings filed with the Court of Criminal Appeals after the district court denied this writ, the sheriff claimed to be holding Riddle pursuant to an order by District Judge G.M. Barrett dated Sept. 22, 1923, for Riddle's failure to give a recognizance bond in the amount of \$50. The facts also reflect that on Sept. 23, 1923, the Choctaw District Court denied Riddle's petition to be freed from custody and ordered Riddle's continued detention.⁷ Both orders, of course, came eight months after Riddle's initial detention.

The question of which state officials have statutory power to detain material witnesses is easily answered by referring to the statutes. Had *Riddle* actually required scrutiny of the statutory authority for detaining a witness, it is clear that district attorneys have never possessed statutory authority to order the detention of a material witness. 22 Okla. Stat. § 274 (2001) mentions district attorneys, but limits the district attorney to making a sworn application to a judicial officer for a determination that the presence of the witness is material or necessary. In 2004, with the enactment of 22 Okla. Stat. § 720 (Supp. 2005), police officers were given temporary authority to detain a material witness up to 48 hours without a court order. Except for this 48-hour exception, judges have exclusive power to direct the detention of material witnesses.

Reviewing the statutory authority for Oklahoma judges to order the detention of a resident material witness is a complicated endeavor. A note published three decades ago in the

“The question of which state officials have statutory power to detain material witnesses is easily answered by referring to the statutes.”

Oklahoma Law Review explains that the six original Oklahoma statutes create two distinct statutory procedures applicable to material witnesses.⁸ The first procedure stems from 22 Okla. Stat. §§ 270 - 271 (2001) and situations in which a defendant has been bound over for trial at the conclusion of a preliminary hearing. At that point, to ensure each witness will appear and testify at the defendant's trial, the magistrate may require an undertaking (without surety) from each of the state's material witnesses who

appeared at the hearing (emphasis added). As a second step in this first procedure, the court has the ability to order the witness to enter into a written undertaking with sureties if there is reason to believe the witness will not appear and testify at trial. The third step stems from 22 Okla. Stat. § 273 (2001) and its requirement that the judge *must* commit the witness to jail if the witness refuses to comply with the court ordered undertaking (emphasis added). Upon ordering a defendant to stand trial after a preliminary hearing, these three sections give clear statutory authorization for the judge to order the jailing of a non-compliant material witness who appeared at the preliminary hearing and subsequently failed to provide a required surety bond.

The second procedure affecting the detention of a material witness originates in 22 Okla. Stat. § 274 (2001) and is related to rare situations in which the witness was discharged, without surety, from his original undertaking.⁹ In such a case, upon the sworn application of the district attorney or other person on behalf of the state, the previously discharged witness may be compelled to give a new undertaking with sureties to assure his or her presence at trial if the court finds the presence of the witness was shown to be material or necessary. This statute gives the judge the power to issue a warrant to have the witness arrested for the purpose of having the hearing set in motion by the district attorney's application. However, it is necessary to use 22 Okla. Stat. § 275 (2001) to find a source for the judge's power to continue

holding the witness after this hearing and the ordering of a secured bond. Section 275 allows the judge to order the commitment of the arrested witness if the witness refuses or neglects to make the new secured bond as ordered. Once the order of commitment is issued, the statute gives the sheriff or other officer authority to hold the witness in jail until the witness testifies or complies with the court-ordered undertaking. A straightforward reading of 22 Okla. Stat. §§ 274 -275 (2001) requires linking the two statutes, *i.e.*, the grant of authority from § 275 to commit a witness to jail exists only after the hearing authorized in § 274. Since the hearing authorized in § 274 is allowed only for a witness discharged from a previous undertaking, it is necessary to determine when a witness might incur a previous undertaking from which he or she was discharged. The only statutory way in which a previous undertaking could have been placed on the witness comes from the procedure authorized in 22 Okla. Stat. §§ 270-273 (discussed above) in which the defendant was bound over for trial. Thus, without a preliminary hearing, there is no statutory authorization giving judges the power to order the detention of a material witness.

Because *Riddle* was decided on the misdemeanor issue, the Court of Criminal Appeals never faced the tougher question of whether the district judge had the power to order *Riddle*'s detention since it did not stem from Bill Johnson, the defendant, being bound over for trial as required under either of the two statutory procedures outlined above. Studying the statutory changes enacted since 1970 is necessary to determine if Oklahoma courts have subsequently received power to order the detention of a material witness prior to or without conducting a preliminary hearing and binding the defendant over for trial.

The wording of 22 Okla. Stat. § 719 (2001) assumes that a person may be taken into custody pending a mere *criminal investigation or proceeding*.¹⁰ In the case of *Shaw v. State*, the Court of Criminal Appeals

provided no insight when it denied a writ of *habeas corpus* in a brief opinion citing § 719 without elaboration.¹¹ However, the wording of this section strongly suggests that it was passed for the purpose of ensuring the rights of anyone detained as a material witness; it does not read as a statutory grant of power enlarging the authority of the court to jail material witnesses. When the legislature enacted Oklahoma's newest material witness statute, 22 Okla. Stat. § 720 (Supp. 2005), the powers of law enforcement officers (not judges) were addressed. Section 720 gave law enforcement the authority to detain any person when an officer has probable cause to believe the person was a material witness to a felony and would avoid service of a subpoena or refuse to appear in any criminal proceeding. However, this detention is limited to 48 hours unless the witness is brought before the court. Reading these two statutes together, it is clear the legislature believes material witnesses can be detained or made to issue an undertaking any time there is probable cause to believe he or she witnessed a felony and plans to avoid testifying in any criminal proceeding. But such a grant of power is not actually included in either of these newer statutes nor, as discussed above, does such authority exist in the older statutes. Section 720 refers to requirements of § 719. However, § 719 merely indicates that the witness has the right to be released upon entering a written undertaking *in the manner provided by law, i.e.*, the original

statutes *Riddle* faced in 1923. If logic and strict construction is used to interpret these statutes, this circular linkage between the old and new statutes should condition all material witness detentions (including those ordered pursuant to § 719 and § 720) upon the defendant being bound over for trial.

If there is no grant of statutory authority to keep material witnesses in jail except in situations where the defendant has been bound over for trial, could common law supply the missing authority to the court? The precedent that freed *Riddle* provides the negative answer to this question.

“ If logic and strict construction is used to interpret these statutes, this circular linkage between old and new statutes should condition all material witness detentions... ”

Little held that “the power to bind witnesses by recognizance to appear and give evidence in criminal cases is an extraordinary one, and cannot be exercised in the absence of statutory authority.”¹² If it is an extraordinary power for a judge to require a written undertaking, surely the same would be true for the power to jail that same witness.

Once detained, 22 Okla. Stat. § 719 (2001) gives the material witness the right to be advised of his constitutional rights including being advised of the reason for his detention, of his right to counsel and of the fact his compliance with the court ordered undertaking would free him. This section also provides for the unusual, and potentially expensive, right of the material witness to be kept separate from the regular jail inmates during his detention. The question of whether the material witness is entitled to be paid is also answered by § 719. Not only will the material witness be paid the statutory witness fee for each day of testifying, the witness is also entitled to be paid for every day of incarceration. To determine the amount the witness is entitled to, the statute refers to the general witness fee statute, 28 Okla. Stat. § 81 (Supp. 2005) which recently raised the amount to \$10 per day. An additional requirement of § 81 specifies that the witness in a criminal case should be paid at the conclusion of each day of attendance unless the witness agrees to another option. No system is described for delivering this \$10 daily fee to an incarcerated witness. In 2004, § 720 of Title 22 brought about a significant change for a small percentage of material witnesses when it prohibited the detention of any material witness who is also the victim of the felony he witnessed. However, since § 720 refers only to the power granted to law enforcement to temporarily detain material witnesses, the question remains as to whether the victim of a felony could be detained by court order after being declared to be a material witness who failed to comply with a court-ordered written undertaking.

Oklahoma’s statutes on material witnesses need to be reviewed and improved. One glaring omission is the fact that a defendant facing

a felony charge has no corresponding statutory right to have defense witnesses declared as material witnesses. A witness’s duty to the court should apply equally to all sides in a criminal case. The federal material witness law gives each party in a criminal proceeding the right to pursue the holding of a material witness.¹³ Other issues needing statutory clarification include how long the witness may be held after appearing before a judge, whether material witnesses may be detained for any criminal proceeding or merely for criminal trials, and what level of proof is needed to empower the court to order a witness’s incarceration. A defendant facing charges has the right to a speedy trial, but not the witness who is expected to testify in that trial. If the defendant and the prosecution are content with postponements of the trial, the witness remains in jail without standing to protest the delay.

Although Oklahoma allows depositions in criminal proceedings, no statutory authorization establishes the right of a witness to earn release from detention by testifying in a pre-trial deposition.¹⁴ Such an option for federal material witnesses is specifically mandated in § 3144 of Title 18. A deposition provides both sides an opportunity to question and/or cross-examine the witness and preserves the witness’ sworn testimony for later use at trial in the event

the witness fails to appear. Inclusion of a deposition as a way to satisfy the court order requiring an undertaking or testimony also resolves the dilemma of courts jailing poor witnesses simply because of financial inability to comply with the court ordered security bond. By allowing depositions to be used as a means to secure freedom, the needs of the court are met, and all witnesses, rich or poor, are given the means to choose whether to remain in jail until the defendant goes to trial. The same should be true of the witness who testified at the defendant’s preliminary hearing. Since the recorded preliminary hearing testimony can be used at trial if the witness is unavailable, the appearance of the witness, while preferable, ceases to be essential to the workings of justice. That fact implicates the Fourth Amendment’s prohibition of unreason-

“Oklahoma’s statutes on material witnesses need to be reviewed and improved.”

able seizures of a person when the state's only justification for continued detention of the witness is based upon the need to ensure the witness's information becomes a part of the defendant's trial. Allowing the use of the preliminary hearing testimony or the sworn deposition to satisfy a court order to testify serves the goal of balancing the needs of the court system to access the witness's information against the citizen witness's right to be free of unreasonable seizures.

A final problem inherent in the current Oklahoma practice with material witnesses is more an administrative concern than a constitutional issue. There is no mandated method for reliably tracking material witnesses once they enter the criminal justice system. When a person is arrested as a material witness, this arrest does not automatically trigger a file under the witness's name since he or she is not being charged with a crime. Instead, all paperwork on the material witness may be filed in the defendant's case. This produces two worrisome effects. First, there is no way to determine how many persons Oklahoma processes as material witnesses without manually checking every felony case filed in the state. Therefore it is not surprising that there are no reports kept on the use or treatment of material witnesses across the state. Secondly, the process makes the material witness invisible within the complex criminal justice system. To access any data on a material witness, it is necessary to recall the defendant's name. The human component is always suspect when problems arise within the criminal justice system. It is not unusual to hear of cases in which "someone" forgot to inform witnesses not to appear as originally scheduled after continuances were granted or hearings were waived. Is it any less likely that the same "someone" might forget to process the paperwork necessary to release the material witness after a plea bargain with the defendant is made? Material witnesses need an individual file and case number to give them official visibility and a trackable paper trail within the jail and court systems. This case number and information on the material witness could easily be cross-listed with the case number of the defendant facing charges in order to protect the state's ability to prosecute the defendant's case.

Patching new statutes containing references to probable cause standards and constitutional rights onto the narrowly drafted laws adopted in 1910 has not produced a workable statutory scheme that balances the needs of the court to determine the defendant's guilt or innocence against the rights of a witness with information material to that determination. Oklahoma should replace its existing statutes with one comprehensive act detailing the rights and duties of the material witness, the requirements for a court to declare a witness as material for the prosecution or defense of a felony, and the power of law enforcement and the courts to curtail the liberty of anyone deemed a material witness. The 1994 New Jersey revision of its material witness law provides a suitable model for developing a modern cohesive approach to setting forth the necessary statutory authority to proceed against a material witness while protecting his or her rights to due process and to be free of unreasonable seizures.¹⁵

Highlights of the New Jersey material witness statutes include a clear definition of a material witness and delineated requirements for the state or the defendant to follow when requesting court determination that a witness is material to the case. Separate sections spell out the procedures to use when arresting an alleged material witness with or without a warrant.¹⁶ New Jersey also takes the unusual step of prohibiting the jailing of anyone solely because he or she is a material witness. While the witness may be held by the authorities, this detention cannot take place in a jail or prison, and the witness is entitled to "ordinary food" and a minimum of \$40 per day per diem.¹⁷ One atypical requirement of the New Jersey statutes should curtail the unnecessary use of the power to detain a material witness by prosecutors or defendants. This provision is the requirement that the per diem costs of the detention be assessed against the party petitioning for the detention of the witness (unless that party can prove indigency).¹⁸ While New Jersey law contains protections extending well beyond constitutional minimums, Oklahoma could easily use these statutes as a starting point for bringing its handling of material witnesses into balanced, workable system that even Joe Riddle might approve.

1. *Ex parte Riddle*, 25 Okl.Cr. 25, 218 P. 894 (1923).
2. *Little v. Territory*, 28 Okla 467, 114 P. 699 (1911).
3. 22 Okla. Stat §1 (2001), Historical and Statutory Notes. Prior to statehood, the Oklahoma Territory adopted criminal procedure rules taken from the Territory of the Dakota. Much of the current Code of Criminal Procedure found in Title 22, including the six original material witness laws, evolved from those original laws borrowed from the Dakota Territory when the Oklahoma Legislature passed its Revised Laws in 1910.
4. 22 Okla. Stat. §719 (2001) Persons Held as Material Witness to be Informed of Constitutional Rights — Fees was enacted in 1970; and 22 Okla. Stat. §720 (Supp. 2005) Detaining Necessary and Material Witness to a Felony — Procedure — Length of Detention was enacted in 2004.
5. Discussion of material witness issues will not include the procedure involved in securing the attendance of witnesses located outside the state of Oklahoma. The statutory authorization for non-resident witnesses is found at 22 Okla. Stat. §§ 721-727 (2001).
6. *Riddle*, *supra* note 1.
7. *Id.*
8. *Leader, Witness: Securing the Appearance of Material Witnesses From Within the State for Criminal Proceedings in Oklahoma*, 27 Okla. L. Rev. 299 (1974).
9. *Id.*, 299.
10. 22 Okla. Stat. §719 (2001) is formally entitled *Persons Held as Material Witnesses to be Informed of Constitutional Rights — Fees* and states, in its first sentence, that “(W)hensoever any person shall be taken into custody by any law enforcement officer to be held as a material witness in any criminal investigation or proceeding, he shall, if not sooner released, be taken before a judge of the district court without unnecessary delay and said judge of the district court shall immediately inform him of his constitutional rights including the reason he is being held in custody, his right to the aid of counsel in every state of the proceedings, and of his right to be released from custody upon entering into a written undertaking in the manner provided by law”.
11. *Shaw v. State ex rel Porter*, Okl. Cr., 624 P. 2d 81 (1981).
12. *Little*, *supra* note 2.
13. 18 U.S.C. § 3144 (1984).
14. 22 Okla. Stat. §§ 761 - 771 (2001) govern the rules on taking depositions in a criminal case.
15. N.J.S. 2C:104-1 - 104.9 (1994).
16. N.J.S. 2C:104-4-5 (1994).
17. N.J.S. 2C:104-7 (1994).
18. *Id.*

ABOUT THE AUTHOR



Karen Youngblood graduated in 1975 from the OU College of Law where she earned Order of the Coif honors. After 12 years of private practice, she joined the faculty of Cameron University in Lawton. She currently teaches criminal law, criminal procedure and evidence courses in the criminal justice program. Cameron bestowed its highest honor upon her when it named her the 2005 recipient of the Hackler Award for academic excellence.

PACE XVIII

DO YOU KNOW AN OUTSTANDING TEACHER?



The OBA Law-related Education Department is looking for those unique, energetic teachers to apply for the 18th annual PACE (Programs Advancing Citizenship Education) summer institute.

Scheduled for July 8-12, 2007 at the Midwest City Reed Conference Center. Participants must be energetic and committed to offering an excellent citizenship academic program to their students.

This year's institute, "Oklahoma Centennial: A State of Many Nations," will expose educators to various aspects of the Oklahoma judicial system, Native American courts, citizenship education and public policy. This program is made available through generous grants from the Oklahoma Bar Foundation and the Constitutional Rights Foundation.

**To check out the program agenda
& download an
application form go to:
www.okbar.org/public/lre/pace.htm
Or contact the
OBA/LRE Department at
(405) 416-7023**

OBA Legislative Report

By John Morris Williams, OBA Executive Director

Below is a list of the OBA bills. The OBA Web site has a link under the "Legal Research" tab to the Oklahoma Legislature Web site, which has full text of bills and current status information. The Legislature Web site can be accessed directly at www.lsb.state.ok.us. Among the bills pre-filed are those bills adopted by the OBA House of Delegates.

The OBA bills are:

• SB 634 •

This bill amends existing law to allow service to be obtained by use of courier service such as UPS or FedEx as long as delivery service provides a signed receipt, record of to whom delivery was made, date of delivery, address where served and the person or entity making the delivery. United States Postal Service changes in Certified Mail delivery may have made this type of service less dependable than in the past. Use of commercial carriers provides safeguards and procedure that ensure due process is met. The bill also allows a party or attorney to agree to electronic service (facsimile or e-mail). The party agreeing to electronic service has to consent to such in writing and file the consent in the case. The proposed amendment provides that consent can be included in an Entry of Appearance. The bill allows a party or attorney an option of using electronic means of service. It does not mandate or require the use of electronic service or notice.

A committee substitute was introduced that amends 12 O.S. §§ 140.1 696.2., 696.3, 1083, 2004.1, and 2005. These new provisions were part of last year's OBA Legislative Agenda. The amended language provides: who pays new filing fee on transfers of a case, relate to service of final judgment on parties, provide for dismissal without prejudice of cases in which no pleading has been filed or action taken for after a year and relate to service of a subpoena in a case pending out of state and subpoenas for production or inspection in cases pending outside of Oklahoma. These amendments clarify existing statutes and do not contain major revisions or changes in existing law.

Author: (S) Lerblance, (H) Sullivan

Status: On Governor's Desk

• HB 1716 •

This bill provides a new section of law clarifying that the "mail box rule" applies to ad valorem protests and makes the practice uniform for the entire state. Current practice in almost all counties in the state is to use the mail box rule in determining when notice of a protest is received. This statute allows taxpayers the ability to know with certainty that the protest is timely filed and received. Otherwise, the protesting taxpayer may mail the protest well within the allotted protest period and due to postal delays or mishandling upon receipt by the taxing authority be denied the right to appeal.

Author: (H) Miller, (S) Lamb

Status: Passed House, and on General Order with the Senate. Title and enacting clause have been stricken.

• HB 1828 •

This bill recodifies and reinstates 11 O.S. 2001, Section 27-111.1 that was repealed in 2006. The purpose of the bill is to require the sheriff in counties of more than 200,000 population to create a system where certain persons may pass quickly to gain entrance to the courthouse. Under this bill the sheriff would be required to provide an identification card to the persons stated in the statute, plus others the sheriff may determine.

Author: (H) Kiesel

Status: Failed Do Pass in subcommittee and is dormant

OBA Day At the Capitol

March 27, 2007 • Oklahoma City



Jacob Diesselhorst, Marty Cain and Brad West prepare for the day at the morning briefing.



Hundreds of legislators, Capitol workers and bar members line up for a barbecue lunch provided by the OBA.



Day at the Capitol attendees pose for a group photo on the south steps of the Capitol.



OBA Governor Peggy Stockwell, OBA member and State Representative Richard Morrissette, and OBA President Stephen Beam enjoy the evening reception at the bar center.



Attorney General Drew Edmondson, Lieutenant Governor Jari Askins and Jon Parsley visit at the reception.

Two Reasons to Celebrate

By John Morris Williams

Law Day has a double meaning to me. In addition to being a day set aside to celebrate our profession and the rule of law, it is my anniversary date here at the OBA. Four years ago I began as your executive director. I was fortunate enough to inherit a talented staff and a very good group of directors. All those directors are still with us at the OBA, and I have learned much from them. Each one in his or her chosen area of work is dedicated to great member service.

With the memory of private practice still fresh, I have tried to hold steadfast to my personal mission of "enhancing the professional lives of OBA members."

I hated doing MCLE reports and found myself the secretary of that commission. Life does have its funny turns. No one wants to make your professional life better than Beverly Petry, our MCLE administrator. I asked if we could get rid of all this paper and make this easier for the members, and she and IT Director Rick Loomis made it happen. We have more than 15,000 members and cutting out the handling thousand of pieces of paper with our new online system allowed us to eliminate a part-time position in that department.

If you are like me, in the past you may have spent at least the equivalent of an hour of billable time getting the form filled out. Now, if you have your hours in, we send you an e-mail confirming your compliance, and you do not have to do anything. You are finished! Just to be safe you can log on to our Web site and verify your attendance at any time. If your provider reports to the OBA, the OBA has the information in its system. OBA saves postage and staff time. I call that a win-win.

Our building needed some repairs when I came along. Through the work of a line of dedicated and selfless OBA presidents, governors and Bar Center Facilities Committee members, we are entering the third phase of the building repairs. At its March meeting the Board of Governors approved the contract to begin asbestos abatement. This means that half the staff, including yours truly, will be housed in modular buildings in the parking lot for a year. We are scheduled to begin abatement and demolishing the interior of the building's east side in August.

Recently, I saw a bar member with a physical challenge come through the south entrance. I was proud of the fact that we now have an

entrance that is structurally sound, but more importantly, it is welcoming to all our members. It is my hope and the hope of the entire OBA staff that everything we do is welcoming to all our members. There are always things that we can do to improve. However, having the organizational value system in place to do the right thing is critical, and I lucked into working for such a place.

Without you, there would be no OBA or a Law Day. To me Law Day means that our legal system has survived yet another year and that for another year I have worked for you. You are the true champions of justice, and my work is meaningful because of what you stand for.

Thank you for the opportunity to be involved in the work of the OBA and for all each of you does to maintain our system, profession and our justice.



To contact Executive Director Williams, e-mail him at johnmw@okbar.org

The Rise and Fall of the Dictation Tape

By Jim Calloway, Director, OBA Management Assistance Program

"My firm has gone digital! As a result, we have over 100 dictation machines that need a good home." That was a recent post on OBA-NET, our bar online forum, from Jerrod S. Geiger of the firm Pierce Couch Hendrickson Baysinger & Green LLP.

This month's column is written with a simple goal in mind. I want to make sure that every lawyer who reads this understands that the dictation equipment that many of you have in your offices, with standard or micro cassettes, is headed for obsolescence. The next dictation device that a lawyer buys should be digital equipment rather than one that relies on cassette tapes. Soon your tape dictation equipment will take its rightful place in history alongside the eight track tape and the Sony Betamax video recorder. (In case you haven't heard, it will likely be joined fairly soon by your trusty VHS video recorder as well.)

This is actually good news for lawyers. As with so many things, going digital improves performance and capabilities. The one doing the transcribing will appreciate the high sound quality and lack of hiss and distortion. Digital dictation equipment is a lot more

versatile. Think back to those abandoned cassette units from Pierce Couch. Law firms do not scrap dozens of perfectly usable cassette recorders without a good reason.

If you're one of the lawyers who has not replaced your dictation unit in the last several years, you may not be aware of the revolution in this industry.

To get an idea of the history of mechanical dictation devices in the law office and businesses generally, I contacted Ed Rose of AEC Solutions in Oklahoma City. His company was founded in 1956 as Audio Equipment Company. By the mid-1960s, the word audio was more understood by the public to refer to home stereo systems and so the business changed its name to AEC Solutions.

He recalls that the trained shorthand stenographers were his biggest business competitor in the early days. Then, about 20 or 30 years ago, that mode of

doing business began to vanish. The legal profession was among the first to retire short-hand stenographers in favor of dictation equipment and transcribers. By the early 1970s, most law offices using dictation were relying on tape dictation systems.

While most people today think of a dictation unit as a

While most people today think of a dictation unit as a handheld portable device, that is a very recent trend.



handheld portable device, that is a very recent trend. Even as late as the mid-1990s more attorneys had desktop dictation cassette units than portable units, according to Rose.

But the move to digital dictation instead of tape has been fairly rapid.

All but about three of the 10 largest Oklahoma law firms have converted to digital dictation equipment within the last six to eight months, according to Rose.

In fact, if you go shopping for good dictation equipment, you probably won't see any cassette units on display. You can perhaps still purchase them, but don't expect a discount. Since they are no longer being built, the few remaining ones will be held for those customers who insist on cassettes instead of going digital.

That should not include any law offices.

HOW IS A DIGITAL RECORDER DIFFERENT?

The primary difference is that the dictation is now recorded on a tiny hard drive within the recorder as opposed to removable cassette tapes. It is exactly the same as having your music collection on an iPod rather than a box full of cassette tapes or CDs.

But for the lawyer-user, this one difference results in many improvements. A lawyer who is in the middle of dictating something and is reminded of something else (e.g. instructions to the assistant) can pause the first dictation job and open a new dictation job to dictate those instructions. When that job is completed,

the lawyer can return to the first project. The lawyer in the middle of a trial can dictate trial notes at the close of the day and transfer them back to the office from home or hotel over the Internet for his or her assistant to begin typing the next morning.

“ All but about three of the 10 largest Oklahoma law firms have converted...”

This online “delivery” of dictation to the office for transcription is a huge time-saving advantage. With cassette tapes, if one was not going to return to the office physically, the only way to get the dictation tapes to the office for transcription would be by some sort of courier or delivery service. Now one can just locate a computer with Internet access and securely transfer the dictation to the office staff.

For the lawyer returning to the office, the recorder can be dropped into the cradle to both recharge the batteries and transfer to the assistant.

Another advantage of digital dictation is that the original dictation files can be saved. (Hopefully these would be archived to a CD or storage device rather than taking up space on the network.) One lawyer reported at ABA TECHSHOW that a lengthy and critical document became corrupted and the backup failed. Because the firm saved

the voice dictation files, the original dictation was still available to be re-transcribed.

Purchasing good dictation equipment can be fairly expensive.

But paradoxically, the total cost of an office digital dictation system may actually be lower than the standard variety. For a traditional dictation tape system to operate, one had to purchase both a dictation unit and a transcription unit. One of the big advances with digital transcription is that the purchase of a USB foot pedal, a headset and appropriate software can make any computer a transcription station. Purchasing these components is much less expensive than a dedicated transcription unit. Take your time when making these purchases, however. A typical computer headset may not have a cord that is lengthy enough for comfortable transcription, for example.

KEEPING YOUR FINGER ON THE RIGHT BUTTON

One of the big technology barriers for early handheld dictation devices was that early ones required the use of several buttons to properly operate them. One button would be pushed to record. A different button was used to play; another to rewind. That was the standard for full-size cassette recorders. As most readers know, the professional using dictation equipment prefers the one-button slide model to perform all operations. The busy executive or lawyer doesn't want to have to push a lot of buttons. They don't want to take their eyes off of the research or other material they were using to aid their dictation.

When handheld digital dictation devices were first released they did not have the one-button slide either. Rose recalls the release of the Olympus DS-4000 unit with the one-button slide was what really sparked sales.

"I sold about as many in the first four months after that as I had in the preceding two years," Rose said.

Rose also warns against buying a digital meeting recorder when the lawyer really wants a dictation device. The meeting recorders do not allow one to back up and record over previous dictation. This only makes sense as they are intended to make an audio record of a meeting. These devices have their place, but the busy professional might not appreciate the difference while shopping in a hurry.

Two of the most popular state-of-the art digital dictation devices are the Olympus DS-4000 with a suggested retail price of \$449 and the recently released Phillips 9600 with a suggested retail price of \$549. Early reports indicate that the Philips unit is a bit more complex to set up on your networks. The transcription companion kit to the Olympus is the AS-4000 with a suggested retail price of \$349.

Some dealers offer packages that include hardware, onsite installation and training.

Dictaphone, Sony and other manufacturers produce digital dictation units as well.

The industry standard for file format appears to be the DSS file. Caution is advised for recorders that use a proprietary format and/or cannot

import DSS files. This is not to say that you should avoid these units.

Of course, all of the information included above relies on a human being to transcribe the dictation. I have previously covered Dragon Dictate Naturally Speaking 9 Preferred speech recognition software in this space. See "'Computer, Can You Hear Me Now?' One Lawyer's Surprisingly Positive Experience with Speech Recognition Software," 77 *Oklahoma Bar Journal* 2485 (Sept. 2, 2006).

Digital recorders have such high quality that they can be used in conjunction with speech recognition software. That did not work well with the traditional cassette recorders, but several lawyers have reported good results using digital recorders. Please note that this only applies to the voice that the speech recognition software is trained to recognize. For others, the human transcriber will still be required.



Some lawyers have tried dictating into their mobile phone with digital recorder capability. It may not have the famed one button slide, but in an emergency this could be utilized. One can easily envision a day when "professional" mobile phone would

include advanced voice recorder capability with a one button slide on the phone.

The recording of telephone conversations has also improved with technology. (No opinions about legality or propriety are expressed.) When I needed to record a telephone conversation for an interview, I stopped by the local Radio Shack. They sold me an Olympus TP7 Telephone pickup for just over \$20 with tax. There is a soft little plug that fits into your ear that has a microphone on the other side. Just plug it into your recorder and use the phone normally. (Use that ear for the phone, of course.) It records both sides of the conversation very well. Because it plugs into your ear instead of the phone, it can be used with any phone, including mobile phones.

Of course, there are do-it-yourself types who want to buy over the Internet and put together their own package.

Here's a list of Web sites for some of the products and vendors in this area:

Quikscribe
www.digitaldictation.us

WinScribe
www.winscribe.com

Express Dictate
www.nch.com.au/express/index.html

Express Scribe
www.nch.com.au/scribe/index.html

You can locate others as well as all of the products mentioned above through an Internet search.

Happy Dictating!

Interest on Unpaid Legal Fees

By Gina Hendryx, OBA Ethics Counsel

“My client owes me a lot of money for legal services and advanced expenses. May I charge the client interest on the unpaid balance?”

This is a common question asked by frustrated lawyers who are attempting to collect on their past due accounts. Almost all jurisdictions allow lawyers to charge interest on unpaid legal fees and advanced expenses provided a specified amount of time has elapsed and the client has agreed to such an arrangement. The Oklahoma Bar Association's Legal Ethics Committee adopted this majority approach in 1975 in Ethics Opinion No. 286, which can be found at www.okbar.org/ethics/286.htm.

In its opinion, the committee stated:

Therefore, the Legal Ethics Committee of the Oklahoma Bar Association finds that it is ethical and proper for an attorney to charge interest on overdue accounts for professional services rendered or expenses advanced as long as there has been an agreement made with the client concerning these charges.

The opinion further notes that attention should be paid to applicable state and federal law.

In light of the Committee's opinion it merits mention that there are specific requirements under the Oklahoma Uniform Consumer Credit Code providing for the disclo-

sure of interest under various situations. It is suggested that the attorney review the statutes before proceeding with the charging of interest so that he fully complies with the requirements applicable to his situation.

In Oklahoma, as in most jurisdictions, the client must have agreed in advance to pay interest on an unpaid balance. However, jurisdictions differ on whether the agreement must be in writing. Ethics Opinion No. 286 does not require the agreement to be memorialized nor does Oklahoma require all fee agreements to be in writing. Oklahoma Rules of Professional Conduct (ORPC) 1.5 requires only contingency fees be in writing while encouraging other fee agreements to be communicated to the client in writing. However, if an Oklahoma attorney intends to attach finance charges to an unpaid legal fee, the client's agreement to same should be reduced to writing. The following guidelines are suggested:

1) Communicate the basis or rate of the fee along with the intent to charge interest on any unpaid balance to the client both orally and in writing.

2) Communicate to the client how the interest will be computed both orally and in writing.

3) Affirm the client's agreement to the fee and interest by having the client sign the fee agreement.

4) Keep the original of the fee agreement and give the client a copy.

5) The interest rate must be reasonable, within legal limits, and not usurious.

6) The total amount sought from the client (fees plus interest) must be reasonable.

By reducing the agreement to writing and obtaining the client's signature to same, the attorney protects himself from later claims that he failed to disclose the subsequent interest charges. In *Florida Bar v. Fields*, 482 So. 2d 1354 (Fla. 1986) an attorney was found to have violated the ethics rules by imposing interest charges to an unpaid balance without proper disclosure to and authorization of the client.

Proper explanation and documentation will aid the attorney in the quest to collect past due fees and the applicable interest charges.

March Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center on Friday, March 30, 2007.

REPORT OF THE PRESIDENT

President Beam reported he attended the roast for 2006 YLD Chair Keri Williams, induction of Justice Steven Taylor into the OSU Alumni Hall of Fame, Oklahoma High School Mock Trial Program finals and signing of the Law Day Directive by Chief Justice Winchester. He also attended meetings of the OBA Annual Meeting Task Force, Lawyers Helping Lawyers, Bench and Bar Committee and Custer County Bar Association, at which Executive Director Williams and Ethics Counsel Hendryx were guests. He met with organizers of the Hispanic Bar Network, volunteered with other OBA members at the OETA Festival, met and posed for photos with Law Day contest winners at the State Capitol, presented a CLE program before a Hornets game, worked with Linda Thomas on Leadership Conference planning and met with Executive Director Williams on numerous occasions.

REPORT OF THE VICE PRESIDENT

Vice President Dawson reported he participated in the Law School Committee visit to the OCU School of Law, Mentor Committee meeting and Bar Center

Facilities Committee. He has recruited members for the Advertising Task Force he chairs and has started gathering materials from New York, Florida and New Mexico. The first meeting is scheduled for April 23 at the Oklahoma Bar Center and Tulsa County Bar Center.

REPORT OF THE PRESIDENT-ELECT

President-Elect Conger reported he attended the Bar Leadership Institute in Chicago, Board of Governors swearing-in ceremony, President Beam's reception, "has been" party, OBF meeting and ABA midyear meeting.

REPORT OF THE PAST PRESIDENT

Past President Grimm reported he attended the Tulsa County Bar Association Young Lawyers Division Mardi Gras party, TCBA Awards and Nominations Committee meeting, Tulsa Title and Probate Lawyers Association meeting, two meetings of the Bar Center Facilities Committee and Justice Taylor's induction to the OSU Hall of Fame.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the YLD roast, High School Mock Trial Program

finals, Chief Staff Retreat and Bar Leadership Conference in Chicago, birthday celebrations for Justices Watt and Edmondson, OBA Day at Capitol events and reception and Board of Governors dinner with Supreme Court members. He attended meetings of the Bench and Bar Committee, Legislative committee meetings, Supreme Court's Court Improvement Task Force, Pontotoc County Bar Association, Custer County Bar Association, OBA Annual Meeting Task Force, Bar Center Facilities Committee, MCLE Commission and Lawyers Helping Lawyers Committee. He participated in meetings with President Beam and Hispanic Bar Network leaders, Family Law Section on new guardianship proposal, Oklahoma County Bar Association leadership, Oklahoma County district attorney and Oklahoma County sheriff regarding courthouse security passes and Hatton Sumners Foundation representatives regarding LRE grants. He had lunch with Thad Balkman regarding the One Hundred Idea-Raiser and presented a bar member with a 50-year membership pin at a Logan County Bar Association event. He met with President Beam several times on various issues.

BOARD MEMBER REPORTS

Governor Bates reported she attended the February board social function in Bricktown, February board meeting, Keri Williams' roast, State Legal Referral Service Task Force meeting, Oklahoma County Bar Association Board of Directors meeting and OCBA Awards and Nominations Committee meeting. She also served as a scoring judge in the OBA's High School Mock Trial quarterfinals round. **Governor Caudle** reported he attended the February Board of Governors meeting, Thursday evening board social event, OBA Mentoring Task Force meeting and Comanche County Bar Association meeting. He presented a lecture on "Lawyering in the 21st Century" at the OU College of Law to third-year law students. He also chaired the March State Legal Referral Task Force meeting at the bar center and reported the task force has scheduled ABA representatives to come to Oklahoma City April 11 to meet with the task force to review plans for a proposed lawyer referral service. **Governor Christensen** reported she attended the Board of Governors function in Bricktown, February board meeting, OSU Hall of Fame dinner in Stillwater honoring Justice Steven Taylor, OETA Festival, Keri Williams' YLD dinner and roast, Bar Center Facilities Committee meeting, Bench and Bar Committee meeting and subcommittee meeting, OBA Day at the Capitol events, OBA Mentoring Task Force meeting, OBA Women in Law Committee meeting and Oklahoma County Bar Association

meeting. She also participated in a few meetings discussing the possibility of wireless service for the entire Oklahoma County Courthouse. **Governor Dirickson** reported she attended the Custer County Bar Association monthly meeting, Beckham County Bar Association monthly meeting, swearing-in ceremony for Washita County Associate Judge Christopher S. Kelly and Lawyers Helping Lawyers Committee meeting as its board liaison. **Governor Faris** reported he attended the Board of Governors function in Bricktown, February Board of Governors meeting, two OBA Diversity Committee meetings, Tulsa County Bar Association board meeting and OBA Day at the Capitol activities. **Governor Hogan** reported he attended the Thursday night board function in Bricktown, OSU Hall of Fame dinner in Stillwater and Pittsburg County Bar Association meeting. **Governor Kennemer** reported he attended the Mentoring Task Force meeting, February Board of Governors meeting and social event, Oklahoma High School Mock Trial competition in Wewoka, Seminole/Hughes County Bar Association luncheon and six hour meeting of the Uniform Residential Sales Contract Task Force at OKC/OREC. He also participated as a scoring judge in the mock trial quarterfinals round. **Governor Reheard** reported she attended the February board meeting, OSU Alumni Hall of Fame festivities for Justice Taylor, Bench and Bar Committee meeting as Board of Governors liaison and Pittsburg County Bar Association meeting. **Governor Souter** reported he attended the

Board of Governors social and February meeting in Oklahoma City, OSU Alumni Hall of Fame dinner honoring inductee Justice Steven Taylor and Creek County Bar Association meeting that featured OTLA President Jennifer DeAngelis as the keynote speaker. **Governor Stockwell** reported she attended the Thursday night board social event in Bricktown, February Board of Governors meeting, March Cleveland County Bar Association luncheon, Cleveland County Bar Association Executive Committee meeting, OBA reception for legislators and Oklahoma Supreme Court school and teacher of the year award ceremony.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Camp reported he attended the February Board of Governors meeting, February YLD Board of Directors meeting, YLD Executive Committee meeting and hosted the YLD Roast for Immediate Past Chairperson Keri Williams at the Bourbon Street Café in Oklahoma City, YLD reception for her at the Colcord Hotel and Wills for Heroes Project Executive Committee meeting. He briefed the board on the current progress of the Wills for Heroes Project. He said that attendance has been down at past new attorney socials, and this year the YLD will send letters and follow up with phone calls. The YLD is adding a new social event at the Solo and Small Firm Conference/ Midyear YLD Meeting, which will be to rent a bus to go to the Deep Ellum area in Dallas one evening.

REPORT OF THE SUPREME COURT LIAISON

Justice Taylor reported the revised Rules of Professional Conduct are set to be heard at the April 9 conference. Ethics Counsel Hendryx will make the presentation to the court, and it is anticipated that action will take place at the conference.

LAW STUDENT DIVISION LIAISON

LSD Chair Robben introduced the incoming division chairperson, Shiny Pappy. She reported she attended the Thursday night Board of Governor's function in Bricktown, February Board of Governors meeting and the OSU Alumni Hall of Fame dinner in Stillwater.

REPORT OF THE GENERAL COUNSEL

General Counsel Murdock shared a status report of the Professional Responsibility Commission and OBA disciplinary matters. He reported he toured CoreVault with Information Service Director Loomis to address confidentiality issues. He participated in the Pro Bono and Career Fair at the OCU School of Law, OBA OETA evening to take pledges to raise funds for OETA and OBA Day at the Capitol. He gave CLE presentations to the Creek Nation in Okmulgee, LeFlore and McCurtain County Bar Associations in Hot Springs, Ark. and prior to a Hornets basketball game. He attended a planning meeting at the OBA preparing for the December ethics musical CLE and an OBA directors meeting. He will participate in a PRC meeting after the board meeting.

BAR CENTER RENOVATIONS

Executive Director Williams reported the Bar Center Facilities Committee recommends approval of the asbestos abatement bid received. He explained bids were sent out, and the committee is pleased with the low bid received. Work would begin in August. Stan Lingo, Lingo Construction Services president, reviewed the report on the bids received. The board approved the bid.

Executive Director Williams reported the computer servers need to be moved from the east building, and air conditioning will be needed to provide a safe environment for the equipment. The Bar Center Facilities Committee has reviewed the cost estimates and recommends approval. The board approved the expenditures to move the equipment.

OBA MEMBER SERVICES COMMITTEE RECOMMENDATION TO ENDORSE COREVAULT

Member Services Committee Chairperson Debra Charles reviewed the committee's recommendation to approve a new vendor relationship with CoreVault, a company that provides online computer backup service. CoreVault representatives Jeff Cato and Travis Rutherford reviewed details of the service the company offers and pricing for bar members. Changes in the agreement were requested. The board approved the agreement in concept and authorized President Beam and Executive Williams to execute the final contract.

BAR ASSOCIATION TECHNOLOGY COMMITTEE RECOMMENDATION FOR NEW TELEPHONE SYSTEM

Executive Director Williams explained the new proposed voice over IP-based telephone system integrates the phone with the computer into one system, which will provide greater flexibility in being relocated to temporary quarters during the remodeling and being moved again when the project is completed. Information Services Director Loomis reviewed consideration of potential vendors. The board approved the Bar Association Technology Committee's recommendation to purchase a voice over IP system from Cisco Systems.

PERSONNEL MANUAL CHANGE ON PROBATIONARY EMPLOYEES

President Beam reviewed a proposed change to the OBA personnel manual to allow probationary employees to utilize earned sick leave during their first three months of employment. The board approved the change in personnel policy.

STAFF REIMBURSEMENT POLICY CHANGES

President Beam reviewed the policy changes proposed regarding staff reimbursement for business travel. The board approved the policy change.

CONSIDERATION TO HEAR APPEAL FOR LEGAL ETHICS OPINION 2006 OK LEG ETH 01

The board approved a request to hear an appeal of

a legal ethics opinion at next month's board meeting.

APPOINTMENTS

The board approved the following appointments:

Oklahoma Attorneys Mutual Insurance Co. - appoint Jon K. Parsley, Guymon, and Renee DeMoss, Tulsa, as nominees to the OAMIC Board of Directors (term expires 6/1/2010)

Advertising Task Force - Ed Abel, Oklahoma City; Patrick E. Carr, Tulsa; Victor R. Kennemer, Wewoka; Stephen L. Barghols, Oklahoma City; Kelly A. George, Oklahoma City; Anthony M. Laizure, Tulsa; Amber P. Garrett, Tulsa.

OETA VOLUNTEER NIGHT

President Beam described the evening's activities accepting pledges to support Oklahoma's PBS television station that airs the annual Ask A Lawyer show. He reported the OBA raised more than \$7,000 in private donations, which was an

all-time record high amount and keeps the OBA in the top "Underwriting Producers" donor level.

OBA DAY AT THE CAPITOL

Executive Director Williams reported about 40 lawyers attended OBA Day at the Capitol, and the evening reception at the bar center was well attended. The event helps increase communications with state legislators.

100 GREAT IDEAS EVENT, APRIL 18, 2007, OKLAHOMA BAR CENTER, EMERSON HALL

Executive Director Williams reported House Speaker Lance Cargill has asked the OBA to host a town hall meeting at 5 p.m. on April 18 on the topic of law and government that is part of an effort to identify the 100 best ideas for Oklahoma's second century. All OBA members are invited to attend, and he encouraged board members to participate.

JUDICIAL NOMINATING COMMISSION ELECTIONS

Executive Director Williams reported there are two positions to fill this year (Congressional Districts 3 and 4) and only one nominating petition has been received so far. Deadline for filing is 5 p.m. May 18, 2007.

FASTCASE

Training sessions free to bar members are coming up in Oklahoma City on April 23 and 24 in Oklahoma City and Norman, plus April 25 in Tulsa.

NEXT MEETING

The board will meet Friday, April 20, 2007, at 2 p.m. at the Oklahoma Bar Center in Oklahoma City.

Feel like you've painted yourself into a corner?

If you need help coping with emotional
or psychological stress, please call

1 (800) 364 - 7886

Lawyers Helping Lawyers

Before it's too late. • Confidential. • Responsive. • 24/7



Free Tax Help

Cindy began a new job last year with a fast-growing oil-field industry manufacturer. She was a good worker and enjoyed her job. Things were going great for Cindy and Fred, her new husband of five months. Previously she had been married several years to her son Matt's father. Things were never right during that turbulent time, and it was always difficult making ends meet. Fred was very generous and very social, taking her and Matt to a variety of expensive events. Fred was fun and Matt adored him. Then almost overnight, things changed.

Fred was self-employed and never seemed to work anymore. He spent a great deal of time and money visiting casinos across Oklahoma. He used his business as an excuse to pay for expensive sporting events and party venues for friends. Debts were building and Fred still wasn't working. Fred often said he was writing off social events as business expenses and later confessed he wasn't keeping business records. Matt wasn't doing well in school. Cindy was missing work and eventually lost her job. Then the Internal Revenue Service came calling – Fred's business

of five years had never filed a tax return. The business had never been incorporated and Fred had mixed personal and business expenses. The IRS attached most of their assets. Soon after, the couple separated and Cindy filed for divorce. Cindy developed medical problems that made it almost impossible for her to work. Where does this put Cindy with the IRS? Cindy did not understand the IRS notices and letters or her rights and obligations under the law.



A friend told Cindy about a Low-Income Taxpayer Clinic (LITC) at Oklahoma Indian Legal Services (OILS). Cindy was skeptical of calling OILS for help. However, she learned the clinic is operated as an extension of OILS' outreach that provides legal services to poor and

disadvantaged persons in the state and does not discriminate on any basis for qualifying recipients. The clinic will provide legal representation free of charge to unrepresented petitioners with cases before the United States Tax Court. Cindy made an appointment and the clinic is working with the IRS to bring Cindy's problems to resolution. Cindy is beginning to feel in control again and has taken a new job.

The Oklahoma Bar Foundation has awarded grant funding to the LITC for the past two years. This year funding will be used to hire two full-time paralegals that will provide litigation support enabling LITC to serve additional taxpayers. The OILS LITC is unique in that it is able to provide legal services free of charge to clients with tax and financial issues. The clinic

works to a) create and maintain an annual work capacity of some 500 formal cases and 2,000 informal cases, b) conduct 70 to 100 tax-season outreach clinics across the state, and c) offer Open Clinic Friday Programs throughout the year that train law students

and attorneys in the areas of tax and bankruptcy.

The OILS clinic has been very successful since its start-up in January 2003. The OILS LITC is recognized as one of the top eight clinics in the nation compared to 150 such clinics. Simply put, the clinic helps people, particularly the underserved, with their tax problems.

OBF GRANTS AND AWARDS COMMITTEE CURRENTLY ACCEPTING 2007 GRANT APPLICATIONS

The Oklahoma Bar Foundation was founded in 1946 to accomplish the charitable purposes of lawyers from all across Oklahoma. OBF is a Section 501(c)(3) nonprofit organization and is the third-oldest state bar foundation in the nation. It serves as the charitable arm of the bar association, and all licensed lawyers in Oklahoma are OBF members. OBF works silently behind the scenes for Oklahoma's children, the poor and our most vulnerable citizens. OBF is financially able to fulfill its mission through the generous support of attorneys by charitable donations and participation in OBF programs such as the Fellows and IOLTA.

The deadline for grant application submission is Tuesday, July 24, 2007. Applications will be accepted for programs and projects which:

- 1) Provide delivery of legal services to the poor and elderly;
- 2) Promote quality legal education;

- 3) Improve the administration of justice and promote such other programs for the benefit of the public as are specifically approved by the Oklahoma Bar Foundation for exclusively public purposes.

Grants totaling \$464,790 were approved during 2006 by the Oklahoma Bar Foundation Board of Trustees to:

- Provide **delivery of civil legal aid services to the poor and elderly throughout Oklahoma** and to improve the **administration of justice**. Grants totaling \$280,000 were awarded to Legal Aid Services of Oklahoma Inc. and the Oklahoma Indian Legal Services Low Income Taxpayer Clinic, and \$73,900 was awarded for legal aid and advocacy services for children, the elderly and victims of violence to Tulsa Lawyers For Children Inc., the Oklahoma Indian Legal Services Inc. Domestic Violence Division, Oklahoma CASA Association for Children, Oklahoma CAAVA Association for Vulnerable Adults and SANE of Southwest Oklahoma.

- Fund **educational** programs in the total amount of \$81,500. Awards were made to the OBA Law-related Education teacher's summer workshop, benefiting school children in grades K through 12; the OBA Young Lawyers Division High School Mock Trial Program; the statewide YMCA Oklahoma Youth & Government Program; the Mayes County and surrounding areas Youth Court; the special touring exhibit of the Oklahoma City Memorial Museum on Lincoln and the Constitution; and the Senior Law Resource Center Inc. In addition, the foundation awarded \$29,390 in scholarships.

- Grant applications should be postmarked or delivered no later than **Tuesday, July 24, 2007** to receive consideration. Applications will be accepted early and early application is encouraged. Packets may be downloaded from the Web page at www.okbar.org/obf or applications may be requested by writing or calling: Oklahoma Bar Foundation, P.O. Box 53036, Oklahoma City, OK 73152-30036, (405) 416-7070.

HOW YOU CAN HELP

Attorneys and others interested parties can help to provide services across Oklahoma through membership in the OBF Fellows program and other general contributions. Join with Oklahoma attorneys and help us to make a real improvement in the lives of others.

GRANT APPLICATION DEADLINE:

Tuesday, July 24, 2007

More information is available at www.okbar.org/obf

OBF

FELLOW ENROLLMENT FORM

☐ Attorney ☐ Non-Attorney

Name: _____
(name, as it should appear on your OBF Fellow Plaque) County _____

Firm or other affiliation: _____

Mailing & Delivery Address: _____

City/State/Zip: _____

Phone: _____ Fax: _____ E-Mail Address: _____

☐ I want to be an OBF Fellow **now** – Bill Me Later!

☐ Total amount enclosed, \$1,000

☐ \$100 enclosed & bill annually

☐ *New Lawyer 1st Year*, \$25 enclosed & bill as stated

☐ *New Lawyer within 3 Years*, \$50 enclosed & bill as stated

☐ I want to be recognized as a **Sustaining Fellow** & will continue my annual gift of **at least \$100** – (initial pledge should be complete)

☐ I want to be recognized at the leadership level of **Benefactor Fellow** & will annually contribute **at least \$300** – (initial pledge should be complete)

**YES –
I support charitable good works
& agree to become a member of
the OBF Fellow Program.**

Signature & Date: _____ OBA Bar #: _____

Make checks payable to:
Oklahoma Bar Foundation • P O Box 53036 • Oklahoma City OK 73152-3036 • (405) 416-7070

OBF SPONSOR: _____

☐ *I/we wish to arrange a time to discuss possible cy pres distribution to the Oklahoma Bar Foundation and my contact information is listed above.*

Many thanks for your support & generosity!

Access Makes All the Difference

By Kade McClure and Judith Maute

Sue lived in a small town in rural Oklahoma with her two teenage children, unemployed and without regular means of transportation. Her battles with mental illness triggered interpersonal conflicts with many in the community, including the public housing officials who sought to evict them, in casual disregard of statutory due process protections. She remained in a troubled marriage with a history of domestic violence. Fortunately, Sue had a dedicated mental health caseworker who often traveled the long distance to meet with her, providing psychological counseling services, temporary assistance for her rent and encouraging her to obtain medical treatment and legal representation.

Faced with eviction and frustrated by the administrative process to obtain Supplemental Security Income and Medicaid benefits, Sue asked for help from Legal Aid Services of Oklahoma. In time the eviction proceeding terminated, and she received federal public benefits. In all, the representation consumed about 30 hours of lawyer time, half of which involved travel to the outlying town where Sue lived. We believe that the

compassionate mental health and legal services enabled Sue and her children to continue functioning during difficult times. Resolution of her legal issues would have a continuing impact on her children. Problems related to poverty, mental illness and domestic violence are self-perpetuating. Efforts to address immediate problems can have lasting impact.

health. At present, the legal outcome is determined more from happenstance, on whether one has received competent representation of law to facts. Oklahoma must address the difficulties in delivering legal services to all its citizens, especially those who live in rural areas in which the few lawyers are already spread thin, and

Committee seeks your ideas and involvement in dealing with challenges.

No one in our society is immune from the trauma of mental illness, income interruption, family strife or post-traumatic stress. As a nation, we are becoming more aware of the difficulties encountered by those who served in the armed forces as they try to become re-acclimated. Yet, the reality is that the many miles that separate service providers from rural clients makes more difficult effective representation.

The legal problems of many low-income persons are complicated, intersecting substantive law, administrative procedure and mental

where the greatest concentration of lawyers practice in the metropolitan regions.

The OBA Access to Justice Committee is charged with exploring the challenges that low-income folks experience in trying to be successful in the courts and also in understanding how the courts work. Rural Sooners are particularly at a disadvantage when it comes to travel, the numbers of attorneys available to them and the income with which to retain these attorneys. From the Black Mesa in the panhandle to the southeast forests of the Oua-

chita National Forest, the stretch and variety of Oklahoma geography, both physical and political, presents formidable problems. Legal services are stretched thin in many of these areas. The committee is working to find innovative approaches to ensuring all Oklahomans have a fair shot at justice. Technology will be part of the answer, and partnerships between the courts, pro bono lawyers and nonprofit legal providers will also be a part.

These issues challenge the Oklahoma Bar Association leaders and members to create an infrastructure that efficiently delivers competent legal services to those with legitimate needs. If you have ideas about these issues or are interested in becoming involved with the important work of the Access to Justice Committee, please contact Kade McClure at kade.mcclure@laok.org or (580) 248-4675 or Judith Maute at jmaute@ou.edu or (405) 325-4747.

Ms. McClure and Ms. Maute are members of the OBA Access to Justice Committee.

Oklahoma Bar Journal

Editorial Calendar

2007

- **May**
Estate Planning
Editor: Mark Curnutte
mcurnutte@loganlowry.com
Deadline: Jan. 1, 2007
- **August**
Health Law
Editor: Martha Rupp Carter
mcarter@tulsa-health.org
Deadline: May 1, 2007
- **September**
Bar Convention
Editor: Carol Manning
- **October**
Education Law
Editor: D. Renée Hildebrant
renee.hildebrant@oscn.net
Deadline: May 1, 2007
- **November**
Diversion Programs
Editor: Judge Lori Walkley
lori.walkley@oscn.net
Deadline: Aug. 1, 2007
- **December**
Ethics & Professional Responsibility
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2007

2008

- **January**
Meet Your OBA
Editor: Carol Manning
- **February**
Real Estate Law
Editor: John Munkacsy
johnmunk@sbcglobal.net
Deadline: Oct. 1, 2007
- **March**
Pretrial Litigation
Editor: Julia Rieman
rieman@enidlaw.com
Deadline: Jan. 1, 2008
- **April**
Law Day
Editor: Carol Manning
- **May**
Work/Life Balance
Editor: Jim Stuart
jtstuart@swbell.net
Deadline: Jan. 1, 2008
- **August**
Insurance Law
Editor: Judge Lori Walkley
lori.walkley@oscn.net
Deadline: May 1, 2008
- **September**
Bar Convention
Editor: Carol Manning
- **October**
Guardianship
Editor: Stephen Barnes
barneslaw@alltel.net
Deadline: May 1, 2008
- **November**
Technology/Practice Management
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2008
- **December**
Ethics & Professional Responsibility
Editor: Martha Rupp Carter
mcarter@tulsa-health.org
Deadline: Aug. 1, 2008

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

YLD WELCOMES NEW ADMITEES

The Young Lawyers Division will host several activities in the next few weeks to welcome its newest members to the Oklahoma Bar Association.

During the next few weeks, the YLD will host a number of opportunities for the division to extend its welcome and offer congratulations to those individuals who successfully passed the February Bar Exam.

The swearing-in ceremony for those who passed the February bar exam will be held in the house chamber at the Oklahoma State Capitol on April 27 at 10 a.m. Immediately following the ceremony, the YLD will host a reception for the new members and their families and friends. Light refreshments and snacks will be served outside the chamber in the rotunda. Information on the division's standing committees and current activities will also be provided during this networking opportunity. For more information, contact Doris Gruntmeir at (918) 680-3983.

Happy hour receptions in Tulsa and Oklahoma City

will also honor the new lawyers. All new division members, as well as all YLD members, are invited and encouraged to attend each of these events. Festivities will begin in Tulsa at Full Moon Cafe on Cherry Street beginning at 5:30 p.m. on May 3. For questions concerning the happy hour in Tulsa, please contact Sara Barry at sbarry@gablelaw.com or (918) 595-4850. The YLD happy hour in Oklahoma City will be held at Bricktown Brewery on May 17 starting at 5:30 p.m. Questions about the Oklahoma City happy hour should be directed to John Weaver at (405) 319-8535.

DETOUR TO DALLAS WITH THE YLD

The YLD is offering a new activity at this year's Solo and Small Conference/YLD Midyear Meeting. On Friday, June 22, the YLD will charter a bus from Tanglewood Resort to the Deep Ellum District in Dallas. To make the approximate one-hour commute more

enjoyable, the bus comes fully equipped with plasma televisions, refreshments and music. While the official itinerary is still in the works, it is projected that the bus will leave Tanglewood for Dallas at approximately 9:30 p.m. Once the bus arrives, division members will be dropped off in the heart of the Deep Ellum District where they can enjoy the night's revelries at one of the many nightclubs or live music venues. The bus will then depart Dallas at approximately 2 a.m. and return to Tanglewood.

For more information, please contact Roy Tucker at roy@coultertucker.com or (918) 583-6394.



New Event this Year!

MARK YOUR CALENDARS!

YLD Midyear Meeting • June 21-23
Tanglewood Resort on Lake Texoma

Calendar

April



17 Death Oral Argument, Scott James Eizember v. State – D-05-319; 10 a.m.; Price Turpen Courtroom, University of Tulsa College of Law

18 OBA Clients' Security Fund Committee Meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Micheal Salem (405) 366-1234

100 Great Ideas; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000

19 OBA Work/Life Balance Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Melanie Jester (405) 609-5280

20 OBA Board of Governors Meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000

20-22 YLD South Central Regional Conference; Sheraton Hotel, Oklahoma City; Contact: Keri Williams (405) 385-5148

23 OBA Advertising Task Force Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jack Dawson (405) 236-8541

24 Death Oral Argument, Ricky Malone v. State – D-2005-600; 10 a.m.; Court of Criminal Appeals Courtroom

OBA Women in Law Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Elizabeth Joyner (918) 573-1143

27 New Attorney Admission Ceremony; 10 a.m.; House of Representatives, State Capitol, Oklahoma City; Contact: Board of Bar Examiners (405) 416-7075

OBF Trustees Meeting; 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070



May

1 OBA Ask A Lawyer Day; Oklahoma City and Tulsa; Contact: Lori Rasmussen (405) 416-7018

2 OBA Diversity Committee Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Linda Samuel-Jaha (405) 290-7030

4 Oklahoma Uniform Jury Instructions Committee Meeting; 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Chuck Adams (918) 631-2437

Oklahoma Trial Judges Association Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Judge Barbara Swinton (405) 713-7109

8 OBA Bar Center Facilities Committee Meeting; 9 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Bill Conger (405) 208-5845

OBA Professionalism Committee Meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Steven Dobbs (405) 235-7600

cont'd next page

may cont'd

9 LRE Project Citizen Portfolio Showcase; 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024

State Legal Referral Service Task Force Meeting; 1 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Dietmar Caudle (580) 248-0202

10 OBA Bench and Bar Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jack Brown (918) 581-8211

11 OBA Family Law Section Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Donelle Ratheal (405) 842-6342

16 OBA Law Day Committee Meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Giovanni Perry (405) 601-2222

17 OBA Work/Life Balance Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Melanie Jester (405) 609-5280

OBA Communications Task Force Meeting; 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Melissa DeLacerda (405) 624-8383

18 OBA Board of Governors Meeting; Tulsa; Contact: John Morris Williams (405) 416-7000

OBA Mentoring Task Force Meeting; 1:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jon Parsley (580) 338-8764

OBA Lawyers Helping Lawyers Committee Meeting; 1:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Thomas Riesen (405) 843-8444

26 Memorial Day (State Holiday)

30-31 Sovereignty Symposium XX; Skirvin Hilton Hotel, One Park Avenue, Oklahoma City



June

1 Oklahoma Trial Judges Association Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Judge Barbara Swinton (405) 713-7109

8 OBA Family Law Section Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Donelle Ratheal (405) 842-6342

12 OBA Bar Center Facilities Committee Meeting; 9 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Bill Conger (405) 208-5845

13 OBA Diversity Committee Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Linda Samuel-Jaha (405) 290-7030

20 OBA Clients' Security Fund Committee Meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Micheal Salem (405) 366-1234

21-23 OBA Solo & Small Firm Conference and YLD Midyear Meeting; Tanglewood Resort on Lake Texoma; Contact: (405) 416-7050

22 OBA Board of Governors Meeting; Tanglewood Resort on Lake Texoma; Contact: John Morris Williams (405) 416-7000

29 OBF Trustees Meeting; 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070

This master calendar of events has been prepared by the Office of the Chief Justice in cooperation with the Oklahoma Bar Association to advise the judiciary and the bar of events of special importance. The calendar is readily accessible at www.oscn.net or www.okbar.org.



House Speaker Lance Cargill will speak at the Idea Raiser April 18

Bar Association to Host Idea Raiser

The Oklahoma Bar Association will host an idea raiser to help find the best 100 ideas for Oklahoma's second century on Wednesday, April 18 at 5 p.m. The town hall-style meeting will convene in the bar center's Emerson Hall at 1901 N.

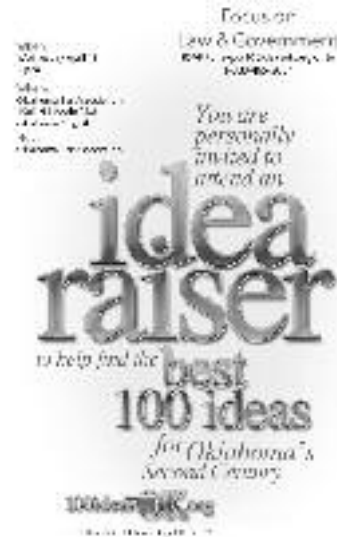
Lincoln in Oklahoma City. House Speaker and OBA member Lance Cargill, who formed the initiative, will be on hand to listen to our state's citizens and be guided by their ideas.

The 100 Ideas initiative invites all citizen input to create a grassroots approach to governing. Through this meeting and a series of others,

the initiative will develop a comprehensive vision as we move into the next 100 years of our state's history.

At the end of this year, the 100 Ideas Initiative will publish a book filled with the first 100 ideas from Idea Raisers across the state. The book will serve as an agenda for Speaker Cargill as well as a plan for Oklahoma's second century.

To attend the meeting, RSVP to (888) 465-2007 or by e-mail to rsvp@100ideasok.org.



Judge Fischer Takes Oath

John F. Fischer of Tulsa was recently sworn in as an Oklahoma Court of Civil Appeals judge. Gov. Brad Henry appointed Judge Fischer to the bench after more than 30 years as an attorney in private and public practice.

Judge Fischer was in private law practice from 1980 until 2006. He served as assistant attorney general for Oklahoma from 1976 to 1980. He received his J.D. degree from OU in 1975 and holds bachelor's and master's degrees from OU in English literature. He is a master of the bench and past-president of the William J. Holloway American Inn of Court, member of Oklahoma Lawyers for Children and author of various articles on antitrust law and healthcare issues. He has been involved in various arts and community activities and served as a member and chair of several state and county bar committees. He is a member of the ABA and the Oklahoma Judicial Conference, a fellow of the Oklahoma Bar Foundation and the past Oklahoma representative to the United States Court of Appeals for the 10th Circuit Advisory Committee. He and his wife, Pam, have two daughters, Jennifer and Andrea.



Oklahoma Court of Civil Appeals Judge John F. Fischer, with the help of his wife, Pam, dons his judicial robe after taking his oath as judge. Photo: Legislative Service Bureau Photo Division

TU Professor and Students Aid Disaster Relief

Professor Sharisse O'Carroll, who teaches legal reasoning, analysis and writing at TU, and a group of first-year law students recently put action to the OBA's definition of professionalism, "Professionalism for lawyers and judges requires honesty, integrity, competence, civility and public service."



TU Professor Sharisse O'Carroll, center, lets the good times roll with a group of her students at the TU Alumni Association's annual ChiliFest. The group's Mardi Gras-themed booth helped raise funds for Louisiana disaster relief.

The group used their Mardi Gras-themed booth at the annual ChiliFest sponsored by the TU Alumni Association to raise money for the Louisiana State Bar Association/Louisiana Bar Foundation Disaster Relief Fund. The students raised more than \$500 for the Disaster Relief Fund, which assists displaced lawyers by helping them rebuild their practices in the wake of the recent hurricanes. This is the first time the event has been utilized for an altruistic purpose.

OBA Leader Attends Institute

OBA President-Elect Bill Conger of Oklahoma City recently joined 300 other incoming leaders of lawyer organizations from across the country at the ABA's annual Bar Leadership Institute in Chicago.

Others from Oklahoma attending the institute were Tulsa County Bar Association President-Elect Martha Rupp Carter, OBA Executive Director John Morris Williams, Oklahoma County Bar Association Executive Director Debbie Gorden, OCBA President-Elect Charles Geister III, OBF President-Elect Renée DeMoss of Tulsa and OBF Vice President Richard Riggs of Oklahoma City.

The group attended sessions on bar governance, finance, communications and planning for a presidential term. Various ABA entities briefed the participants on resources available from the ABA for local, state, national and specialty bar associations and foundations.

The institute is sponsored by the ABA Standing Committee on Bar Activities and Services and the ABA Division for Bar Services.



Oklahoma bar and ABA leaders meet at the recent Bar Leadership Institute. From left are ABA President Karen Mathis, Bill Conger, Martha Rupp Carter, John Morris Williams, Debbie Gorden, Charles Geister III and ABA President-Elect William H. Neukom.

Legal Aid to Find Best Ways to Serve Community

Legal Aid Services of Oklahoma is reviewing the legal needs of its client community to determine if those needs are being met in the best possible way. As part of the needs assessment process, Legal Aid is holding a series of town hall meetings, each in five different Oklahoma locations.

"Legal Aid wants to know if our services best meet the needs of our client community in these changing times," Executive Director Gary Taylor said. "We cordially invite mem-

bers of our client community, service providers and others interested in the legal services needs of low-income and elderly Oklahomans."

A meeting is scheduled Thursday, April 19 in Oklahoma City, from 6-8 p.m. in the Big Dipper Room at the Metro Tech, Springlake Campus at 1900 Springlake Dr.

In addition to the public forums, Legal Aid is seeking the public's comments through an online survey that can be reached through its Web site at www.legalaidok.org.

OBA Member Reinstatement

The following members of the OBA suspended for nonpayment of dues have complied with the requirements for reinstatement, and notice is hereby given of such reinstatement:

Karin Johnson Chatfield
OBA No. 11256
1374 S. Vine St.
Denver, CO 80210-2335

OBA Member Resignations

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

Stephen T. Smith
OBA No. 19296
4900 Woodway,
Suite 1200
Houston, TX 77056

Jennifer M. Treece
OBA No. 15861
116 Somerset Dr. N.E.
Grand Rapids, MI 49503



President Stephen Beam presents a check to on-air personality and lawyer Kim Brasher during the OETA Festival March 15.

Bar Supports Public Television

The OETA raised a record-setting excess of \$7,000 in private donations as part of its volunteer effort to support the state's PBS-TV station during the annual OETA Festival. The donation sustained the association's top "Underwriting Producers" level that is recognized in the station's monthly programming guide.

Bar members along with President Stephen Beam turned out in force the evening of March 15, taking pledges by phone during the fundraiser. This year's volunteers were Melinda Alizadeh-Fard, Stephen Beam, Cathy

Christensen, Mary Jane Coffman, Brian Hermanson, Mark Koss, Holly Lantagne, Janice Loyd, Dan Murdock, Richard Nelson, Gretchen Nicholson, Rick Olderbak, Edward Oliver, Nancy Parrott, Janis Preslar, Charles Rouse, Linda Ruschenberg, B. Michael Shanbour, Chris Stein, Victoria Tindall, Margaret Travis, Mary Travis and Jon Woods.

Oklahoma Academy to Discuss Tort Reform

The pros and cons of tort reform will be discussed at an upcoming meeting of the Oklahoma Academy, a non-profit organization. The forum, "Illuminating the Issues of Tort: Is Oklahoma at an Advantage or Disadvantage?" will focus on issues such as the effects of tort reform in nearby states, where Oklahoma stands after recent legislation, and the effects tort reform may have on the business, royalty owner and medical communities.

The forum takes place Wednesday, April 25 from 8:30 a.m. to 2 p.m. at the Reed Conference Center in Midwest City. Visit www.okacademy.org for more information.

Kudos

The Carter County Bar Association announced its new officers for 2007-2008. They are President **Timothy W. Burson**, Vice President and Co-Social Chair **Betsy Clark**, Co-Social Chair **Julie Austin**, Secretary and Treasurer **Ron Worthen** and Law Day Chair **Andrew S. Harlow**.

Crowe & Dunlevy Director **Gayle Barrett** has been selected as general counsel to the Oklahoma State Council for Human Resource Management, an organization established to further the work of human resource professionals in Oklahoma. In her new position, Ms. Barrett will provide general corporate counsel and legal advice for the organization.

Dallas-based **Lee Brown** was recently named by *Lawdragon Magazine* as one of the 500 leading plaintiff lawyers in America. Mr. Brown practices in the area of products liability.

Jacque Brawner Dean of Oklahoma City was inducted as a fellow of the College of Workers' Compensation Attorneys at its first annual induction dinner in March in Naples, Fla. Recently established by the ABA, the college honors attorneys who have

distinguished themselves in the field of workers' compensation law.

State Auditor and Inspector Jeff McMahan recently appointed Oklahoma City attorney **Terry L. Hawkins** to the state's EDGE (Economic Development Generating Excellence) Fund. Mr. Hawkins will be serving as a member on the Board of Investors. The Board of Investors is responsible for managing the assets of the fund and overseeing economic development.

Sara G. Murphy of Oklahoma City has been appointed to Oklahoma's Heartland Home Health Care and Hospice Board of Advisors. Ms. Murphy will serve as the legal advisor to the board.

Rania Nasreddine has been chosen as one of Tulsa's Twenty New Leaders. Ms. Nasreddine was honored April 13 by the Cystic Fibrosis Foundation.

Norman attorney **Robert "Buddy" Pendarvis** has been selected as grand marshal for this year's Norman '89er Day Parade.

Glenn Sharpe of Wewoka has been appointed as the Seminole Nation gaming commissioner. The commission regulates the gaming industry of the Seminole Nation of Oklahoma. He was appointed by Principal Chief Kelly Haney and

confirmed by the nation's general council.

The OCU School of Law announced **Robert N. Sheets** as the Outstanding Law Review Alumni at a recent banquet. Mr. Sheets is director, shareholder and a founding partner of Phillips McFall McCaffrey McVay & Murrah P.C. in Oklahoma City.

T. Douglas Stump of Oklahoma City has been reappointed as senior editor for AILA publications. He has served as an AILA editor since 1999 and has co-edited over 19 books on immigration law.

Jesse J. Worten III has become a member of the American College of Trial Lawyers. The induction ceremony was held during the college's spring meeting in La Quinta, Calif.

Robert L. Kasper of Perry was honored March 28 for his 50-year service as an attorney. OBA Executive Director John Morris Williams presented a certificate. A certificate was also presented by State Representative Rex Duncan for Mr. Kasper's years of service to the OBA and Korean War Veterans. A reception was also hosted by the Noble County Court Clerk's Office and Noble County Bar Association.

On The Move

Gable Gotwals is pleased to announce two attorneys have been elected shareholders — **Amy Stipe** in the Oklahoma City office and **Brad Welsh** in the Tulsa office. Ms. Stipe received her J.D. with honors from the OU College of Law in 1999 and her undergraduate degree in psychology in 1995. Her legal practice is in the areas of civil litigation. Mr. Welsh received his J.D. from the University of Texas in 1999. He earned his master's degree in economics in 1996 and an undergraduate degree in government from OU in 1994. His practice areas are business litigation, commercial litigation and appeals.

Julia Allen has joined the offices of Edward Lindsey, Tim Tuck and Wesley Casey in Tulsa. Ms. Allen's practice will continue to concentrate on litigation in the state and federal district courts. Ms. Allen may be reached at her new location, 111 West Fifth St., Suite 500, Tulsa, 74103; and by phone at (918) 585-5500.

Jim Banowsky has been promoted to senior attorney at Microsoft Corp. in Redmond, Wash. Formerly in private practice in Norman, Mr. Banowsky manages attorneys, patent agents and engineers involved with in-house patent procurement. He may be reached by e-mail at jim-ban@microsoft.com.

The Legal Aid Services of Oklahoma announced new Oklahoma City staff attorneys **Emily Hufnagel**, **Gisele Perryman**, **Elizabeth Tennery** and **Richard Joseph Vreeland**. **Brian N. Bishop** has also joined as a part-time staff attorney. **Holly Lantagne** and **Earlene Mitchell** have joined Legal Aid's Norman office, **Michelle M. Schultz** has joined the Clinton office and **Iris Philbeck** has joined the Stilwell office.

Ms. Hufnagel received her bachelor's degree at OSU where she graduated *summa cum laude*. She received her J.D. from the OU College of Law. Ms. Hufnagel has performed volunteer work with AmeriCorps VISTA, Cleveland County CASA program, the Employment Justice Center and Legal Aid Services of Oklahoma.

Ms. Perryman graduated from Rose State College and went on to obtain her bachelor's degree in journalism and mass communication at OU. She received her J.D. from OU. She is fluent in Spanish.

Ms. Tennery graduated from OSU and received her J.D. from the OU College of Law. She interned with the U.S. Department of Justice, Office of Tribal Justice in Washington D.C. and has served as a volunteer with Legal Aid.

Mr. Vreeland graduated from OU where and received his J.D. from the OU College of Law. While in law school, he was president of the American Constitution Society, treasurer of United Students and a member of the American Indian Law

Review. He is currently involved in the Family Law sections of the OBA and the ABA.

Mr. Bishop graduated from OSU. He received his J.D. from California Western. He is also licensed to practice law in North Carolina and California.

Ms. Lantagne received her J.D. from the OU College of Law. She also received her B.S. degree from OU. Ms. Lantagne most recently was a solo practitioner in Norman.

Ms. Mitchell received her J.D. degree from the OCU School of Law. She received her bachelor's degree in business management from the University of Sciences and Arts of Oklahoma. She is currently a member of the Canadian County Juvenile Drug Court Team. Additionally, she is a subcontractor for the Oklahoma Indigent Defense System, defending juvenile delinquents in Canadian County.

Ms. Schultz previously was a city attorney for the City of Claremore, focusing on contract negotiation, employment law and commercial litigation. Ms. Shultz received her J.D. from OU, after earning a degree in political science from SWOSU.

Ms. Philbeck graduated from OSU. She also attended Queen's College in Oxford, England and received her J.D. from the TU College of Law. Ms. Philbeck was in private practice in Sapulpa where she practiced primarily in civil law including personal injury, workers' com-

pensation, family law and probate.

Jones, Gotcher & Bogan announced the election of **John W. Cannon** as shareholder and director in the firm. Mr. Cannon joined the firm in 2004. He practices in the areas of contracts, commercial transactions and litigation, bankruptcy and reorganization, mergers and acquisitions, wills, trusts and probate.

The Norman firm of Barnum & Clinton PLLC announces that **Shanin M. Daron** has been named a member of the firm, and that the firm's name has changed to Barnum, Clinton & Daron PLLC. Ms. Daron joined the firm in 2005. She obtained her J.D. from the OU College of Law in 2000. Her practice focuses on general civil litigation including workers' compensation and liability defense. Ms. Daron may be reached at the firm's offices at 1011 24th Ave. N.W., Norman, 73069; phone:(405) 579-7300; fax: (405) 579-0140.

Hornbeek Krahll Vitali & Braun PLLC announced that **Laurie Gaither** has become an associate with the firm. Ms. Gaither will concentrate her practice on the defense of employers and their insurers through the workers' compensation division of the firm. She may be reached at 3711 N. Classen Blvd., Oklahoma City, 73118; phone: (405) 236-8600; e-mail: gaither@hklaw.com.

Andrews Davis is pleased to announce that **Cheri K. Gray** has joined the firm of counsel. Her practice areas include family law and probate. Ms. Gray has over

15 years of experience in Oklahoma. She may be reached at the firm's offices located at 100 N. Broadway, Suite 3300, Oklahoma City, 73102.

Kevin J. Kuhn has joined the Denver-based law firm of Wheeler, Trigg, Kennedy LLP as a partner where he will focus his practice in the areas of professional liability, product liability and commercial litigation. Mr. Kuhn is a trial attorney with experience in the defense of medical malpractice lawsuits and other professional liability matters. In addition, he handles the defense of personal injury matters and product liability cases. Mr. Kuhn received his bachelor's and law degrees from OU.

John J. Morozuk has been named senior attorney for Chesapeake Energy Marketing Inc. where he will serve as in-house counsel for the midstream assets subsidiary of Chesapeake Energy Corporation. Mr. Morozuk was previously assistant general counsel for eCORP LLC, a Houston-based developer of underground natural gas storage facilities. His new office address is 6100 N. Western Ave., Oklahoma City, 73118; phone: (405) 879-8446.

Crowe & Dunlevy announced **Jeffrey C. Rambach** has joined the firm as a director in its Tulsa office. Mr. Rambach will practice in the areas of taxation, trusts and estates, mergers and acquisitions, probate, tax litigation and tax-exempt organizations. Mr. Rambach received his

L.L.M. in taxation from Georgetown University Law School in 1989. He graduated from Boston University in 1983 and received his J.D. from the Tulane University Law School.

Pignato and Cooper PC announced that **John W. Turner** has joined the firm as an associate attorney. Turner graduated from the OU College of Law in 1996 with honors and practices in the areas of appellate law and general defense.

Glass Law Firm in Tulsa announced that **Victor Wandres** has joined the firm as an associate attorney. Mr. Wandres received his undergraduate degree from Tulane University. He received his J.D. from the OU College of Law in 2002.

Zane D. Wood has been named an associate of the Oklahoma City firm of Resides & Resides PLLC. Mr. Wood received his undergraduate degree from East Central University in 1992 and his J.D. from the OCU School of Law in 2002. Prior to joining the firm, his practice focused family law as well as defense of traffic violations for commercial drivers. He current work will focus on the firm's civil litigation, criminal defense and family law practice groups.

Jason M. Lile recently joined the Drummond law firm in Tulsa. Mr. Lile received a B.A. from OU in 2001 and a J.D. from TU in 2005. His practice focuses primarily on general civil litigation. He may be reached at the firm's offices located at 1500 S. Utica, Suite 400,

Tulsa, 74104; phone: (918) 749-7378; fax: (918) 749-7869.

At The Podium

Marty Ludlum of Oklahoma City Community College recently spoke on "Legal Reform in 2007 or How to Throw Momma from the Courthouse" and "Effects of Enron on Future

Russian Business Leaders" at the annual convention of the Southern Academy of Legal Studies in Business in San Antonio, Texas.

T. Douglas Stump of Oklahoma City will speak at the American Immigration Lawyers Association Annual Conference June 13-15 in Orlando, Fla. He will discuss the litigating mandamus cases against the Citizenship and Immigration Services.

Edited by Lauren Clark

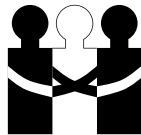
How to place an announcement: If you are an OBA member and you've moved, become a partner, hired an associate, taken on a partner, received a promotion or an award or given a talk or speech with statewide or national stature, we'd like to hear from you. Information selected for publication is printed at no cost, subject to editing and printed as space permits. Submit news items **(e-mail strongly preferred)** in writing to:

Lori Rasmussen
Public Information Dept.
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152
(405) 416-7018
Fax: (405) 416-7001 or
E-mail: barbriefs@okbar.org

Articles for the May 12 issue must be received by April 23.

Family & Divorce Mediation Training

OKC • May 9-12
Tulsa • June 13-16



Approved for 40 hours of MCLE credit

This course is lively and highly participatory and will include lecture, group discussion, and simulated mediation exercises

Cost: \$625 includes all materials

The Course for Professional Mediators in Oklahoma

This course fulfills the training requirements set forth in the District Court Mediation Act of 1998

Contact:

The Mediation Institute

(405) 607-8914

James L. Stovall, Jr.

13308 N. McArthur
Oklahoma City, OK 73142

THE EDMOND SUN

The Edmond Sun, can be your source for legal publishing in Oklahoma County.

We offer fast, accurate, dependable service and competitive pricing. Affidavits will be issued to each lawyer as well as the copy(s) we file with the courthouse or Corporation Commission.

- E-mail documents preferred.
- We accept: pdf, tiff, JPEG, Word, WordPerfect, Rich Text, Adobe, or copy and paste documents.
- Published Sunday through Friday.

Call or email for more information.



LEGAL PUBLICATIONS

Patricia Wheat

E-mail: legals@edmondsun.com

405.341.2121 Ext. 203 • Fax 405.340.7363

123 South Broadway • PO Box 2470

Edmond, Oklahoma 73083

Everette T. Brown Jr. of Tulsa died March 6. He was born April 18, 1925. He earned his bachelor's and master's degrees from Oklahoma A&M University and his law degree from the TU College of Law. **He served in the U.S. Merchant Marines during World War II and later in the Navy as a lieutenant commander.** He was a member of the Lions Club, judge advocate general for the local chapter of American Merchant Marine Veterans and also served on the board of trustees for the St. Paul United Methodist Church.

Susan Jernigan Brown of Oklahoma City died Feb. 26. She was born on March 23, 1939. She grew up in Virginia and North Carolina before settling in Oklahoma. Brown graduated from OU with a B.A. in art education. She received her J.D. from the TU College of Law. She practiced law in the Oklahoma City area for 15 years.

Craig J. Franseen of Ponca City died Nov. 1, 2006. He was born in Clarinda, Iowa, on May 25, 1955. He graduated high school from Midwest City. He attended OU and graduated with a history degree in 1977. He received his J.D. from the OCU School of Law in May of 1980. Franseen served as an Indian Court judge as well as having a private practice.

He was past president of the Kay County Bar Association and member of the Marland State Commission.

Clyde Allen Lewis of Oklahoma City died March 6, 2007. He was born in Altadena, Calif., on July 25, 1948. He earned his bachelor's and master's degrees from OU and his law degree from the OCU School of Law. Memorial donations may be made to the A.A. Intergroup of Oklahoma City.

Edmund Dow Simank II of Oklahoma City died March 11. He was born Dec. 6, 1948, in Stillwater. He graduated from OSU in 1971 and received his J.D. from OCU in 1978. Memorials may be made to the Wesley United Methodist Church music department or a charity of your choice.

Clark Nichols died Feb. 21. He was born in Holdenville on March 30, 1912. He received his law degree from George Washington University, Washington, D.C. **He served in the Navy as a lieutenant during World War II in the Pacific.** He was a general counsel for the Associated Industries of Oklahoma and a member of Rotary International. Memorial contributions can be made to Peachtree Christian Hospice of Atlanta.

Peyton Miller Williams of Oklahoma City died Feb. 19. He was born in Sanford, Fla., on July 4, 1925. He graduated high school from the Fork Union Military Academy. In 1954, he received his J.D. from OU. **Mr. Williams served in the Navy for 22 years as a fighter pilot during World War II and later as an instructor for the Navy Reserve.** He first worked in private practice, then for labor arbitration and meditation for 50 years. He was a member of the National Academy of Arbitrators and the National Meditation Board. Memorial donations can be made to All Soul's Episcopal Church or the charity of your choice.

George W. Wulff of Oklahoma City died March 5. He was born Aug. 16, 1921, in Greeley, Colo. **He served in the Army Air Corps during World War II and was honorably discharged as a corporal aviation mechanic.** He received his law degree from the OCU School of Law in 1950. He was a past Warr Acres City councilman, and general chairman and past president for the National Association for Mentally Retarded Children. Memorials may be made to McCall's Communities for Life Enrichment of Ada.

SERVICES

INTERESTED IN PURCHASING Producing & Non-Producing Minerals; ORRI; O & G Interests. Please contact: Patrick Cowan, CPL, CSW Corporation, P.O. Box 21655, Oklahoma City, OK 73156-1655; (405) 755-7200; Fax (405) 755-5555; E-mail: pcowan@cox.net.

TRAFFIC ACCIDENT RECONSTRUCTION

INVESTIGATION • ANALYSIS • EVALUATION • TESTIMONY

25 Years in business with over 20,000 cases. Experienced in automobile, truck, railroad, motorcycle, and construction zone accidents for plaintiffs or defendants. OKC Police Dept. 22 years. Investigator or supervisor of more than 16,000 accidents.

Jim G. Jackson & Associates Edmond, OK (405) 348-7930

LEGAL RESEARCH AND WRITING. Brief writing, motions, civil appeals, and trial support since 1995. Lou Ann R. Barnes (918) 810-3755; louann@tulsacoxmail.com

HANDWRITING IDENTIFICATION POLYGRAPH EXAMINATION

Board Certified
Diplomate — ABFE
Life Fellow — ACFE

Court Qualified
Former OSBI Agent
FBI National Academy

Arthur D. Linville (405) 636-1522

OF COUNSEL LEGAL RESOURCES — SINCE 1992 — Exclusive research & writing. Highest quality: trial and appellate, state and federal, admitted and practiced U.S. Supreme Court. Over 20 published opinions with numerous reversals on certiorari. **MaryGaye LeBoeuf (405) 728-9925, marygaye@cox.net**

ABRAHAM'S SINCE 1959 NATIONWIDE

BAIL BONDS

Attorney's **EXPRESS** Service

DISCOUNTED Bond Fees on Referrals

OFFICE OPEN & STAFFED 24/7

Toll Free 1-877-652-2245 OKC 528-8000

APPEALS and LITIGATION SUPPORT — Research and writing by a veteran generalist who thrives on wide variety of projects, big or small. **Cogent. Concise.** Nancy K. Anderson, (405) 682-9554, nkanderson@hotmail.com.

MEDICAL MALPRACTICE

Board-certified doctor expert witnesses, all specialties: \$500 flat rate referral. In house case review by veteran MD specialists, \$750 flat rate, opinion letter, no extra charge. Fast, easy, safe since 1998. www.MedMalExperts.com (888) 521-3601

SERVICES

MEDICARE – MEDICAID – HEALTH LAW Mark S. Kennedy, P.C. Attorneys and Counselors at Law – A Health Law Boutique concentrating practice in Healthcare regulatory and payment matters and other Business Services to the healthcare provider and practitioner. Formerly Counsel to U.S. Department of Health and Human Services' Centers for Medicare & Medicaid Services and Office of the Inspector General. Voice (972) 479-8755; Fax (972) 479-8756; markskennedylaw@msn.com

SIGNATURE and HANDWRITING writer identified. DOCUMENTS examined for alterations. Specialized lab equipment. Since 1978. Certified. PAT TULL (405) 751-1299.

AFARM Consulting, L.C.

Raleigh A. Jobes, Ph.D.

2715 West Yost Rd

Stillwater, OK 74075-0869

Phone (405) 372-4485 Fax (405) 377-4485

E-Mail raleigh.jobes@afarmconsulting.com

Agricultural Economic and Business Consultant

Will provide independent and objective analysis of agricultural related problems. Resume and Fee schedule sent upon request.

CIVIL APPEALS, RESEARCH PROJECTS, BRIEF WRITING, DISCOVERY ISSUES & LITIGATION SUPPORT. Experienced former federal law clerk will handle state and federal appeals, draft motions and briefs and assist in trial preparation. Amy H. Wellington (405) 641-5787, E-mail: avhw@mindspring.com

EXPERT WITNESSES • ECONOMICS • VOCATIONAL • MEDICAL Economic Damages, Lost Profits Analysis, Business/Pension Valuations, Employment Discrimination, Divorce, Wrongful Discharge, Vocational Assessment, Life Care Plans, Medical Records Review, Business/Legal Ethics. National Experience. Call **Patrick Fitzgerald**. (405) 447-6093.

OKC ATTORNEY has client interested in purchasing producing and non-producing, 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, timdowd@eliasbooks.com.

SECURITY NEGLIGENCE Special expertise in premise liability, security training and security procedures. Authored four security textbooks. Thirty years combined experience in security and law enforcement. Contact Ron Vause. 1-800-728-0191.

CERTIFIED COMPUTER EXAMINER, John W. Bridges, Norman, OK., (405) 310-2629 www.jbadata.com

OFFICE SPACE

GREAT DOWNTOWN OKC LOCATION — ONE OFFICE AVAILABLE FOR SUBLEASE Receptionist, phone, copier, fax, law library, kitchen, conference room and DSL internet. Call Denise at (405) 236-3600 or come by 204 N. Robinson, Suite 2200.

NEWLY REMODELED EXECUTIVE OFFICE SPACE. \$500 to \$750, No Lease. Space includes: receptionist, digital copier, digital telephone, voicemail, internet service, fax, library, access to complete legal research for all 50 states and federal, two conference rooms, IP video conferencing, large parking, file storage, Non-smoking. Email AGI310@cs.com, (405) 525-0777

LUXURY SOUTH TULSA LAW OFFICES. TurnKey ready offices with extensive amenities and services available. Flexible lease terms. Virtual offices available. Rates variable. Visit us anytime at 8816 South Sheridan or www.turnkeyready.net or call (918) 494-0010 (Joel). Confidential.

SPACES AVAILABLE FOR RENT. Downtown OKC locations. Large office with side office if needed. Great parking at no cost. Shared reception area and secretary services if requested. Available immediately. Phone and internet hookups installed. Call (405) 476-7102.

401 N. HUDSON DOWNTOWN OKC. 1 block from courthouse. One office plus secretarial area, receptionist, conference room, phone, fax, copier, 1 reserved parking place plus additional client parking included. Call Sig Harpman (405) 659-6740 for appointment.

SOUTH OKLAHOMA CITY OFFICE SPACE, 4 offices, reception area, furnished conference room, kitchenette, storage room, phone system available for lease or purchase. Parking in front. Will consider lease of part of the available space and sharing common areas. \$1250/mo. Patrick (405) 314-0686.

POSITIONS AVAILABLE

SMALL OKLAHOMA CITY FIRM WITH HEAVY CASE LOAD seeks associate with experience in personal injury, criminal defense and civil litigation. Our firm practice focuses mainly in personal injury, family practice, criminal practice and immigration. All contacts will be kept confidential. Compensation package commensurate with experience and performance. Send resume to Box "R," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

ATTORNEY: One year Contract Attorney with possibility of permanent position with Insurance Company Staff Counsel office in Tulsa. Responsibilities include first-chair trial, arbitration and mediation. Must be member of Oklahoma Bar. Minimum five years' tort litigation experience desirable, preferably in insurance defense. Competitive salary. Submit resume to: Box "W," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

OKC AV RATED LAW FIRM seeking self-motivated associate attorney with 3-7 years experience for an immediate position. Primary practice areas are general civil & commercial defense practice. First chair trial experience preferred and excellent research and communication skills a must. Submit a confidential resume, references, writing sample and salary requirements to Box "S," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

CLAREMORE, OK SMALL FIRM seeking associate attorney, 2 years minimum experience. Qualified candidate will be intelligent, personable and ambitious. Very busy practice in the areas of criminal, domestic, personal injury and employment law. Heavy trial practice. \$35K-55K base plus considerable incentives. Send resume by April 28, 2007, to Box "O," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

ASSOCIATE ATTORNEY wanted with 2-5 years experience in civil litigation and domestic law. Northeast Oklahoma law firm with diverse client background seeks right candidate looking for more than just a paycheck and an opportunity to grow with the firm. Must be willing to roll up your sleeves and provide clients with high degree of attention to detail, customer service and quality work. Prefer persons looking to establish roots in a 30,000+ community and who possess a high degree of ethics and unquestionable integrity. Compensation package commensurate with experience and based on performance. Send resume, cover letter outlining previous experience and corresponding salary history, and short writing sample to Box "I," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152. Incomplete submissions will not be considered.

OKLAHOMA CITY INSURANCE DEFENSE FIRM seeks attorney with two years or more experience for Workers' Compensation position. Send replies to Box "Q," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

LEGAL ASSISTANT. Downtown OKC law firm seeks a person of character to fill an opening in our transaction department. Requires strong computer skills, oral and written communication skills, attention to detail, organizational skills and professional appearance. Experience in estate planning, probate and/or corporate law required. Under cover letter, please send resume and salary requirements to Ann E. Atkinson, CP, DeBee Gilchrist, 100 N. Broadway Ave., Suite 1500, Oklahoma City, OK 73102

BUSY CIVIL LITIGATION FIRM seeks an experienced immigration attorney for an immediate position. Applicant must possess 3 - 5 years experience, and be able to handle a variety of immigration matters. Experience in criminal and family law a plus but not required. Compensation package negotiable. Send replies to Box "G," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152

POSITIONS AVAILABLE

CORPORATE/SECURITIES ASSOCIATE with 2-5 yrs. experience. Prestigious regional law firm seeks a candidate for its Oklahoma City office who is committed to the highest degree of quality of work. Evidence of academic excellence is paramount. Candidates must be autonomous and also able to work with supervision. Corporate law experience and a working knowledge of securities law are required. Candidates should be goal oriented and interested in opportunities for advancement within the Firm through dedication and hard work. Compensation package commensurate with experience and performance. Send resume, cover letter outlining previous experience, transcript and short writing sample to: Conner & Winters, LLP, Attn: Hiring Partner, 211 North Robinson, 1700 One Leadership Square, Oklahoma City, OK 73102.

Immediate Opening-AIRCRAFT TITLE ESCROW AGENT/AIRCRAFT TITLE INSURANCE AGENT; requirements: law degree with a minimum of 1-year legal experience. Aircraft transaction experience is a plus; excellent benefits through Fortune 500 parent company. Please send resume in confidence, salary requirements and availability by mail, fax or email to: Aero Records & Title Co., P.O. Box 19246, Oklahoma City, OK 73144, Attn: L. Smith or FAX: (405) 685-4215 or email to: larhesa.smith@aerorecords.com

DOWNTOWN Oklahoma City AV-rated law firm, seeks a self-motivated associate with 2-4 years of experience in insurance defense and personal injury-related cases. Responsibilities include depositions, research, discovery, and trial work. Salary commensurate with experience. Reply to Box "J," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

DRISKILL & JONES seeks associate with at least two (2) years experience. Must have ability to work independently and have good writing skills. Competitive salary and benefits. Send resume, references and writing sample to: Driskill & Jones, Attn: Kathy, Chase Tower, 100 North Broadway, Suite 2300, Oklahoma City, OK 73102.

LEGAL SECRETARY — State Farm Insurance Companies In-House Counsel, Angela Ailles & Associates seeks Legal Secretary. Job duties include word processing, docketing/calendaring/scheduling, preparation of standard pleadings, and assisting with preparation of draft discovery responses. Secretarial Experience in insurance defense litigation is preferred. State Farm offers an excellent salary and benefits package. If interested, please fax your resume to (405) 478-0906. Equal Opportunity Employer.

OKLAHOMA CITY COMPANY seeks general counsel. Experience in corporate law including contracts, leases and employment law. 5 to 15 years previous experience. Please respond to Box "V," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

AV OKC FIRM engaged in general civil litigation, business practice, and estate planning, seeking an attorney with strong academics and writing skills with 1 to 3 years experience. Send resume and salary requirements to Box "Z," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

AV RATED TULSA LAW FIRM seeks attorney with 3-5 years experience. Primary responsibilities include research and writing in areas of ERISA, employment, and real estate law. Flexible hours possible. Submit resumes and references to Box "U," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

FOR RENT

FOR RENT/LEASE SHANGRI-LA COUNTRY ESTATES CONDO Fully Furnished One bedroom condo. Golf, Tennis, Swimming Pool, Private Gated Entry. Rent /Lease or special Lease. (405) 232-2218, Box 42402, Oklahoma City, OK 73123

BOOKS

THE LAWBOOK EXCHANGE, LTD. Buys, sells and appraises all major law book sets. Also antiquarian, scholarly. Reprints of legal classics. Catalogues issued in print and online MasterCard, Visa and AmEx. (800) 422-6686; fax: (732) 382-1887; www.lawbookexchange.com.

CLASSIFIED INFORMATION

CLASSIFIED RATES: One dollar per word per insertion. Minimum charge \$35. Add \$15 surcharge per issue for blind box advertisements to cover forwarding of replies. Blind box word count must include "Box _____, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152." Display classified ads with bold headline and border are \$50 per inch. See www.okbar.org for issue dates and Display Ad sizes and rates.

DEADLINE: Tuesday noon before publication. Ads must be prepaid. Send ad (e-mail preferred) in writing stating number of times to be published to:

Melissa Brown
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152
E-mail: melissab@okbar.org

Publication and contents of any advertisement is not to be deemed an endorsement of the views expressed therein, nor shall the publication of any advertisement be considered an endorsement of the procedure or service involved. All placement notices must be clearly non-discriminatory.

Frog Fiasco

By Judge David Barnett

In my many years as a district court judge in Oklahoma, I have presided over several cases that were highly publicized in our area and in our state. However, I have had very few that received national publicity. The first such case was one I have come to remember as *The Tillman County Frog Case*, an account of which was widely publicized all over the nation.

As part of my normal responsibilities, I am assigned to preside over cases arising under the general misdemeanor statutes, as well as the specialized misdemeanor statutes, including the wildlife and game laws. In the infamous *Tillman County Frog Case*, a man was charged with shooting or "taking" a frog without having purchased the requisite hunting license.

In presenting the case, the state's attorney relied on the wildlife code in the Oklahoma Statutes and did not present the more specialized regulations promulgated by the Wildlife Commission, nor did I have ready access to them at the hearing. In examining the wildlife code, it became clear to me that amphibians, including frogs, were not covered by the definitions of game or wildlife in the

Oklahoma Statutes. Of course, I later learned that frogs are covered by the Wildlife Commission's regulations. Based upon my reading of the statutes, I summarily dismissed the case, much to the chagrin of the state game ranger who had written the citation and presented the case to the district attorney for prosecution.

The editor of the *Frederick Press*, Joe Miller, covered the case and apparently saw an opportunity for a funny "editorial." The newspaper's next issue after the dismissal contained the very well written editorial that was hilarious to almost everyone. The title of the editorial was, "CROAK! Judge's Ruling Unpopular with County Bullfrog Population," and it appeared on the front page of the newspaper. In a humorous way, the editorial "critiqued" my ruling.

Because of the high quality of Joe's editorial and its humorous nature, it was picked up by all of the major wire services and published in newspapers around the nation. For several months, I received calls and letters

from friends around the country about my most famous case. Almost everywhere I went, someone would ask me about the *Tillman County Frog Case*. One of my daughters even gave me an "amphibian" tie to commemorate the case.

For a time, I even gave thought to directing that my obituary should contain no reference to my judicial career, lest I should be forever remembered as the judge who presided over the *Tillman County Frog Case*!

Judge Barnett is associate district judge in Tillman County.

Editor's Note: Have a short funny, intriguing or inspiring story to share? E-mail submissions to carolm@okbar.org.

“...I have had very few that received national publicity.”



Discovery and Discovery Plans - Comparison of the Relevant Rules
by Ed Abel

The Ten Most Important Employer Cases of the Last Year
by Jim Priest

Effective Client Communication in the 21st Century Law Office
by Jim Calloway

When a Judge Should Recuse and When a Lawyer Should Ask for Recusal
by Judge Noma Gunch

The Ten Most Frequently Asked Ethics Questions and the Answers
by Gina Hendrix

Oil and Gas: Surface v. Mineral Use
by Eric R. King

How to Recognize a Bad Faith Case - Plaintiff's Perspective
by Simone Susself Fulmer

How to Evaluate a Bad Faith Case from the Defense Perspective
by Brandon S. Nichols

IPAA Rules All Lawyers Should Know
by Terese Meinders Burkett

Branching Out in Business: An Overview of the Oklahoma LLC
by Armand Peliccia

Fundamentals of a Personal Injury Claim
by Greg A. Farrar

Employment Law and Work-Life Balance
by Alex B. Long

Conflict of the Security Interests: Can One Protected Purchaser Cut Off Another Protected Purchaser?
by Keith Pearson

THE BEST OF OBA/CLE 2006

\$150 for book
and CD

Oklahoma Bar Association

The CLE department has compiled a book of the best materials from various CLE programs of 2006. This is a MUST have book for the general practitioner. For only \$150 you get the book and CD. Order now, quantities are limited.



Full Name _____

Firm _____

Address _____

City _____

State _____

Zip _____

Phone (____) _____

E-Mail _____

Are you a Member of OBA? ☐ Yes ☐ No ☐ OBA Bar# _____

Make checks payable to the Oklahoma Bar Association and mail entire page to: CLE REGISTRAR, P.O. Box 240018, Oklahoma City, OK 73124-0018

For ☐ Visa or ☐ MasterCard Use (43)-16 7933 Place or Mail 1403-416-2006

Credit Card# _____ Expires _____

Authorized Signature _____



The newest addition to the West family tree

West has branched out and added the #1 realtime transcript and evidence management software to its family of market-leading litigation solutions.

LiveNote® deposition software lets you annotate live text as it scrolls on your laptop, search earlier testimony, privately communicate with on-site or off-site team

members, and complete your deposition summary before leaving the conference room. It's just one of the many ways West partners with you to help grow your business.

For more information, call **1-800-762-5272** or visit **livenote.com**.

Financial Security



takes more than a wish.



**Long Term Disability? The risk
may be greater than you think.**

**Good financial plans
are better than wishes.**

According to the National Underwriters "Why Disability" booklet

- **At age 42 it is four times more likely that a person will be seriously disabled than die during the working years.**
- **Men have a 43% chance and women a 54% chance of becoming seriously disabled during their career life.**

According to www.soundfinancialplan.com, from the MDRT

- **Almost 30 percent of the people between ages 35 and 65 will experience a disability that lasts at least 90 days.**
- **One out of seven people between the ages of 35 and 65 can expect to be disabled for five years or longer.**



According to the 2005 AHP "Guide to Individual Disability Income Insurance"

- **At age 40, with an annual salary of \$50,000, the individual who suffers a long term disability can face the loss of over \$1,000,000 in future earnings over an expected 20 years and would also be unable to continue building a desired retirement nest egg.**

According to the U.S. Census Bureau Survey "Income Program & Participation"

- **The average 45 yr. old earning \$50,000 per year would have only enough savings to care for family needs six months or less.**



Disability insurance reflects your determination to see that your family does not face financial hardship. If you are unsure of the financial impact your disability would have on your family, the professionals at Beale can help you plan with confidence for those who depend on you.

To request more information, please fill out the Information card on the reverse side and mail to: Beale Professional Services • PO Box 60809 • Oklahoma City, OK 73146

To request more information, fill out this card and mail to:

Beale Professional Services
PO Box 60809
Oklahoma City, OK 73146

YES!

I want more information on the following insurance plans:

- ☐ Individual Health
- ☐ Personal Umbrella
- ☐ Workers Comp.
- ☐ Life Insurance



- ☐ Group Health Insurance
- ☐ Disability Insurance
- ☐ Long Term Care Insurance
- ☐ Other (specify) _____

Name _____
Firm _____
Address _____
City _____ State _____ Zip _____
Phone _____
E-Mail _____

Beale Professional Services • (05.521.1600 or 800.530.4863 • www.bealepro.com