

THE Oklahoma Bar JOURNAL

Volume 80 ♦ No. 26 ♦ October 10, 2009

Criminal Law

A black and silver handgun is positioned diagonally across the upper half of the cover. Below it, a pair of metal handcuffs is shown, also diagonally. The background is a dark, textured wooden surface.

ALSO INSIDE

- OBA Award Winners Announced
- More Annual Meeting Information

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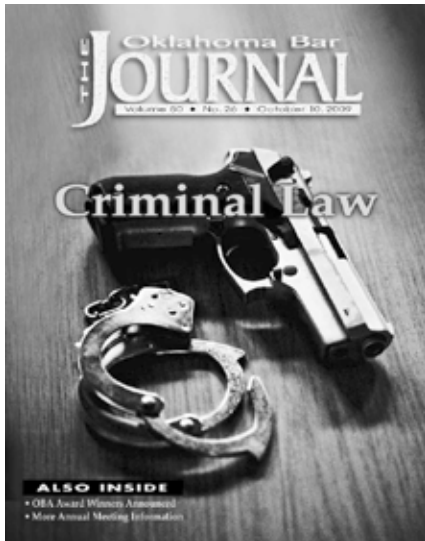
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THEME:
CRIMINAL LAW
EDITOR: PANDEE RAMIREZ

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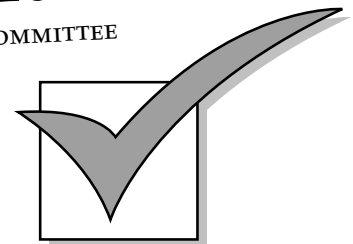
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Annual Meeting Just Around the Corner

By Jon K. Parsley

The OBA Annual Meeting is Nov. 4-6, 2009, at the Sheraton Hotel in Oklahoma City.

Now is the time to get signed up if you have not already! We have a fabulous meeting planned. The CLE looks great, and we have several special events planned. The Annual Meeting is a great opportunity to network with other lawyers throughout the state. The better the attendance, the better the meeting. Details can be found at www.okbar.org/annualmeeting09, and remember you can register online. I look forward to seeing you all there.



WOMEN IN LAW EVENT

The week of Sept. 21 was an exceptional week for the Oklahoma Bar Association. We swore in more than 300 new attorneys. The OBA Women in Law Committee put on its annual event in the form of a banquet with Cherie Blair (wife of former British Prime Minister Tony Blair). This was one of the most outstanding events ever put on by the OBA. Mrs. Blair was a very pleasant and lovely person. She was very gracious with her time, and her speech (which focused on women in the law and human rights) was very forceful and eloquent. WIL Committee Chair Deb Reheard and her crew put on a wonderful event.



Jon K. Parsley

President Parsley
practices in Guymon.
jparsley@ptsi.net
(580) 338-8764

TECH FAIR

Also during the week of Sept. 21, the OBA hosted a technology fair. We had a traveling ABA Tech Show group doing the presentations. There was a company setting up Web sites. We had over 160 lawyers in attendance. The event was not for CLE credit, but the vast majority of the attendees stayed the entire day. Management Assistance Program Director Jim Calloway and his department did a great job getting this event planned.

*The better the attendance,
the better the meeting*

STAFF DESERVES PRAISE

The outstanding events that are put on by the OBA do not just happen. During these past few years, I have become keenly aware of the effort and dedication that our staff puts into making OBA events a success.

Our executive director, John Morris Williams, the directors and other staff members do an outstanding job. I want to take this opportunity to say THANKS to these people who make our association great!

See you all at the Annual Meeting.

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EVENTS CALENDAR

OCTOBER 2009

- 16 **OBA Board of Governors Meeting**; Guymon; Contact: John Morris Williams (405) 416-7000
OBA Lawyers Helping Lawyers Assistance Program Committee Meeting; 12:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Thomas Riesen (405) 843-8444
- 17 **OBA Young Lawyers Division Committee Meeting**; 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Rick Rose (405) 236-0478
- 19 **OBA Alternative Dispute Resolution Subcommittee Meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Andrea Braeutigam (405) 640-2819
OBA Alternative Dispute Resolution Section Meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Andrea Braeutigam (405) 640-2819
- 20 **OBA Civil Procedure Committee Meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton (918) 591-5229
Hudson-Hall-Wheaton Chapter of American Inns of Court; 5:30 p.m.; Page Belcher Federal Building, 333 West Fourth St.; Contact: Michael Taubman (918) 260-1041
- 21 **Oklahoma Council of Administrative Hearing Officials**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212
Ruth Bader Ginsburg American Inn of Court; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donald Lynn Babb (405) 235-1611
- 22 **OBA Bench & Bar Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jack Brown (918) 581-8211
- 23 **Oklahoma Black Lawyers Association Scholarship Banquet**; 4:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Kyshe Williams (405) 512-1466
- 24 **OBA Young Lawyers Division Committee Meeting**; 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Rick Rose (405) 236-0478
- 27 **Oklahoma Board of Bar Examiners Workshop**; 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Board of Bar Examiners (405) 416-7075

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

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

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Federal Sentencing: The New Frontier of Modern Legal Advocacy

By Matthew C. Kane & Daniel G. Webber Jr.

Over time, the art of legal advocacy has, by and large, been reduced to a formulaic effort to find the “right” case or statute to support a particular legal position. Congress has passed detailed legislation to deal with increasingly narrow contingencies, agencies have made detailed attempts to construct all-encompassing regulatory packages, and courts have continued to apply such laws and regulations to more and more fact patterns each day. As a result, it often appears there is little room for creativity and inventiveness in the law.

Federal sentencing, until recently, served as a glaring example of the escalating predilection for defining an area of the law to the limits of rigidity. Faced with often significantly disparate sentencing in federal courts across the United States, Congress passed the Sentencing Reform Act of 1984, which established the United States Sentencing Commission. The commission’s primary objective was to develop sentencing guidelines for use by district court judges so a standardized methodology would be applied to all convicted defendants. The first guidelines became effective in 1987 and were found to be constitutional by the Supreme Court in 1989. With the implementation of the guidelines, courts were provided with extraordinarily limited discretion, and, consequently, attorneys had little opportunity to effectively advocate for their clients.

However, after two decades of strict adherence to the federal sentencing guidelines, federal district judges have recently been granted significant discretion in determining the appropriate sentences for federal offenders. In light of recent Supreme Court precedent, sentences must meet only an enigmatic “reasonableness” stan-

dard. As a result, 10th Circuit Judge Terrence O’Brien has recently written a single sentence concurring opinion, which provides: “In a series of ceremonial rites the leveling forces of the guidelines, their hearthstone, were sacrificed on the altar of sentencing discretion and appellate courts rendered impotent.”¹ Because the district court “considering what sentence to impose... does not have the benefit of any prior judicial determination regarding the particular circumstances of the offender and the offense,”² the 10th Circuit’s review of the district court’s variance from the advisory guideline range is limited to an examination of the district court’s “application of the 18 U.S.C. §3553(a) factors for substantive reasonableness, utilizing the abuse-of-discretion standard.”³ Thus, in a September 2009 opinion, the 10th Circuit upheld a sentence doubling the highest guideline recommendation – without substantive discussion – since the district court could only abuse its discretion if “it render[ed] a judgment that is arbitrary, capricious, whimsical, or manifestly unreasonable.”⁴

A brief example from the Western District of Oklahoma serves to illustrate the issue. The defendant in *U.S. v. Snider*⁵ was an older profes-

sional with no prior criminal history. He had cooperated extensively with the government to obtain convictions against the primary actors in a tax fraud scheme and, as a result, was the subject of a government motion for downward departure. The court, apparently recognizing (although not acknowledging at the time) that incarceration was not appropriate, nonetheless notified the parties of its intent to depart upward from the guidelines – with regard to the amount of restitution. Although the court ultimately decided that the upward departure was not necessary, the case illustrates the discretion a court wields to craft a sentence which rewards the defendant for his cooperation and recognizes that incarceration is not necessary given the age and history of the defendant, the conduct at issue and severity of the offense. Nonetheless, the sentence significantly punishes the defendant and deters others similarly situated from committing such offenses. With the availability of such broad discretion, the attorney must make every effort to advocate on his client's behalf in federal sentencing.

ADVOCACY AND THE PRESENTENCE REPORT

The U.S. Probation Office prepares a presentence report (PSR) on every federal defendant. The PSR is intended to provide the judge with information necessary to impose a fitting sentence and includes discussions of a defendant's personal and family data, physical condition, mental and emotional health, employment record and financial condition, among other issues. Historically, much of this type of background information contained in the PSR had little bearing on the ultimate sentence, while the guideline calculation contained therein was of pre-eminent importance. Now, however, given the court's extraordinary discretion, these sections of the PSR provide the defendant with the first opportunity to put his case for variance before the judge.

As an initial matter, it is necessary to provide the probation officer with accurate and complete information on the defendant's background. The defendant is the foremost source of this information, although the probation officer will generally obtain and check information by interviewing friends and family. In addition, a defendant may comment on or object to the PSR. The defendant's inclusions as well as the probation officer's responses are incorporated into an addendum to the PSR for judicial consideration. Proper advocacy at this stage of

sentencing results in PSR conclusions which can be adopted and expanded rather than contested in the sentencing memorandum.

ADVOCACY THROUGH THE SENTENCING MEMORANDUM

The guidelines are now simply one of many factors that are to be taken into account in arriving at an appropriate sentence under §3553(a).⁶ Generally, issues with the guidelines are addressed in the presentence report prepared by the U.S. Probation Office and any objections thereto made by counsel. Thus, the focus of the sentencing memorandum is on factors other than the guidelines. However, the character and history of the defendant, the nature and seriousness of the charges, and the preferences of the court will all play a role in determining what issues should be raised and where emphasis should be placed. Moreover, the sentencing memorandum should always be predicated on the overarching theme of 18 U.S.C. §3553(a): that "[t]he court shall impose a sentence sufficient, *but not greater than necessary* to comply with the purposes [of sentencing]."⁷ In addition, the court must "recogniz[e] that imprisonment is *not* an appropriate means of promoting correction and rehabilitation."⁸

SENTENCING FACTORS

In determining the minimally sufficient sentence, §3553(a) directs sentencing courts to consider the following factors, among others: 1) the nature and circumstances of the offense and the history and characteristics of the defendant; 2) the kinds of sentences available; 3) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and 4) the need to provide restitution to any victims of the offense. Such factors include:

Age – Under the present regime, "district courts have routinely considered a defendant's age as part of their analysis on the ground that older defendants exhibit markedly lower rates of recidivism compared to younger defendants."⁹ Indeed, even before *Booker*, the 10th Circuit, and other courts, recognized that an older defendant's lack of prior criminal conduct could be a relevant downward departure ground.¹⁰

Education, Vocational Skills and Employment History – A defendant's education, vocational skills and employment history should also be considered by the court. Thus, depend-

ing on the circumstances, one might argue that the professional, such as corporate officer responsible for employing others in the community or the sole medical provider in a small town, is a valuable resource to the community and removal of the individual from the community will have far reaching effects. In addition, there would be a smaller likelihood of recidivism where the defendant has a means by which to earn a paycheck. Or, alternatively, if the professional can no longer perform his or her job as a result of the conviction, he or she will have already suffered a great consequence for the criminal activity. Similarly, if the crime was committed through any special position resulting from the defendant's education or skill and the license is revoked, there is little threat of a repeat offense, as the opportunity no longer exists.

Physical Condition – A defendant's health condition is relevant to the need for confinement, the conditions of confinement, the potential for recidivism and the ability to provide adequate health care (and the associated costs) during any incarceration.¹¹ Particularly, in conjunction with advanced age, the physical condition of the defendant can be a very persuasive and reasonable basis for the imposition of a lower sentence as, under such circumstances, the chance of recidivism greatly decreases while the costs of incarceration would significantly escalate.

Mental and Emotional Condition – The mental and emotional condition of the defendant may be important for a number of reasons. At one extreme, the defendant could be suffering from such acute mental distress that it affects the individual's physical condition and should be treated accordingly. It may also provide a complete or partial justification for the crime committed. In addition, extreme remorse, which could potential exhibit itself as a diagnosed condition (although such a diagnosis is not necessary to make the argument) is itself a grounds for downward departure.¹²

Family Ties and Responsibilities – Courts often find that a defendant's family life is an important ground for imposition of a low sentence. The most obvious cases involve instances where the defendant is the sole or primary caretaker of minors or elderly parents. In such circumstances, incarceration places a significant burden, not only on the defendant but on his or her dependants, as well as the community,

which, in many cases, may be required to fulfill the void while the defendant is jailed.

Civic, Military, Charitable or Public Service Contributions – A strong record of civil, military, charitable or other public service contributions is a legitimate independent basis for downward departure.¹³ Courts are generally much more inclined to give weight to "hands on" activities rather than simple monetary contributions.

Lack of Guidance as a Youth and Similar Circumstances – Where appropriate, the childhood conditions of a defendant, especially a younger defendant, may provide justification for the imposition of a lower sentence.

Cooperation and Exceptional Acceptance of Responsibility – If the defendant is seeking a motion for downward departure from the government based on substantial assistance to a governmental investigation, defense counsel should keep a "diary" reflecting the information, testimony and documents provided by the client and the impact the assistance had on the government's efforts. The 10th Circuit has recognized that a variance was appropriate "for acceptance of responsibility to be so exceptional that it is 'to a degree' not considered by USSG §3E1.1."¹⁴ Thus, even if the government refuses to provide a motion for downward departure based on the defendant's cooperation, the court may still recognize that a departure is merited. With or without a government motion, a well-documented record of the efforts by the defendant will be invaluable in arguing for a variance on such grounds.

Nature of the Offense – To a certain extent, the nature of the offense "is what it is." The court will have at its disposal, for better or worse, the presentencing report and any objections, which will include a discussion of the offense. However, the sentencing memorandum provides an excellent opportunity to attempt to minimize the negative impact of the offense, although great care must be taken to avoid any compromise of the defendant's acceptance of responsibility. Thus, for example, it might be wise to point out that the only "victim" was the government, or that the public funds awarded as a result of a bribe were nonetheless used for their intended purpose resulting in a benefit to the public rather than solely personal gain.

Kinds of Sentences Available – Some statutes provide for minimum and maximum

periods of incarceration. However, many provide language to the effect that a defendant should be fined, imprisoned for not more than a certain period, or both. In such circumstances, the court has discretion to impose a fine and/or incarceration. Consequently, the 10th Circuit has held that this type of statutory language does not require imprisonment but instead allows discretion in sentencing.¹⁵

Need to Provide Restitution to Victims – In the appropriate setting, an argument may be made that, all things considered, it is better for a defendant to be on probation or home detention so he or she can continue to work and generate income that can be used, in part, to pay restitution to the victims of his crime.

SENTENCING OBJECTIVES

Title 18 U.S.C. §3553(a) provides that the court shall impose a sentence sufficient but not greater than necessary to comply with the purposes of sentencing, which are: 1) to reflect the seriousness of the offense, to promote respect for the law and to provide just punishment for the offense; 2) to afford adequate deterrence to criminal conduct; 3) to protect the public from further crimes of the defendant; and 4) to provide the defendant with needed educational or vocational training, medical care or other correctional treatment in the most effective manner.

Just and Proportional Punishment – The concept of just punishment is founded on Old Testament law (an eye for an eye) and has been revisited by political scholars throughout history. Thus, to the extent the sentencing judge has an interest in the philosophical underpinnings, such information is readily available and can often be found within existing case law. For instance, one court, in considering the defendant's sentence, quoted Immanuel Kant: "Juridical punishment can never be used merely as a means to promote some other good for the criminal himself or for civil society, but instead it must in all cases be imposed on him only on the ground that he has committed a crime."¹⁶ The court continued, "[u]nder a Kantian model, the extent of punishment is required to neatly fit the crime. 'Whoever commits a crime must be punished in accordance with his desert.'"¹⁷ Of course, such arguments must be selectively made, as reliance on Kant may simply turn off certain members of the judiciary.

Regardless, the advocate must at some point confront the issue of what punishment is necessary to redress a particular crime. In a truly

retributive society, an appropriate punishment for a typical "white collar" crime would likely involve a financial penalty equal to the amount wrongfully acquired, a result which would be perfectly acceptable under the Sentencing Reform Act (although contrary to the sentencing guidelines). However, the sentencing guidelines attempt, by and large, to equate a period of incarceration to the crime committed. Thus, proportionality between severity of the crime and period of incarceration is a central concept to sentencing jurisprudence.¹⁸ While any crime, particularly a felony, is a serious offense, there is clearly a difference between types of crimes and the means with which they were performed (as evidenced by the guidelines themselves). Similarly, however, one can argue any conviction of a crime, particularly a felony, and the related sentence, whether probation, home detention or incarceration, is a serious consequence.

Adequate Deterrence – The second goal of sentencing, "to afford adequate deterrence to criminal conduct," may also be addressed with more or less philosophical or pragmatic arguments. In many ways, deterrence is a complete contradiction to the first goal of retribution. While Kant believed that only punishment premised on a theory of retribution adequately recognized the individual's dignity, the concept of general deterrence necessarily contemplates the effect of a given punishment on the individual's future conduct as well as the conduct of others in the community. Quoting Plato, the 9th Circuit explained: "The purpose of [punishment] is not to cancel the crime — what is once done can never be made undone — but to bring the criminal and all who witness his punishment in the future to complete renunciation of such criminality."¹⁹

The 10th Circuit has recognized the importance of this consideration when determining an appropriate sentence outside the guidelines range.²⁰ However, the court is left to determine what amount of punishment is required to effectuate the twin goals of individual and general deterrence. Thus, it may be appropriate to argue in a given case that "even relatively short sentences can have a strong deterrent effect on prospective 'white collar' offenders."²¹ A lesser sentence can also generally provide greater deterrence in cases of first-time defendants.²²

Incapacitation – The next statutory objective is the need "to protect the public from further crimes of the defendant."²³ This utilitarian

approach is again at odds with the retributive theory of punishment, yet each remains a cornerstone of the controlling statutory scheme. "[While] the theory of retribution would impose punishment for its own sake, the utilitarian theories... would use punishment as a means to [a practical] end – the end being community protection by the prevention of crime."²⁴ There are several factors that can be raised when arguing against the need for incarceration. If the defendant has no prior criminal history, the chance of recidivism is very low – lower in fact, than is reflected in the criminal offense category of the guidelines.²⁵ In fact, the Sentencing Commission has acknowledged that the U.S. Parole Commission's "Salient Factor Score," which incorporates first-time offense and age, is a better predictor of recidivism than its own criminal offense category system.²⁶ Other important indicators that a defendant is not a future threat for a repeat offense is if the defendant has a good employment record, is presently employed or attending school, has not and is not abusing drugs, and has a stable home life.²⁷ It may also be useful to remind the court of the significant cost to the public of a defendant's incarceration, especially when the need to protect the public is low.

Need for Educational or Vocational Training, Medical Care or Other Treatment – A final basis for punishment is rehabilitation, which potentially includes educational or vocational training or appropriate medical or mental health treatment. Such considerations may favor probation or home detention rather than incarceration, particularly where other sentencing objectives do not necessitate lengthy periods of detention. As noted above, the defendant's health is now a very relevant consideration in fashioning an appropriate sentence. At least one district court has implied the burden is on the government to show it can meet the defendant's medical needs.²⁸

THE CATCH-ALL PROVISION

While numerous factors are expressly contemplated by statute and incorporated into the guidelines, 18 U.S.C. §3553(b) provides that departure may be warranted if the court finds "that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different than that described." Thus, the defendant has no limit on his or her opportunity to

creatively argue for a sentence below the guidelines range.

EVIDENCE TO SUPPORT SENTENCING CONTENTIONS

To apply any sentencing factor or support argument relating to any sentencing objective, the defendant must be able to support his or her factual contentions with some documentary evidence. Perhaps a defendant's best (but potentially risky) option is to prepare an allocation statement, with or without the assistance of counsel. Paul Antonio Lacy of the Western District of Oklahoma Federal Public Defender's Office has utilized a questionnaire format wherein the defendant responds to inquiries such as: 1) What are your best accomplishments; 2) What are your best attributes; 3) What have you done that you are most proud of; 4) What are your short/long term goals; 5) Why are you a better person now; 6) How does giving you leniency reflect the seriousness of your offense; 7) How would leniency promote your/others' respect for the law; 8) What, if anything, would you say to your family; and 9) Why should the judge give you a break.

Additional materials may include affidavits and letters from family, members of the community and charitable organizations, doctors and clergy – in short, people willing to provide the court with support for the contentions set out in the sentencing memorandum. Of course, any statements should be carefully reviewed by counsel prior to presentation to the court. Few judges will be swayed by the defendant's bookie noting the defendant always paid on time or the defendant's mother stating their child did nothing wrong. Similarly, newspaper clippings, photographs, Internet articles or any other media which can provide a basis for the variance requested should be collected and evaluated for use as an exhibit to the sentencing memorandum.

CASES FOR DEPARTURE

It is often advantageous to include cases where defendants convicted of similar criminal activities have received sentences below the guidelines range in the sentencing memorandum. Unless the sentence is appealed, which is often not the case where a variance was granted, such examples are not readily available through Westlaw. Instead, one might start with a simple Internet search to find articles or blogs discussing particular cases, which could, in turn, allow the researcher to utilize the PACER

or ECF systems for the appropriate districts to obtain the actual case details. Such a process could be used, for example, in the case of a white collar defendant whose guidelines were significantly increased due to the amount of money involved. After identifying and researching similarly situated individuals, the defendant could provide the court with specific cases where variances were granted.²⁹

CONCLUSION

As expressed by one district court, “[s]entencing is a critical stage of a criminal prosecution. It represents an important moment in the law, a ‘fundamental judgment determining how, where, and why the offender should be dealt with for what may be much or all of his remaining life.’ It is significant not only for the individual before the court, but for his family and friends, the victims of his crime, potential future victims, and society as a whole.”³⁰ Given the stakes involved and the extraordinary discretion afforded to the district court, effective advocacy is at a premium. At the end of the day, the conclusion reached by the sentencing court, based in significant part on the creative efforts of defense counsel, will affect not only the defendant, but also those closest to the defendant and, to some degree, society at large.

1. *United States v. Flanders*, 2009 WL 405846 (10th Cir. Feb. 19, 2009).

2. *U.S. v. Angel-Guzman*, 506 F.3d 1007, 1015-16 (10th Cir. 2007).

3. *United States v. Bullcoming*, — F.3d —, 2009 WL 2783012, *6 (10th Cir. Sept. 3, 2009) (also discussing the testimony of a victim regarding the defendant’s acceptance of responsibility as it related to the government’s duty under the plea agreement).

4. *Id.*

5. CR-03-159-F, Western District of Oklahoma.

6. *Kimbrough v. United States*, 128 S.Ct. 558, 570 (2007), *Gall v. United States*, 128 S.Ct. 586 128, 594-97, 602 (2007).

7. As stated by Judge Bright of the 8th Circuit, quoting Jeremy Bentham, *Principles of Penal Law*, 1 The Works of Jeremy Bentham 398 (John Bowring ed., 1962), “Every particle of real punishment that is produced, more than what is necessary, is just so much misery run to waste.” *United States v. Weekly*, 128 F.3d 1198, 1201 (8th Cir. 1997) (dissent).

8. 18 U.S.C. §3582 (Emphasis added.)

9. *United States v. Green*, 2007 WL 869725 * 2 (S.D. Ohio Mar. 20, 2007) (citing several cases).

10. See *United States v. Collins*, 122 F.3d 1297, 1307-08 (10th Cir. 1997) (district court properly departed downward based on conclusion that it would overstate the likelihood of recidivism to treat 64-year old man whose prior convictions occurred years ago as a career offender); see also, *United States v. Phillips*, 368 F. Supp.2d 1259, 1260 (D.N.M. 2005); *United States v. Nellum*, 2005 WL 300073 (N.D.Ind. Feb. 3, 2005) (departure where, because of age, likelihood of recidivism very low); *United States v. Ward*, 814 F.Supp. 23 (E.D. Va. 1993) (departure because guidelines fail to consider the length of time, forty-nine years, defendant refrains from committing first crime); *United States v. Hildebrand*, 152 F.3d 756 (8th Cir. 1998) (departure permitted based on age and health condition); *United States v. Dusenberry*, 9 F.3d 110 (6th Cir. 1993) (table) (same); see also *United States v. Tsosie*, 14 F.3d 1438, 1441-42 (10th Cir. 1994) (holding aberrational conduct combined with steady employment and economic support of family warranted downward departure).

11. See e.g., *United States v. Martin*, 363 F.3d 25 (1st Cir. 2004) (in tax evasion case, health concerns merited downward departure); *U.S. v. Gee*, 226 F.3d 885 (7th Cir. 2000); *United States v. Johnson*, 71 F.3d 539 (6th Cir. 1995); *United States v. Willis*, 322 F.Supp.2d 76 (D. Mass. 2004).

12. *United States v. Fagan*, 162 F.3d 1280, 1284-1285 (10th Cir. 1998); see also, *United States v. Jaroszenko*, 92 F.3d 486 (7th Cir. 1996).

13. See *U.S. v. Jones*, 158 F.3d 492 (10th Cir. 1998); see also, *United States v. Cooper*, 394 F.3d 172 (3rd Cir. 2005); *U.S. v. Woods*, 159 F.3d 1132 (8th Cir. 1998); *U.S. v. Rioux*, 97 F.3d 648 (2nd Cir. 1996); *United States v. Greene*, 249 F.Supp.2d 262 (S.D.N.Y. 2003); *United States v. Bennett*, 9 F.Supp. 513 (E.D. Pa. 1998).

14. *United States v. Gaither*, 1 F.3d 1040, 1043 (10th Cir. 1993), citing *United States v. Smith*, 930 F.2d 1450, 1454 (10th Cir.) cert. denied, 502 U.S. 879, 112 S.Ct. 225, 116 L.Ed.2d 182 (1991) *United States v. White*, 893 F.2d 276, 278 (10th Cir.1990).

15. See *United States v. Elliot*, 971 F.2d 620, 622 (10th Cir. 1992).

16. *United States v. Blarek*, 7 F.Supp.2d 192, 200-201 (E.D.N.Y. 1998).

17. *Id.* at 202.

18. 18 U.S.C. §3553(a)(2)(A).

19. *United States v. Barker*, 771 F.2d 1362, 1368, n. 12, 13 (9th Cir. 1985) (also quoting Lord Halifax, “[m]en are not hang’d for stealing Horses, but that Horses may not be stolen.”).

20. See *United States v. Shaw*, 471 F.3d 1136, 1139 (10th Cir. 2006) (sentencing above guideline range to adequately deter).

21. *United States v. Adelson*, 441 F. Supp.2d 506, 514 (S.D.N.Y. 2006).

22. See *United States v. Qualls*, 373 F. Supp.2d 873, 877 (E.D.Wis. 2005) (“Generally, a lesser period of imprisonment is required to deter a defendant not previously subject to lengthy incarceration than is necessary to deter a defendant who has already served serious time yet continues to re-offend”).

23. 18 U.S.C. §3553(a)(2)(C); see also, *Shaw*, 471 F.3d at 1139.

24. *Blarek*, 7 F.Supp.2d 192, 202 (E.D.N.Y. 1998), quoting Charles E. Torcia, 1 Wharton’s Criminal Law § 1, at 3.

25. See U.S. Sentencing Commission, A Comparison of the Federal Sentencing Guidelines Criminal History Category and the U.S. Parole Commission Salient Factor Score (Jan. 4, 2005), available at www.ussc.gov/publicat/RecidivismSalientFactorCom.pdf. Last visited on May 20, 2009.

26. *Id.*

27. *Id.*

28. *United States v. Pineyro*, 372 F.Supp. 2d 133 (D. Mass. 2005).

29. See e.g., *United States v. Adelson*, 441 F.Supp.2d 506 (S.D.N.Y. 2006) (guideline result of life incarceration with actual sentence imposed of 42 months); *United States v. Garand* (D. Conn. 06-CR-137-CFD) (guideline result of 168-210 months with actual sentence imposed of 12 months and a day); *United States v. Crumpler* (N.D. Ala. 04-CR-502-VEH-JEO) (guideline result of 292-365 months with actual sentence imposed of 96 months); *United States v. McVay*, 447 F.3d 1348 (11th Cir. 2006) (guideline result of 87-109 months with actual sentence imposed of two months, and after appeal, six months).

30. *Blarek*, 7 F.Supp. at 199 (internal citations omitted).

ABOUT THE AUTHORS

Matthew C. Kane and Daniel G. Webber Jr. are shareholders and directors of the law firm Ryan Whaley Coldiron Shandy PC in Oklahoma City. The firm’s broad practice includes a variety of civil, criminal and environmental matters.



Matthew C. Kane



Daniel G. Webber Jr.

ANNUAL CRIMINAL LAW SECTION LUNCHEON

Petroleum Club, 100 North Broadway, Oklahoma City

Wednesday, November 4, 2009



Oklahoma Attorney General W.A. "Drew" Edmondson has graciously accepted our invitation to deliver the keynote address for the Annual Luncheon and Professional Advocate Awards Presentation of the Criminal Law Section of the Oklahoma Bar Association, to be held at the Petroleum Club on Wednesday, November 4, 2009, during the OBA Annual Meeting.

The gourmet luncheon menu includes filet mignon and chicken filet with port wine mushroom sauce and accoutrements of comparable quality.

Registration Form

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Gant TKOs *Belton* in the Fourth Round

Belton Demands Rematch: The Millennium's Most Significant Fourth Amendment Decision So Far

By Jim Drummond

On April 21, 2009, the U.S. Supreme Court invalidated a “search incident to arrest” in *Arizona v. Gant*.¹ Contrary to popular belief, *Gant* did not overrule *New York v. Belton*,² which since 1981 has been widely viewed as *carte blanche* authority for officers to search a vehicle incident to any arrest. It had appeared that the expectation of privacy in vehicles was greatly diminished after *Belton*. The *Gant* decision brought an enervated Fourth Amendment back to some semblance of life, not by creating a sweeping bright line rule, but by returning Fourth Amendment jurisprudence to its roots in fact situations. Justice John Paul Stevens, writing for the majority, expressly disavowed Justice Samuel Alito’s assertion that *Belton* was being overruled:

Justice Alito’s dissenting opinion also accuses us of “overrul[ing]” *Belton* and *Thornton v. United States*, 541 U.S. 615, 124 S.Ct. 2127, 158 L.Ed.2d 905 (2004), “even though respondent *Gant* has not asked us to do so.” Post, at 1726. Contrary to that claim, **the narrow reading of *Belton*** we adopt today is precisely the result *Gant* has urged. That Justice Alito has chosen to describe this decision as overruling our earlier cases does not change the fact that the resulting rule of law is the one advocated by respondent.³

There is no area of constitutional law in which the parsing and sifting of facts and mak-

ing of fine distinctions is more pronounced than in Fourth Amendment jurisprudence, and *Gant* is a perfect example. *Gant* was arrested for driving with a suspended license, and then secured and cuffed inside the police car when the officers initiated their search of his vehicle. There were four officers present when *Gant*’s car was searched in his own driveway, during which drugs were found. *Gant* was nowhere near being able to access the vehicle, obviating concerns for officer safety; and the search was not conducted to uncover evidence of the offense (driving with a suspended license) for which he was arrested.

In *Belton*, the fact situation was vastly different, as Justice Stevens stated:⁴

A lone police officer in that case stopped a speeding car in which *Belton* was one of four occupants. While asking for the driver's license and registration, the officer smelled burnt marijuana and observed an envelope on the car floor marked "Supergold" — a name he associated with marijuana. Thus having probable cause to believe the occupants had committed a drug offense, the officer ordered them out of the vehicle, placed them under arrest, and patted them down. **Without handcuffing the arrestees**, the officer "'split them up into four separate areas of the Thruway ... so they would not be in physical touching area of each other'" and searched the vehicle, including the pocket of a jacket on the backseat, in which he found cocaine.

The officer could not handcuff the arrestees because he had only one set of handcuffs.⁵ Clearly the situation in *Belton* was more volatile than in *Gant*, with a greater risk of officer safety and arrestee access to the vehicle. Thus *Belton* is not overruled, though clearly distinguishable on the facts.

The *Gant* decision stands for the proposition that police may search the passenger compartment of a vehicle incident to a recent occupant's arrest only if it is reasonable to believe that the arrestee might access the vehicle at the time of the search⁶ or that the vehicle contains evidence of the offense of arrest.⁷

Justice Scalia's concurrence was made ambivalently, because he would have gone much further to overrule *Belton* outright. His view is that *Belton* was abused as a free ticket to conduct vehicular searches incident to any arrest as a police entitlement, rather than an exception to the warrant requirement to be narrowly limited to situations where officer safety is at stake or where there is reason to believe the vehicle contains evidence of the crime for which there was probable cause to detain without a warrant. Thus Justice Scalia felt that searches incident to arrest should never be predicated on officer safety concerns, but limited to probable cause or searches for evidence related to the crime of arrest.

Justice Scalia concisely explained why he felt the court should overrule *Belton*:

“Thus Justice Scalia felt that searches incident to arrest should never be predicated on officer safety concerns...”

Justice Stevens would therefore retain the application of *Chimel v. California*, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969), in the car-search context but would apply in the future what he believes our cases held in the past: that officers making a roadside stop may search the vehicle so long as the “arrestee is within reaching distance of the passenger compartment at the time of the search.” *Ante*, at 1723. **I believe that this standard fails to provide the needed guidance to arresting officers and also leaves much room for manipulation, inviting officers to leave the scene unsecured (at least where dangerous suspects are not involved) in order to conduct a vehicle search. In my view we should simply abandon the *Belton-Thornton* charade of officer safety and overrule those cases. I would hold that a vehicle search incident to arrest is ipso facto “reasonable” only when the object of the search is evidence of the crime for which the arrest was made, or of another crime that the officer has probable cause to believe occurred.**⁸

In a nod to the Scalia concurrence, Justice Stevens' majority opinion noted that Justice Brennan's dissent to *Belton* predicted exactly that gruesomely Procrustean⁹ result: *Belton* would be stretched into the “fiction... that the interior of a car is always within the immediate control of an arrestee who has recently been in the car.”¹⁰

It is as refreshing to see Justice Scalia join Justice Brennan as a Fourth Amendment champion as it has been to contemplate his bright-line heroism in advocating for the right of confrontation and trial by jury in his opinions in *Booker*¹¹ and *Crawford*.¹² But there are two fronts of attack on which police party-poopers will continue to hack away at the *Gant* holding: the “good faith” exception and the inventory/impoundment search. The second front will be a long-term challenge to defenders invoking

Gant, the first a transitional challenge regarding searches conducted before April 21, 2009, when *Gant* was decided.

THE GOOD FAITH EXCEPTION

Regarding the *Leon* good faith exception,¹³ just two days before this writing the 10th Circuit decided *U.S. v. McCane*.¹⁴ The court held that the search was invalid in light of *Gant*, but affirmed the lower court ruling that the evidence could not be excluded because the officers could rely in good faith on the 10th Circuit's decision in *U.S. v. Humphrey*,¹⁵ which was the progeny of *Belton*. The good faith exception arises from the Supreme Court holding that the exclusionary rule is not expressed in the wording of the Fourth Amendment and was created not as an individual right of the victim of the search but as a deterrence to law enforcement abuse of the Fourth Amendment right.¹⁶ Thus, the *McCane* court noted that in *Illinois v. Krull*,¹⁷ the Supreme Court extended the good faith exception to warrantless administrative searches performed in reliance upon a statute later declared unconstitutional.¹⁸

It is to be expected that federal case defenders wishing to invoke *Gant* in cases involving pre-*Gant* searches will have an uphill battle. One possible line of argument would be that officers should never have interpreted *Belton* as a bright line rule in the first place, and that assertions by the 10th Circuit in *Humphrey* — that there was ever a judicial bright line rule¹⁹ — regardless of the safety of the officers or the relation of the evidence to the arrest crime — were over-expansive and overreaching.

Oklahoma state courts have not acknowledged the *Leon* good faith exception, so state case defenders will not have to worry about this transitional problem.²⁰

INVENTORY/IMPOUNDMENT SEARCH

The second and more serious threat to *Gant* is the inventory/impoundment search. If the police policy is to impound cars whenever an arrest is made, and to search them in order to protect the property of the owner of the vehicle and to avoid liability for failing to protect that property, then *Gant* may possibly be circumvented by initiating a policy, as the City of Oklahoma City has done, that cars are to be impounded and subjected to an inventory search whenever the officer feels it is necessary.

Practically speaking, however, there are limits to an inventory search and the police power

to impound. In *Tomlin v. State*, 1994 OK CR 14, 869 P.2d 334, impoundment was unjustified because 1) the vehicle was not evidence of any offense, 2) the inventory occurred on private property, 3) police did not inquire whether the owner of the private property wanted the car removed, and 4) officers denied arrestee's request to leave the car there until the matter could be cleared up.

Similarly, the 10th Circuit ruled in *U.S. v. Ibarra*²¹ that impoundment and inventory search were not justified because Ibarra's car was not stolen, he was not arrested for an offense requiring that he be taken before a magistrate without delay, Ibarra could provide for the car's custody and removal, and there was no threat to public safety posed by leaving his vehicle there. These concerns apparently trump any local policies that officers may impound and inventory as they see fit.

Tomlin further held that the ultimate issue in determining the validity of the inventory search following the impoundment is not whether impoundment might be authorized by some city ordinance, but whether such search, authorized or not, was constitutionally reasonable.²² Thus the city's procedure 183.20(G) — a catch-all provision that impoundment is permitted if an officer arrests and then determines impoundment is needed — is only as good as the reasonableness of the impoundment under constitutional analysis. However, defenders may experience mixed results in pitching this to judges, who might prefer appellate reversal risks to walking alleged perps.

In situations where the vehicle is illegally parked, or the property owner has requested the vehicle be removed, or the arrestee has no way to arrange for alternative care of the vehicle, or the vehicle creates a threat to public safety, the inventory search will likely be upheld even though a search incident to arrest will not be after *Gant*. A proper inventory is not considered to be a "search" at all in Fourth Amendment jurisprudence. But if, under the tests in *Tomlin* and *Ibarra*, the inventory is improper, it becomes a "search" and an illegal search at that. Officers may not rely on a departmental *carte blanche* impoundment/inventory policy if the search violates the Constitution as in those cases. One law enforcement attorney has observed in a memorandum on *Gant* directed to a police audience: "If the person arrested is in handcuffs and in your police car, a search of the vehicle cannot be justified as 'incident to

arrest.’ You must give another reason, like ‘probable cause’ or ‘inventory’ or a reasonable belief that evidence of the crime for which the person was arrested is in the car.”²³

CONCLUSION

So the game of constitutional cat and mouse continues: round four to the defense, but a split decision for the arrestees – a likely loss on good faith exception grounds for federal (but not Oklahoma state court) pre-*Gant* defendants, and a likely increase in inventories, visible weapons in felons’ cars and marijuana odors. Still, it is the best news Fourth Amendment Warren-court purists have had in years, and a real shocker as to Justice Scalia, who would banish the exclusionary rule altogether as to admittedly constitutional violations of the residential knock-and announce rule, suggesting §1983 suits as the remedy.²⁴

1. 129 S.Ct. 1710 (2009).

2. 453 U.S. 454 (1981).

3. *Gant*, FN 9 at 1722. Emphasis supplied.

4. *Gant* at 1716-1717. Emphasis supplied.

5. *Id.*, FN 1 at 1717.

6. *Gant* at 1713. For an example of factual parsing in applying *Gant*, see *State of Kansas v. Preston*, 207 P.3d 1081, 1087 (May 22, 2009), where the arrestee was not handcuffed and the search was upheld for that and other reasons.

7. “Consistent with the holding in *Thornton v. United States*, 541 U.S. 615, 124 S.Ct. 2127, 158 L.Ed.2d 905 (2004), and following the suggestion in Justice Scalia’s opinion concurring in the judgment in that case, *id.*, at 632, 124 S.Ct. 2127, we also conclude that circumstances unique to the automobile context justify a search incident to arrest when it is reasonable to believe that evidence of the offense of arrest might be found in the vehicle.” *Gant* at 1714.

8. *Gant* at 1724-1725. Emphasis supplied.

9. A Procrustean bed is an arbitrary standard to which exact conformity is forced. Procrustes was a rogue smith and bandit from Attica. He had an iron bed in which he invited every passer-by to spend the night, and where he set to work on them with his smith’s hammer, to stretch them to fit. If the guest proved too tall, Procrustes would amputate the excess length; nobody ever fit the bed exactly because secretly Procrustes had two beds. Procrustes continued his reign of terror until he was captured by Theseus, traveling to Athens along the sacred way, who “fitted” Procrustes to his own bed.

10. *Gant* at 1718, quoting *Belton*, 453 U.S. at 466.

11. 543 U.S. 220 (2005).

12. 541 U.S. 36 (2004).

13. Citing the seminal good faith exception case of *U.S. v. Leon*, 468 U.S. 897 (1984).

14. Case No. 08-6235, – F.3d –, 2009 WL 2231658, decided July 28, 2009.

15. 208 F.3d 1190 (2000).

16. “The exclusionary rule is not an individual right and applies only where it results in appreciable deterrence.” ...Because the purpose of the exclusionary rule is to deter police misconduct, *United States v. Leon*, 468 U.S. 897, 906 (1984), in determining whether to apply the rule the court is to weigh the benefits of the resulting deterrence against the costs of applying the rule. *Herring v. U.S.* 129 S.Ct. 695, 700 (2009).

17. 480 U.S. 340, 349-53 (1987).

18. *McCane*, 2009 WL 2231658 at 4.

19. *Humphrey* at 1202 asserts the bright-line rule. Dissenters from *Gant* may feel Justice Stevens statement that *Belton* never went so far is historical revisionism. But in fact it was Justice Brennan, 453 U.S. at 463, who used the term bright-line rule, asserting that was the majority’s intent. The majority referred to it as a “workable” rule, 453 U.S., at 460, 466, and 469, and emphasized it did not mean to undermine *Chimel v. California*, 395 U.S. 752 (1969).

20. See, e.g., *Solis-Avila v. State*, 1992 OK CR 27, 830 P.2d 191. Thanks to Creekmore Wallace and Don Haslam for reminding the author that Oklahoma state courts do not recognize the good faith exception.

21. 955 F.2d 1405 (10th Cir. 1992).

22. *Tomlin* at 343. “Appellant was stopped, forcibly detained, and arrested on private property-a convenience-store parking lot. The impoundment and inventory of his vehicle took place there as well. Norman Police did not inquire whether the owner of the lot (or his agent) wished the vehicle to be removed. (Tr. I 87-88). Appellant asked permission to secure his vehicle and leave it parked at the convenience store until matters could be cleared up, but this request was denied. Norman Police had no need, and no authority, to impound Appellant’s vehicle on the property without consent of the property owner. Because the impoundment was improper, the evidence obtained therefrom must be suppressed, and Appellant’s convictions must be reversed with instructions to dismiss.” *Tomlin*, at 342.

23. April 23, 2009, memorandum by J.H.B. Wilson, Esq., Senior Attorney, Oklahoma Council on Law Enforcement Education and Training (CLEET).

24. *Hudson v. Michigan*, 547 U.S. 586 (2006).

ABOUT THE AUTHOR



Jim Drummond practices criminal defense in Norman, handling trials and appeals in federal and state courts. Previously he has worked as a state and federal public defender. He was recently named chairperson of the OBA Legal Ethics Advisory Panel. He was the inaugural chairperson of the OBA

Criminal Law Section, and also serves on the Boards of the Oklahoma Criminal Defense Lawyers Association and the Oklahoma County Criminal Defense Lawyers Association.

**THE 2009 ANNUAL OKLAHOMA CRIMINAL DEFENSE LAWYERS ASSOCIATION
AWARDS FOR EXCELLENCE IN CRIMINAL DEFENSE DEADLINE OCTOBER 23, 2009 @ 5pm**

Each year your peers in the practice of criminal defense select three of their own to receive the most prestigious awards for excellence in criminal defense achievements in Oklahoma. These awards are the only statewide awards that are nominated and selected by attorneys that practice criminal defense in Oklahoma. The awards are as follows:

The Clarence Darrow Award

Clarence Darrow was born in Ohio in 1857. After being admitted to the bar in 1878, he became a small-town lawyer for nine years.

During WWI he defended anti-war activists and was critical of The Espionage Act that was used to stifle anti-war activities. You need only mention the names of his famous cases to realize his impact on criminal defense; the *Scopes Monkey Trial*, the *Scottsboro 9* and the *Leopold-Loeb Murder Trials*. A 1936 FBI memo to Clyde Tolson, aide-de-camp to J. Edgar Hoover, gave Mr. Hoover some quotes that Clarence Darrow had made in an article entitled *Attorney for the Defendant*. It was suggested that Mr. Hoover could use these quotes in speeches to point out how unscrupulous criminal lawyers stimulate disrespect for law and influence crime conditions.

The award recognizes the efforts of an individual who has, during the year, exemplified the zealous criminal defense advocacy that befits the namesake of the award "Clarence Darrow". It is in the deeds and spirit of Clarence Darrow that this award is given each year for the zealous criminal defense advocacy by an individual attorney. The only qualification requirement is that the event(s) upon which the nomination is based must have taken place during the current year.

The Lord Thomas Erskine Award

Lord Erskine was a Scotsman, the third son of the 10th Earl of Buchan, educated at Edinburgh and Cambridge and called to the bar in 1778. He was a strong advocate and defender of popular liberties and constitutional rights. His defense of Thomas Paine cost him his post of attorney general to the Prince of Wales. The award is given to honor a member of the criminal defense bar who has over the years steadfastly placed the preservation of personal liberties over his or her own personal gain or reputation. The award is a cumulative year award and is not limited to any particular activities in any given year.

The Thurgood Marshall Appellate Advocacy Award

Thurgood Marshall, the grandson of a slave, was born in 1908 in Maryland. In 1930, he was denied admission to the University of Maryland Law School due to the fact that he was black. This event was to direct his future professional life.

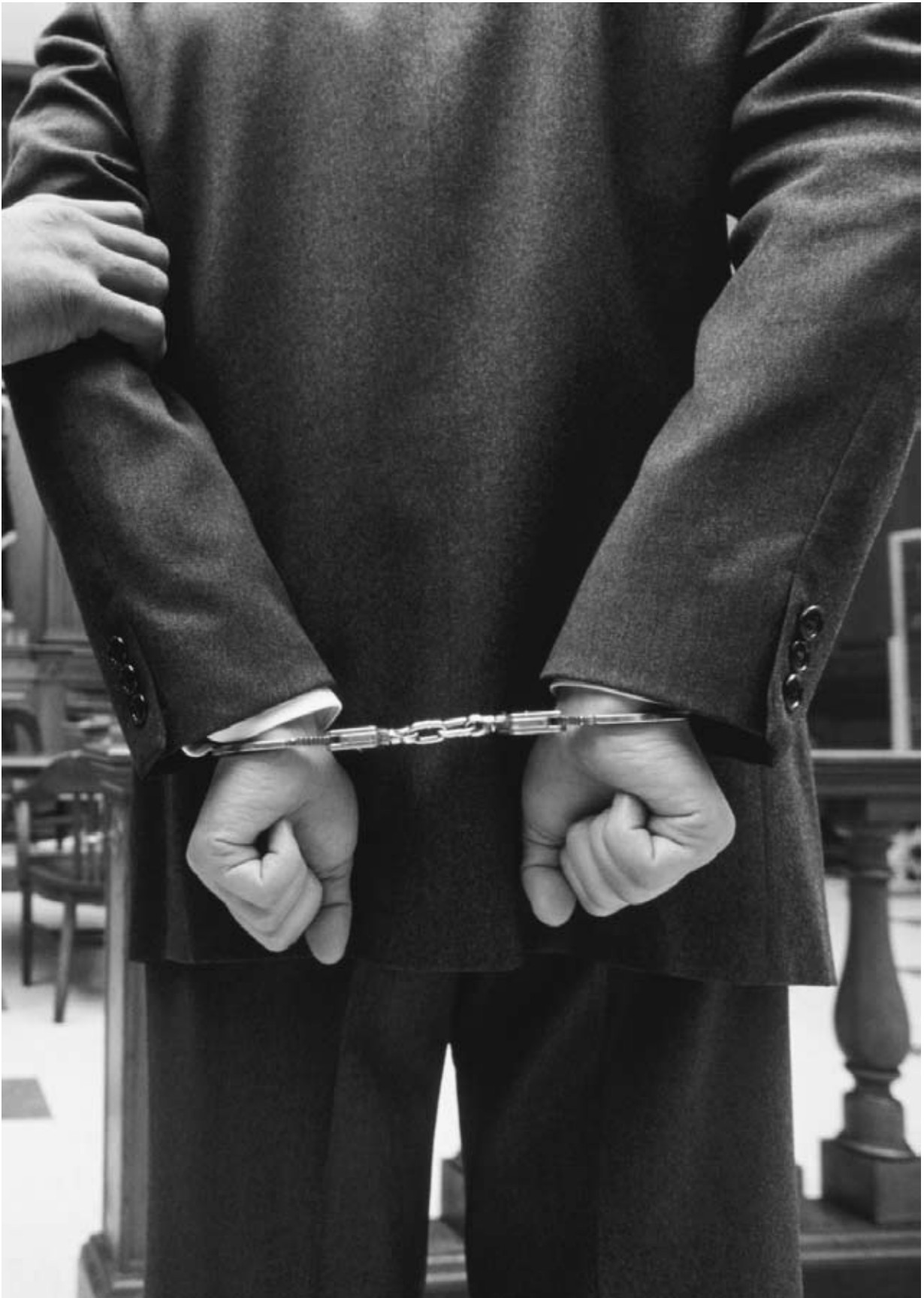
In 1934, he began his association with the NAACP and dismantled school segregation in his 1954 victory of *Brown vs. Board of Education of Topeka*. He later desegregated graduate schools with his victory in *McLaurin vs. Oklahoma State Regents*. As a Justice for the Court of Appeals for the 2nd Circuit, he made 112 rulings that were all upheld before the United States Supreme Court. As Solicitor General for the United States, he won 14 of 19 cases argued before the United States Supreme Court. In 1967, Thurgood Marshall was the first African American appointed to the United States Supreme Court. He was often the lone voice of dissent against the death penalty and always spoke for voiceless Americans in his opinions. He died in 1993.

The only qualification for the awards is that the nominee must be the appellate attorney of record in the decision that formed the basis of the nomination. However, there is no requirement that the decision must have occurred within the current year.

Please submit written nominations and the reasons therefore to:
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The deadline is October 23, 2009. The awards will be announced prior to the OBA Convention and awarded at the OCDLA Annual Meeting on November 5, 2009 at 1:30 p.m. You do not have to be a member of OCDLA to nominate an individual.

Awards not received by October 23, 2009 at the OCDLA post office box will not be considered.



Understanding the Interstate Agreement on Detainers Act: Ten Questions and Answers

By Mark A. Yancey

Whether prosecuting or defending criminal cases in Oklahoma state courts, Oklahoma federal courts, or both, it is essential to have a basic working knowledge of the Interstate Agreement on Detainers Act (IADA).¹ Why? Because it can mean the difference between winning and losing a case. For the prosecutor, a failure to adhere to the built-in “speedy trial” and “anti-shuttling” provisions can lead to the automatic dismissal of your case. These same provisions provide fertile ground for defense counsel to successfully challenge an otherwise valid criminal charge.

The following article is intended to aid Oklahoma criminal law practitioners by providing an overview of the IADA, and by focusing on those provisions of the act that have the potential of derailing a criminal prosecution, whether state or federal.

WHAT IS THE IADA?

The IADA is a congressionally sanctioned interstate compact within the compact clause of the United States Constitution (Art. I, §10, cl. 3).² The United States³ and 48 States, including Oklahoma, have joined the compact.⁴ Louisiana and Mississippi are the only two states that are not parties to the agreement. The IADA establishes standardized procedures for states having outstanding charges and detainers on sentenced prisoners incarcerated in other states to obtain temporary custody of prisoners for trial.⁵ It also helps a sentenced prisoner resolve

pending charges in another state that has filed a detainer against the prisoner.

WHY WAS THE IADA PASSED?

Before the IADA was passed, prisoners subject to detainers from another state were believed to be “seriously disadvantaged” because there was no way for the prisoner to formally demand a speedy trial on charges pending in the other state. Furthermore, because of the outstanding detainers, prisoners were subjected to “close custody” by prison officials. This higher level of security rendered prisoners ineligible for “desirable work assignments” and other “institutional opportunities” that could assist in rehabilitation. The constant transfer of prisoners between institutions could further harm rehabilitative efforts.⁶ To remedy this inequality among prisoners, Congress passed the IADA to encourage the determination and proper status of detainers, require the

expeditious and orderly disposition of outstanding charges, and establish cooperative and uniform procedures among compact members to achieve these goals.⁷

WHAT IS A DETAINER AND HOW DOES THE IADA WORK?

Although the IADA does not specifically define “detainer,” a detainer is generally considered any written notice by a criminal justice agency advising prison authorities that charges are pending against a prisoner in another jurisdiction, and that the prisoner should be held for that agency before being released.⁸ A court ordered writ of habeas corpus *ad prosequendum* commanding production of a prisoner is not considered a detainer within the meaning of the IADA.⁹

The IADA works by regulating the transfer of sentenced prisoners who are subject to detainers: 1) between two party states; 2) from the United States to a party state; and 3) from a party state to the United States. The IADA does not apply to transfers of prisoners within federal or state judicial districts.¹⁰ For example, a prisoner serving a federal sentence in U.S. Penitentiary Leavenworth, Kansas, would not have IADA rights if indicted in the United States District Court for the Western District of Oklahoma. This is because the United States is considered a single state under the IADA.¹¹ Similarly, the IADA does not apply to an Oklahoma state prisoner who is later charged by an Oklahoma District Attorney’s Office because the IADA applies to transfers between party states, not within a state.¹²

According to the language of the IADA, the jurisdiction in which the prisoner is incarcerated and is being transferred from is referred to as the “sending state.” The jurisdiction where the outstanding charge is pending and where the prisoner is being transferred to is the “receiving state.”¹³ This is true even for the United States, which is also referred to as a receiving or sending state.¹⁴

The IADA prisoner transfer process is initiated by one of two separate and distinct mechanisms. One mechanism allows prisoners to affirmatively invoke their rights and be sent to the receiving state to dispose of the outstanding charges. The other allows the prosecuting attorney of the receiving state to demand temporary custody of the prisoner for trial.¹⁵

The prisoner initiated provision found in Article III reads:

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, . . . and there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused the to be delivered to the prosecuting officer and the appropriate court . . . written notice of the place of his imprisonment and his request for a final disposition to be made of the [outstanding charge]...¹⁶

When a sentenced prisoner has a pending detainer, the IADA requires prison officials to notify the prisoner of the “source and contents” of the detainer and the right to demand a speedy trial by making a “request for final disposition of the indictment, information, or complaint on which the detainer is based.”¹⁷ For federal detainees, the United States Marshal’s Service has developed a standardized detainer form (*USM Form 17*) that is served on prisoners when federal charges are pending. This form provides the required notice and allows the prisoner to either elect or decline a speedy trial.

The procedure for lodging detainers based on Oklahoma state charges differs slightly. The District Attorney’s Office simply sends a detainer letter, with a copy of the warrant, to the prison where the prisoner is serving a sentence. If the prisoner is in the Oklahoma Department of Corrections (DOC), once DOC receives the detainer letter and warrant, they also use standardized forms, similar to those used by other states, (*Agreement on Detainers: Forms I and II*) to advise prisoners of their IADA rights, including their right to request a “speedy” disposition of the pending charges. Whether in federal or state custody, if the prisoner elects a speedy trial, prison officials are required to promptly forward the written speedy trial request and a certificate¹⁸ to the prosecutor and court by “registered or certified mail, return receipt requested.”¹⁹

Even if the prisoner declines a speedy trial, the IADA contains a procedure for the prosecutor to demand a transfer for prosecution. The prosecutor initiated provision found in Article IV reads:

The appropriate officer²⁰ of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated. *Provided*, That the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded and transmitted the request . . . *And provided further*, That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.²¹

Prosecutors frequently activate this provision by first lodging a detainer against the prisoner and then issuing a writ of habeas corpus *ad prosequendum*. Oklahoma state prosecutors can also activate this provision by filing a detainer, then signing and delivering a copy of an Oklahoma Department of Corrections "Request For Temporary Custody" form (*Agreement on Detainers: Form V*). Criminal law practitioners must understand that once a detainer is lodged, a subsequent writ of habeas corpus *ad prosequendum* is construed as a "written request for temporary custody," which triggers a prisoner's IADA speedy trial and anti-shuttling rights.²²

Again, a writ of habeas corpus *ad prosequendum* alone does not impact the IADA.

The IADA is sometimes confused with Uniform Criminal Extradition Act (18 U.S.C. §3182). However, when a prisoner demands a speedy trial by requesting "final disposition" of the outstanding charges pursuant to Article III of the IADA, it operates as a "waiver of extradition" rights under the Uniform Criminal Extradition Act and is considered consent by the prisoner to be transferred for both prosecution and service of sentence.²³ Conversely, the rights accorded a prisoner under the Uniform Criminal Extradition Act are generally preserved by the IADA for prisoners being transferred against their will.²⁴ In other words, when a prosecutor files a "written request for tempo-

rary custody" pursuant to Article IV, the prisoner has 30 days to petition the governor of the sending state to "disapprove" the request.²⁵ An exception to the 30-day rule is when the United States is the receiving state and uses a writ of habeas corpus *ad prosequendum* to demand custody of the prisoner. Then, the governor of the sending state cannot ignore the writ and refuse to send the prisoner.²⁶

WHY SHOULD I CARE ABOUT THE IADA?

Because the IADA contains "get out of jail free" provisions! While the IADA provides a comprehensive procedural mechanism for prisoners subject to detainers to transfer between party states to dispose of outstanding criminal charges, it also confers substantive statutory rights²⁷ in the form of "speedy trial" and "anti-shuttling" guarantees. These guarantees must be recognized by criminal law practitioners because a violation of a "speedy trial" or "anti-shuttling" provision can result in the dismissal of charges with prejudice.²⁸

WHERE CAN I FIND THE IADA'S SPEEDY TRIAL PROVISIONS?

The IADA contains two speedy trial provisions, a 180-day clock that is triggered by the prisoner pursuant to Article III(a), and a 120-day clock that is triggered by the prosecutor pursuant to Article IV(c). A prisoner starts the 180-day speedy trial clock by giving "written notice" of his desire for a speedy trial and "caus[ing]" the notice to be delivered to the "prosecuting officer" and "appropriate court."²⁹ The written notice is usually the signed detainer form that is presented to the prisoner by prison officials, explains IADA rights, and allows the prisoner to either demand or decline a speedy trial. A prosecutor starts the 120-day speedy trial clock by lodging a detainer against the prisoner, then issuing a writ of habeas corpus *ad prosequendum* or a standardized "Request For Temporary Custody" form.³⁰ Remember, once a detainer is in place, a writ is construed as a "written request for temporary custody" under the IADA.³¹ The 120-day time period begins to run when the prisoner arrives in the jurisdiction for prosecution.³²

WHAT IS THE REMEDY FOR A SPEEDY TRIAL VIOLATION?

The IADA's remedy for a speedy trial violation is dismissal of the pending indictment, information or complaint.³³ The only remaining

issue is whether the charges will be dismissed with or without prejudice. This is where state prosecutions differ markedly from federal prosecutions. State cases are automatically dismissed with prejudice.³⁴ Federal cases, on the other hand, are treated differently by virtue of an amendment to the IADA. In 1988, Congress added §9, which gives a federal court the discretion to dismiss a case “with or without prejudice” if the United States is the receiving state.³⁵ When considering whether to dismiss the case with or without prejudice, a federal court is required to consider “[t]he seriousness of the offense; the facts and circumstances of the case which led to the dismissal; and the impact of a reprosecution on the administration of the agreement on detainees and on the administration of justice.”³⁶

CAN THE SPEEDY TRIAL TIMES BE EXTENDED OR TOLLED?

Yes! The IADA contains two specific provisions that allow for the extension or tolling of the 180-day and 120-day speedy trial limits. One way the limits can be extended is for a judge, in open court with the prisoner or his counsel present, to find “good cause.” A “good cause” continuance is one that is deemed “necessary” or “reasonable” by the court.³⁷ If the court fails to make a clear record about the basis for the continuance (*i.e.*, whether “good cause” existed) the speedy trial time limits may not be properly tolled.³⁸ In Oklahoma state courts, the lack of a jury docket during the speedy trial time period is not considered “good cause.”³⁹ Some federal courts have found the excludable time provisions of the “Speedy Trial Act” (18 U.S.C. §3161(h)) the equivalent of “good cause” under the IADA, and therefore toll the IADA’s speedy trial time limits as well.⁴⁰

A second way to toll the speedy trial under the IADA is for the court to determine if the prisoner is “unable to stand trial.”⁴¹ A delay for a competency exam, or due to the prisoner’s physical infirmity would render the defendant “unable to stand trial.”⁴²

WHAT IS ANTI-SHUTTTLING ?

Anti-shuttling (or anti-shuffling) is the IADA’s prohibition against transferring a prisoner back and forth between party states before the new charges are completely disposed of. This means when a prisoner is transferred to the receiving state pursuant to the IADA his “trial” must be “had” before he is transferred back to his “original place of imprisonment.”⁴³ The 10th Circuit Court of Appeals has held that the word “trial” in the context of the IADA does not include the prisoner’s sentencing. Therefore, the return of the prisoner to state custody after his federal conviction [whether by guilty plea or trial] but before his federal sentencing does not violate the anti-shuttling rule.⁴⁴ Many state courts considering the issue also agree the prisoner’s “trial” does not encompass sentencing.⁴⁵

The anti-shuttling rule applies to both prisoner and prosecutor initiated transfers.⁴⁶ It also extends to all pending charges for which detainees have been filed in the receiving state.⁴⁷ For instance, assume the Oklahoma County District Attorney’s Office has charged and placed a detainer on a prisoner serving a sentence in the Texas Department of Corrections. Also assume the Custer County District Attorney’s Office has pending charges and a detainer for the same Texas prisoner. If the Oklahoma County District Attorney’s Office or prisoner initiates an IADA transfer to dispose of the charges, the Custer County charges must also be fully resolved before the prisoner is returned to Texas. As you can see, this area is ripe for potential mistakes. That is why the IADA requires that transfer requests be disseminated by prison officials to all prosecutors and courts in the receiving state that have detainees lodged against the prisoner.⁴⁸ For federal cases only, there is one IADA authorized procedure for returning state prisoners before their cases are complete without violating the anti-shuttling provisions. Section 9(2) of the IADA allows a federal court to order the return of a state prisoner as long as the prisoner has notice and an opportunity to be heard.⁴⁹

“A second way to toll the speedy trial under the IADA is for the court to determine if the prisoner is ‘unable to stand trial.’”

Finally, an anti-shuttling violation carries the same potential penalty as a speedy trial violation — dismissal of the charge(s) with prejudice.⁵⁰ The harshness of the penalty is premised on the theory that “prison treatment and rehabilitation programs are negatively impacted when a prisoner is indicted and transferred to a new jurisdiction and then returned to the original place of imprisonment before trial is had on the new charges.”⁵¹

CAN IADA RIGHTS BE WAIVED OR FORFEITED?

Yes! The IADA was passed for the benefit of prisoners — therefore, the IADA’s speedy trial and anti-shuttling rights can be waived or forfeited despite the act’s mandatory language.⁵² In fact, there is no requirement that IADA waivers be knowing and intelligent because IADA rights are statutory and not constitutional in nature.⁵³ Here are some of the ways the IADA’s speedy trial and anti-shuttling rights are commonly (and sometimes inadvertently) waived or forfeited:

- 1) By the prisoner signing an express waiver of IADA rights;⁵⁴
- 2) By the prisoner requesting to be returned to the sending state before final disposition of the charges;⁵⁵
- 3) By the prisoner’s attorney requesting the prisoner be returned to the sending state before final disposition of the charges;⁵⁶
- 4) By the prisoner’s attorney agreeing to a continuance beyond the IADA’s speedy trial time limit;⁵⁷
- 5) By the prisoner not timely raising IADA violations before trial⁵⁸ or guilty plea;⁵⁹ and
- 6) By the prisoner escaping after invoking their right to a speedy trial.⁶⁰

HOW CAN I TELL IF THE IADA IS APPLICABLE TO MY CASE?

By following a simple four step process! This step-by-step approach will help you determine if the IADA may be applicable to your case.

Step one: determine if the prisoner is serving a *term of imprisonment in a penal or correctional institution*.

A prisoner merely being held pending trial cannot benefit from the “IADA.”⁶¹ Nor can a sentenced county jail prisoner awaiting transfer to a penal or correctional institution because

the purpose of the IADA is to prevent interference with institutional care and rehabilitation, which is normally not available at a jail designed for temporary custody of prisoners.⁶²

Step two: determine if the prisoner has an outstanding *detainer* lodged against them by a party state.

If no detainer is in place then the IADA does not apply. Prosecutors are free to move prisoners back and forth between jurisdictions using writs of habeas corpus *ad prosequendum* without offending the IADA if no detainer has been lodged.⁶³

Step three: determine if the detainer is based on an *untried indictment, information or complaint*.

This means a new unrelated charge. The IADA does not apply to detainees based on probation, supervised release, immigration, parole, or suspended judgment or sentence violations.⁶⁴

Step four: determine if the prosecutor has made a *written request for temporary custody* (by lodging a detainer and writ of habeas corpus *ad prosequendum*) or, if the prisoner *caused to be delivered to the prosecuting officer and the appropriate court written notice of his request for final disposition of the outstanding charge(s)*.

Courts have strictly construed the provision allowing prisoners to demand a speedy trial finding that the speedy trial time limits do not begin to run when the prisoner signs the written request for final disposition, but when the written notice is in the proper form and actually received by both the court and prosecutor. The onus is on the prisoner to ensure their IADA speedy trial demand lands in the hands of the proper authorities. This is true even when prison and other government officials fail in their responsibilities to deliver the prisoner request to the court and prosecutor.⁶⁵

* * *

The IADA only applies to your case if all four of the preceding conditions are present.

CONCLUSION

Oklahoma criminal law practitioners need to understand the IADA because the United States and the state of Oklahoma are parties to the agreement. This means the IADA may apply to transfers of sentenced prisoners between the state of Oklahoma and the United States, and between the state of Oklahoma and most other

“The IADA does not apply to detainees based on probation, supervised release, immigration, parole, or suspended judgment or sentence violations.”

states. If applicable, the IADA's speedy trial and anti-shuttling provisions provide potential pitfalls for prosecutors and missed opportunities for defense counsel. Prosecutors must understand that filing a detainer and issuing a writ of habeas corpus *ad prosequendum* triggers a prisoner's IADA speedy trial rights and, that once transferred, the prisoner should not be returned to the original place of incarceration before the charges are disposed of. Defense counsel must also understand these provisions and the fact that IADA rights can be inadvertently forfeited if not recognized and properly preserved.

1. Pub. L. No. 91-538, 84 Stat. 1397 (1970) (18 U.S.C. Appendix II).
2. Because it is a congressionally sanctioned compact, the IADA is subject to federal rather than state construction. *Carchman v. Nash*, 473 U.S. 716 (1985).
3. The United States includes the District of Columbia, Commonwealth of Puerto Rico, and any territory. IADA, §2, Art. II(a).
4. Oklahoma joined the compact in 1977 with the passage of 22 O.S. §§1345-1349.
5. See *New York v. Hill*, 528 U.S. 110, 111 (2000); IADA §2, Art. I.
6. See *United States v. Mauro*, 436 U.S. 340, 353 (1978) (quoting H. R. Rep. No. 91-1018, at 3 (1970); S. Rep. No. 91-1356, at 3 (1970)); *United States v. Pursley*, 474 F.3d 757, 762 (10th Cir. 2007); IADA §2, Art. I.
7. IADA, §2, Art. I.
8. See *Carchman v. Nash*, 473 U.S. 716, 719 (1985); *Gilbreath v. State*, 651 P.2d 699, 701 (Okla. Crim. App. 1982).
9. *United States v. Mauro*, 436 U.S. 340, 360-61 (1978).
10. *Hunter v. Samples*, 15 F.3d 1011, 1012 (11th Cir. 1994); *United States v. Walling*, 974 F.2d 140, 141 (10th Cir. 1992); *United States v. Stoner*, 799 F.2d 1253, 1256 (9th Cir. 1986); *United States v. Bryant*, 612 F.2d 806, 810 n.6 (4th Cir. 1979); *United States v. Krohn*, 558 F.2d. 390, 392 (8th Cir. 1977).
11. See *United States v. Walling*, 974 F.2d 140, 141 (10th Cir. 1992).
12. See *Id.*
13. IADA §2, Art. II(b) and (c).
14. IADA, §2, Art. II(a).
15. IADA §2, Arts. III and IV.
16. IADA §2, Art. III(a).
17. IADA §2, Art. III(c).
18. The certificate from the prison official is required to contain a statement about the term of commitment under which the prisoner is being held, the time the prisoner has already served, the time remaining to be served, the amount of good time earned, the time of parole eligibility, and any parole agency decisions that have been made. IADA §2, Art. III(a). The Oklahoma Department of Corrections uses a standardized "Certificate of Inmate Status" form (*Agreement on Detainers: Form III*) to comply with the IADA's directive.
19. IADA §2, Art. III(b).

20. The phrase "appropriate officer" means the prosecutor. See *United States v. Woods*, 465 F. Supp 89, 91 (E.D. Ky. 1979), *aff'd* 621 F.2d 844 (6th Cir. 1980).
21. IADA §2, Art. IV.
22. *United States v. Mauro*, 436 U.S. 340, 361-63 (1978); *Gray v. Benson*, 443 F. Supp. 1284, 1287 (D. Kan. 1978).
23. IADA §2, Art. III(e); *Cuyler v. Adams*, 449 U.S. 433, 443-50 (1981).
24. See *Yellen v. Cooper*, 828 F.2d 1471, 1474 (10th Cir. 1987) (citing *Cuyler v. Adams*, 449 U.S. 433 (1981)).
25. IADA §2, Art. IV(a); *Cuyler v. Adams*, 449 U.S. at 444 (1981).
26. *United States v. Graham*, 622 F.2d 57, 59 (3rd Cir. 1980) (citing *United States v. Mauro*, 436 U.S. 340 (1978)); *United States v. Bryant*, 612 F.2d 799 (4th Cir. 1979).
27. The rights granted by the IADA are "statutory, not fundamental, constitutional, or jurisdictional in nature." *Greathouse v. United States*, 655 F.2d 1032, 1034 (10th Cir. 1981).
28. See, e.g., *Alabama v. Bozeman*, 533 U.S. 146 (2001) (anti-shuttling violation); *United States v. Schrum*, 504 F. Supp. 23 (D. Kan. 1980), *aff'd* 638 F.2d 214 (10th Cir. 1981) (anti-shuttling violation); *Bell v. State ex. rel. Lane*, 714 P.2d 205 (Okla. crim. App. 1986) (speedy trial violation).
29. IADA §2, Art. III(a).
30. IADA §2, Art. IV(a) and (c).
31. *United States v. Mauro*, 436 U.S. 340, 361-63 (1978); *Gray v. Benson*, 443 F. Supp. 1284, 1287 (D. Kan. 1978).
32. See *Ullery v. State*, 988 P.2d 332, 340 (Okla. Crim. App. 1999).
33. IADA §2, Art. V(c).
34. IADA §2, Art. V(c); See, e.g., *Bell v. State ex. rel. Lane*, 714 P.2d 205 (Okla. Crim. App. 1986) (granting writ of mandamus and ordering district court to dismiss charges with prejudice due to IADA speedy trial violation).
35. Anti-Drug Abuse Act of 1988; Pub.L. 91-538, §9, as added Pub. L. 100-690, Title VII, §7059, Nov. 18, 1988, 102 Stat. 4403.
36. IADA §9(1); See, e.g., *United States v. McKinney*, 395 F.3d 837 (8th Cir. 2005) (dismissal without prejudice); *United States v. Kurt*, 945 F.2d 248 (9th Cir. 1991) (same); *United States v. Martinez*, 376 F. Supp. 2d 1168 (D. N.M. 2004) (same); *United States v. Small*, 209 F. Supp. 2d 1114 (D. Colo. 2002) (same).
37. IADA §2, Arts. III(a) and IV(c).
38. See, e.g., *Birdwell v. Skeen*, 983 F.2d 1332 (5th Cir. 1993) (finding speedy trial violation when state court failed to make proper findings); *Bell v. State ex. rel. Lane*, 714 P.2d 205 (Okla. Crim. App. 1986) (same).
39. *Gallimore v. State*, 944 P.2d 939, 943-45 (Okla. Crim. App. 1997).
40. *United States v. Collins*, 90 F.3d 1420 (9th Cir. 1996); *United States v. Cephas*, 937 F.2d 816 (2nd Cir. 1991); *United States v. Odom* 674 F.2d 228 (4th Cir. 1982).
41. IADA, §2, Art. VI.
42. See, e.g., *Ullery v. State*, 988 P.2d 332, 341 (Okla. Crim. App. 1999) (competency exam); *Hicks v. State*, 737 P.2d 948 (Okla. Crim. App. 1987) (physical infirmity).
43. IADA, §2, Arts. III(d) and IV(e).
44. *United States v. Coffman*, 905 F.2d 330, 331-33 (10th Cir. 1990).
45. See, e.g., *State v. Leyoa*, 906 P.2d 910, 912 (Utah App. 1995) (collecting cases).
46. IADA, §2, Art. III(d) and IV(e).
47. *Id.*
48. IADA, §2, Art. III(d) and IV(b).
49. IADA, §9(2).
50. IADA, §2, Art. III(d) and IV(e).
51. See *United States v. Pursley*, 474 F.3d 757, 762 (10th Cir. 2007).
52. *United States v. Eaddy*, 595 F.2d 341, 344 (6th Cir. 1979).
53. *Yellen v. Cooper*, 828 F.2d 1471, 1474 (10th Cir. 1987).
54. *United States v. Fischer*, No. 05-2343, 2006 WL 2468304, *2 (10th Cir. August 28, 2006) (unpublished).
55. *Gray v. Benson*, 608 F.2d 825, 827 (10th Cir. 1979).
56. *United States v. Scallion*, 548 F.2d 1168, 1170 (5th Cir. 1977).
57. *New York v. Hill*, 528 U.S. 110, 114-18 (2000).
58. *Webb v. Keohane*, 804 F.2d 413 (7th Cir. 1986); *United States v. Scallion*, 548 F.2d 1168, 1174 (5th Cir. 1977); *Contra, Ullery v. State*, 988 P.2d 332 (Okla. Crim. App. 1999) (considering merits of defendant's argument even though he failed to raise IADA speedy trial violation before trial).
59. *United States v. Hach*, 615 F.2d 1203, 1204 (8th Cir. 1980); *United States v. Palmer*, 574 F. 2d 164 (3rd Cir. 1978).
60. Although not technically a waiver, IADA §2, Art. III(f) states the prisoner's request for final disposition is "void" upon escape.
61. *United States v. Muniz*, 1 F.3d 1018, 1025 (10th Cir. 1993); *United States v. Wilson*, 719 F.2d 1491, 1494-95 (10th Cir. 1983).

62. *United States v. Taylor*, 173 F.3d 538, 541 (6th Cir. 1999)(internal quotations and citation omitted); *Crooker v. United States*, 814 F.2d 75, 77 (1st Cir. 1987); *United States v. Wilson*, 719 F.2d 1491, 1495 n.1 (10th Cir. 1983).

63. See *Greathouse v. United States*, 655 F.2d 1032 (10th Cir. 1981); *Henager v. State*, 716 P.2d 669 (Okla. Crim. App. 1986), *overruled on other grounds*; *Gilbreath v. State*, 651 P.2d 699 (Okla. Crim. App. 1982).

64. See, e.g., *Carchman v. Nash*, 473 U.S. 716, 725 (1985) (probation violation); *United States v. Romero*, 511 F.3d 1281, 1284 (10th Cir. 2008) (supervised release); *United States v. Gonzalez-Mendoza*, 985 F.2d 1014 (9th Cir. 1993) (immigration detainer); *McDonald v. New Mexico Parole Board*, 955 F.2d 631, 633 (10th Cir. 1991) (probation or parole violation warrants); *White v. State*, 763 P.2d 718 (Okla. Crim. App. 1988) (probation revocation); *Engs v. District Court of Tulsa County*, 645 P.2d 1035 (Okla. Crim. App. 1982) (applications to revoke suspended judgments and sentences).

65. See, e.g., *United States v. Jones*, 454 F.3d 642 (7th Cir. 2006) (finding no IADA violation where U.S. Marshal failed to deliver prisoner demand to court or prosecutor); *Rodriguez v. Aguilera*, No. 02-10298, 2003 WL 21054707 (9th Cir. May 5, 2003) (unpublished) (holding IADA not violated when prison officials failed to forward speedy trial demand to court); *United States v. Paredes-Batista*, 140 F.3d 367 (2nd Cir. 1998) (holding no IADA speedy trial violation when U.S. Marshal failed to present prisoner demand to court and United States Attorney). *United States v. Dent*, 149 F.3d 180 (3rd Cir. 1998) (holding letter from prisoner requesting speedy trial pursuant to IADA insufficient to trigger speedy trial clock because letter failed to meet all requirements of Article III); *United States v. Collins*, 90 F.3d 1420 (9th Cir. 1996) (citing) *Fex v. Michigan*, 507 U.S. 43, 46-53 (1993) (finding U.S. Marshal not agent of court so IADA speedy trial clock began when prisoner demand delivered to court not when given to Marshal).

ABOUT THE AUTHOR



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The Right to a Speedy Trial: The Path Less Traveled

By Ken Adair

John C. Client was a plant manager at a local manufacturing company. He had been living and working in Smalltown for years, raising a family, paying his taxes and participating actively in his church. Mr. Client was then unexpectedly arrested on drug charges that were filed a number of years ago. Mr. Client now comes to you with this serious legal problem, previously unaware of the existence of the charges and warrant until he was taken into custody, and now his entire life is hanging in the balance.

This is not a new scenario. Authorities can investigate cases, take reports and file charges with a probable cause affidavit – all without the knowledge of the defendant. Sometimes a defendant is arrested and the state fails to timely file charges, allowing the defendant to be released. Days, weeks or even months later, the state then files charges and a warrant is issued for the defendant's arrest. If that warrant is never served, then this serious situation can arise. This article explores how a defense attorney can handle this issue after the arrest has finally been made.

A CONSTITUTIONAL RIGHT

The United States and Oklahoma Constitutions afford a defendant the right to a speedy trial.¹ A person becomes "accused" for purposes of speedy trial analysis either when charges are filed (whether by information or indictment) or when an arrest for the offense in question has occurred, whichever happens first.² When the amount of delay approaches one year, it is "presumptively prejudicial" and speedy trial implications are invoked.³

The right to a speedy trial imposes on the prosecution of the obligation to proceed with reasonable dispatch in order to avoid oppression and prevent unnecessary delay in criminal prosecutions.⁴ The state is responsible for undertaking reasonable efforts to secure the presence of a defendant for trial.⁵ The lack of diligence - indeed, the lack of any meaningful effort - on the part of the state in failing to prosecute defendant for seven years is violation of his rights to a speedy trial.⁶ Dismissal is the only remedy when the fundamental constitutional right to a speedy trial is violated. The U. S. Supreme Court in *Strunk v. United States* noted that "such severe remedies are not unique in the application of constitutional standards. In light of the policies which underlie the right to a speedy trial, dismissal must remain, as *Barker* noted, 'the only possible remedy.'"⁷

Oklahoma's Court of Criminal Appeals agreed, stating in *Wilson v. District Court of Oklahoma County*⁸ that the U.S. Supreme Court's holding in *Klopfer v. North Carolina*⁹ makes the Sixth Amendment applicable to the states

through the Fourteenth Amendment and guarantees the accused the right to a speedy trial.

THE BARKER 4-FACTOR TEST

The *Wilson* Court also found that a court must consider four factors in a speedy trial analysis. These four factors became the national standard for U.S. Constitutional analysis of speedy trial rights in *Barker v. Wingo*, 407 U.S. 514, 92 S. Ct. 2182 (1972). These are 1) length of delay, 2) reason for delay, 3) the defendant's assertion of his/her right, and 4) prejudice to the defendant.

Factor One: Length of Delay

In 1992, the U.S. Supreme Court addressed the integral relationship between the length of the delay (factor one) and the prejudice to the defendant (factor four), holding that a six-year delay attributable to the government's sloth constituted such egregious length that the showing of prejudice was made entirely by the length of the delay in the case of *Doggett v. United States*, 505 U.S. 647, 112 S.Ct. 2686 (1992).¹⁰ The *Doggett* Court held that the first *Barker* factor of length of delay entails a double inquiry. First, "to trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay..."¹¹ Further, the court noted that post-accusation delay is generally found to be "presumptively prejudicial" at least as it approaches one year.¹² It also found the six-year delay attributable to the government to be "six times as long as that generally sufficient to trigger judicial review."¹³

The second of this double inquiry is "the extent to which the delay stretches beyond the bare minimum needed to trigger judicial examination of the claim."¹⁴ Stated another way, this part of the inquiry correlates the length of delay factor with the prejudice to the defendant factor, because "the presumption that pretrial delay has prejudiced the accused intensifies over time."¹⁵

Doggett was indicted on federal drug charges in 1980 but left the United States before his arrest occurred. The government discovered *Doggett* imprisoned in Panama and requested that he be returned to the United States but never followed up on its request. After tracing him to Colombia, the government gave up all effort to find him and, thus, was unaware that he returned to the United States in 1982. From

that point he lived openly under his true name – indeed, a simple credit check in 1988 revealed an outstanding warrant for him and he was thereupon arrested some eight and a half years after his indictment. Because he had been absent from the country for two of those years, the speedy trial delay attributable to the government was six years.¹⁶

Factor Two: Reason for Delay

In *Doggett*, the reason for delay was found to be, simply, government negligence in not pursuing the accused.¹⁷ Although negligence is a more neutral reason for delay compared to deliberate bad faith, courts must consider mere negligence and sloth because "the ultimate responsibility for such circumstances must rest with the government rather than with the defendant".¹⁸

In *Doggett*, the defendant lived openly under his true name for over six of the eight and a half year delay between his charge and arrest. During this time, *Doggett* was not incarcerated and made no demand for speedy trial because he had no idea that charges had been filed against him until he was arrested eight and a half years later. The only reason he was not prosecuted during this time is that the government simply made no effort to find him.

In its analysis, the court noted that "[f]or six years, the Government's investigators made no serious effort to test their progressively more questionable assumption that *Doggett* was living abroad, and, had they done so, they could have found him within minutes. While the Government's lethargy may have reflected no more than *Doggett's* relative unimportance in the world of drug trafficking, it was still findable negligence, and the finding stands."

Factor Three: Defendant's Assertion of His Right

Doggett also addresses the factor of whether and to what extent a defendant has asserted his or her right to a speedy trial. There was no evidence indicating *Doggett* knew of his indictment until the moment of his arrest. It is extremely important to note, that simply due to ignorance of the indictment, *Doggett* was "not to be taxed for invoking his speedy trial right only after his arrest."¹⁹

Invoking a speedy trial right, however, even with substantial delay, and where the cause of the delay rests squarely with the state, does not always guarantee a successful speedy trial

“...the blame for the delay rested squarely with the state, an unreliable state witness, an arguably abusive trial court...”

argument. In *Ellis v. State*²⁰ the defendant clearly asserted his right to speedy trial throughout the proceedings. However, the prosecutor assigned to the case had a conflict, and the case had to be continued.²¹ Additionally, the state filed a motion to continue just two weeks before the resetting of the trial because it learned a witness (a jailhouse snitch) stated the defendant told him the murder weapon was thrown into a lake.²² Thereafter, the state sought to drain the lake and was forced to litigate the right to drain the lake with adjacent property owners resulting in a 13-month delay.²³ Consequently, the gun was never found.²⁴ Defendant then petitioned the Court of Criminal Appeals for a writ of mandamus to disqualify the judge, resulting in further delay.²⁵ The Court of Criminal Appeals ordered the judge off the case noting an “abuse of discretion as the facts demonstrate an appearance of impropriety.”²⁶ Notwithstanding defendant’s repeated assertion of his rights, and the substantial delay (approximately two and a half years), and where the blame for the delay rested squarely with the state, an unreliable state witness, an arguably abusive trial court, and where the court noted further violations of defendant’s statutory rights to have his case reviewed,²⁷ the Oklahoma Court of Criminal Appeals ruled against defendant’s speedy trial rights noting “...reasonable reasons for the delay, the absence of significant prejudice — including some evidentiary benefit Appellant received as a result of the delay — and the less-than egregious deprivation of liberty.”²⁸

Factor Four: Prejudice to the Defendant

The primary point of contention in *Doggett* was the government’s claim that no speedy trial violation had occurred because *Doggett* had not shown “precisely how he was prejudiced by the delay between this indictment and trial.”²⁹ The *Doggett* Court answered by holding that impairment of an accused’s ability to effectively defend himself is the “most serious” form of prejudice

because it “skews the fairness of the entire system.”³⁰ It noted *Doggett* claimed this kind of prejudice, “and there is probably no other kind that he can claim, since he was subjected neither to pretrial detention nor, has he successfully contended, to awareness of unresolved charges against him.” *Id.*

However, the *Doggett* Court also held that “affirmative proof of particularized prejudice is not essential to every speedy trial claim” and that “excessive delay presumptively compromises the reliability of a trial in ways that neither party can prove, or for that matter, identify.”³¹ *Doggett* notes “that impairment of one’s defense is the most difficult form of speedy trial prejudice to prove because time’s erosion of exculpatory evidence and testimony ‘can rarely be shown.’”³² Thus, *Doggett* was entitled to dismissal of charges because the delay in his case was so great, in and of itself, as to constitute unalterable prejudice — to him, to the government, and to the fundamental administration of justice.

The 10th Circuit Court of Appeals in *Jackson v. Ray*³³ took the ruling in *Doggett* and appears, at first glance, to create a bright line rule that six years is the minimum amount of delay required to create a presumption of prejudice sufficient to relieve a defendant of the obligation to show particularized prejudice.³⁴ *Doggett* does not appear to intend any such bright line rule, and goes to great lengths to set out that such particularized prejudice is virtually impossible to prove. Thus, many practitioners argue that *Jackson* appears to be in conflict with clear reasoning in *Doggett*. Further, practitioners and courts should carefully read footnote 4 in the *Jackson* decision, which distinguishes itself as a ruling “in the context of habeas review” and specifically leaves open the question of whether, on direct appeal, a defendant can be relieved of the burden of showing particularized prejudice where the delay is less than six (6) years. *Id.* Accordingly, the 10th Circuit has not actually created a bright line rule. Finally, defense counsel should specifically allege, what *Doggett* calls, “the most serious” prejudice, and that is, that there is an impermissible risk “the defense will be impaired by dimming memories and loss of exculpatory evidence.” *Doggett* at 654.

PRACTITIONER'S POINTERS FOR EVIDENTIARY HEARINGS

Issues can arise in a speedy trial evidentiary hearing with regard to the prejudices that a defendant encounters. The types of particularized prejudice are too numerous to set forth here, but some are addressed below with a practical standpoint as to how to handle specific issues.

- *Continuances*: Why ask for a delay or continuance or agree to the same if a speedy trial is an issue in the case? Make sure all objections and the specific reasons for such objections to additional delays are duly noted in court minutes and orders. It can be fatal to an otherwise legitimate speedy trial claim where the defendant initiates further delays.
- *Witnesses*: Defendants are often deprived of ability to locate and interview witnesses because they die or move. Further, witnesses' recollections can be altered, diminished or fade away altogether over time.
- *Multiple cases*: Defendants lose the ability to resolve multiple counts and cases together in the interest of justice, even in multiple jurisdictions. Arguably, whether such resolution is in the interest of justice is best determined contemporaneously, not years later. Further, it would be disingenuous of courts or prosecutors to suggest that such negotiated resolution of multiple cases is not in the interest of justice, because they resolve cases in that manner almost daily. It would also be disingenuous to suggest a defendant has no entitlement to have his cases resolved in the interest of justice.
- *Drug charges*: A client accused of a drug charge (in particular, manufacturing methamphetamine) had a pending charge in another county. Since the filing of the "manufacturing" charge, the defendant had been placed on probation in the other county, had gone through counseling and drug treatment and had years of sobriety, gainful employment, and payment of state and federal taxes. To prosecute such a drug case long after the defendant had been rehabilitated, and where the defendant was clearly not the same person who had been arrested and let go years ago without charges being filed, can be argued as extremely prejudicial.

- *Documentary evidence*: Attorneys should appear for preliminary hearing with a copy of the relevant case law, and move to dismiss the case for violation of a speedy trial right. Bring documentary evidence such as tax records, employment records, W-2 forms, utility bills, and a copy of the defendant's driver's license (including old drivers licenses or a drivers license history), the NCIC report printed by law enforcement at the time of the defendant's arrest (that shows the authorities have the defendant's date of birth, SSN, driver's license number and current and former addresses), history of child support payments if made through DHS, paid traffic tickets (especially if those were obtained during the pendency of a case and they were not arrested on the outstanding warrant at issue). Further, bringing any renewal of a driver's license, car tag, or other official interaction with the government goes a long way to show the accused was not absconding from justice and was living openly and notoriously in the community.
- *Testimony*: Subpoena and call officers to testify that they never engaged in any conduct to attempt to locate the defendant. If officers testify that they figured the warrant will someday catch up with the accused, then argue that this mindset is a violation of the defendant's rights and ignores the burdens which are placed squarely on the government.

CONCLUSION

An accused has a fundamental constitutional right to a speedy trial. The burden is on the government to timely prosecute a crime. Prosecutors must be vigilant to recognize speedy trial violations and be willing to dismiss cases involving clear violations. Defense attorneys, likewise, must be on the lookout for speedy trial violations and then prepare to litigate them.

1. Oklahoma Constitution Sections 6 and 20 of Article II. Sixth Amendment to the U.S. Constitution.

2. *United States v. Marion*, 404 U.S. 307, 320, 325, 92 S.Ct. 463, 466 (1971); *State v. Powers*, 1997 OK CR , ¶¶ 12-13, 952 P.2d 997, 999-1000.

3. *Doggett v. United States*, 505 U.S. 647, 112 S.Ct. 2686 (1992).

4. *Pickle v. Bliss*, 1966 OK CR 128, ¶38, 418 P.2d 69.

5. *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182 (1972).

6. *Doggett v. United States*, 505 U.S. 647, 112 S. Ct. 2686 (1992).

7. *Ibid. Strunk v. United States* 412 U.S. 434, 439-440, 93 S.Ct. 2260, 2263 (1973), citing *Barker v. Wingo*, *supra*.

8. 1970 OK CR 58 ¶ 10, 471 P.2d 939, 942 (dismissing robbery with firearms charge after seven year delay).

9. 386 U.S. 213, 87 S.Ct 988 (1967).

10. *Doggett v. United States*, 505 U.S. 647, 112 S.Ct. 2686 (1992). [emphasis is added by me].

11. *Id.* at 651-652, 112 S.Ct. at 2690.

12. *Id.* at 652 fn. 1, 112 S. Ct. at 2691 fn. 1 [emphasis added by me].

13. *Id.* at 657-658, 112 S. Ct. at 2694. See also, *United States v. Samson*, 1993 WL 350182 (D. Guam 1993) (18 month delay "well exceed[ed]" whatever period of delay is needed to trigger the speedy trial analysis under *Barker*); *Barker v. Wingo*, 407 U.S. 514, 533, 92 S. Ct. 2182, 2193-2194 (five year delay is "extraordinary"). The Oklahoma Legislature seems to have arrived at one year for those incarcerated and 18 months for those on bond as the analysis triggering point, at least for purposes of state law; it has done this by mandating the courts to review cases in which the defendant is either incarcerated pretrial or on bond awaiting trial for one year and 18 months respectively after the filing of charges. See 22 O.S. § 812.1. This statute does not speak to the situations where a defendant is not arrested during the period of delay, and is merely, for purposes of speedy trial analysis, "the accused." This omission is due, no doubt, to the impossibility of mandating judicial review of cases when the defendant is not present due to the state's failure to pursue an arrest after filing charges.

14. *Doggett*, 505 U.S. at 652, 112 S. Ct. at 2691.

15. *Id.*

16. 505 U.S. at 67, 657-658, 112 S. Ct. at 2688, 2694.

17. 505 U.S. at 652-654, 112 S. Ct. at 2691.

18. *Id.*

19. 504 U.S. at 654, 112 S. Ct. at 2691.

20. 2003 OK CR 18, 76 P.3d 1131.

21. *Id.* at ¶34

22. *Id.* at ¶36

23. *Id.* at ¶¶40-41

24. *Id.*

25. *Id.* at ¶42

26. *Id.*

27. 22 O.S. § 812.1 provides as follows:

A. If any person charged with a crime and held in jail solely by reason thereof is not brought to trial within one (1) year after arrest, the court shall set the case for immediate review as provided in Section 2 of this act, to determine if the right of the accused to a speedy trial is being protected.

B. If any person charged with a felony crime who is held to answer on an appearance bond is not brought to trial within eighteen (18) months after arrest, the court shall set the case for immediate review as provided in Section 2 of this act, to determine if the right of the accused to a speedy trial is being protected.

C. In the event a mistrial is declared or a conviction is reversed on appeal, the time limitations provided for in this section shall commence to run from the date the mistrial is declared or the date of the mandate of the Court of Criminal Appeals.

28. *Ellis* at ¶64

29. 505 U.S. at 654, 112 S. Ct. at 2692.

30. *Id.*

31. 505 U.S. at 655, 112 S. Ct. at 2692-2693.

32. *Id.*

33. 390 F.3d 1254.

34. *Id.* at 1264.

ABOUT THE AUTHOR



Ken Adair offices in Okmulgee and practices primarily in the area of criminal defense. He has practiced as both a contract public defender and staff attorney with OIDS. He raises Scottish Highland Cattle and plays in a classic rock band. Ken is also a graduate of Gerry Spence's Trial Lawyers College in Dubois, Wyo.

NOTICE OF MEETING FOR CREDENTIALS COMMITTEE

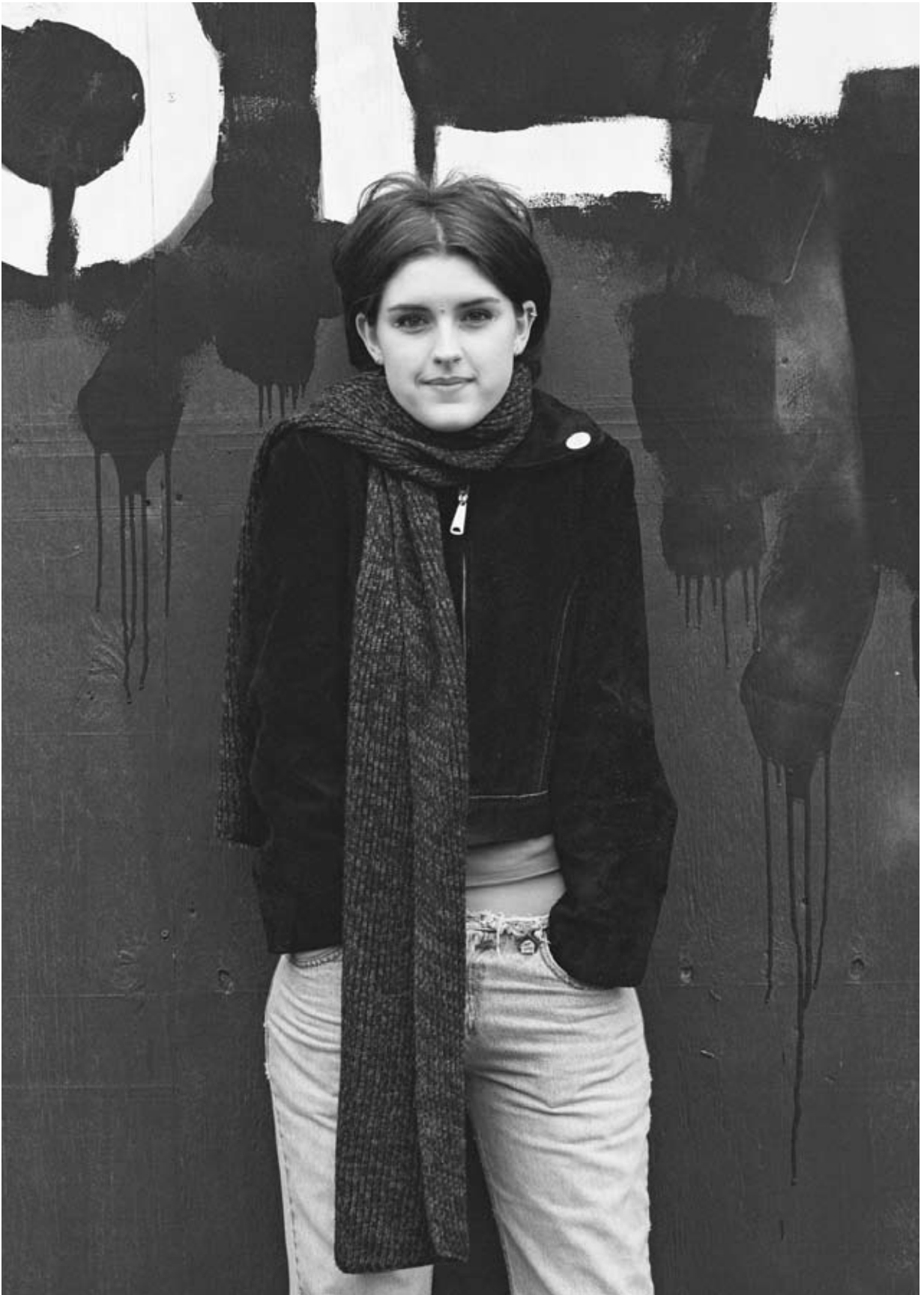
The Credentials Committee of the Oklahoma Bar Association will meet Thursday, Nov. 5, 2009, from 9:00 - 9:30 a.m. in the Executive Board Room of the Sheraton Hotel, One North Broadway, Oklahoma City, Oklahoma in conjunction with the 105th Annual Meeting. The Committee members are: Chairperson Luke Gaither, Henryetta; Michael C. Mordy, Ardmore; David K. Petty, Guymon; and W. Mark Hixson, Yukon.

NOTICE OF MEETING FOR RULES & BYLAWS COMMITTEE

The Rules & Bylaws Committee of the Oklahoma Bar Association will meet Thursday, Nov. 5, 2009, from 10:00 - 10:30 a.m. in the Executive Board Room of the Sheraton Hotel, One North Broadway, Oklahoma City, Oklahoma in conjunction with the 105th Annual Meeting. The Committee members are: Chairperson Deborah A. Reheard, Eufaula; Julie A. Evans, Tulsa; Robert S. Farris, Tulsa; Reneé DeMoss, Tulsa and Peggy Stockwell, Norman.

NOTICE OF MEETING FOR RESOLUTIONS COMMITTEE

The Resolutions Committee of the Oklahoma Bar Association will meet Thursday, Nov. 5, 2009, from 10:45 - 11:00 a.m. in the Executive Board Room of the Sheraton Hotel, One North Broadway, Oklahoma City, Oklahoma in conjunction with the 105th Annual Meeting. The Committee members are: Chairperson Mack K. Martin, Oklahoma City; Molly A. Aspan, Tulsa; Dwight L. Smith, Tulsa; M. Courtney Briggs, Oklahoma City; James T. Stuart, Shawnee and Deirdre Dexter, Tulsa



Youth Court in Oklahoma

By T. Anne Mize

What to do with children and our youth is an age-old question for the Criminal Justice System. Recidivism rates, community responsibility, parenting and legal requirements all play a part in decisions that are made in this arena. While many arguments can be made for different areas and options within the Juvenile Court System, one option that has met with much success in Oklahoma is the Youth Court Program. Youth Courts have been utilized in Oklahoma for many years. Currently, such programs are being successfully utilized by communities such as Tulsa, Broken Arrow and most recently, Owasso.

Youth Court accomplishes several things for Oklahoma's justice system. It involves our children in the legal process, teaching them valuable lessons about how our democracy works, it provides an opportunity to reach young people before they become fully involved in the Criminal Justice System, and gives attorneys within the state of Oklahoma the opportunity to give back to the community and positively affect future generations.

Youth Court is a program in which juvenile offenders are prosecuted, defended and ultimately judged by their peers. The participants in youth court consist of two groups – the offenders accepted into the Youth Court program and those that complete an eight week training session to become the “court.” “Offenders” are usually placed into the Youth Court Program by prosecuting attorneys in each respective jurisdiction. Working with social service organizations such as Youth Services, prosecutors are able to select candidates that are first time offenders or who have only committed minor criminal infractions. School Resource Officers, counselors and

administrators in the local schools are also excellent resources that should be tapped when determining children that are good candidates for the program and who could ultimately benefit from this type of early intervention.

Members of the “court” are typically recruited in the local schools when presentations are given by organizations such as Youth Services, with the participation of local attorneys involved in the program. These presentations are often times coordinated with middle school or high school law classes and are designed to inform the students about the program and give them the opportunity to get involved. The court consists of a defense attorney, a prosecuting attorney, a judge or possibly a panel of judges, a bailiff and clerk. Any “court” can be tailored to the amount of participants in the program. For example, not every youth court has a clerk and/or a bailiff. Once a student applies to the program, they are required to complete an eight week training session before participating. These sessions consists of instruction regarding ethics / confidentiality, criminal

“‘Offenders’ involved in the program are often times very young or they are kids who do not have a history of making criminal mistakes.”

law, criminal procedure, evidence and trial practice. At the end of the eight weeks of training, a mini bar exam is held and must be passed for each participant to continue with the Youth Court program.

The benefits to the children that participate in the Youth Court program are arguably immeasurable. The program gives participants the opportunity to learn firsthand how our legal system works by directly participating in its operation. It can provide them with a better understanding of what it means to be involved in both community and school and it gives them valuable experience in public speaking and working together as part of a team that can be utilized later on in life.

“Offenders” involved in the program are often times very young or they are kids who do not have a history of making criminal mistakes. The idea at work in Youth Court is to get them involved in a more positive experience than the typical visit to juvenile court and to set them on the right path before such problems become habitual. Much has been said about the negative effects of peer pressure, but peer pressure can be used for positive results as well. By being “judged” by their peers at this early stage, many children are more likely to respond positively to their situation. Youth Court also provides for more creative sentencing than the traditional court system. Many times “offenders” are given the option to provide things such as verbal or written apologies which many retailers greatly appreciate. Some “offenders” have also been required to perform work or projects that directly benefit their “victims.” Helping out at home has even been a very successful and appreciated sentence by more than one parent. These more creative sen-

tencing options generally work out to be positive learning experiences for all parties involved and many times, even provide the “victim” with a positive experience.

Making the benefits of the Youth Court Program possible requires the cooperation of many different entities but perhaps the most important member of the Youth Court team is the attorney advisor. Every youth court session has an attorney present to answer questions, help all parties prepare for any questioning of the defendant, victims or witnesses and to make sure various rules and the law are followed. All classes are also taught by volunteer attorneys who spend at least an hour with the young participants during each of the eight weeks of training. Local attorneys have also been successfully utilized in the recruitment of participants in the Youth Court Program.

Youth Court provides an outstanding opportunity for the local attorney to give back to their community. It offers a perfect venue to shape young minds and build positive relationships with today’s youth. Such an experience allows for opportunities to interact with children from a variety of different backgrounds and circumstances and helps to develop excitement about the legal system. Youth Court can deliver lifelong benefits to anyone involved, regardless of their position. From the “offenders” to the “court,” to the attorney advisors, all have the chance to participate and learn from one another. Positive interaction with the youth of today and the mentoring of our children through programs such as Youth Court is critical in developing the leaders of tomorrow.

ABOUT THE AUTHOR



T. Anne Mize graduated from the TU College of Law and College of Business in 2000. She started her legal career in the Tulsa County District Attorney’s Office. After the District Attorney’s Office, she became the city prosecutor for the City of Broken Arrow. She now has a criminal defense practice and serves as an associate municipal judge for the City of Tulsa.

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‘His Works Do Follow Him’

Judge Henry Furman and the Dawn of Oklahoma Criminal Law

By Bryan Lester Dupler

Oklahoma’s first presiding judge of the Criminal Court of Appeals was a progressive, pragmatic, Christian Democrat and one of the most luminous criminal lawyers in Texas and the Oklahoma and Indian Territories. As a judge, he possessed the qualities of a powerful analytical mind, a traditional deterrence theory of crime control and a temperament of decency, common sense and fair play. Judge Henry Marshall Furman served as presiding judge from 1909 to 1916 and left us with a body of interesting and quotable cases about life and law at the dawn of the Sooner State. He died after a lengthy illness, from Bright’s Disease, on April 10, 1916.¹

Born June 20, 1850, in Society Hill, S.C., Henry Marshall Furman was the son of Dr. and Mrs. Richard Furman. Dr. Furman was a prominent Baptist minister and founder of Furman University in Greenville, S.C. Henry Furman was educated in Greenville and Sumter, S.C., and worked on farms until age 21, when he set out to join his older brothers in Texas.² He sailed from Charleston to New Orleans in 1871, and studied law for a year in the office of his relative, Judge J.L. Whittaker. Furman made it to Texas the following year and taught school, and was soon admitted to the bar at Brenham.

Four years later, Furman was elected county attorney of Bell County, but resigned the office the following year and opened a practice in Fort Worth. He met and married Frances Hutcheson in 1879. The couple had two children, Henry Jr. and Florence. The Furman family moved to Denver, Colo., in 1890.³

In his long career at the bar, Henry Furman prosecuted and defended myriad trials and appeals in the courts of Texas, Colorado, and the Oklahoma and Indian Territories. In 1891, while living in Denver, he defended the Harvard-educated physician and lawyer Thomas Thatcher Graves against a charge of murder. Dr. Graves was accused of poisoning his elderly benefactor, the heiress Josephine Barnaby, with a poisoned bottle of whisky sent in the mail. The alleged motive was Ms. Barnaby’s dissatisfaction with Dr. Graves’ services as attorney and adviser. Prosecutors argued that Ms. Barnaby was, at the time of her death, intent on removing Dr. Graves from her will, in which he stood to receive \$25,000.⁴ Dr. Graves admitted he had sent a bottle of whiskey to Ms. Barnaby just weeks before her death. Whether this was the death bottle, and whether it was poisoned by Dr. Graves or others, were the issues at trial. Furman’s client was convicted and sentenced to hang, but won a reversal on

appeal. Dr. Graves committed suicide before his second trial in 1893, but always protested his innocence. The "Death in the Mail" case made Henry Furman legitimately famous, as it was widely followed in the national newspapers of the day and warranted an extensive 1921 article in *American State Trials*, almost 30 years after the verdict.⁵

Furman brought his family to Indian Territory in 1895, first settling in Ardmore, then moving to Ada in 1904. In the Twin Territories, Furman was among those early lawyers, including Moman Prueitt, Lee and A.C. Cruce, Robert L. Williams, Stilwell Russell and Temple Lea Houston, whose services were sought in high profile, often capital trials. In a system which still marginally allowed the use of private prosecutors, bitter antagonists in one capital case were often co-counsel in the next.⁶

Henry Furman appears in a colorful account (written 40 years later) of the 1896 murder trial of "Little Bud" Watkins, the first trial held in U.S. District Court for the Southern District of Indian Territory, then sitting at Ardmore, after Congress extended homicide jurisdiction to the federal courts in Indian Territory. Little Bud and a Gainesville, Texas, stockman named Wyatt Williams apparently harbored a mutual grudge born of personal grievances on the cattle trail. When Williams and Little Bud met again, in Little Bud's Ardmore chili joint, they exchanged heated words and both reached for their guns. Little Bud's bullet found Wyatt Williams' chest, and Williams dropped dead, his .45 revolver half-cocked in his hand.⁷

Furman, by then "the foremost criminal lawyer of Texas," sat at a defense table "piled high with law books."⁸ The defendant, just beyond his teens, was part Chickasaw, part white and had influential friends in the Indian Territory. At the government's table sat U.S. Attorney A.C. Cruce, brother of the future Gov. Lee Cruce.⁹ The trial was a sharp contest. Furman "filled the record with exceptions while Cruce, a great civil law authority, knew little of the twists, turns and shrewd practices of great criminal cases."¹⁰ Cruce apparently eclipsed his adver-



sary with a powerful closing argument, and the jury returned a guilty verdict. That judgment was re-versed on appeal. A conviction and life sentence followed in a second trial, again reversed. In his third trial, Little Bud was acquitted. After six years in federal custody, Bud returned to his farm outside of Ardmore.¹¹ A.C. Cruce and Henry Furman would work as co-counsel in several later trials, including the infamous murder trial of Sam Ashton, who was acquitted.

Judge Thomas Doyle said Furman's civic work showed the "benevolence of his heart was in full accord with his master mind."¹² He "dedicated

great amounts of time, personal sacrifice and resources to" raising the \$50,000 required to build a Masonic Children's Home and was thereafter recognized as the founding father of that institution in Darlington.¹³ Furman was a well-known speaker in Indian Territory, discoursing and debating statehood and self-government at summer barbecues and outdoor socials.

In the 1907 Democratic preferential primary race that preceded Oklahoma statehood, Furman received the second highest number of votes for nomination to one of the two new Oklahoma seats in the United States Senate. This outcome entitled him to the Democratic nomination. However, the State Democratic Committee had resolved in a gentlemen's agreement that Oklahoma's Democratic candidates for Senate would include one candidate from each of the former Territories. Despite the urging of some of his friends to claim the nomination which was his by right, Furman waived the nomination in favor of a blind, brilliant lawyer from Lawton, Thomas P. Gore.¹⁴

The first Legislature of the new state of Oklahoma passed H.B. 397, "creating a Criminal Court of Appeals, and defining the jurisdiction of said court." Gov. Haskell signed the bill on May 18, 1908, and appointed Henry Furman of Ada as the court's first judge. The governor then filled the two remaining seats on the new court by appointing H.G. Baker of Muskogee and Thomas H. Doyle of Perry. The Criminal

Court of Appeals convened in session for the first time on Sept. 16, 1908, and elected Henry Furman as its presiding judge.¹⁵

Judge Furman served seven years and seven months on the Criminal Court of Appeals. His opinions often surprised those who thought him too defense-oriented to make an appellate judge. A devout Christian, he wrote a forceful prose laced with biblical allegories. A practical, populist and distinctly moral temperament defined his work. He sensed the court's important purpose in establishing a working legal system for the 46th state and forging a new social order from the anarchic violence of the Twin Territories. To a progressive believer in the power of deterrence, the formula for an end to frontier lawlessness was fair trials for the accused and swift punishments for the guilty:

This court is largely responsible for the property, the liberty, and lives of the people of Oklahoma. Next to honor, human life is the most sacred thing on earth. He who needlessly takes it must be held to a strict responsibility for his action. Laws are made to be enforced. Punishments are prescribed to be inflicted. If men do not respect the law they must at least be made to fear it, and to know that while justice may move with a leaden foot, it crushes with an iron heel.¹⁶

[I]t is an outrage on law and justice and a crime against society for appellate courts to turn criminals loose who have been legally proven guilty, or to send their cases back, to be retried at the expense of the people, upon legal quibbles which are without substantial justice, and which are only shadows, cobwebs and flyspecks on the law.¹⁷

The sooner that desperate and lawless men learn that human life has ceased to be the cheapest thing in Oklahoma, the better it will be for them. They must control their passions or suffer the just penalties of violated law. In order that this improved condition may be made permanent, juries must be careful, firm, and fearless in the discharge of their duties, and courts must uphold their verdicts when it appears from the record that they were rendered upon sufficient evidence and were fairly obtained, and that the defendant was not deprived of any of his substantial rights. These things are necessary for the well-being of society and the protection of the people in the

peaceable enjoyment of life, liberty and the pursuits of happiness.¹⁸

If he was stern in his resolve to punish the criminal, the presiding judge professed an equally vigorous commitment to legal equality and evenhanded justice:

[T]he defendant in this case is an ignorant Indian, who cannot speak or understand the English language. So much the greater reason why the trial court should have been vigilant in guarding his right to a fair trial... [T]rials must be fair, or convictions will not be sustained by this court. We are determined that every person in Oklahoma, regardless of race or nationality or social position or poverty, can rely upon the absolute fairness of the courts of the state.¹⁹

[A]ppellant is only a poor washerwoman... and is dependent upon the charity of her attorneys for her defense; but she is a human being, and her rights are as sacred in the eyes of the law as though she were the wealthiest and most influential society favorite in Oklahoma. It is the duty of this court to see that the poor and friendless are fully protected in the enjoyment of the rights given them by the law... A fair trial, when charged with crime, is the birthright of every citizen of Oklahoma, it matters not how poor and humble the defendant may be or how numerous and influential those who are interested in the prosecution.²⁰

Judge Furman was a legal theorist of singular ability, and the court he led inspired admiration in many corners, from radical trade unionists to President Theodore Roosevelt to the immortal sage of evidence law, Dean John Wigmore.²¹ A work of this length cannot do justice to the depth or breadth of Judge Furman's jurisprudence, but a few quotes will reveal his analytical powers and encourage the reader to consult the many opinions he handed down to us.

In *Ex Parte Jefferies*,²² Judge Furman offered a powerful rebuttal to the fashionable prejudice against circumstantial evidence:

There is a deep-rooted and widespread feeling, not only on the part of the public, but among many members of the legal profession and many courts, that circumstantial evidence is to be considered as a chain, of which each circumstance relied upon constitutes a separate and distinct link, and that each such circumstance or link must be

proven by the same weight and force of evidence and must be as convincing in its conclusiveness of guilt as though it was the main issue in the case. The fallacy of this theory lies in the fact that it makes every such circumstance or link stand by itself and depend alone upon its own strength. It matters not how strong some links in a chain may be; the weaker links will not gain strength by being connected with the stronger links. It is manifest that no chain can be stronger than its weakest link. It is utterly impracticable to apply the chain theory to matters of belief. The man who would apply this theory to his private affairs would never accomplish anything.

The chain theory is largely responsible for the misconception and consequent prejudice which exists in the minds of so many persons against circumstantial evidence... Instances have been industriously collected in which persons have been wrongfully convicted upon circumstantial evidence which are invariably used for the purpose of intimidating courts and juries and preventing them from enforcing the law upon this class of testimony. But a fair investigation will show that these instances are rare when compared with the great volume of business transacted, and that they have occurred at times and places remote from each other. An investigation will show that a much larger per cent. of persons have been convicted improperly upon direct and positive evidence. The Savior of mankind was crucified upon direct and false testimony.²³

Another memorable discourse on the law of evidence is found in *Price v. State*,²⁴ where Judge Furman constructed an explanation of the concept of *res gestae*:

Action, without thought, is imbecility of mind, and cannot therefore be either meritorious or criminal. It is true that men often act upon impulse, but this impulse is the result of previous thought which has caused a mental condition. There must be a Union of both action and intention to constitute a felony. Any amount of action without intention is not felonious, and any amount of intention without action is also not felonious. Both of these elements are indispensable in cases of felonies. One and the same

act may be either criminal or praiseworthy, according to the intention with which it is done. By way of illustration: Suppose that at midnight A., with an incendiary purpose, applies a torch to the house of B., in the city, and destroys it by fire. He is a criminal of the blackest hue. Suppose that a great conflagration is raging in the city, and A., being in charge of the fire department of the city, at the same hour applies a torch to the house of B., and destroys it by fire (which is often done), for the purpose of burning ahead of the fire and thus checking the force of the conflagration; his act is legal, and free from blame. So, in the trial of a criminal case, it is the intention which gives character to the act and makes it either justifiable or a violation of the law. Now we cannot look into the minds and hearts of men and see what their intentions are. We can only determine their intentions by considering all of the facts which are connected with the matter under investigation, whether they precede, occur at the identical time, or follow the main fact, and which shed light upon the main act done. These facts constitute the *res gestae*.²⁵

In *Oklahoma v. Coyle*,²⁶ to the delight of labor reformers and left-wing radicals, Judge Furman upheld criminal convictions based on a price-fixing conspiracy in the cotton trade. The presiding judge found the antitrust statute a legitimate protection of working people against the "natural crime" of exploiting honest labor, and more importantly for him, in keeping with the divine command:

Labor was made by God; capital is made by man. Labor is not only blood and bone, but it also has a mind and a soul, and is animated by sympathy, hope, and love; capital is inanimate, soulless matter. Labor is the creator; capital is the creature. If all of the capital in the world was destroyed, a great injury would thereby be inflicted upon the entire human race; but the bright minds, the brave hearts, and the strong arms of labor would in time create new capital, and thus the injury would be ultimately cured... Labor is always a matter of necessity. Capital is largely a matter of luxury. Labor has been dignified by the example of God. The Savior of mankind was called the "carpenter's son." We are told in the Bible that "the love of money is

the root of all evil." This statement is confirmed by the entire history of the human race. The love of money is the cause of the organization of trusts and monopolies. With what show of reason and justice, therefore, can the advocates of monopoly be heard to say that capital is the equal of labor?

... Agriculture is the only occupation followed by men which was instituted by divine command. Savages and barbarians may exist without the cultivation of the soil, but civilization in its true sense begins and ends with the plow. The farmer gives value received for every dollar he digs out of the ground. He not only earns every dollar he gets, but he earns a great many dollars he never gets. For these reasons the facts charged in these indictments constitute a natural crime, for their result would be to enable appellees to reap where they had not sown and to eat in idleness the bread earned by the sweat of the farmers brow. A single drop of sweat upon the brow of honest labor shines more brightly and is more precious in the eyes of God and is of more benefit to the human race than all of the diamonds that ever sparkled in the crown of any king. If the state did not protect the farmers of Oklahoma against such conspiracies as this, the law would be a miserable, contemptible farce, a snare, a mockery, a burden, and a delusion. We are glad to know that there is a growing disposition upon the part of the appellate courts of the United States to recognize the justice of and to sustain anti-trust legislation, and that common sense and substantial justice are taking the place of the obsolete and unjust distinctions and intricacies of the common law.²⁷

In an impressive body of homicide cases which remain worthy of careful study by our students and practitioners, Judge Furman's decisions spoke with elegance and precision. *Morris v. State*²⁸ contains an unforgettable discussion of the distinction between murder and manslaughter:

The law is not seeking victims; it does not set up an angelic standard by which men shall be tried; it makes allowance for the weakness and imperfection of human nature. The result is that, if for any reason a defendant who is charged with a felonious homicide can prove that at the time the kill-

ing occurred he was in such a state of terror or rage, or was otherwise incapable of premeditation or forming a design to effect the death of some human being, or if the evidence for the state indicates the same state of mind, he cannot be guilty of murder under the statutes above quoted, unless it be proven by the evidence that his mental condition at the time grew out of his own intentional wrongful and illegal conduct, of such a character as to show that the act of killing was the result of premeditation and formed design. Therefore, if the killing takes place after an attempt has been made by the deceased to commit a crime, and if, as the result of such attempt, the defendant, under the influence of such fear, rage, or terror, takes the life of deceased, at a time when the defendant was incapable therefrom of premeditating or forming a design to effect the death of a human being, his act could not be more than manslaughter, even though it might not immediately follow such an attempt on the part of the deceased.²⁹

Another passage from the *Morris* opinion reveals the doctrine of heat of passion through the chivalric imagination of a southern gentleman.

Suppose that A., upon returning to his home, finds his sister, mother, daughter, or wife murdered, or, worse, dishonored. He learns the details of the crime. This might throw him into a frenzy of passion. The trees, rocks, and all inanimate things would cry, "Shame! Shame! Shame!" The fires of perdition might blaze in his heart; reason might reel and stagger on its throne. If, in this state of mind, he should pursue and overtake the incarnate fiend, in human form, who had done this wrong or who had wrought this deed of infamy, and should slay him, who would say that under this condition of mind he was capable of having formed a premeditated design to unlawfully effect the death of the party slain, and would be guilty of murder? It may be said that this is an extreme illustration. This is granted. But, it must be remembered that it is the extreme case that tests the accuracy of a rule of law. We have presented this view for the purpose of preventing a misunderstanding as to what we believe to be the spirit of the law upon the subject of murder. The statute which states that we shall construe all penal laws liberally and in the

furtherance of justice requires us to look more to the spirit than to the letter of the law. This is in harmony with the Divine law, which says, "The letter killeth; 'tis the spirit that giveth life."

... The mere fact that defendant was angry when he fired the fatal shot does not prevent his act from being murder. If it did, it would be seldom indeed when a defendant could be convicted of this offense. But few persons are so depraved and so deeply sunken in moral turpitude as to be able to break into the sacred house of life and shed its precious stream with minds absolutely free from anger, resentment, terror, or some other disturbing passion.³⁰

Judge Furman undeniably possessed the sensibilities of the southern gentry from which he descended. The family home, and its domestic inhabitants, were to be protected and revered. The law rightly concerned itself with punishing depredations against women, children and family harmony. He therefore regarded seduction and adultery as distinctly wicked violations of the social order. These sentiments may sound quaint to our modern ears, but our first presiding judge was deadly serious about the protection of familial and marital honor. In *Ex parte Burris*,³¹ a defendant jailed to answer a charge of adultery brought habeas corpus seeking a reduced bail. The state supported the detention with an incriminating and threatening letter from defendant to another's wife. The petitioner received no sympathy, and no bail reduction, from Judge Furman. Indeed, said he: "It should have been larger."³²

A country is simply an aggregation of homes, and no country can rise superior to the sanctity and purity of its homes. Therefore, whenever a man invades the sanctity of a home and debauches the wife of another, he is guilty of treason against society and becomes an enemy to the human race. The sooner such men are sent to the penitentiary and the longer they are kept there the better it will be for society.

Petitioner... complains bitterly that as the result of his confinement he is losing in flesh and that his clothes are becoming entirely too large for him. If he will take a philosophical view of the situation he can console himself with the reflection that this may not be an unmixed evil, for as his blood becomes thinner and cooler it may have the effect of moderating the ardor of his affections for another man's wife... Seducing other men's wives and then threatening to kill the injured husband on sight if he objects to his wife's defilement are things which the law will not sanction, tolerate, or condone. Such men must either restrain their passions, leave the state, or expect to spend their time in jails or in the penitentiary.

...[I]llicit love is a most prolific source of crime and assassination... Human experience teaches that when a wife has been seduced she hates her husband and will not hesitate at any means to destroy him in order that she may gratify her illicit love. Many revolting assassinations have taken place in Oklahoma which were prompted by this motive alone, as is abundantly shown by the records of the courts.³³

Before the modern child welfare agency and child support enforcement, prosecutions for seduction often set the stage for determinations of paternity, pledges of marriage and establishing responsibility to support illegitimate children. Even where a seduction prosecution failed in these salutary purposes, Judge Furman intended to see the offender meet with justice. In *Hast v. Territory*,³⁴ the court affirmed a conviction and six-year prison term for statutory rape of a previously chaste female (essentially criminal seduction of a virgin under age 18). Judge Furman offered these striking views of the crime.

The offense of which the defendant has been convicted is the blackest in the catalogue of crimes. It is a much graver crime than that of rape by force. A rape fiend is generally carried away by the sudden irresistible impulse of the strongest passion to which man is heir. As soon as the crime is

“...as his blood becomes thinner and cooler it may have the effect of moderating the ardor of his affections for another man's wife...”



committed, he may deeply regret it. It is true that he has committed a fearful outrage upon the body of his victim; but her soul remains pure, and she may still be a loving mother, a trusted wife, and an honored member of society. None of these things can exist in a case of seduction. The seducer acts with the utmost deliberation. He coolly lays siege to the citadell of his victim's heart, and, by all manner of flattery, promises, and protestations of love, he gains her affections and subjects her will to his. This is not the work of a moment, but it extends over days and weeks and maybe months of time. The appellant was over 20 years the senior of this unsuspecting country girl. He was a man of experience and property. She was a mere child. There was no blacker and more deadly treachery in the heart of Judas Iscariot when he betrayed the Savior of mankind with a kiss, than there is in the heart of the seducer, when in the sacred name of love he violates the body and crushes the soul of his unfortunate and trusting victim, merely to gratify his base animal passion. She is as powerless in his hands as a sparrow in the talons of a hawk; as a lamb in the bloody jaws of a wolf. He not only outrages her body, but he —

Ne'er can give her back again
That which he has taken away,
The brightest jewel woman wears
Throughout her little day.
The brightest and the only one
Which from the cluster riven
Shuts out forever woman's heart
From all its hopes of heaven.

No punishment can be too great for the seducer. Under the Mosaic law, the penalty of death was inflicted for this offense. The

seducer was taken beyond the gates of the city and stoned to death. If this was the law now, there would not be so much impurity in our country. Which is worse, to kill the body and let the soul live, or to kill the soul and let the body live? One is physical death, the other spiritual assassination. The courts and juries of this state cannot be too vigilant in protecting the innocent girls of our country against the wiles and machinations of such incarnate fiends in human form. The virtue of our girls is the most sacred thing this side of Heaven. The man who boasts that he can take a thousand dollars and beat a prosecution for seduction as appellant did had better leave this state if he desires to preserve his liberty. Of course, no one should be convicted upon suspicion; but where a defendant has been found guilty of this infamous and detestable offense, after having had a fair and impartial trial, and the evidence clearly shows his guilt — as it does in this case — it would be a crime against society and treason to virtue to set the verdict aside.³⁵

Among the early court's most lasting reforms is the doctrine of harmless error. In Judge Furman's time, an extremely technical common law jurisprudence existed uneasily alongside 18th century American constitutional reforms — particularly the allowance of counsel to the accused in felony trials and appeals. The strict construction of statutes and pleadings at common law frequently made even a good indictment or information difficult to sustain against a skilled procedural attack. At the dawn of the 20th century, progressive legal minds viewed the technicalities of the common law as a frequent hindrance to substantial justice.³⁶ Judge Furman had often used intricacies of the common law to the advantage of his accused clients; as a jurist he knew they were the means by which shrewd lawyers defeated meritorious charges.

The enforcement of the doctrine of harmless error in Oklahoma will greatly improve the character of our criminal trials. Lawyers will be compelled to try their cases upon their actual merits, and will cease devoting so much time in attempting to force technical errors into the record. The needless waste of much valuable time and the expenditure of a great deal of money

will be saved, and far better results will be reached in the administration of justice, and the courts will gain the confidence and respect of the people, and acts of mob violence will cease to disgrace our State.

The reversal of the just convictions of the guilty, upon purely technical questions, is the prime cause of want of confidence in the courts. This want of confidence often results in mob violence on the part of the long-suffering and outraged public. We have the highest possible authority for this statement, for we are told in the Bible that:

"Because sentence against an evil work is not executed speedily, therefore the heart of the sons of men is fully set in them to do evil." (Ecclesiastes, 8-11).

When a defendant has been properly charged with an offense and fairly tried and convicted, and the evidence sustains the conviction, we will not reverse the case upon any technicality or exception which did not work an injustice to the defendant.³⁷

The new Oklahoma Legislature had enacted an important set of reforms of the criminal law, and Judge Furman was one of its most determined defenders. In the Laws of 1909, the Legislature had repealed "the common-law doctrine of a strict construction of penal statutes," and established "the equitable doctrine of a liberal construction of such statutes."³⁸ The Criminal Court of Appeals was "unconditionally committed" to the new doctrine³⁹ and would construe the statutory law "according to its spirit and reason, so as to enable it to reach and destroy the evil at which it was aimed, and thereby effect the object for which it was enacted and promote justice."⁴⁰ The Laws of 1909, in sections 6704 and 6705, also abolished "all of the artificial distinctions of the common law in indictments or informations,"⁴¹ and did thus crumble the walls of

that ancient refuge, stronghold, and citadel of defense of murderers, thieves, perjurers, and all other desperate criminals, that indictments must be certain to a certain intent in every particular, and place them upon a common-sense basis, and make an indictment sufficient if a person of ordinary understanding can know what was intended, and forbid the courts from holding insufficient any indictment or informa-

tion, unless the defects therein are of such a character as to prejudice the substantial rights of the defendant upon the merits.⁴²

The Legislature also provided in section 6957 of the Laws of 1909 that on appeal "the court must give judgment without regard to technical errors or defects, or to exceptions which do not affect the substantial rights of the parties." In this measure, Judge Furman saw the destruction of "that ancient heresy of the common law that error presumes injury, and by its terms absolutely binds this court to disregard any and all technical errors, defects, and exceptions, unless the party complaining thereof can show from the record that he has been deprived of some substantial right thereby to his injury."⁴³

Section 6005 of the Revised Laws of 1910 further emphasized the court's obligation to do substantial rather than technical justice, providing:

No judgment shall be set aside or new trial granted by any appellate court in this state in any case, civil or criminal, on the ground of misdirection of the jury or the improper admission or rejection of evidence, or as to error in any matter of pleading or procedure, unless, in the opinion of the court to which application is made, after an examination of the entire record, it appears that the error complained of has probably resulted in a miscarriage of justice, or constitutes a substantial violation of a constitutional or statutory right.⁴⁴

To Judge Furman, section 6005 embodied

a legislative acknowledgment and establishment of the doctrine of harmless error for which this court has unflinchingly stood from the day of its organization. Those who have been criticizing the court on account of its decisions should turn their batteries on the Legislature who passed this law and on the Governor who approved it. It vindicates everything this court has said on this question, and, it matters not what the future personnel of this court may be, it settles the law of Oklahoma unless repealed by the Legislature.⁴⁵

The Criminal Court of Appeals thus served notice that matters of technical form would not hold sway over substantial justice.

When the Legislature has made a change in legal procedure, it is the duty of the courts

to lay aside their preconceived ideas, and construe such legislation according to its spirit and reason. We are not in sympathy with those who believe in the infallibility of the common-law rules of criminal procedure, or that form, ceremony, and shadow are more important than substance, reason, and justice. This court does not propose to grope its way through the accumulated dust, cobwebs, shadows, and darkness of the evening of the common-law rules of procedure; but it will be guided, as the statutes above quoted direct, by the increasing light and inspiration of the rising sun of reason, justice, common sense, and progress . . . The effect of the statutes hereinbefore quoted is to prevent disputes over mere technical questions of procedure. If properly construed, they destroy legal quibbling. Their purpose is to eliminate from a trial all immaterial matters, and thereby better secure the triumph of the party who ought to succeed upon the actual merits of the case...⁴⁶

It has been the settled policy of this court from the day of its organization not to reverse any conviction where the defendant was fairly tried and clearly proven to be guilty upon any error of the trial court which did not deprive the defendant of a constitutional right. Courts are not established as an arena in which contending counsel may use the processes of the law as a game of skill, but their sole purpose is to enforce justice, punish criminals, and suppress vice, and it is their duty to disregard all errors which do not involve substantial rights and result in material injury to the defendant. This is the fundamental principle upon which all of the decisions of this court are based, and in conformity with this principle we do not hesitate to exercise our power to reform and modify judgments so as to cure if possible any error committed by the trial court.⁴⁷

In *Ostendorf v. State*,⁴⁸ and other cases,⁴⁹ Judge Furman suggested to defense counsel that the liberal construction of penal statutes and the doctrine of harmless error warranted a change of tactics at trial and on appeal. Lawyers should indeed “do everything in their power that is fair and legal to protect the substantial rights of their clients, and in so doing they should be upheld by the courts,”⁵⁰ but too many lawyers were arguing outmoded technical irregularities

rather than the merits of their cases. “Their capital consists chiefly of their knowledge of obsolete technical rules. Therefore they desire this court to enforce these rules, and thereby perpetuate the chains which have bound justice hand and foot for so long a time.”⁵¹ Judge Furman encouraged trial and appellate counsel to move beyond obsolete technicalities of the common law and focus their forensic skills on the factual merits of the case:

As long as lawyers disregard the oft-repeated requirement of this court that they must try their cases upon their actual merits, and persist in quibbling over mere trifles, which are only shadows, cobwebs, and flyspecks on the law, and present questions to this court which are purely technical, we will continue to condemn such practice, it matters not who the attorneys may be; for we are determined, if possible, to break it up in Oklahoma. Our purpose is to elevate the practice of law in Oklahoma, and make lawyers, and not quibblers, out of those who try such cases. The only questions which this court desires to have submitted to it are those which involve the actual merits of a case. This does not include the presentation of jurisdictional questions, which cannot be waived, and which are always in order, and which may be raised at any time.⁵²

The harmless error doctrine achieved a new and different kind of prominence as it began to define the remedial boundaries of the Warren court’s revolution in constitutional criminal procedure that reached its pinnacle in the late 1960s. As Warren court reforms of state criminal procedure have come to symbolize both modern legal progressivism and a procedural technicalism to rival the old common law, the remedial limitations marked out by the harmless error doctrine are identified increasingly with modern legal conservatism. Oddly enough, as a matter of history, Oklahoma’s doctrine of harmless error belongs to the tradition of progressive legal reform established under the leadership of Judge Henry Furman.

Judge Furman was determined to uphold the capital punishment law passed by the Legislature, and he blanched when his old rival from Ardmore, Gov. Lee Cruce, resolved to grant clemency in almost every capital case during his administration, from 1911 to 1915. To Judge Furman, this was a breach of executive duty amounting at least to cowardice, if not treason.

His public excoriation of Gov. Cruce in *Henry v. State*,⁵³ is surely one of the great clashes between the judiciary and a sitting executive in modern times.⁵⁴ The *Henry* case produced a quintessential declaration of Judge Furman's *ethos* on what he called "the supreme question;" and a culmination of his views on the laws of God and man, the limits and separations of government powers, and the wisdom of representative government. Only a portion can be reproduced here, but the reader is encouraged to study the whole.

It is a matter known to all persons of common intelligence in the state of Oklahoma that the Governor takes the position that legal executions are judicial murder; and that he refuses to permit them to be carried into effect, upon the ground that he would thereby become a party thereto; and that he has expressed his fixed determination to strictly adhere to this policy until the expiration of his term of office. As this is a capital conviction, and as the Governor's action presents an absolute bar to the enforcement of the law in Oklahoma, we cannot, without a failure to discharge our duty, omit to take judicial notice of, and pass upon, this position of the Governor, as unpleasant as it is for us to do so. If we remained silent, the Governor and the people would have the right to think that the courts acquiesced in the position which he has assumed, when as a matter of fact nothing is further from the truth. We therefore cannot avoid deciding this matter.

That the position of the Governor is utterly untenable is shown by the following considerations:

First. There is no provision of law in Oklahoma which requires the Governor to approve a verdict assessing the death penalty before it can be executed. His duty with reference to such verdicts is negative and not affirmative. He

has nothing whatever to do with them, unless he may be satisfied that an injustice has been done in an individual case; then he may commute the sentence or pardon the offender; but this can only be done upon the ground that, upon the facts presented, the defendant was a fit subject for executive clemency, and that an exception should be made in his favor as against the general rule of law.

Second. It is not true that when a defendant is executed according to law the Governor is in any wise responsible therefor. The execution takes place in obedience to law and not because the Governor orders it; and the Governor has not a shadow of legal or moral right to interfere with the law, unless he can say upon his official oath that special reasons, applicable alone to the given case before him, justify such action. The Governor's alleged conscientious scruples with reference to the infliction of capital punishment cannot lawfully justify his action in a wholesale commutation of death penalties. The Governor has no legislative

powers at all; he can neither enact nor repeal laws, either directly or indirectly, which he does attempt to do when he sets aside the death penalty in all murder cases ... It would indeed be an idle thing for the Legislature to enact a law and then make its execution depend upon the whim or caprice of any juror or Governor. If the Governor's position is correct, then we do not have a government of law in Oklahoma, but a government of men only. If it were necessary for the Governor to approve such verdicts before they could be carried into execution, then the Governor should have made his views known before he was elected, and he should have refused to take the oath of office. There is no logical escape from this conclusion. The Governor's position can only be explained upon the hypothesis that he imagines himself to be a dictator, and that his will is supreme and above the law. In this the Governor is mistaken.



“...the Governor takes the position that legal executions are judicial murder;”

Third. During the last campaign for the election of the present Legislature, which occurred after the Governor had served two years of his four years' term, he took an active part in the campaign and personally appealed to the people to elect a Legislature who would support what he called "my policies." In that campaign he also made a vicious assault upon this court, which has inflexibly demanded the strict enforcement of all of the laws of Oklahoma. His position on the subject of capital punishment was then well known to all of the people of Oklahoma. His action in commuting the death penalties of a number of atrocious murderers had caused a great wave of indignation to pass over the entire state. The issue was clearly drawn; and the advocates of, and those who objected to, the death penalty, debated the question as to whether or not capital punishment should be repealed. In fact, this was probably the most discussed question in the state. The Governor personally took part in a number of these debates. This is a matter of public history of which this court must take judicial notice. The election passed off, and the policies of the Governor were not indorsed by the people in the election of the members of the Legislature; on the contrary, a Legislature was elected which was hostile to the policies of the Governor, and which refused to repeal the law of capital punishment. If he desires to prove that he regards himself as a servant of the people, he should now no longer interfere with the execution of their will, or he should resign from his office.

Fourth. If it be conceded that the Governor's position is correct, and that he has the right to suspend the execution of any provision of law of which he may not approve; and if it be true that the other officials of the state are answerable to him, and not to the people — then we have an empire in Oklahoma, and not a free state. This would establish a precedent which would justify any subsequent Governor, who might be opposed to the prohibitory liquor law, in commuting all jail or penitentiary sentences inflicted in such cases upon the ground that he did not like the law, and that he knew better than the people what should be done in such cases. The same principle would apply to all laws. Concede the principle contended for by the Governor, and

where will the matter end? It would utterly demoralize the enforcement of law in Oklahoma, and would convert the state government into one of men and not of law. What do the people of Oklahoma think of this?...

The law of Oklahoma prescribes the penalty of death for willful murder. This punishment, like most of our penal laws, was taken by the Legislature from the divine law⁵⁵ ... The Bible is absolutely unanimous in its statements that the legal punishment for willful murder shall be death. . .

The supreme question is: Shall the laws of Oklahoma be enforced? One of the most mischievous tendencies of the present day is a disposition manifested among the people to set their individual judgments up against the law, and to assert their right not to obey any law unless it meets with their personal approval. This is anarchy, pure and simple. It is bad enough for private citizens to feel and act this way, but it is much more criminal for officials to do so, and the higher the official the greater the crime committed... This court will not render a single opinion which can be used in excuse for mob violence. It will to the last extremity defend the exclusive right of the people to enact laws, and continue to demand, as it has uniformly done since the day of its organization, the strict enforcement of all of the laws of the state as enacted by the people or the Legislature, it matters not whose criticism and enmity it may incur thereby, or what amount of misrepresentation, abuse, and vilification may be heaped upon it therefor. The members of this court would be fools, cowards, and traitors if they took any other position.⁵⁶

The years of hard work took their toll on Henry Furman. The exciting life of a busy trial lawyer and politician in the Twin Territories had not been easy. Courtrooms were stifling and smoky, hours in trial were long, travel and lodging were difficult. A 1903 newspaper report says this about the then 53-year-old lawyer:

[a] striking feature of the case was the speech of Henry M. Furman of Ardmore, one of the attorneys for the defense. He is afflicted with rheumatism and his speech was delivered partly as he kneeled before the jury in a manful effort to stand and partly from his chair, when his exertions

overcame him and he was obliged to seat himself.⁵⁷

When Judge Furman ascended the bench, the Criminal Court of Appeals had inherited many pending cases from the Court of Appeals of the Indian Territory and the Supreme Court of Oklahoma Territory, and work began in earnest. Using typewriters, carbons and onionskin papers, the court published opinions in over 300 cases annually for several years after statehood and unpublished summary opinions in many more. Hundreds of cases were appealed from convictions under the prohibitory act.

In the fall of 1912, Judge Furman mentioned in the *Ostendorf* opinion that the members of the court “are worked to the limit of human endurance.”⁵⁸ Judge Doyle would later recall it was in this same period, a little more than three years before his death, that Judge Furman’s health began to fail and he suffered a stroke. Nevertheless,

The night was neither too dark nor too cold, the distance was neither too far nor the perils of the journey too great, for him to go forth joyously and buoyantly in the discharge of that duty. He bore suffering with great fortitude, and while enduring the most excruciating pain he would meet his friends and family with buoyancy of spirit that was equal to that of the ordinary man in his most comfortable and successful hours.⁵⁹

His friends tell us that it was Judge Furman’s energy that “knew not the measure of a day’s work or the limit of a man’s endurance, and whose unrestrained application broke his health and finally caused his death.” He “was in very truth a martyr to his high conception of his official duty.”⁶⁰ In early 1915, Judge Furman’s failing kidneys at last brought him low and curtailed his judicial work for the final time. He produced no published opinions in the last two years of his term. In his illness,

[d]uring many months of which he was confined to his bed, and which he could not but know was to terminate fatally, he uttered no murmur of complaint or word of petulance. All was cheerfulness and serenity with him. He knew that his life’s work was done... And now he is gone. Having withstood the rigor of the winter, upon the coming of spring, with its sunshine and flowers, he succumbed. There is a vacant place in the home; a friend absent

from the Orphanage, a voice never to be heard again in the Judges’ conference room. But the character which he builded in his children, the very existence of the Orphanage itself, and the ever-increasing citation of the opinions he wrote, all show that his influence still lives, and that verily, “His works do follow him.”⁶¹

1. The author wishes to thank Allison Beall of the University of Oklahoma College of Law and Caroline Featherstone of Oklahoma City University School of Law for their able assistance in the preparation of this article. In *Memoriam: Henry Marshall Furman*, 12 Okl.Cr. xi (1916), also presented in bound commemorative volume, John Dunning Collection, Box 5, FF 10, Oklahoma History Center Archives, Oklahoma City, Oklahoma.

2. *Id.*; see also, Thomas H. Doyle, “Judge Henry M. Furman,” in Joseph Thoburn, Vol. 5, *A Standard History of Oklahoma: An Authentic Narrative of its Development 1804* (Chicago, New York: The American Historical Society, 1916).

3. In *Memoriam*, at xiii.

4. Martin C. Day, *Death in the Mail: A Narrative of the Murder of a Wealthy Widow and the Trial and Conviction of the Assassin, who was Her Physician, Attorney and Friendly Advisor* (Providence Journal Print, 1892).

5. J. Lawson, ed., “The Trial of Dr. Thomas Thatcher Graves for the Murder of Josephine A. Barnaby. Denver, Colorado, 1891,” 13 *American State Trials* 256 (1921).

6. In *Memoriam*, supra; see also, Howard K. Berry, *He Made It Safe To Murder: The Life of Moman Prueitt* (Oklahoma Heritage Assn., 2001); “Sam Ashton Acquitted,” *Chickasaw Enterprise*, Pauls Valley, Chickasaw Nation, I.T., Thursday, May 30, 1901; *Williams v. United States*, 1902 IT 28, 69 S.W. 871; *New v. Territory of Oklahoma*, 1902 OK 72, 12 Okla. 172, 70 P. 198; “Col-lard Guilty: Murderer of Gip Bailey Gets a Life Sentence,” *The Wapanucka Press*, October 22, 1903 (describing Furman as one of the “leading criminal lawyers in the territory”); “Henry M. Furman returned from Paris, Texas where he defended Will Sealy who had been charged with murder, but was acquitted,” *The Daily Ardmoreite*, Sunday, April 3, 1904.

7. Clarence B. Douglas, “The First Murder Trial,” *Daily Oklahoman*, Sunday, December 20, 1936.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.* The Bud Watkins case is also discussed in Von R. Creel, “On the Gallows’ Edge: Capital Punishment, Appeals, and Presidential Clemency in Indian Territory, 1896-1907,” 84 *Chronicles of Oklahoma* 162 (2004).

12. In *Memoriam*, supra.

13. Masonic Charity Foundation of Oklahoma, *Chronology of Masonic Charity In Oklahoma From 1888*.

14. Arrell M. Gibson, *Oklahoma: A History of Five Centuries* 201 (University of Oklahoma Press, 2d ed., 1985).

15. Janis Hubbard, “The History of the Court of Criminal Appeals,” 75 *Oklahoma Bar Journal* 100 (September 11, 2007); see also, Hon. Thomas G. Andrews, *Oklahoma: A Judicial History*, unpublished manuscript, undated, *Thomas G. Andrews Collection*, Box 1, FF 10, Oklahoma History Center Archives, Oklahoma City, Oklahoma.

16. *Byers v. Territory*, 1 Okl.Cr. 698, 710-11, 103 P.532, 537 (1909) (per curiam) (rehearing).

17. *Steils v. State*, 1912 OK CR 192, 7 Okl.Cr. 391, 396, 124 P. 76, 77.

18. *Morris v. Territory*, 1909 OK CR 18, ¶ 85, 1 Okl.Cr. 617, 657, 99 P. 760, 775.

19. *Hargo v. State*, 1909 OK CR 14, 1 Okl.Cr. 590, 594, 98 P. 1021, 1023.

20. *Gilbert v. State*, 1913 OK CR 22, ¶ 3, and ¶ 10 (on rehearing), 8 Okl.Cr. 543, 545, 549, 128 P. 1100, 1101, 129 P. 671, 673 (on rehearing).

21. In *Memoriam*, at 10 (Furman’s works “evoked the attention and favorable comment of many distinguished jurists, legal authors, and lay publishers throughout the nation”); see also *Steils*, supra, reprinted in “Oklahoma Justice,” *American Digest* 774 (West, 1907); “Common-Sense Law Versus Common Law,” *The Dallas Morning News*, September 15, 1912. Dean Wigmore hailed Judge Furman as one of the greatest American judges.

22. 1912 OK CR 215, 7 Okl.Cr. 544, 124 P. 924.

23. *Id.*, 7 Okl.Cr. at 550-51, 124 P. at 926-27.

24. 1908 OK CR 32, 1 Okl.Cr. 358, 98 P. 447.

25. *Id.*, 1 Okl.Cr. at 365-66, 98 P. at 450-51.

26. 1913 OK CR 42, 8 Okl.Cr. 686, 130 P. 316.

27. *Id.*, 8 Okl.Cr. at 695-99, 130 P. at 320-21.

28. *Morris v. Territory*, 1909 OK CR 18, 1 Okl.Cr. 617, 99 P. 760.

29. *Id.* at ¶¶ 27-28, 1 Okl.Cr. at 636-37, 99 P. at 767.
 30. *Id.*, 1 Okl.Cr. at 637-38, 99 P. at 767-68.
 31. 1913 OK CR 261, 10 Okl.Cr. 83, 133 P. 1139.
 32. *Id.*, 10 Okl.Cr. at 86, 133 P. at 1140.
 33. *Id.*, 10 Okl.Cr. at 85, 133 P. at 1140.
 34. 1911 OK CR 56, 5 Okl.Cr. 162, 114 P. 261.
 35. *Id.*, 5 Okl.Cr. at 181-82, 114 P. at 269-70.
 36. A representative expression of this view appears in *Turner v. State*, 1912 OK CR 370, 8 Okl.Cr. 11, 19, 126 P. 452, 455, where Judge Furman quoted approvingly from the November, 1911 issue of the *Journal of the American Institute of Criminal Law and Criminology*:
 As some people think more of a man's clothes and style than of his principles, so some lawyers are concerned more with the mere procedure in a trial than with the triumph of the party that ought to succeed on the merits of the case. The quibbling of the logicians and disputes of the middle ages has often formed the subject for satire; but our present-day legal disputes over the technical question of procedure are pettier, less profitable, and more indefensible than the fine-spun arguments and theories of the much-abused schoolman of the middle ages.
 37. *Byers*, 1 Okl.Cr. at 708-11, 103 P. at 536-38.
 38. *Turner*, 8 Okl.Cr. at 19, 126 P. at 455, *citing* Comp. Laws 1909, §§2027, 6487.
 39. *Arnold v. State*, 1913 OK CR 381, 48 Okl.Cr. 452, 464, 132 P. 1123, 1127.
 40. *Turner*, 8 Okl.Cr. at 19, 126 P. at 455-56.
 41. *Id.*, 8 Okl.Cr. at 20, 126 P. at 456, *citing* Comp. Laws 1909, §§ 6704, 6705.
 42. *Id.*
 43. *Id.*
 44. Section 6005 is now codified in largely identical language as 20 O.S.2001, §3001.1.
 45. *Scribner v. State*, 1913 OK CR 131, 9 Okl.Cr. 465, 509, 132 P. 933, 949.
 46. *Turner*, 8 Okl.Cr. at 19, 126 P. at 455.
 47. *Arnold v. State*, 1913 OK CR 381, 48 Okl.Cr. 452, 462-63, 132 P. 1123, 1127.
 48. 1912 OK CR 411, 8 Okl.Cr. 360, 128 P. 143.
 49. In *Steils*, 7 Okl.Cr. at 391, 124 P. at 76, Judge Furman said lawyers "who attempt to make a purely technical defense, without regard to reason and justice, will see themselves as this court sees them by reading the following lines," and thereafter reprinted the complete text of a popular satirical verse about technical absurdities in criminal defenses entitled, "The Up-to-Date Defense of Cy N. Ide."
 50. *Ostendorf*, 8 Okl.Cr. at 374, 128 P. at 148.
 51. *Id.*, 8 Okl.Cr. at 375, 128 P. at 149.
 52. *Id.*, 8 Okl.Cr. at 362, 128 P. at 143 (syllabus).
 53. 1913 OK CR 311, 10 Okl.Cr. 369, 136 P. 982.
 54. Governor Cruce allowed only one execution during his term. Cruce's clemency policy is discussed in Austin Sarat, *Mercy on Trial: What It Means to Stop an Execution 35 passim* (Princeton, 2005).
 55. Here the opinion quotes Numbers 35 and Deuteronomy 19.
 56. *Henry*, 10 Okl.Cr. at 383-90, 136 P. at 987-90.
 57. "Collard Guilty: Murderer of Gip Railey Gets a Life Sentence," *The Wapanucka Press*, October 22, 1903.
 58. *Ostendorf*, 8 Okl.Cr. at 391, 128 P. at 156.
 59. Address of Hon. Stephen C. Treadwell, *In Memoriam*, at 6.
 60. Address of Judge D.A. Richardson, *In Memoriam*, at 8.
 61. *Id.*

ABOUT THE AUTHOR



Bryan Lester Dupler is a native of Temple. He graduated from Cameron University in 1989 and the University of Oklahoma College of Law in 1991. He is currently judicial assistant to Judge David Lewis of the Oklahoma Court of Criminal Appeals. He served as trial and appellate defense counsel at the Oklahoma Indigent Defense System for more than a decade.

Oklahoma Bar Journal Editorial Calendar

2009

- **November: Family Law**
 Editor: Leslie Taylor
 leslietaylorjd@gmail.com
 Deadline: Sept. 9, 2009
- **December: Ethics & Professional Responsibility**
 Editor: Jim Stuart
 jtstuart@swbell.net
 Deadline: Sept. 9, 2009

2010

- **January: Meet Your OBA**
 Editor: Carol Manning
- **February: Indian Law**
 Editor: Leslie Taylor
 leslietaylorjd@gmail.com
 Deadline: Oct. 1, 2009
- **March: Workers' Compensation**
 Editor: Emily Duensing
 emily.duensing@oscn.net
 Deadline: Jan. 1, 2010
- **April: Law Day**
 Editor: Carol Manning
- **May: Commercial Law**
 Editor: Jim Stuart
 jtstuart@swbell.net
 Deadline: Jan. 1, 2010
- **August: Access to Justice**
 Editor: Melissa DeLacerda
 melissde@aol.com
 Deadline: May 1, 2010
- **September: Bar Convention**
 Editor: Carol Manning

- **October: Probate**
 Editor: Scott Buhlinger
 scott@bwrlawoffice.com
 Deadline: May 1, 2010
- **November: Technology & Law Practice Management**
 Editor: January Windrix
 janwindrix@yahoo.com
 Deadline: Aug. 1, 2010
- **December: Ethics & Professional Responsibility**
 Editor: Pandee Ramirez
 pandee@sbcglobal.net
 Deadline: Aug. 1, 2010

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





2009 Award Recipients

OUTSTANDING LAW SCHOOL SENIOR STUDENT AWARD

Katherine Lee Holey,
Oklahoma City University School of Law

Katherine Lee Holey is a third-year law student at Oklahoma City University School of Law. She earned undergraduate degrees from the University of Texas in studio art and art history. Currently, she serves as the *OCU Law Review* editor in chief. Ms. Holey is a merit scholar and a dean's fellowship recipient, is on the faculty honor roll and dean's list and is a student member of the William J. Holloway Inn of Court. She received CALI awards in Advanced Legal Research, Constitutional Law I, Constitutional Law II and Legal Profession.



Presently, she volunteers as an Adult Literacy Tutor for the Oklahoma City Literacy Council. She has also mentored kindergarten students at Western Village Academy, served as a legal advocate at SafePlace, a sexual assault and domestic violence shelter, interned at a non-profit art gallery and interned at the Oklahoma County District Attorney's Office where she worked in the white collar crime and misdemeanor divisions.

After graduation, she will serve as a law clerk for Judge Robin Cauthron in the Western District of Oklahoma.

OUTSTANDING LAW SCHOOL SENIOR STUDENT AWARD

Amanda Clark,
University of
Oklahoma College
of Law

Amanda Clark is a third-year law student at the University of Oklahoma College of Law. She received her B.A. in legal studies from Kaplan University in 2006.



OBA Awards:

Individuals for Whom Awards are Named

NEIL E. BOGAN — Neil Bogan, an attorney from Tulsa, died unexpectedly on May 5, 1990 while serving his term as president of the Oklahoma Bar Association. Mr. Bogan was known for his professional, courteous treatment of everyone he came into contact with and was also considered to uphold high standards of honesty and integrity in the legal profession. The OBA's Professionalism Award is named for him as a permanent reminder of the example he set.

HICKS EPTON — While working as a country lawyer in Wewoka, attorney Hicks Epton decided that lawyers should go out and educate the public about the law in general, and the rights and liberties provided under the law to American citizens. Through the efforts of Mr. Epton, who served as OBA president in 1953, and other bar members, the roots of Law Day were established. In 1961 the first of May became an annual special day of celebration nationwide designated by a joint resolution of Congress. The OBA's Law Day Award recognizing outstanding Law Day activities is named in his honor.

MAURICE MERRILL — Dr. Maurice Merrill served as a professor at the University of Oklahoma College of Law from 1936 until his retirement in 1968. He was held in high regard by his colleagues, his former students and the bar for his nationally distinguished work as a writer, scholar and teacher. Many words have been used to describe Dr. Merrill over the years, including brilliant, wise, talented and dedicated. Named in his honor is the Golden Quill Award that is given to the author of the best written article published in the *Oklahoma Bar Journal*. The recipient is selected by the OBA Board of Editors.

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She currently interns with the land department at Chesapeake Energy Corp. and previously interned with Clifton D. Naifeh & Associates and worked as a paralegal. Ms. Clark is actively involved in the OU College of Law, serving as vice president to the Student Bar Association and co-founder of the college's Student Ambassadors Recruiting program. She has earned the speaker award in the 1L Moot Court Competition and placed sixth nationally at the 2008 National Health Law Moot Court along with her team. Ms. Clark has accepted an offer to be an associate landman with Chesapeake upon her graduation.

OUTSTANDING LAW SCHOOL SENIOR STUDENT AWARD

Jared Burden,
University of Tulsa College of Law

Jared Burden is a third-year law student at the University of Tulsa College of Law. He earned his undergraduate degree summa cum laude and a master's degree in classics from Texas Tech University.



Mr. Burden currently serves as the editor in chief of the *Tulsa Law Review* and is a member of the Delta Theta Phi legal fraternity. His article, "Bursting Bubbles: Participations, Derivatives, and the Roles They Play in Creating Banking Crises," has been selected for publication in Volume 45 of the *Tulsa Law Review*. He has also received the John Hager Award for Excellence in Torts, the Kenneth L. Brune Award for Evidence, the Gable & Gotwals Outstanding Student Award, the George and Jean Price Award for Legal Reasoning, Authorities, and Writing and CALI awards in Contracts, Torts, Reasoning and Writing I & II, Evidence and Professional Responsibility. After graduation he will work for McAfee & Taft in their Tulsa office.

EARL SNEED CONTINUING LEGAL EDUCATION AWARD

Judge William C. Kellough, Tulsa



Judge William C. Kellough has a passion for history — a passion that is highlighted by his passion for law and the dedicated men and women throughout history who have shaped the profession.

To pass on his knowledge to others, Judge Kellough has shared his experience and intelligence through writing and speaking. He has written several articles for the Tulsa County Bar Association's *Tulsa Lawyer* and book reviews for the *Tulsa World*, and he was a principle writer for the book, *Building Tulsa: Lawyers at Work*. Additionally, in 1992, after nearly a year of research, Judge Kellough's article on the History of the Federal Courts in Oklahoma was published by the 10th Circuit Court of Appeals. He has also presented many CLE presentations to lawyers around the state.

His desire to inspire other lawyers to learn and excel is evident in his association with the Hudson-Hall-Wheaton Inn of Court, where he currently serves as president and was recently elected presiding judge-elect by his peers. Through his many years of involvement with the Tulsa County Library as commissioner, trustee and chair of various committees, Judge Kellough has regularly contributed as a speaker or moderator on numerous topics, both legal and non-legal.

EARL SNEED CONTINUING LEGAL EDUCATION AWARD

Deborah Reheard, Eufaula

A valuable asset to the learning community, Deborah Reheard has contributed much of her time and talents to the OBA. She has presented CLE presentations at several Solo & Small Firm Conferences on various topics and has spoken at many other CLE presentations through the OBA and OCDLA. This year,



she has a traveling road show where she is presenting CLE presentations to county bar associations across the state on the topic of bar disciplinary proceedings.

Additionally, she has been involved in the Women in Law Committee for many years, serving as chair this year. Through her leadership and innovation, the committee provided a new CLE seminar geared toward attorneys in both the private and government sectors. Her hard work with the committee paid off with the appearance of Cherie Blair as the Women in Law Banquet's guest speaker.

JUDICIAL EXCELLENCE AWARD

Judge Farrell Melton Hatch, Durant

Judge Farrell Melton Hatch obtained his B.A. from Hendrix College in 1960 and a master of divinity from Duke University in 1963, shortly after serving in the U.S. Navy. He went on to earn his law degree from OU in 1968. He was in private practice for over 25 years before taking the bench, where he served from 1992 to 2005. He served a term as the OBA appointee to the Appellate Division of the Court of the Judiciary and later served as the Supreme Court's appointee to the Oklahoma Pardon and Parole Board from 1983 through 1993.



After leaving the bench, Judge Hatch continued to serve the community and the legal profession by starting a drug court in Durant with the assistance of Judge Tom Landrith. Judge Hatch still resides over this drug court without compensation. Before starting the drug court, Judge Hatch knew that it would benefit society by helping the defendant get back into the community. He knew then, and still believes now, that rehabilitation is possible and preferable. Since he began supervision of the drug court five years ago, Judge Hatch has witnessed 85 graduates of the program succeed with only two known re-offenders.

His commitment to his community is also evident in his civic involvement. He is a member and past president of the Durant Lions Club, an active member of the Bryan County Bar Association and the Durant Chamber of Commerce, a leader in promoting the Choctaw Nation to occupy the vacant Oklahoma Presbyterian College. He is also a member of the First United Methodist Church in Durant.

LIBERTY BELL AWARD

Theresa Hansen, Tulsa

Affectionately known as "Mother Theresa" or "Mother T" for short, Theresa Hansen is dedicated to volunteering within the legal system. Her desire to alleviate anxiety and provide support for families during difficult times motivated her to begin volunteering at the Tulsa County courthouse. What has kept her volunteering for so many years is her aspiration to help people feel comfortable in the courthouse.



Today, "Mother T" can still be found at the courthouse on Mondays and Tuesdays, tending to the needs of the staff and recruiting other community members to volunteer. Other days she volunteers at a local hospital assisting the on-duty nurse with victims of violent assault and rape. But she is not only an instrumental volunteer, she is also a community activist. She has lobbied for stronger laws at the State Capitol, including making first-time strangulation a felony. She is currently working with her representative to sponsor a new law that would make first-time domestic assault and battery a felony if the act took place in the presence of a minor.

For all her work, Ms. Hansen received the 50 People over 50 Years Award at the Oklahoma State Capitol in 2008 and the Call to Service Award from President George W. Bush in 2007.

JOE STAMPER DISTINGUISHED SERVICE AWARD

Nancy Parrott, Oklahoma City

For her entire career, Nancy Parrott has been an active and distinguished member of the Oklahoma Bar Association. She has put a "good face" on lawyers and the legal profession through her polite demeanor, kind assistance, willingness to listen and commitment to "do the right thing."



Her service to the legal profession has been exemplified by her conduct during her 24 years as marshal of the Supreme Court and by her long-term volunteer service on OBA committees and boards. As marshal, she is helpful every day to members of the OBA and the public who need guidance through the complex appellate process, and she has gained statewide respect. Ms. Parrott does not just belong to committees; she works and has led groups with big jobs to do. She has for many years chaired or been an active member of state and county committees such as the Oklahoma and the Oklahoma County Law Day, Bench and Bar, Public Information, Bar Media, Community Service, Lawyer Referral, Continuing Legal Education, Awards, Civil Procedure, Professionalism, Disaster Relief and numerous committees to draft court rules. She has served on the Board of Directors of the Oklahoma County Bar Association, on the House of Delegates and as a Fellow of the Oklahoma Bar Foundation. She has been a planner, writer and speaker for statewide and local continued legal education seminars and she has appeared and answered questions for OETA, the appellate practice section, high schools and civic groups. According to her nominator, she is always willing to help and to answer questions patiently, thoroughly and accurately to give the kind of assistance that could not be gotten anywhere else.

Ms. Parrott represents the community through her membership in Leadership Oklahoma and Leadership Oklahoma City, and she has served on the boards of the American Cancer Society, Youth Leadership Exchange, Lupus Association, Shiloh Camp and American Lung Association.

"She has served us in so many ways, not because she was required to, but because she wanted to and because she loves lawyers and our profession," her nominator said.

ALMA WILSON AWARD

Judge Donald Deason, Oklahoma City



Oklahoma County District Judge Donald Deason has displayed his empathy for others by proving that he believes in making a quality difference in the lives of Oklahomans.

Judge Deason has become a valiant participant in community activities. For years he has mentored young lawyers and provided for interaction between the bench and the community. He holds noon-time and round-table discussions in his courtroom for young attorneys, participates in Young Lawyers Division events and has given his time to the Ginsburg Inn of Court's mentoring program. Two years ago, he helped develop the model program for guardian ad litem in domestic cases, a program that provides guidelines and training for volunteer pro bono and low bono attorneys willing to serve as GALs in such cases. Before taking the bench in 1999, he served as an assistant district attorney for Oklahoma County for 20 years. During that time, he prosecuted domestic violence, sexual assault and related homicide cases and received the Governor's Commendation for Victims' Rights in 1997 for his compassion when dealing with people affected by such crimes and for his extraordinary success in those areas.

Judge Deason continues to help women and children through his involvement with the Oklahoma Domestic Violence and Sexual Assault Advisory Council and the advisory board of the Downtown Oklahoma City YWCA. Additionally, he is a frequent CLE speaker on domestic violence issues.

GOLDEN GAVEL AWARD

OBA Law Day Committee
Tina Izadi, Chairperson



This was the OBA's 31st year to celebrate Law Day, and the committee began the year with a commitment to keeping the event current and interesting. Committee Chair Tina Izadi, Oklahoma City, saw the need to keep the contests relevant and to add a new element to the Ask A Lawyer TV show.

This year, in addition to the age-appropriate contests for each grade, a YouTube video contest was added to capitalize on the growing online medium. The contest produced several creative videos from students of all ages. This new category and the extensive publicity of the contest resulted in 2,176 Law Day contest entries, the highest in Oklahoma's Law Day history.

Ms. Izadi also wanted to keep the Ask A Lawyer TV show relevant and fresh. A town hall forum was added, which added new life to the show by providing an opportunity for community members to ask questions directly to panelists during the segment. Ask A Lawyer was re-broadcast 17 times between May and September on OETA's digital channels.

Additionally, during the Ask A Lawyer free legal advice campaign, lawyers answered 2,611 calls from Oklahomans seeking legal advice, up 7.3 percent over the last five years.

Ms. Izadi was the driving force behind the new improved Law Day activities. She was there each step of the way, ensuring that the highest quality of events took place.

NEIL E. BOGAN PROFESSIONALISM AWARD

Jack L. Brown, Tulsa

For 25 years, Jack L. Brown has been known throughout the state for his integrity, professionalism, ethics and service to the OBA and his community.



His service to the OBA includes being a Fellow of the American Bar Association, a member of the Board of Governors of the ABA, OBA and Tulsa County Bar Association and Governor at Large of the OBA Board of Governors for 2008-2010; chair of the OBA Bench and Bar Committee; chair of the 2010 ABA Judicial Division and many other chair and vice-chairmanships for other ABA, OBA and TCBA committees. His leadership is well demonstrated in the amount of time he gives to local, state and national causes. Some of these causes include Legal Aid Services of Oklahoma, where he was the 2006-2008 president; the Tulsa Metropolitan Utility Authority; the Tulsa Zoo Friends Advisory Board; the Hillcrest Healthcare Foundation Board; Oklahoma Task Force on Volunteerism and Leadership Tulsa. For his involvement, Mr. Brown has received many awards including the OBA Outstanding Service to the Community in 1989, the OBA Outstanding Director Award in 1991 and the OBA Outstanding Young Lawyer Award in 1993.

JOHN E. SHIPP AWARD FOR ETHICS

Sidney Swinson, Tulsa



Sidney Swinson earned his B.A. from the University of Notre Dame and his law degree from TU in 1980. He is currently a shareholder and director at GableGotwals.

Mr. Swinson is passionate about the legal profession and about legal education. This is evident in his extensive legal involvement. He served as chair of the Local Rules Committee for the Bankruptcy Court of the Northern District of Oklahoma. His commitment and leader-

ship resulted in a thorough revision of the local rules. Additionally, he was recently selected as a Fellow in the American College of Bankruptcy and is an active member of the OBA, serving as an OBA Bankruptcy Section director, chief master of the OBA Professional Responsibility Tribunal and CLE contributor and speaker. He has been an adjunct professor of law at TU since 1993 and has co-authored a textbook.

TRAILBLAZER AWARD

Annette Jacobi, Oklahoma City



Annette Jacobi serves as the chief of the Family Support & Prevention Service at the Oklahoma State Department of Health. Throughout her career, she has demonstrated her desire to provide legal needs to abused and deprived children. Through her involvement with the OBA Young Lawyers

Division Children and the Law Committee, which she chaired at one time, Ms. Jacobi has spear-headed the effort to accomplish certain goals, including generating public interest in juvenile representation, educating lawyers in juvenile issues and increasing the number of lawyers serving as child advocates in and out of the courtroom.

As a result of these efforts, 35 lawyers and judges toured three of Oklahoma City's juvenile facilities to promote programs such as Positive Tomorrows, the Oklahoma County Juvenile Detention Center and the Child Abuse Response and Evaluation Center (CARE). Ms. Jacobi led the way for tours to be organized in Tulsa and Stillwater, and within weeks she began working with the OBA/CLE department to provide free all-day seminars in Oklahoma City and Tulsa to lawyers and judges on issues involving effective legal representation of abused and deprived children.

With her encouragement and inspiration, Oklahoma Lawyers for Children was founded to team qualified pro bono lawyers with children in the juvenile division of the Oklahoma County District Court.

She currently serves as the vice president on the National Alliance of Children's Trust and Prevention Funds Board of Directors, president of the Board of Directors for Catholic Charities of the Oklahoma City Diocese and a Master of

the William J. Holloway American Inn of Court and is the past chair of the Oklahoma Child Death Review Board.

OUTSTANDING COUNTY BAR ASSOCIATION

Bryan County Bar Association



Over the past few years, the Bryan County Bar Association has been committed to raising membership and fostering a close relationship between local attorneys. Recently, membership has risen dramatically and local attorneys have been growing together as a community through functions and social events. Currently, the Bryan County Bar Association has 49 members, and the majority of the members are very active in the bar association and in the community.

The BCBA has been able to reach out to the community in many ways. Over the past year, the BCBA was very involved in Law Day. The BCBA hosted an awards presentation and sponsored activities for local school-age children. The BCBA also participated in the Ask A Lawyer program and contributed articles to the local newspaper about legal topics in honor of Law Day.

The BCBA participated in other community projects as well. For the "Durant Main Street Trick or Treat" event, several members of the BCBA dressed up in costume to hand out candy and balloons with the BCBA logo imprinted on them. Members also participated in a local Wills for Heroes event and raised money for local charities. Additionally, the BCBA sponsored a scholarship for a SOSU student interested in the study of law.

Individual attorneys are also proactive in the community. Many BCBA members volunteer to help with activities with the Durant Chamber of Commerce, the Durant Main Street programs, the City of Durant and several other civic and community programs. The BCBA will continue to work to support its local communities and the legal community as a whole.

OUTSTANDING COUNTY BAR ASSOCIATION Garfield County Bar Association

The Garfield County Bar Association recently adopted a long-range plan to enhance the positive image of the legal profession and to better serve the public. One way the GCBA is tackling these goals is through community services such as this year's Law Day activities.

Other ways they have tried to achieve their goals include conducting a survey to determine the needs of the association and ways in which they could provide more meaningful service; holding CLE seminars on topics about ethics, child support, wind power and other topics; handing out awards to local attorneys; hosting a Wills for Heroes event in Enid where 17 wills were drafted and executed; and participating in several other local events.

Some of the local events the GCBA participate in include a combined CLE golf event in conjunction with Law Day, the United Way Chili Cookoff and the monthly meeting for the Board of Governors which took place in Groendyke Lodge. In addition, many GCBA lawyers volunteer numerous hours to local and state boards and organizations. Current officers of the GCBA are Randy J. Long, president; Michael Bigheart, vice president; Doug Jackson, secretary; and Robert Faulk, treasurer.

"Our bar association still believes that the practice of law is a profession that requires the constant vigilance and hard work of each and every one of our members to continue to uphold the honor and reputation of an Oklahoma lawyer," said the nominator.

HICKS EPTON LAW DAY AWARD Cleveland County Bar Association



To celebrate Law Day this year, the Cleveland County Bar Association scheduled several Law Day activities and highly publicized Law Day to the community. The CCBA hosted an open forum on April 29 that was held in the Norman City Council Chambers. Rick Tepker, an OU

law professor and noted Abraham Lincoln scholar, provided background of Lincoln's contributions in the areas of equality, civil rights and the right to vote. Following his presentation, several Cleveland County district judges, lawyers and others represented the panel for the forum. The event was open to the public and broadcast on the City of Norman local access channel. It was promoted by several articles in the *Norman Transcript*.

Local attorneys also went to six schools in the Cleveland County area to speak about the Law Day theme and the court system. The attorneys gave talks to multiple classes at each school. Opinion editorials were published during the week leading up to Law Day in the *Norman Transcript* highlighting the current impact of Lincoln's legacy in the civil rights arena. Eleven CCBA attorneys participated in the Ask A Lawyer program April 29.

Finally, a reception concluding the CCBA Law Day activities and events was held for members of the CCBA and the local courthouse staff.

HICKS EPTON LAW DAY AWARD Oklahoma County Bar Association



The Oklahoma County Bar Association held several events in honor of Law Day. With the assistance of the OCBA, the Oklahoma County Law Library featured special daily events throughout the week including offering free legal advice and referrals to all library patrons on a walk-in basis and tours and instructions on how to use the law library. The OCBA also provided speakers at various civil clubs and venues in Oklahoma County.

On Law Day, 104 Oklahoma County lawyers handled 1,350 telephone calls at this year's Ask A Lawyer program. The 2009 Law Day luncheon was held May 1 and the OCBA invited students from the pre-law program at Douglass High School to attend. Featured speaker Oklahoma Supreme Court Justice James Winchester spoke to the crowd and awards were presented to several local attorneys.

OUTSTANDING YOUNG LAWYER AWARD

Kimberly Warren, Tecumseh

Kimberly Warren received her B.A. in political science and economics from TU and an M.B.A., J.D. and LL.M. in taxation from Capital University. She is a partner at Cole and Reed PC.



Ms. Warren has been very active in the Young Lawyers Division and the OBA all while excelling in her career and her community efforts. She currently holds the position of past chair of the board of the OBA Young Lawyers Division. In addition to serving as the YLD chair last term, she has also served as chair-elect, treasurer and secretary of the YLD. She was named OBA/YLD Outstanding Director of the Year in 2004 and Outstanding Officer of the Year in 2005. She is currently the chair of the YLD Nominating Committee. Her OBA involvement includes serving as the YLD representative to the Board of Governors in 2008 and on the Budget and Awards Committees in 2007. Throughout her service, she has served as a positive representation of her profession.

OUTSTANDING SERVICE TO THE PUBLIC

Jim Sharrock, Oklahoma City



Jim Sharrock has made an impact on the Oklahoma City community through his involvement in several service activities. While his daytime job has consisted of working at McAfee & Taft since 1985, he has dedicated countless out-of-office volunteer hours to organizations across Oklahoma City.

Mr. Sharrock just completed his second term as president of Leadership Oklahoma City, a nonprofit organization focused on providing leadership training for adults and high school students. His devotion to LOKC began 17 years ago when he was in LOKC class X. Since that time, he has served in a variety of leadership

roles for the organization, including serving as chairman of Youth Leadership Exchange, the youth leadership arm of LOKC. He also served as a long-time board member for Rebuilding Together and served as its initial president, as the former president of the Edmond Public Schools Foundation where he implemented many of the organization's fundraising and grant-making procedures and as chair and current board member of the Rotary Club 29 Foundation, an independent organization operated by members of the Oklahoma City Rotary Club whose mission is to support the club's philanthropic activities. Mr. Sharrock credits former OBA President C.D. Northcutt as an early mentor and role model.

OUTSTANDING PRO BONO SERVICE

John E. Miley, Oklahoma City

John E. Miley is the deputy general counsel of the Oklahoma Employment Security Commission. He is president of the general counsels' forum and chairman of the Oklahoma County Bar Pro Bono Committee.



As a long-time volunteer for Legal Aid Services of Oklahoma, Mr. Miley has proven his compassion for the plight of those living in poverty. He has chaired the Oklahoma County Bar Association's Legal Aid Committee for the past three years and has consistently volunteered at Legal Aid's Third Saturday Legal Clinic at Epworth United Methodist Church in Oklahoma City, a program that provides both a legal clinic and a medical clinic at the church where low-income individuals and families can come for assistance. His dedication to the clinic is so strong that he even recruited his twin brother David to volunteer at the clinic with him. Legal Aid and their clients have clearly benefited from Mr. Miley's work in the field and will continue to benefit from his commitment to volunteer work.

MAURICE MERRILL GOLDEN QUILL AWARD

Wade Gungoll, Oklahoma City

Wade Gungoll receives the Maurice Merrill Golden Quill Award for his article titled, "The Sem-Group Bankruptcy and the Ramifications for Oklahoma Producers," which appeared in the May 9, 2009, issue of the *Oklahoma Bar Journal*.



Mr. Gungoll is an attorney with the Oklahoma City office of Gungoll, Jackson, Collins, Box & Devoll PC. His practice areas include energy and natural resources, general commercial litigation, and school law and public finance. Mr. Gungoll graduated from Yale University in 2004, earning a B.A., with honors, in political science. He obtained his J.D. from Columbia Law School in 2007. Prior to joining Gungoll Jackson, he was an attorney with the Oklahoma City office of Crowe & Dunlevy PC.

MAURICE MERRILL GOLDEN QUILL AWARD

Matthew C. Kane, Oklahoma City



Matthew C. Kane receives the Maurice Merrill Golden Quill Award for his article titled, "Federal Sentencing: The New Frontier of Modern Legal Advocacy," which appeared in the Oct. 10, 2009, issue of the *Oklahoma Bar Journal*.

Mr. Kane is a shareholder and director of the law firm Ryan Whaley Coldiron Shandy PC in Oklahoma City. His practice is primarily focused on complex litigation, white collar defense and other business and environmental litigation and has included a variety of noteworthy cases such as the defense and acquittal of a white collar defendant in a billion dollar criminal securities case, proceedings to remove a judge before the Oklahoma Court of the Judiciary, and the return of a child to his parent under the Hague Convention on the Civil Aspects of International Child Abduction. Prior to joining the firm, Mr. Kane served as a legal

intern for Chief Judge Robin Cauthron of the Western District of Oklahoma and the Office of the Prosecutor for the International Criminal Tribunal for Rwanda.

He has also developed projects for various entities such as the Memorial Institute for the Prevention of Terrorism and the Centre for the Study of Terrorism and Political Violence relating to the legal aspects of the war on terror. Mr. Kane received the National Center for Missing & Exploited Children's Award of Merit for his pro bono representation relating to litigation involving international child abduction.

MAURICE MERRILL GOLDEN QUILL AWARD

Daniel G. Webber Jr., Oklahoma City



Daniel G. Webber Jr. receives the Maurice Merrill Golden Quill Award for his article titled, "Federal Sentencing: The New Frontier of Modern Legal Advocacy," which appeared in the Oct. 10, 2009, issue of the *Oklahoma Bar Journal*.

Mr. Webber is a shareholder and director of the law firm Ryan Whaley Coldiron Shandy PC in Oklahoma City. The firm's broad practice includes a variety of civil, criminal and environmental matters. His business litigation practice includes a wide range of civil, criminal and administrative matters. His white collar criminal practice has focused on issues involving political corruption, securities fraud and health care overbilling, among others. In a seven-year career in the U.S. Attorney's Office, he was lead counsel in numerous trials and argued several cases before the 10th Circuit. He served as U.S. Attorney for the Western District of Oklahoma from 1999 to 2001.

Mr. Webber also served as Judge Advocate in the Oklahoma National Guard's 45th Infantry Brigade and deployed to New Orleans in the aftermath of Hurricane Katrina. He began his legal career as counsel for U.S. Sen. David Boren and later served as a law clerk for U.S. District Judge Lee West.

(cont'd from page 1836)

JOHN E. SHIPP — John E. Shipp, an attorney from Idabel, served as 1985 OBA president and became the executive director of the association in 1998. Unfortunately his tenure was cut short when his life was tragically taken that year in a plane crash. Mr. Shipp was known for his integrity, professionalism and high ethical standards. He had served two terms on the OBA Professional Responsibility Commission, serving as chairman for one year, and served two years on the Professional Responsibility Tribunal, serving as chiefmaster. The OBA's Award for Ethics bears his name.

EARL SNEED — Earl Sneed served the University of Oklahoma College of Law as a distinguished teacher and dean. Mr. Sneed came to OU as a faculty member in 1945 and was praised for his enthusiastic teaching ability. When Mr. Sneed was appointed in 1950 to lead the law school as dean, he was just 37 years old and one of the youngest deans in the nation. After his retirement from academia in 1965, he played a major role in fundraising efforts for the law center. The OBA's Continuing Legal Education Award is named in his honor.

JOE STAMPER — Joe Stamper of Antlers retired in 2003 after 68 years of practicing law. He is credited with being a personal motivating force behind the creation of OUJI and the Oklahoma Civil Uniform Jury Instructions Committee. Mr. Stamper was also instrumental in creating the position of OBA general counsel to handle attorney discipline. He served on both the ABA and OBA Board of Governors and represented Oklahoma at the ABA House of Delegates for 17 years. His eloquent remarks were legendary, and he is credited with giving Oklahoma a voice and a face at the national level. The OBA's Distinguished Service Award is named to honor him.

ALMA WILSON — Alma Wilson was the first woman to be appointed as a justice to the Supreme Court of Oklahoma in 1982 and became its first female chief justice in 1995. She first practiced law in Pauls Valley, where she grew up. Her first judicial appointment was as special judge sitting in Garvin and McClain Counties, later district judge for Cleveland County and served for six years on the Court of Tax Review. She was known for her contributions to the educational needs of juveniles and children at risk, and she was a leader in proposing an alternative school project in Oklahoma City, which is now named the Alma Wilson SeeWorth Academy. The OBA's Alma Wilson Award honors a bar member who has made a significant contribution to improving the lives of Oklahoma children.

Legal Assistant

State Farm Insurance Companies In-House Counsel, Angela Ailles & Associates has an opening for a Paralegal. Job duties include drafting discovery and legal documents in personal injury cases, legal research and writing, docketing/calendaring/scheduling, reviewing medical records, proactively identifying new areas of discovery, and applying knowledge of negligence actions, medical terminology, injuries and treatment. Paralegal experience in personal injury litigation required, insurance defense litigation is preferred. Candidate must have previously been employed as a paralegal for civil personal injury or defense firm and have at least 5 years experience. Candidate must also possess: Strong organizational skills with ability to multi-task; Typing 60 wpm; High level of familiarity with Microsoft Word; Strong communication skills both orally and in writing, and previous experience researching and brief writing; Strong command of preparation of discovery, and review and assimilation of medical records; Ability to work effectively and efficiently in a high paced time sensitive work environment; Ability to work effectively and efficiently in an electronic environment; high level of familiarity of Adobe. State Farm offers an excellent salary and benefits package. If interested, please go to www.statefarm.com - Career Center - Become a State Farm Employee, search for Job #19261 and submit your online application. EOE.

KICKAPOO TRIBAL COURT POSITION ADVERTISEMENT

POSITION: ASSOCIATE SUPREME COURT JUDGE

The Kickapoo Tribal Supreme Court of the Kickapoo Tribe of Oklahoma is seeking one (1) Associate Supreme Court Judge that will serve a five (5) year term.

QUALIFICATIONS:

An Associate Supreme Court Judge shall possess the following:

- An enrolled member of the Tribe, or;
- An Attorney, or;
- An individual who physically resides within the jurisdiction of the Kickapoo Tribe of Oklahoma, or;
- An advocate who has practiced before the Trial Court on a regular basis for more than two (2) years as member of the Court bar; or,
- A graduate of an American Bar Association accredited law school approved by the Kickapoo Tribe of Oklahoma Supreme Court

DUTIES:

- To hear all appeals from the Tribal District Court.
- Administer justice in an orderly, timely, efficient, and effective manner.
- Perform the duties of the Trial Judge, as necessary.
- To hold and conduct judicial proceedings during an established term.
- To issue, as a judicial panel, necessary legal orders, and judgments.

All resumes will be accepted beginning October 1, 2009, and will close on October 16, 2009. Please submit all resumes to Rochelle Murdock, Court Administrator, Kickapoo Tribal Court, P.O. Box 1310, McLoud, OK 74851.

OBA Governance

2010 Transitions

2009 President

Jon K. Parsley, Guymon

Jon K. Parsley is a sole practitioner in Guymon. He received a bachelor's degree from Central State University in Edmond in 1991. Mr. Parsley received his Juris Doctor Degree from the University of Oklahoma College of Law. He was admitted to the Oklahoma Bar Association in 1994. His practice is very general with an emphasis in litigation. He is also admitted to practice before the U.S. District Court for the Western District of Oklahoma. Mr. Parsley was the chairperson of the OBA Young Lawyers Division in 2002. He was then elected as the Governor from District 4 and served on the OBA Board of Governors from 2004-2006. Mr. Parsley is a member of the American Bar Association, Oklahoma Association for Justice and the American Association for Justice. Mr. Parsley is a Benefactor Fellow of the Oklahoma Bar Foundation.



2010 President

Allen M. Smallwood, Tulsa

Allen M. Smallwood is a solo criminal defense practitioner in Tulsa. He received a B.S. from Oklahoma State University in 1972 and his J.D. from the University of Tulsa College of Law in 1974. He has been a member of the Oklahoma Bar Association and the Tulsa County Bar Association since 1975. Prior to obtaining his degrees, Mr. Smallwood served in the United States Marine Corps, 1966-1968. He is a two-time past president of the Tulsa County Bar Association and former director of the Tulsa County Bar Foundation. He has been or is a member of the American Inns of Court, Council Oak Chapter, OBA Board of Governors, Oklahoma Judicial Nominating Commission, Tulsa Criminal Defense Lawyers Association, National Association of Criminal Defense Lawyers, Fellow, Oklahoma Bar Foundation, Fellow, American Bar Foundation and Fellow, American Association for Justice. In addition to serving, he has received numerous awards such as the TCBA Golden Rule Award, OBA Award for Ethics, President's Award for Service to the Centennial Committee – TCBA, TCBA Neil E. Bogan Award for Professionalism, OBA Neil E. Bogan Award for Professionalism and ABA General Practice, Solo & Small Firm Division Donald C. Rikli Solo Lifetime Achievement Award (2006).



2010 Nominees

President-Elect

Deborah Reheard, Eufaula

Deborah Reheard graduated from the TU College of Law in 1987 and has been in private practice in Eufaula since 1991 where she practices family law, criminal defense and bar disciplinary defense. Her OBA involvement includes serving with the Board of Governors; the Oklahoma Criminal Defense Lawyers Association as vice president; the OBA Bench & Bar Committee; the Professionalism and Civility Task Force; the Administration of Justice Task Force; the Women in Law Committee as chair in 2002, 2003 and 2009; the board of trustees of the Oklahoma Bar Foundation and the Oklahoma Judicial Nomination Commission representing the 2nd Congressional District. She is a recipient of the Mona Lambird Spotlight Award and the Oklahoma Criminal Defense Lawyers President's Award. She is also a frequent presenter of CLE topics on professionalism, civility, ethics and criminal law.



Vice President

**Mack K. Martin,
Oklahoma City**

Mack K. Martin graduated from OCU School of Law in 1979. Since then he has practiced criminal defense law. He has been actively involved with and held offices in numerous organizations including serving as former president of the Oklahoma Criminal Defense Lawyers Association, former president of the Oklahoma City Federal Bar, former advisory board member of the Oklahoma Trial Lawyers Association, president-elect of the Oklahoma County Bar Association, Fellow of the American College of Trial Lawyers, Fellow of the American Board of Criminal Lawyers, life member of the National Association of



Criminal Defense Lawyers and Master of the William J. Holloway Jr. American Inns of Court. Additionally, he was the recipient of the Oklahoma Criminal Defense Lawyers Association Lord Erskine Award for lifetime achievement in criminal defense in 2000 and the recipient of the Criminal Law Section Professional Advocate Award in 2006.

Supreme Court Judicial District Three

**Susan B. Shields,
Oklahoma City**

Susan B. Shields is a shareholder with McAfee & Taft who practices in the areas of estate and family wealth planning, estate and trust administration, business planning and charitable organizations. She earned her B.A. from Stanford University in 1986, and her J.D. from the University of California, Los Angeles School of Law in 1989. She is a Trustee of the Oklahoma Bar Foundation; former chair of the Estate Planning, Probate and Trust Section; former member of Legal Ethics Committee; Fellow of American College of Trust and Estate Counsel; recipient of the OBA Earl Sneed Award in 2005; recipient of Outstanding Pro Bono Lawyer from Legal Aid of Western Oklahoma in 1993; finalist in 2005 for *The Journal Record* Woman of the Year Award; former director of SpiritBank; former director of the Oklahoma Center for Non-Profits; member of the Oklahoma City Estate Planning Council and member of the Oklahoma Medical Research Foundation Planned Giving Council. She has been a frequent speaker on a variety of estate planning, probate and non-profit topics for CLE at the OBA and at other seminars and has served as an adjunct professor in estate planning at the OU College of Law.



Supreme Court Judicial District Four

Glenn A. Devoll, Enid

Glenn A. Devoll is a shareholder and director of the Enid-based law firm of Gungoll, Jackson, Collins, Box and Devoll PC. Practicing primarily in the Enid office, he is also active in the firm's Oklahoma City office. He received his undergraduate degree in business administration from Central State University in 1974. In 1977, he received his J.D. from Oklahoma City University and was admitted to practice that same year. A native of Altus, he has lived in Enid since 1978. His practice is focused primarily in the areas of oil and gas, banking, commercial transactions and litigation pertaining to those areas of practice. Most recently, he has served on the Oklahoma Judicial Nominating Commission, and also served as a past president of the Garfield County Bar Association (2002), is a past Garfield County delegate to the annual Oklahoma Bar Association meeting and convention, is a Fellow in the Oklahoma Bar Foundation, member of the Mineral Law Section of the Oklahoma Bar Association and past chairman of the Mineral Law Section (1986-87). He has worked on the Garfield County Bar Association Law Day Committee, the Joint Industrial Foundation of Enid and has assisted the Enid High School Constitution Team.



Supreme Court Judicial District Five

Ryland Louis Rivas, Chickasha

Ryland Louis Rivas graduated from the OU College of Law in 1974. Upon receiving his law degree, he immediately opened a private practice in Chickasha and has worked there throughout his career. He practices Indian law as well as criminal and civil law and has served as the general counsel for the Oklahoma Indian Affairs Commission. He was also one of the first four magistrates on the Court of Indian Offenses known widely as the CFR court which was the forerunner of tribal courts today. He has also served on the Chickasha City Council, Grady County Community Sentencing Council and the Oklahoma Indian Legal Services Board of Directors. Currently he is the chief justice for the Cheyenne and Arapaho Supreme Court and is general counsel for the Kiowa Casino Operations Authority.



CONTESTED ELECTION:

Member-At-Large

David A. Poarch,
Norman


A 1977 graduate of the OU College of Law, David A. Poarch was appointed assistant dean for external affairs and adjunct professor of law at OU in 1997 following several years of public service as an assistant United States attorney for the Western District of Oklahoma. He was engaged in the private practice of law for more than 10 years. In addition, he served as chief operating officer and general counsel for the Oklahoma subsidiary of a Fortune 500 company. Dean Poarch serves as a Master of the Luther Bohanon chapter of the American Inns of Court and was an active elected member of the Oklahoma Bar Association Board of Governors from 2001 to 2003.



Member-At-Large

Amber Peckio Garrett, Tulsa

Amber Peckio Garrett is a partner at Garrett Law Office PC where she practices consumer protection, insurance disputes, product liability, family law and criminal defense. She received dual degrees in economics and political science from Southeastern Oklahoma State University and received her J.D. from the TU College of Law where she served as articles editor for the *Tulsa Journal of Comparative and International Law* and as the Student Bar Association speaker of the house. Ms. Peckio Garrett currently serves the OBA as a YLD board director; as a member on the MCLE Commission, the Lawyer Advertising Task Force and the Professionalism Committee and as a member and immediate past chairperson for the Women in Law Committee. She is a graduate of the inaugural 2008-2009 OBA Leadership Academy and is a frequent moderator and presenter of CLE for the OBA and other professional organizations. In addition to her work with the OBA, she serves on the pro bono attorney panel for Legal Aid of Oklahoma for Tulsa and surrounding counties working with at-risk women and families.



An Evening with
JOHN GRISHAM

"The Innocent Man" and
Wrongful Convictions in America


7:30 p.m., OCTOBER 13, 2009
OCU Henry J. Freede Wellness and Activity Center
N.W. 27th & N. Florida

Bestselling novelist John Grisham -- author of the nonfiction blockbuster "The Innocent Man" -- will speak about efforts to combat wrongful convictions.

Attendees will have an opportunity to contribute to a fund to establish a program at OCU LAW to address wrongful convictions (suggested minimum contribution, \$25).

Contributors of \$100 or more are invited to attend a post-event reception (photo opportunity with John Grisham included).

Seating is limited. Doors open at 6:30 p.m.

OCU  LAW
OKLAHOMA CITY UNIVERSITY SCHOOL OF LAW
www.okcu.edu/law

For more information, contact
lawevents@okcu.edu or 405-208-5197.

2009 House of Delegates

Delegate certification should be sent to OBA Executive Director John Morris Williams in order for names to appear in print in the bar journal and to be included in the House of Delegates agenda book.

COUNTY	DELEGATE	ALTERNATE
ADAIR	Judge Jeff Payton.	Shannon Otteson
ALFALFA.....	Marcus A. Jungman	Kyle B. Hadwiger
ATOKA		
BEAVER.....	Jerry L. Venable	Todd Trippet
BECKHAM.....	Avery "Chip" Eeds	Dan Jacobsma
BLAINE		
BRYAN.....	D. Michael Haggerty II.	Chris D. Jones
CADDO		
CANADIAN	W. Mark Hixson.	Michael Denton
	Suzanne P. Heggy	Michael O. Segler
	Roger Dean Rinehart	Alan Gabriel Bass
CARTER	Judge Tom Walker.	Rennie Collins
	Mike Mordy	Betsy Clark
CHEROKEE	Corey Upchurch Johnson.	Brandy Inman
CHOCTAW	G. Donald Haslam.	J. Frank Wolfe III
CIMARRON.....	Stanley Ed Manske	Judge Ronald L. Kincannon
CLEVELAND.....	Craig Sutter	Don Pope
	Holly Iker	James Pence
	Michael Johnson	Blake Virgin
	Golda Long.	Judge Michael Tupper
	Peggy Stockwell	Roger Housley
	Judge Stephen Bonner	Treva Kruger
	Sandee Coogan	Debra Loeffelholz
	Benjamin Odom.	Amy Pepper
	David Stockwell.	Cindee Pichot
	Jan Grant-Johnson.	Ann Harcourt
	Gary Rife.	James Loftis
	Jan Meadows	John Sparks
	Richard Stevens	Jamie McGraw
	Judge Lori Walkley	Aaron Stiles
	Micheal Salem	David Swank
	Henry Herbst.	Richard Wall
	Blaine Nice	David Ponder
	Robert Pendarvis.	Greg Tontz
	David Poarch	Christal Adair
COAL	Preston Harbuck	Trae Gray
COMANCHE.....	Teressa Williams	
	Dietmar Caudle	
	John W. "Bill" Doolin	
COTTON	Kathleen Flanagan.	Mark Clark
CRAIG	O.B. Johnston III	Kent Ryals
CREEK	Lauren Lester Allison	Judge Richard Woolery

CUSTER.....	Donna L. Dirickson.....	Luke Adams
DELAWARE.....		
DEWEY.....	Judge Rick Bozarth.....	Gary Combs
ELLIS.....	Laurie E. Hays.....	Judge Joe L. Jackson
GARFIELD.....	Randy J. Long..... Michael C. Bigheart Glenn A. Devoll	Robert R. Faulk
GARVIN.....	Daniel T. Sprouse.....	John A. Blake
GRADY.....	Ryland Rivas West Johnston	
GRANT.....	Judge Jackie D. Hammontree Jr.....	Steven Andrew Young
GREER.....	Judge Danny R. Deaver.....	Eric G. Yarbrough
HARMON.....	Judge W. Mike Warren.....	David L. Cummins
HARPER.....	G. Wayne Olmstead.....	M. Marcus Holcomb
HASKELL.....		
HUGHES.....		
JACKSON.....	John H. Weigel.....	John Wampler
JEFFERSON.....	James H. Ivy.....	Carrie E. Hixon
JOHNSTON.....	Dustin P. Rowe.....	Laura J. Corbin
KAY.....	James M. Emig..... David R. Bandy.....	Todd Burlie Fera Terrell
KINGFISHER.....	E. Edd Pritchett.....	Rob Johnson
KIOWA.....		
LATIMER.....		
LEFLORE.....	Dru Waren	
LINCOLN.....		
LOGAN.....	Jeff L. Hirzel.....	Tim W. Green
LOVE.....	Kenneth L. Delashaw.....	Richard A. Cochran
MAJOR.....	Mitchell A. Hallren.....	Judge N. Vinson Barefoot
MARSHALL.....	Richard A. Miller.....	Jeffrey S. Landgraf
MAYES.....	R. Benjamin Sherrer.....	James D. Goodpaster
MCCLAIN.....		
MCCURTAIN.....	Tom Ellis.....	Judge Michael DeBerry
MCINTOSH.....		
MURRAY.....	Phil S. Hurst.....	Judge John H. Scaggs
MUSKOGEE.....	Roy Tucker..... Kimberly Cooper..... Doris Gruntmeir	Larry Vickers Jr. Carman Rainbolt
NOBLE.....		
NOWATA.....		
OKFUSKEE.....	Bruce A. Coker.....	Jeremy Pittman
OKLAHOMA.....	Judge Bryan C. Dixon..... Laura H. McConnell-Corbyn..... Mack K. Martin..... Judge Vicki Lynn Robertson..... Charles E. Geister III..... Judge Barbara Green Swinton..... Jack S. Dawson..... Judy Hamilton Morse..... Reid E. Robison..... Timothy J. Bomhoff..... Judge Lisa K. Hammond.....	Richard A. Riggs Celeste T. Johnson Judge Philippa James D. René Hildebrant Raymond Zschiesche Sheila D. Stinson Brian Pierson Tracey D. Martinez Margo Brown Ron Shinn Jr. Lawrence E. Schneider IV

	Don G. Holladay	Eugene K. Bertman
	Michael Mullins	Yolanda Downing
	Nicholle Jones Edwards	Marchi McCartney
	Leslie L. Lynch.....	Judge E. Bay Mitchell III
	Amy Jo Pierce	Kieran D. Maye Jr.
	Kevin D. Gordon	James R. Webb
	Tracy Pierce Nester	W. Todd Blasdel
	Clifford C. Dougherty III	Judge Barry Lee Hafar
	Judge Timothy D. DeGiusti	John Edwards III
	Judge Glenn M. Jones	Angela Ailles-Bahm
	James A. Kirk	David W. VanMeter
	Larry M. Spears	M. Courtney Briggs
	Benjamin J. Butts	Judge Page Morgan
	David W. Kisner	Evan B. Gatewood
	J. David Ogle	Brandon Long
	John B. Heatly	Tim Rhodes
	Michael Rubenstein	Linda L. Samuel-Jaha
	Charles F. Alden III	Steve Horton
	Michael Brewer	Daniel J. Morgan
OKMULGEE	Javier Ramirez	Luke Gaither
OSAGE.....	Jesse J. Worten III	
OTTAWA	Charles W. Chesnut.	John Weedn
PAWNEE		
PAYNE	Andrew (Drew) Ihrig	William Bradley Wooten
	Jodie L. Gage	Brenda Nipp
	Susan C. Worthington.....	John Dunivan
PITTSBURG	Mindy M. Beare.....	Jeremy J. Beaver
PONTOTOC.....	Karen M. Thomas	Joel Stafford
	Deresa Gray	Walter Newmaster
POTTAWATOMIE.....	James T. Stuart.....	Marianne Miller
	Bradley C. West	Joe Vorndran
PUSHMATAHA	James T. Branam	Jacqueline Jo Perrin
ROGER MILLS	Judge F. "Pat" Ver Steeg.....	Julia O'Neal
ROGERS	Christopher Noah Sears.....	Nathan Adams
SEMINOLE.....	R. Victor Kennemer III	William D. Huser
SEQUOYAH.....		
STEPHENS.....		
TEXAS.....	Jon K. Parsley.....	Douglas Dale
TILLMAN.....		
TULSA.....	Judge Jane Wiseman	Sharisse O'Carroll
	Robert S. Farris	Mia Vahlberg
	Judge Millie Otey	Michael Scott Ashworth
	Judge Charles R. Hogshead.....	Kenneth G. Miles
	William G. LaSorsa	David M. Thornton, Jr.
	Paul D. Brunton.....	John D. Dale
	B. Darlene Crutchfield	Keith A. Jones
	Kenneth L. Brune	Shelton L. Benedict
	C. Michael Zacharias	Stephen J. Greubel
	Anne B. Sublett	Jeffrey B. Tracy
	Leonard I. Pataki	Martha Rupp Carter
	Robert "Bob" Redemann	Robert B. Sartin
	Jack L. Brown.....	John Woodard, III
	Theodore P. Gibson.....	D. Kenyon Williams Jr.
	Vivian C. Hale	Georgenia A. Van Tuyl
	Patrick O'Connor	Judge E. Mark Barcus

Faith Orłowski	Professor Martin A. Frey
James R. Gotwals	
James C. Milton	
Ron Main	
Phil Frazier	
Julie A. Evans	
John T. Hall	
Trisha Archer	
Molly A. Aspan	
Chris Camp	
Kimberly K. Hays	
Melissa F. Cornell	
Blake R. Givens	

WAGONER.....

WASHINGTON.....	Linda S. Thomas	P. Scott Buhlinger
	Michael Shiflet	

WASHITA.....	Judge Christopher S. Kelly	Michael Kelly
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WOODS.....	Westline Helen Mae Ritter	Ron Bittle
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WOODWARD.....	Bryce Hodgden	Justin P. Eilers
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JUDICIAL CONFERENCE

DELEGATE

ALTERNATE

Dist. Judge.....	Judge P. Thomas Thornbrugh	Judge M. John Kane IV
Assoc. Dist Judge	Judge Mickey J. Hadwiger	Judge Norman L. Russell

PAST PRESIDENTS

J. William Conger

Stephen D. Beam

William Robert Grimm

Michael Devere Evans

Harry Arthur Woods Jr.

Melissa Griner DeLacerda

Gary Carl Clark

Charles Donald Neal Jr.

M. Joe Crosthwait Jr.

Douglas W. Sanders Jr.

John A. Gaberino Jr.

William J. Baker

James Duke Logan

Sidney George Dunagan

Bob Warren Rabon

Dean Andrew M. Coats

Robert Forney Sandlin

Michael Burrage

Anthony M. Massad

Burck Bailey

David K. Petty

James R. Eagleton

Judge Paul Miner Vassar

William George Paul

Clarence D. Northcutt

Judge Thomas R. Brett

Winfrey David Houston



105th OBA Annual Meeting Sheraton Hotel, Oklahoma City Nov. 4-6, 2009

All events will be held at the Sheraton Hotel unless otherwise specified.

TUESDAY, NOVEMBER 3

OBA REGISTRATION.....4 – 7 P.M.

OKLAHOMA FELLOWS OF
THE AMERICAN BAR
FOUNDATION6:30 – 9:30 P.M.

WEDNESDAY, NOVEMBER 4

OKLAHOMA FELLOWS OF THE
AMERICAN BAR FOUNDATION.....8 – 9 A.M.

ART SHOW REGISTRATION.....8 A.M. – NOON

OBA REGISTRATION.....8 A.M. – 5 P.M.

OBA HOSPITALITY AREA8 A.M. – 5 P.M.

BOARD OF BAR
EXAMINERS8:30 A.M. – NOON

OBA/CLE SEMINAR.....8:30 A.M. – 5 P.M.

*See seminar program for speakers
and complete agenda*

FAMILY LAW
CRIMINAL LAW
NUTS & BOLTS
REAL PROPERTY
RECENT DEVELOPMENTS

OU COLLEGE OF LAW
ALUMNI RECEPTION
AND LUNCHEON.....11:15 A.M. – 1:30 P.M.

OUTSTANDING SENIOR LAW SCHOOL STUDENT
AWARD
Amanda Clark

TU COLLEGE OF LAW
ALUMNI RECEPTION
AND LUNCHEON.....11:30 A.M. – 1:30 P.M.

OUTSTANDING SENIOR LAW SCHOOL STUDENT
AWARD
Jared Burden

OCU COLLEGE OF LAW
ALUMNI RECEPTION
AND LUNCHEON.....11:45 A.M. – 1:30 P.M.

OUTSTANDING SENIOR LAW SCHOOL STUDENT
AWARD
Katherine Lee Holey

CRIMINAL LAW SECTION
LUNCHEONNOON – 1:30 P.M.

OBA BOARD OF GOVERNORS MEETING....2 – 4 P.M.

FRIENDS OF BILL W.....5 – 6 P.M.

LAW DAY COMMITTEE.....5 – 6:30 P.M.

PRESIDENT'S RECEPTION
– 2009: THE SPACE ODYSSEY7 – 10 P.M.
*(Free for everyone
with meeting registration)*

Journey to another atmosphere with President Jon Parsley. Each attendee receives two drink tickets.

THURSDAY, NOVEMBER 5

PRO BONO BREAKFAST7:30 – 9 A.M.

CLE SPEAKER BREAKFAST7:30 – 9 A.M.

PROFESSIONALISM COMMITTEE8 – 9 A.M.

GENERAL PRACTICE/SOLO AND
SMALL FIRM SECTION8 – 9 A.M.

AMERICAN COLLEGE OF
TRUST AND ESTATE COUNSEL8 – 9:30 A.M.

OBA HOSPITALITY AREA8 A.M. – 5 P.M.

OBA REGISTRATION8 A.M. – 5 P.M.

OKLAHOMA ASSOCIATION
FOR JUSTICE SEMINAR8:30 A.M – 4 P.M.

FAMILY LAW SECTION8:30 A.M – 4:45 P.M.

CREDENTIALS COMMITTEE9 – 9:30 A.M.

OBA/CLE PLENARY
SESSION9 – 11:40 A.M.

EARL SNEED AWARD
Judge William C. Kellough, Tulsa
Deborah Reheard, Eufaula

FEATURING:



E. Phelps Gay
Former Louisiana State
Bar President

TOPIC: *Abraham Lincoln: A Few Remarks
about a Real Man*

DVD PRESENTATION, FOLLOWED BY A PANEL
DISCUSSION FEATURING:

Mr. Gay

*Judge David Lewis, Oklahoma Court of
Criminal Appeals*

*Judge Lane Wiseman, Oklahoma Court of
Civil Appeals*

*Steven Dobbs, Dobbs and Middleton,
Oklahoma City*

Professor Rick Tepker, OU College of Law

Gina Hendryx, OBA general counsel

Travis Pickens, OBA ethics counsel

LEGAL INTERN COMMITTEE9:30 – 11 A.M.

OBA RULES AND
BY-LAWS COMMITTEE10 – 10:30 A.M.

ESTATE PLANNING, PROBATE
AND TRUST SECTION10 – 11:45 A.M.

OBA RESOLUTIONS
COMMITTEE10:45 – 11:45 A.M.

OBA ANNUAL LUNCHEON
FOR MEMBERS, SPOUSES
AND GUESTSNOON – 1:45 P.M.
(\$30 with meeting registration)

OBA ARTIST OF THE YEAR
(to be announced at the luncheon)

JUDICIAL EXCELLENCE AWARD
Judge Farrell Melton Hatch, Durant

LIBERTY BELL AWARD
Theresa Hansen, Tulsa

JOE STAMPER DISTINGUISHED SERVICE AWARD
Nancy Parrott, Oklahoma City

ALMA WILSON AWARD
Judge Donald Deason, Oklahoma City

NEIL E. BOGAN PROFESSIONALISM AWARD
Jack L. Brown, Tulsa

JOHN E. SHIPP AWARD FOR ETHICS
Sidney Swinson, Tulsa

PRESIDENT'S AWARD
(to be announced at the luncheon)

FEATURING:



Gene Kranz
Apollo 13
Flight Director

TOPIC: *Failure is not an Option*

GENE KRANZ BOOK SIGNING 2 – 3 P.M.
(Books available for purchase)

WOMEN IN LAW COMMITTEE 2 – 3 P.M.

MCLE COMMISSION 2 – 3:30 P.M.

DIVERSITY COMMITTEE 2 – 3:30 P.M.

BANKRUPTCY AND REORGANIZATION
SECTION 2 – 4 P.M.

REAL PROPERTY SECTION 2 – 4 P.M.

OKLAHOMA CRIMINAL DEFENSE
LAWYERS ASSOCIATION 2 – 4 P.M.

COUNCIL ON JUDICIAL
COMPLAINTS 2 – 5 P.M.

GOVERNMENT AND ADMINISTRATIVE
LAW SECTION 2 – 6 P.M.

2009-2010 LEADERSHIP ACADEMY 2 – 6 P.M.

LAW OFFICE MANAGEMENT
SECTION 2:30 – 4 P.M.

OKLAHOMA BAR FOUNDATION
BOARD OF TRUSTEES 2:30 – 5:30 P.M.

OBA/CLE: COURAGE TO CHANGE: LAWYERS
HELPING LAWYERS 3 – 4:15 P.M.
*(Annual Meeting Registration
not required for admission)*

BOARD OF EDITORS 3:30 – 5 P.M.

FRIENDS OF BILL W. 5 – 6 P.M.

HEALTH LAW SECTION 5 – 7 P.M.

OKLAHOMA BAR FOUNDATION
RECEPTION 5:30 – 7:15 P.M.

YLD BOARD OF DIRECTORS
ANNUAL MEETING 6:30 – 7:30 P.M.

OBA COMEDY CLUB
FEATURING HENRY CHO 7:30 – 9 P.M.
*(Free for everyone with
meeting registration)*



*Laughter is the best medicine,
so get your dose of stand-up
comedy here.*

CASINO NIGHT 9 P.M. – MIDNIGHT
*(Free for everyone with
meeting registration)*

SPONSOR:
OBA Young Lawyers Division

FRIDAY, NOVEMBER 6

PRESIDENT'S BREAKFAST..... 7:30 – 9 A.M.
(\$20 with meeting registration)

FEATURING:



William G. Paul
Past OBA and
ABA President

YLD FELLOWS BREAKFAST 7:30 – 9 A.M.

OBA DELEGATE REGISTRATION 8 – 10 A.M.

OKLAHOMA BAR ASSOCIATION
GENERAL ASSEMBLY 9 – 10 A.M.

TRAILBLAZER AWARD
Annette Jacobi, Oklahoma City

OUTSTANDING COUNTY BAR AWARD
Bryan County Bar Association
Garfield County Bar Association

HICKS EPTON LAW DAY AWARD
Cleveland County Bar Association
Oklahoma County Bar Association

GOLDEN GAVEL AWARD
OBA Law Day Committee
Tina Izadi, Chair

OUTSTANDING YOUNG LAWYER AWARD
Kimberly Warren, Tecumseh

OUTSTANDING SERVICE TO THE PUBLIC AWARD
Jim Sharrock, Oklahoma City

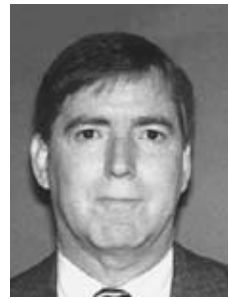
OUTSTANDING PRO BONO SERVICE
John Miley, Oklahoma City

MAURICE MERRILL GOLDEN QUILL AWARD
Wade Gungoll, Oklahoma City
Matthew C. Kane, Oklahoma City
Daniel G. Webber Jr., Oklahoma City

PRESIDENT'S AWARD
(to be announced)

GENERAL ASSEMBLY
SPEAKERS:

Chief Justice
James E. Edmondson
Oklahoma
Supreme Court



Presiding Judge
Charles Johnson
Oklahoma Court
of Criminal Appeals

Jon K. Parsley
President



INDIAN LAW SECTION 10 A.M. – NOON

OKLAHOMA BAR ASSOCIATION
HOUSE OF DELEGATES 10 A.M. – NOON
Election of Officers & Members of
the Board of Governors
Approval of Title Examination Standards
Resolutions



Allen M. Smallwood
President-Elect
Presiding

BALLOT COMMITTEE 11 A.M. – NOON

OBA/CLE Annual Meeting 2009

November 4, 2009 • Sheraton Bricktown

DAY ONE

	<i>Family Law</i>	<i>Criminal Law</i>	<i>Nuts & Bolts</i>	<i>Real Property</i>	<i>Recent Developments</i>
WEDNESDAY <i>Registration</i> 8 - 9 a.m.	Program Planner/ Moderator Kimberly Hays	Program Planner/ Moderator Ben Brown Charles Sifers	Program Planner/ Moderator Rick Rose	Program Planner/ Moderator Kraettli Epperson	Program Planner/ Moderator Travis A. Pickens
Session 1 9 - 9:50 a.m.	The New Child Support Guidelines Amy Wilson	Expungements 101 David Stockwell	Let's Make a Deal: Legal Aspects of Buying and Selling Real Property in Oklahoma Briana J. Ross	Defeating Borrowers' Claims Blake Parrott	Update on Ethics Law (ethics) Travis A. Pickens
Session 2 10 - 10:50 a.m.	Title 10 Recodification Anne Sublett	Dealing with Scientific Evidence in Criminal Law Marny Hill	Basics of Energy Law for the General Practitioner Travis Brown	Use of Transfer on Death Deed Darin Savage	Indian Law Update O. Joseph Williams
Session 3 11 - 11:50 a.m.	It's 10 O'Clock, Do You Know Where Your Client's Genetic Material Is? Questions Family Lawyers Should Be Asking Noel Tucker	Registration Requirements for Violent Offenders and Sex Offenders Cynthia Viol	How to Communicate with Baby Boomers Justice Jim Winchester	Perfecting and Renewing Judgments Josh Greenhaw	Billing Strategies in a Changing Economy Jim Calloway
12-2 p.m. LUNCH (On your own)					
Session 4 2 -2:50 p.m.	It's a Small World! The Current State of Relocation Law: Requesting and Defending Against Relocation Lori Pirraglia	Oklahoma Open Records Act: Its Use in Criminal Defense Steve Fabian	Client Care — Intake, Expectations, and Boundaries (ethics) Gina Hendryx	Changing the Understanding of the Marketable Record Title Act Scott McEachin	Employment Law Update Christine Cave


OBA/CLE Annual Meeting 2009

<i>cont'd</i>	<i>Family Law</i>	<i>Criminal Law</i>	<i>Nuts & Bolts</i>	<i>Real Property</i>	<i>Recent Developments</i>
Session 5 3 - 3:50 p.m.	Lien on Me: Attorney's Fees and Enforcing Your Lien Julie Rivers	Ethics and Criminal Law (ethics) Debbie Maddox	What Does the Internet Think of You Jim Calloway	Definition of Defensible Title Regarding Oil and Gas: Panel Discussion Timothy Dowd John Myles Kraettli Epperson	Adoption Law Update Jennifer Kern
Session 6 4 - 4:50 p.m.	Bar Complaints: What To Do When Your Client Wants to Divorce You! (ethics) Deborah Reheard	Methamphetamine The New Formula, Threat and Epidemic Mark Woodward	Child Support Basics: Getting to Know Oklahoma Child Support Services and Administrative Court Hannah Cable	RESPA Reform Monica Wittrock	Tort Reform: The Effects of 1603 on Your Practice Brad West

4:50 p.m. ADJOURN

November 5

DAY TWO

THURSDAY Registration 8 - 9 a.m.			
OBA/CLE Plenary Session 9 - 11:50 a.m.	Topic: Lessons on Professionalism: The Life and Practice of Abraham Lincoln	Featured Speaker: E. Phelps Gay, Former Louisiana State Bar President	
		"Abraham Lincoln: A Few Remarks about a Real Man" Following a DVD presentation, there will be a panel discussion featuring: Mr. Gay Judge David Lewis, <i>Oklahoma Court of Criminal Appeals</i> Judge Jane Wiseman, <i>Oklahoma Court of Civil Appeals</i> Steven Dobbs, <i>Dobbs and Middleton, Oklahoma City</i> Professor Rick Tepker, <i>OU College of Law</i> Gina Hendryx, <i>OBA general counsel</i> Travis Pickens, <i>OBA ethics counsel</i>	

The OBA Needs You — Volunteer for a Committee

The work of OBA committees is vital to the organization — and that work requires volunteers. Sure, you're busy, but we need you... whether you are a seasoned lawyer or a new lawyer. Please consider becoming involved in your professional association. There are many committees to choose from, so there should be at least one that interests you.

If you practice in or around the Tulsa metro like I do, remember that meetings are conducted using videoconferencing equipment in Tulsa, which makes it convenient to interact with others in Oklahoma City. No time wasted driving the turnpike.

The easiest way to sign up is online at <http://my.okbar.org/login>. If you are already on a committee, my.okbar shows you when your current term expires. Other sign-up options are to complete the form below and either fax or mail it to me. I'm counting on your help to make my year as your bar president a productive one. Please sign up by Dec. 11, 2009.



Allen Smallwood, President-Elect

Standing Committees

- | | | |
|--------------------------------|--|---|
| • Access to Justice | • Group Insurance | • Paralegal |
| • Awards | • Law Day | • Professionalism |
| • Bar Association Technology | • Law-related Education | • Rules of Professional Conduct |
| • Bar Center Facilities | • Law Schools | • Solo and Small Firm Conference Planning |
| • Bench and Bar | • Lawyers Helping Lawyers Assistance Program | • Strategic Planning |
| • Civil Procedure | • Lawyers with Physical Challenges | • Uniform Laws |
| • Communications | • Legal Intern | • Women in Law |
| • Disaster Response and Relief | • Legislative Monitoring | • Work/Life Balance |
| • Diversity | • Member Services | |
| • Evidence Code | | |

Note: No need to sign up again if your current term has not expired. Check www.okbar.org/members/committees/ for terms

Please Type or Print

Name _____ Telephone _____

Address _____ OBA # _____

City _____ State/Zip _____

FAX _____ E-mail _____

Committee Name

1st Choice _____

2nd Choice _____

3rd Choice _____

Have you ever served
on this committee?

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

If so, when?
How long?

☐ Please assign me to only one committee.

☐ I am willing to serve on (two or three - circle one) committees.

Besides committee work, I am interested in the following area(s):

Mail: Allen M. Smallwood • 1310 S. Denver Ave., Tulsa, OK 74119

Fax: (918) 582-1991 • E-Mail: amsmallw@swbell.net

2009 Annual Meeting Registration Form



Failure is Not an Option

Please complete a separate form for each registrant.

Name _____

E-mail _____

Badge Name (if different from roster) _____ Bar No. _____

Address _____

City _____ State _____ Zip _____ Phone _____

Name of Non-Attorney Guest _____

Please change my OBA roster information to the information above. ☐ Yes ☐ No

Check all that apply:

- ☐ Judiciary ☐ OBF Fellow ☐ OBF Past President ☐ OBA Past President ☐ YLD Officer ☐ YLD Board Member ☐ YLD Past President
☐ Board of Bar Examiner ☐ 2009 OBA Award Winner ☐ Delegate ☐ Alternate ☐ County Bar President: County _____

☐ **YES! Register me for the 2009 Annual Meeting, November 4, 5 & 6, in Oklahoma City.**

Events will be held at the Sheraton Hotel. Registration fee includes continental breakfast in hospitality area, President's Reception ticket(s), OBA Comedy Club, convention gift, Vendors Expo, Art Contest and Viva Las Vegas Casino Night.

- ☐ **MEMBER:** ☐ \$50 through Oct. 12; \$75 after Oct. 12 \$ _____
☐ **NEW MEMBER** (Admitted after Jan. 1, 2009): ☐ Free through Oct. 12; \$15 after Oct. 12 \$ _____
☐ **LAW STUDENT DIV.** ☐ \$25 through Oct. 12; \$35 after Oct. 12 \$ _____
☐ I will submit an entry (or entries) in the Art Contest. (Submit art registration form by Oct. 12.
Entry fee included in meeting registration.)

I will be attending/participating in the following ticketed events in addition to my registration fee for Annual Meeting:

- ☐ **WED. & THURS.: CLE Multitrack** (____ [0 or 1] ticket @ \$150 through Oct. 12; \$175 after Oct. 12;
and Plenary \$50 for new members through Oct. 12, \$75 after Oct. 12) \$ _____
☐ **THURSDAY: CLE Plenary only** (____ [0 or 1] ticket @ \$75 through Oct. 12; \$100 after Oct. 12;
\$25 for new members through Oct. 12, \$50 after Oct. 12). \$ _____
☐ **THURSDAY: Annual Luncheon** (____ number of tickets @ \$30 each) \$ _____
☐ **FRIDAY: President's Prayer Breakfast** (____ number of tickets @ \$20 each) \$ _____
☐ Please check here, if under the Americans with Disabilities Act you require specific aids or services during
your visit to the OBA Annual Meeting. ☐ Audio ☐ Visual ☐ Mobile (Attach a written description of your needs.)

I will be attending the following ticketed events that do NOT require Annual Meeting registration:

- ☐ **WEDNESDAY: Law School Luncheon** – (check one) ☐ OCU ☐ OU ☐ TU
(____ number of tickets @ \$30 each \$ _____

TOTAL \$ _____

☐ **I will be attending the free mental health CLE seminar, "Courage to Change: Lawyers Helping Lawyers," that does NOT require Annual Meeting registration.**

THREE WAYS TO REGISTER

- ☐ **MAIL** this registration form with payment or credit card info to:
OBA Annual Meeting
P.O. Box 53036
Okla. City, OK 73152
☐ **FAX** this registration form with credit card information to: (405) 416-7092.
☐ **ONLINE** at www.okbar.org
CANCELLATION POLICY Full refunds will be given through Oct. 23. No refunds will be issued after deadline.

PAYMENT OPTIONS:

- ☐ Check enclosed: Payable to Okla. Bar Association
Credit card: ☐ VISA ☐ Mastercard ☐ Discover ☐ American Express
Card # _____
Exp. Date _____
Authorized Signature _____

HOTEL ACCOMMODATIONS:

Fees do not include hotel accommodations. For reservations contact: Sheraton Hotel at (405) 235-2780. Call by Oct. 12 and mention hotel code: OK BAR for a special room rate of \$97 per night. For hospitality suites, contact Craig Combs at (405) 416-7040 or e-mail: craigc@okbar.org.

OBA Technology Fair

Sept. 24, 2009 • Oklahoma Bar Center, Oklahoma City

It's state fair season in Oklahoma, and the OBA sponsored a fair of its own last month. More than 160 bar members participated in the OBA Technology Fair, which featured the ABA TECHSHOW® Roadshow. The day included numerous technology presentations, vendor demonstrations and tech giveaways.

2010 ABA TECHSHOW® Chair Debbie Foster and OBA Management Assistance Program Director Jim Calloway give a step-by-step explanation of how to convert to a paperless law office.



Jimmy Bunn takes notes during a session at last month's Tech Fair.

Mark Koss, Noel Tucker, Phil Tucker and Linda Pizzini listen to the 60 Tips in 60 Minutes presentation.



OBA Communications Specialist Jeff Kelton helps Alice Costello set up her profile on Oklahoma Bar Circle, a social networking site exclusively for OBA members.

Tim Priebe (front, center) of T&S Web Design set up attorneys' Web sites on site during the Tech Fair.



LAS VEGAS/SEMINOLE COUNTY BAR CLE

Location: Paris Hotel, Las Vegas, Nevada

SATURDAY NOVEMBER 7, 2009

- 8:00 a.m. – 8:30 a.m. REGISTRATION & BREAKFAST
- 8:30 a.m. – 9:30 a.m. OKLAHOMA LEGISLATIVE UPDATE
Ryan Kiesel, State Representative & Attorney
- 9:30 a.m. – 10:30 a.m. OVERVIEW OF SEPARATION OF POWERS & JUDICIAL INDEPENDENCE
Gordon R. Melson, Attorney & Retired Judge
- 10:30 a.m. – 10:45 a.m. BREAK
- 10:45 a.m. – 11:50 a.m. CRIMINAL LAW: RECENT U.S. SUPREME COURT DECISIONS OF INTEREST
Irven Box, Attorney & Television Legal Analyst

SUNDAY NOVEMBER 8, 2009

- 8:30 a.m. - 9:30 a.m. FAMILY LAW UPDATE (including the new Child Support Guidelines)
Honorable Tim Olsen, Associate District Judge
- 9:30 a.m. – 10:30 a.m. JUDICIAL ELECTIONS: FINANCING, RECUSAL, and JUDICIAL INDEPENDENCE
Gordon R. Melson, Attorney & Retired Judge
- 10:30 a.m. – 10:45 a.m. BREAK
- 10:45 a.m. – 12:00 noon THE CONFRONTATION CLAUSE & OKLAHOMA EVIDENCE RULE 2803.1
Chris Ross, District Attorney, 22nd District

*** 7 Hours of CLE Credit, Including 1 Hour of Ethics ***

Registration Form

Complete One Form Per Person. Feel Free to Duplicate for Additional Registrations
Full Payment of \$125.00 Must Accompany this Form. (Includes 2 Breakfasts)

Name and OBA # _____

Address _____

Phone Number: _____ E-Mail _____

Mail to: Judge Tim Olsen, P.O. Box 678, Wewoka, Ok. 74884-0678; (405) 257-3386
Lodging Information: Seminar Participants Special Rate of \$165 per Room on Friday & Saturday nights, & \$125 on Sunday night. For Reservation, call toll-free Paris Las Vegas Hotel at 1-888-266-5687 and refer to Group Code SPSCB9 (Seminole Co. Bar)

OBA Women in Law Conference

Sept. 22, 2009 ★ Skirvin Hotel, Oklahoma City

The OBA Women in Law Conference has gained the reputation as a premier event within the Oklahoma Bar Association. This year's keynote speaker was Cherie Blair, Queen's Counsel and wife of former Prime Minister Tony Blair.



Cherie Blair addresses the crowd of more than 300 on human rights for women and children of the world.



Deborah Bruce, Deirdre Dexter, Renee DeMoss and Faith Orlowski



Julie Bates, M. Courtney Briggs, Judge Carol Hubbard and Sheila Sewell



Cherie Blair (center) with Women in Law Committee members Alison Cave, Deb Reheard, Melissa DeLacerda and Cathy Christensen.



The Oklahoma Association for Justice is sponsoring the annual
Insurance, Tort & Workers' Compensation Update
Program planner/Moderator: Rex Travis, Oklahoma City

Nov. 5 – Oklahoma City
(During OBA Convention)
Cox Convention Center

November 20 — Tulsa
Marriott, Southern Hills
1902 East 71st Street, Tulsa

Register Online at www.OKFORJUSTICE.org

Registration: 8:30 a.m.

Tuition: \$150 for OAJ members and \$195 for nonmembers if registration is received by Oct. 30th. Add \$30 for registrations received after October 30, 2009.

Member Benefit Options

President's Club Members may select this program as their complimentary 6 hour CLE. Please check the "President's Club" box on the registration form to use this benefit option.

Sustaining Members may attend this program for \$120, a savings of more than 15%.

CLE Credit: Participants will earn 6 hours of mandatory CLE credit, including 1 hour of ethics.

Register & Pay Online:
www.okforjustice.org

Registration: ☐ Nov. 5 OKC ☐ Nov. 20 Tulsa
Name _____ OBA # _____
Firm _____
Address _____
City _____ State _____ Zip _____
Phone _____ Fax _____ Email _____

Registration Category:

☐ \$150 OAJ Member ☐ \$195 Non-member
☐ \$120 OAJ Sustaining Member ☐ \$0 OAJ President's Club
Add \$30 per attendee for registrations sent after October 30, 2009.

Best Value for Law Firms: ☐ \$350 – 3 Member Registration
(Send three OAJ Members from your firm and save \$100!)
Name _____ OBA # _____
Name _____ OBA # _____

Method of Payment: ☐ Check Enclosed ☐ Visa ☐ MC ☐ Am Ex
Cardholder name _____
Card number _____ Exp. Date _____
Signature _____

Return Registration Form & Payment to:
OAJ, 323 NE 27th Street, Oklahoma City, Ok. 73105
Fax: 405-528-2431



IS PROUD TO ANNOUNCE THE **Frederic Dorwart** *Chair in Energy Law*



Thanks to the extraordinary support provided by the **George Kaiser Family Foundation**, the TU College of Law has established the Frederic Dorwart Chair in Energy Law. Selected from the nation's top energy law faculty, the Frederic Dorwart Chair in Energy Law will mentor a new generation of TU Law students who are tackling the myriad issues surrounding the nation's long-term energy resource needs. Additionally, the holder of the Dorwart Chair will engage our students and faculty with the National Energy Policy Institute (NEPI), an initiative created by the George Kaiser Family Foundation to develop a sustainable, national energy policy.

The University of Tulsa is profoundly grateful for the George Kaiser Family Foundation's continued generosity and support for university programs designed to improve the quality of life for all our nation's citizens.

THE UNIVERSITY OF TULSA COLLEGE OF LAW CONGRATULATES



The Honorable Layn R. Phillips (BS '74, JD '77)

U.S. Attorney for the Northern District of Oklahoma (1984-1987)
U.S. District Court Judge for the Northern District of Oklahoma (1987-1991)
Partner, Irell and Manella LLP

Distinguished Law Alumnus

We are proud to recognize
Judge Layn R. Phillips
for his professional
accomplishments and
to bring him to campus
to interact with our
students and faculty.



www.utulsa.edu/law

The University of Tulsa is an equal employment opportunity/affirmative action institution.

ANNUAL OU LAW ALUMNI LUNCHEON

SAVE THE DATE!

OBA Annual Meeting
Oklahoma City, Oklahoma
Petroleum Club

Wednesday, November 4, 2009

Reception at 11:15 (cash bar)

Luncheon at Noon, \$30.00

Please send luncheon payment to OBA.

OU
LAW

Questions: Karen Housley

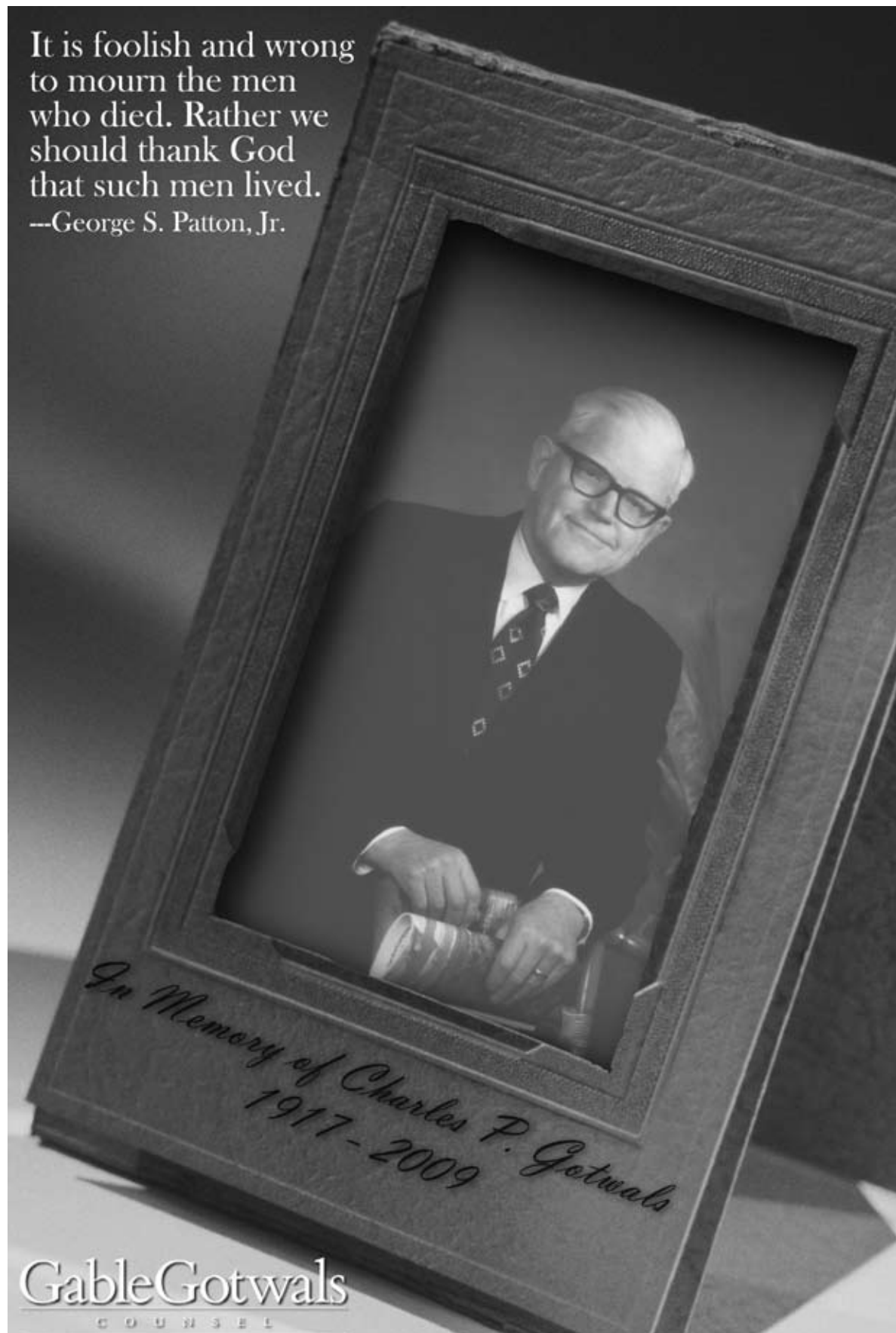
300 Timberdell • Norman, OK 73019-5081

(405) 325-0501 • khousley@ou.edu

• Registration for OBA meeting is not required for luncheon •

SAVE THE DATE!

It is foolish and wrong
to mourn the men
who died. Rather we
should thank God
that such men lived.
—George S. Patton, Jr.



2010 OBA Board of Governors Vacancies

Nominating Petition Deadline: 5 p.m. Friday, Sept. 4, 2009

OFFICERS

President-Elect

Current: Allen M. Smallwood, Tulsa
Mr. Smallwood automatically becomes OBA president Jan. 1, 2010
(One-year term: 2010)

Nominee: Deborah Reheard, Eufaula

Vice President

Current: Linda S. Thomas, Bartlesville
(One-year term: 2010)
Nominee: Mack K. Martin, Oklahoma City

BOARD OF GOVERNORS

Supreme Court Judicial District Three

Current: Cathy M. Christensen, Oklahoma City
Oklahoma County
(Three-year term: 2010-2012)

Nominee: Susan S. Shields, Oklahoma City

Supreme Court Judicial District Four

Current: Donna Dirickson, Weatherford
Alfalfa, Beaver, Beckham, Blaine, Cimarron,
Custer, Dewey, Ellis, Garfield, Harper, Kingfisher,
Major, Roger Mills, Texas, Washita, Woods and
Woodward counties
(Three-year term: 2010-2012)

Nominee: Glenn A. Devoll, Enid

Supreme Court Judicial District Five

Current: Peggy Stockwell, Norman
Carter, Cleveland, Garvin, Grady, Jefferson, Love,
McClain, Murray and Stephens counties
(Three-year term: 2010-2012)

Nominee: Ryland L. Rivas, Chickasha

Member-At-Large

Current: Deborah A. Reheard, Eufaula
(Three-year term: 2010-2012)

Nominee: David A. Poarch, Norman

Nominee: Amber Peckio Garrett, Tulsa

Summary of Nominations Rules

Not less than 60 days prior to the Annual Meeting, 25 or more voting members of the OBA within the Supreme Court Judicial District from which the member of the Board of Governors is to be elected that year, shall file with the Executive Director, a signed petition (which may be in parts) nominating a candidate for the office of member of the Board of Governors for and from such Judicial District, or one or more County Bar Associations within the Judicial District may file a nominating resolution nominating such a candidate.

Not less than 60 days prior to the Annual Meeting, 50 or more voting members of the OBA from any or all Judicial Districts shall file with the Executive Director, a signed petition nominating a candidate to the office of Member-At-Large on the Board of Governors, or three or more County Bars may file appropriate resolutions nominating a candidate for this office.

Not less than 60 days before the opening of the Annual Meeting, 50 or more voting members of the Association may file with the Executive Director a signed petition nominating a candidate for the office of President-Elect or Vice President or three or more County Bar Associations may file appropriate resolutions nominating a candidate for the office.

See Article II and Article III of OBA Bylaws for complete information regarding offices, positions, nominations and election procedure.

Vacant positions will be filled at the OBA Annual Meeting Nov. 4-6. Terms of the present OBA officers and governors listed will terminate Dec. 31, 2009. Nomination and resolution forms can be found at www.okbar.org.

Statement of Ownership Management and Circulation

(Required by 39 U.S.C. 3685)

1. Publication Title: The Oklahoma Bar Journal
 2. Publication number: 277-340
 3. Filing Date: Sept. 30, 2009
 4. Issue Frequency: 3 issues monthly in January, February, March, April, May, August, September, October, November & December; bimonthly in June & July

5. Number of issues published annually: 34

6. Annual subscription price: \$55

7. Complete mailing address of known office of publication: P.O. Box 53036, Oklahoma City, Oklahoma County, OK 73152-3036; 1901 N. Lincoln Blvd., Oklahoma City, OK 73105

8. Complete mailing address of headquarters or general business office of publisher: P.O. Box 53036, Oklahoma City, Oklahoma County, OK 73152-3036; 1901 N. Lincoln Blvd., Oklahoma City, OK 73105

9. Full names and complete addresses of publisher, editor, and managing editor:

Publisher: Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036

Editor: Melissa DeLacerda, 301 S. Duck, Stillwater, OK 74076

Managing Editor: John Morris Williams, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036

10. Owner (If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock.)

Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036

11. Known bondholders, mortgages, and other security holders owning or holding 1 percent or more of total amount of bonds, mortgages or other securities: None

12. Tax Status: The purpose, function and nonprofit status of this organization and the exempt status for federal income tax purposes has not changed during preceding 12 months.

13. Publication Title: The Oklahoma Bar Journal

14. Issue Date for Circulation Data Below: September 26, 2009

15. Extent and nature of circulation

A. Total No. Copies (net press run) (average no. copies each issue during preceding 12 months): 14,272 (actual no. copies of single issue published nearest to filing date): 13,500

B. Paid and/or Requested Circulation

1. Paid/Requested Outside-County Mail Subscriptions (average no. copies each issue during preceding 12 months): 13,669 (actual no. copies of single issue published nearest to filing date): 12,851

2. Paid In-County Subscriptions (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

3. Sales Through Dealers and Carriers, Street Vendors, Counter Sales and Other Non-USPS Paid Distribution (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

4. Other Classes Mailed Through the USPS (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

C. Total Paid and/or Requested Circulation (average no. copies each issue during preceding 12 months): 13,669 (actual no. copies of single issue published nearest to filing date): 12,851

D. Free or Nominal Rate Distribution by Mail

1. Outside-County (average no. copies each issue during preceding 12 months): 173 (actual no. copies of single issue published nearest to filing date): 175

2. In-County (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

3. Other Classes Mailed Through the USPS (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

4. Free Distribution Outside the Mail (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

E. Total Free Distribution (average no. copies each issue during preceding 12 months): 173 (actual no. copies of single issue published nearest to filing date): 175

F. Total Distribution (average no. copies each issue during preceding 12 months): 13,842 (actual no. copies of single issue published nearest to filing date): 13,026

G. Copies Not Distributed (average no. copies each issue during preceding 12 months): 430 (actual no. copies of single issue published nearest to filing date): 474

H. Total (average no. copies each issue during preceding 12 months): 14,772 (actual no. copies of single issue published nearest to filing date): 13,500

I. Percent Paid and/or Requested Circulation (average no. copies each issue during preceding 12 months): 98.75 (actual no. copies of single issue published nearest to filing date): 98.65

I certify that the statements made by me above are correct and complete.

John Morris Williams
Editor-in-Chief



"Race Talk and Ricci: The Court and the Confirmation Process"

Reva Siegel

Nicholas deB. Katzenbach Professor of Law
Yale Law School

Thursday, October 29, 2009

5 p.m. Public Lecture

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Interesting Call

By John Morris Williams

The other day I got a call from the ABA... some commission studying courts, and the caller asked me about limited assistance representation. I am sure you are aware with the new Oklahoma Rules of Professional Conduct that limited (unbundled) representation is an option for clients who do not have resources or who do not want to pay the full costs for an attorney.

My perspectives on this issue were changed greatly during my time as executive director of Legal Aid Services of Oklahoma. As a practicing (billing by the hour mostly) lawyer, I did not think much of the concept. At Legal Aid I thought it was a way to help people, even if it was modest. Today, I feel strongly both ways.

Limited representation is not a new concept. The problems are not new either. First, we all suspect that there are nonlawyers preparing and selling pleadings to the public. The unauthorized practice of law is a sticky wicket. People buying "divorce kits" are buying limited representation. Considering some of the work product I have seen in some of these kits, I can promise you that the help is very limited. At least a kit prepared by a



lawyer with instructions relating to the district courts would be a good start.

During the conversation with the ABA staffer, we talked about a lot of issues relating to representation of low-income clients. It is a challenge that will never go away. In the end I suggested that limited representation is a symptom and not the real problem. The real problem is that funding for no-cost or low-cost legal services is dangerously small in proportion to the size of the problem. In the current economic climate that seems unlikely to change.

The Internet has also brought in new methods of limited representation. Online wills and incorporation documents abound. Little does the public know that the Oklahoma secretary of state offers some of the incorporation doc-

uments for free. I use an off-the-shelf accounting product for my personal use, and it comes with a "will maker."

I am tempted, yet restrained, from going over into a number of areas that our ethics counsel and the Office of the General Counsel will appreciate that I do not tread. The ethical and professional issues surrounding limited representation should be carefully reviewed before a lawyer undertakes such a venture. One should remember that "just doing a form" for many people can be a dangerous thing. Also, just doing a form may in reality offer little to an unsophisticated client. In the end, forms often help cloud legal titles and cause other unintended consequences. Explaining all this to a lay person who just wants a "simple" divorce may not be so easy.

“The Internet has also brought in new methods of limited representation.”

Our conversation then turned to the fact that many lawyers with huge legal education bills may not be able to give away many services or offer cheap limited services and service their own debts. Then add to that a growing population where English is the second language and the whole thing grows even worse. If you can imagine a non-English speaker showing up with a legal document that he or she cannot even read much less understand, then the problem takes on a whole new dimension.

Now, add to that the courts and how they are to handle this, and it gets even more interesting. The ABA is studying the issues. Many judges are living them. The reality is that there is more need than resources, full representation can be cost prohibitive to many people, there are many nonlawyers who are trying to fill the void by providing “kits,” and as lawyers we are not always meeting our obligation to the underprivileged by doing pro bono work and/or giving to legal aid.

In the end I fear, and some have predicted, that much of the work traditionally done by lawyers will be supplanted by nonlawyers willing to do the work for less. Of course, this will be unregulated, at least in the beginning. Older lawyers can tell

you that lawyers once did a huge amount of residential real estate work. Other than title opinions, there is not much lawyer work done in residential real estate these days. My guess is that trends, like we see in California where a majority of divorces are done by preprinted court forms, may be headed our way.

The alternative is to ensure that there are affordable legal services performed by competent lawyers. Otherwise, the work will eventually migrate to another service provider who has less expertise and training – but will cost less and have few (if any) ethical standards to uphold.

As I hung up, I thought about this interesting call. This issue has been out there for a number of years. I wonder if the tough economy and the underfunding of courts has anything to do with this? I wonder what new Internet service or non-lawyer advertising scheme will lure desperate folks to buy their services? Lastly, I wondered why they were calling me; as you can see, I have as many questions as answers. Even though ignorant, I am glad people are still looking at the issue. Interesting call.



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

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Can a Lawyer Really Use Twitter to Market a Law Practice?

By Jim Calloway, Director, OBA Management Assistance Program

Some of you may think you have no interest whatsoever in Twitter. But if you read through this entire article, you will learn of several ways to use Twitter, even without registering for the service and you will also have my answer to the question in the title.

Can a lawyer use Twitter to market a law practice? This simple-sounding question has generated a bit of controversy which seems to have heated up recently as notable lawyer marketing consultants Larry Bodine (www.lawmarketing.com) and Kevin O'Keefe (www.lexblog.com) took opposing positions in various online forums, with Bodine being anti and O'Keefe being pro.

Twitter is a quite interesting phenomenon. By now, most everyone has heard of it. Over 7 million people have registered Twitter accounts. And the phrase "follow me on Twitter" is now more likely to be heard from TV personalities and celebrities than early technology adopters. A Twitter posting is called a tweet. Twitter is an interesting writing exercise for lawyers as the tweets are limited to 140 characters.

Late night comedians have lampooned Twitter. Recently I was in a room where a respected lawyer unleashed a tirade about Twitter and the egotistical nature of its users messaging about where they ate and other trivia. He didn't

know, of course, that several of the lawyers in the room did use Twitter.

So what's the truth about Twitter? Is it a great technology advance or an utter waste of time? And, more importantly, can a lawyer use Twitter to market the lawyer's practice?

To really examine this concept you have to look very briefly at the nature of online information today. Just because Twitter appears to be one of the hottest things right now does not mean it is the best for everyone.

The Public Broadcasting Service (PBS) recently broadcast an episode of the Kalb Report on the state of American journalism. Panelists included the chiefs of the Associated Press and CNN, among others. One of the topics covered was the challenge presented to newspapers and other traditional media by the Internet.

As many of you know, the rise of blogs, personal Web sites and social media sites

like Facebook and Twitter have been referred to as citizen journalism. Today's Internet tools allow anyone with the time and inclination to create the online equivalent of a newspaper, radio station, wire service or video broadcast service. This is referred to the democratization of the Internet. Gaining an audience is, of course, another matter.

President of CNN Jonathan Klein may have made a larger point than he intended on the Kalb Report when he said:

"The world is changing. There are many other ways evolving for humans to commit journalism. You know, journalism, it's not really a profession, it's an obsession, you know? It's not really an occupation; it's a preoccupation for people who want [to do it.]" kalb.gwu.edu/2009/0323/transcript.pdf.

So the question is not whether one can build awareness of practice areas or market one's law practice through Twitter or other social media. The answer to that question is an obvious "yes," in my opinion. The real question is whether the individual lawyer or law firm has the inclination, time, talent, writing ability and understanding to open an outpost on the frontier of citizen journalism and to support it once it has been opened.

Let's assume for the purposes of this discussion that a media source, even a modest small citizen's journalist out-



post needs more than “once a month” posting of content.

So what’s your public information output currently? By that I mean information someone outside of the law firm might read. Many small law firms would truthfully have to answer that question with an answer of one (or less) press release, or article or speech per month. My opinion is that if you do not already have new content that you are generating at least a few times per month, it is difficult to see how a law firm would gain any value from opening up a new social media outlet even though it is certainly true that having the outlet would encourage one to produce more content.

This does not mean the once (or twice) a month content producer is precluded from online marketing activities — quite the contrary. A new feature added each month to a “traditional” small law firm Web site or a blog can build great value over time and would put the small firm lawyer among the elites in online marketing compared with the online presence of many other small law firms. Many law firms are likely better served by a traditional law firm Web site or blog for online marketing at the present time than leaping into Twitter or Facebook.

Do not take this statement the wrong way. Using social media can be great fun and even somewhat addictive. If you enjoy it, by all means use it. It could be great if your hobby generated a little business for you.

It should also be noted that the issues are very different when applied to large law firms as opposed to solo or small firm lawyers. Even a 30-lawyer firm will likely have some lawyer or staff person with the ability and inclination to become a social media con-

“Certainly a lot of what is tweeted to Twitter is nonsense or of interest only to one’s close friends.”

duit and even if each of the 30 lawyers only produces “publishable” content three or four times per year, that aggregates to a lot of content. And, of course, if a law firm is large enough to have a marketing/communications/PR department; those staffers will be looking at communicating through all forms of social media.

Twitter is certainly hot. We hear about it all the time. There are several ways to “consume” information from Twitter. Most with an interest have a Twitter account. They follow those other Twitter users with content that interests them. (Subscribing to receive the content of another is called “following.”) One could follow only those you know personally. One could follow celebrities. One could follow news outlets or particular journalists. One could follow only those who tweet about your favorite sports team. One could register with Twitter and never post a single tweet, but just use it to read what others have posted. You can learn more background information about Twitter by reading a pair of articles we published on our Oklahoma Bar Association Web site earlier this year at www.okbar.org/news/online-exclusives/twitter.htm.

If you do post tweets, then people will follow you so that they can read all of your tweets. I tweet primarily about

law office management and technology issues.

You can follow me if you like. I am @jimcalloway.

But you can also use Twitter without ever registering with the service because, by default, Twitter content is published to the Internet.

So in your web browser, @jimcalloway can be found at twitter.com/jimcalloway.

The Oklahoma Bar Twitter feed, @OklahomaBar, is found at twitter.com/oklahomabar.

OBA Continuing Legal Education’s Twitter feed, @obacle, is twitter.com/obacle.

But that’s not the only way one can use Twitter. Earlier this year, the Twitter home page, twitter.com, was changed to make it look a lot more like Google and other search engines. It has a search box and displays the most popular topics of the last week, day and minute. You can click on a popular topic to read the most recent tweets or you can search through what the millions of Twitter users are posting about right now. Tom Mighell, @TomMighell, gave a good example of how that would be useful when he spoke at the OBA Technology Fair. His Gmail account wasn’t working and he wondered if it was system-wide or just something with his account. He did a search on Twitter for Gmail, found many recent complaints and new ones being posted every second and knew it wasn’t just him. As opposed to Google or Bing, Twitter search is more about what is popular right now than links to comprehensive or authoritative information.

Certainly a lot of what is tweeted to Twitter is nonsense or of interest only to one’s close friends.

Lawyers who wished to promote their law practices via Twitter would be best advised to tweet about something

related to their law practices and profession, in my view. Others would disagree. Certainly a lawyer who loved archery and tweeted about it frequently, mentioning he or she was a lawyer only infrequently, could pick up some legal business or referrals from other archery enthusiasts who use Twitter. But that's not really using Twitter as a law marketing tool. That's enjoying Twitter and picking up some business as a result just like one might do from coaching little league or participating in a civic organization.

My view is that you are not likely going to convince anyone to hire your law firm tweeting every mundane detail of your life. And those who follow you may soon un-follow you.

I know there are many ways to market, but here's one concept of how a small firm lawyer could use Twitter to market his or her practice.

- 1) Set up a Twitter account using either your name or your law firm name, possibly with the word law included. Post your picture and a link to your law firm Web site on your profile. Twitter accounts are personal and you need a picture.
- 2) After you have posted several tweets, send an e-mail out to your tech-savvy friends announcing

that you are on Twitter and giving them the Web address, e.g., twitter.com/myfirm. Those already using Twitter will understand they can follow you at @myfirm. Those who don't use Twitter can click on the link.

- 3) Do some searches in Twitter to see those who you might want to follow. When you find them and follow them, also look to see who they are following and who might be following them for more prospects for you to follow.
- 4) Try to tweet at least weekly, but no more than four or five times a day. (The Twitter evangelists have given me grief over this expressed opinion before and others are free to use a different business method. To me, there's a great danger for a practicing lawyer to give the appearance on Twitter that they are not all that busy and have lots of free time to tweet.)
- 5) Follow almost everyone that follows you. (Many people view this as a hard and fast rule of Twitter etiquette. I do not and I do not do that personally right now. But for this business model, I believe it makes sense.)
- 6) Check your followers every now and then and

block the few with inappropriate profile pictures or other salacious content.

- 7) Be very, very, very careful not to violate attorney-client privilege or your client's privacy with tweets. Don't post negative things about opposing counsel or judges. You will regret it later.

What do you tweet about? News relating to your community, your practice areas and the legal professional in general. The people I follow on Twitter are those who provide me links to great articles online that I might otherwise have missed. To me, the best thing about Twitter is the fact that it provides me with a large group of friends, professional acquaintances, some total strangers and some technology superstars who all voluntarily serve as a clipping service for me with links to news articles, blog posts, product launches and more. They also toss in their own unique and personal content.

But the main thing to remember is that Twitter is a tool. There is more than one way to use a tool. If you have fun following everyone's comments about your favorite sports teams and never post a tweet, that is great, and if you build a national practice representing archery enthusiasts, that's great, too.

The Office of Ethics Counsel is for You

By Travis Pickens, Ethics Counsel

The Office of Ethics Counsel was created in recognition of the increasingly complex law of professional responsibility and the related awareness that providing independent guidance as to ethics issues would be a valuable service to the members of the bar. The frequent connections between the emotional and psychological stresses attorneys disproportionately experience, which often result in depression or alcohol and drug abuse, and violations of the Rules of Professional Conduct, are also widely recognized.

Consequently, the Office of Ethics Counsel provides a number of services to lawyers that are among the most valuable to its membership, including

- ❑ acting as the association's liaison for the Lawyers Helping Lawyers Assistance Program Committee
- ❑ providing accountability to lawyers placed in the diversion program
- ❑ providing continuing ethics education to the bar's members in seminars throughout the state
- ❑ providing general day-to-day guidance in response to your inquiries about ethics issues.

The Office of Ethics Counsel is distinct and entirely separate from that of General Counsel. The Office of General Counsel is charged with the important and necessary "self-policing" task of investigation and prosecution of Rules of Professional Conduct violations. The role of ethics counsel, on the other hand, is to provide a *counterpart* resource to lawyers — providing a basis for early independent advice and guidance regarding compliance with the Rules of Professional Conduct, to hopefully avoid ethics violations altogether. Ethics counsel was created to help you *proactively* recognize, consider and deal with issues of professional responsibility in your role as lawyer and counselor.

Your inquiries and the guidance provided by this office in any form are confidential and protected as a privileged communication. The communications between you and this office cannot be used against you in any proceeding of any kind. Ethics counsel does not "decide" ethics issues or arbitrate disputes. The advice provided is advisory only — but as specific and meaningful as possible.

When you call with a question pertaining to *your own* situation, the advice will be



Travis Pickens

advisory in nature but still direct and specific. Research into Oklahoma ethics opinions, ABA ethics opinions and case law may be necessary to give you the best advice possible, based upon the time allowed.

If you call with respect to the behavior or ethical issue as to *another lawyer*, counsel will endeavor to provide you references to the portions of the RPC and ethical opinions or cases that may apply to the question but does not offer an "opinion" or pre-judge the situation as there are undoubtedly other pertinent facts or factors that might affect the advice.

No advice or ethics guidance is provided to *clients* or *members of the general public* who may call except perhaps for polite referral to the OBA's Web site.

Have an ethics question? It's a member benefit, and all inquiries are confidential. Contact Mr. Pickens at travisp@okbar.org or (405) 416-7055; (800) 522-8065.

September Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, September 25, 2009.

REPORT OF THE PRESIDENT

President Parsley reported the Women in Law Conference held Sept. 22 will be one of the OBA best events held this year, and he noted the OBA Technology Fair was also successful, which gave the OBA an opportunity to showcase the newly renovated Emerson Hall. He also attended the Board of Governors social event with the Washington County Bar Association at Woolaroc, August board meeting, Boiling Springs Legal Institute, one Texas County Bar Association meeting, swearing-in ceremonies for the new admittees, Oklahoma Bar Foundation meeting and OBF/BOG joint dinner.

REPORT OF THE VICE PRESIDENT

Vice President Thomas reported she attended the August Board of Governors meeting, board social event with the Washington County Bar Association, Washington County Bar Association monthly meeting, Boiling Springs Legal Institute, Tulsa County bench and bar party hosted by Allen and Barbara Smallwood, Women in Law private reception and banquet, OBA Tech Fair, Oklahoma Bar

Foundation meeting and the OBF/BOG joint dinner.

REPORT OF THE PRESIDENT-ELECT

President-Elect Smallwood reported he has had discussions with several individuals regarding committee appointments and has worked on judicial selections as a member of the Judicial Nominating Commission.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported that he attended the Leadership Class reception and dinner, Supreme Court conference on rules changes, multiple meetings with the construction company and designer, Lawyers Helping Lawyers Assistance Program meeting and training, Boiling Springs Legal Institute, NABE Program Committee meeting, staff luncheon, Women in Law reception and dinner, meeting with Chief Justice Edmondson and OBA leadership, swearing in of new lawyers, OBA Tech Fair, OBA/OBF joint dinner, OBA budget hearing and swearing in of Judge Dirickson. He participated in an ABA interview on unbundled legal services and visited the facility being considered for

the 2010 Solo and Small Firm Conference.

REPORT OF THE PAST PRESIDENT

Past President Conger reported he attended the August board meeting in Bartlesville, Tulsa County bench and bar gathering, Women in Law private reception and banquet, OBF/BOG dinner and swearing-in ceremony for new lawyers.

SUPREME COURT LIAISON REPORT

Vice Chief Justice Taylor reported the swearing-in ceremonies were held, and he is proud that the event has been moved to the State Capitol, which is a tradition that will continue. He said rule amendments regarding the requirement of OBA members to provide current contact information to the association were presented to the Supreme Court at conference, and they were approved. He said the Women in Law Conference program, featuring the important theme of human rights, was excellent.

LAW STUDENT DIVISION REPORT

Law Student Division Vice Chairperson Waddell was introduced. Unable to attend

the meeting, LSD Chair Nathan Milner reported by e-mail that he attended the Board of Governors meeting in Bartlesville. He also reported that he contacted Tulsa University about the OLSD and membership, spoke with Craig Combs about Annual Meeting, assigned leadership positions to help with division operations, drove to Norman and Tulsa to discuss OLSD events and set up times for membership and Annual Meeting registrations.

BOARD MEMBER REPORTS

Governor Brown reported he attended the Board of Governors meeting in Bartlesville, ABA Section Officers Conference meeting in Chicago, ABA Judicial Division Leadership meeting in Chicago, Legal Aid Services of Oklahoma board meeting, LASO Budget and Audit Committee meeting, OBF External Relations Task Force meeting, OBF Trustee meeting, OBF/BOG joint dinner and the Women In Law private reception and banquet. He reported that he also prepared the OBA Bench and Bar Committee annual report.

Governor Carter reported she spoke at the Oklahoma Municipal League Pandemic Seminar and was involved in recertification as an International Municipal Lawyers Association Local Government Fellow (2009-2014). She also reported that she attended the Women in Law reception and banquet and the BOG/OBF Thursday event. **Governor Chesnut** reported he attended the Board of Governors social event with the Washington County Bar Association, August Board of Governors meeting, Ottawa County Bar Association monthly meeting, Women in Law private recep-

tion and banquet and BOG/OBF joint dinner. **Governor Christensen** reported she attended the Board of Governors meeting in Bartlesville, OBA Bench and Bar Committee meeting, Women in Law private reception and banquet and the OBF/BOG joint dinner. She also reported that she monitored the OBA Bar Facilities Committee meeting regarding the remodel of Emerson Hall. **Governor Dirickson** reported she attended the Board of Governors social event with the Washington County Bar Association, August board meeting, Custer County Bar Association meeting, Women in Law private reception and banquet and the OBF/BOG joint dinner. **Governor Dobbs** reported he attended the Civil Procedure Committee meeting, OBA Budget Committee meeting, Long-Range Planning Committee meeting and the OBA/OBF dinner. **Governor Hixson** reported he attended the Board of Governors social with the Washington County Bar Association, August board meeting, social with 2010 OBA Leadership Academy, Clients' Security Fund Committee meeting and Canadian County Bar Association meeting. **Governor McCombs** reported he attended the Wolaroc social event, Bartlesville board meeting and McCurtain County Bar Association luncheon. **Governor Moudy** reported she attended the Board of Governors meeting in Bartlesville, the Women in Law banquet and the joint OBA/OBF dinner. **Governor Reheard** reported she attended the semi-annual McIntosh County Bar Association meeting, August Women in Law Committee meeting, numerous planning meetings for the

Women in Law banquet, the WIL banquet and reception and the joint OBA/OBF dinner. She also presented a CLE program at the Washington County Bar meeting. **Governor Stockwell** reported she attended the Board of Governors social evening with the Washington County Bar Association, August board meeting, OBA Awards Committee meeting, Cleveland County Bar Association luncheon, CCBA executive meeting, Women in Law private reception and banquet and the OBF/BOG joint dinner. **Governor Stuart** reported he attended the Washington County dinner and Board of Governors meeting in Bartlesville, OBA Awards Committee meeting, Women in Law Conference and reception. He also worked on recruiting authors for the December issue of the *Oklahoma Bar Journal*.

COMMITTEE LIAISON REPORTS

Governor Reheard complimented staff members on their efforts to ensure the success of the Women in Law Conference. Governor Stockwell reported she attended the Lawyers Helping Lawyers training, which was excellent. President Parsley reported he and Executive Director Williams met with Reggie Whitten, who supports drug and alcohol prevention programs. Governor Brown reported the Bench and Bar Committee will present at the winter judicial conference. Governor Hixson reported the Clients' Security Fund will likely recommend more than \$100,000 in claims be paid this year.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported progress continues to be made on dealing with the backlog of cases. She attended the swearing-in ceremony for Judge Dirickson, OBA Clients' Security Fund Committee meeting, new attorney admission ceremony and the Women in Law reception and banquet. She also reported that she gave ethics presentations at the YLD/CLE program in Tulsa and Oklahoma City, Workers' Compensation Judges seminar and the Boiling Springs Institute. She also participated in the OBA Tech Fair. A written status report of the Professional Responsibility Commission and OBA disciplinary matters for August 2009 was submitted for the board's review.

AWARDS COMMITTEE RECOMMENDATIONS

Committee Chairperson Renee Hildebrandt reviewed the committee's selection process. She noted the Fern Holland Courageous Lawyer Award was not recommended for presentation this year. The board voted to approve the Awards Committee recommendations for 2009 OBA winners. Governors Brown and Reheard abstained from voting.

RESOLUTION NO. ONE - SERVICE OF JUDGMENTS, DECREES OR APPEALABLE ORDERS – 12 O.S. 2001, SECTION 2005

Civil Procedure Committee Chairperson James Milton reviewed the resolution to be considered by the OBA House of Delegates at the upcoming OBA Annual Meeting. The board voted to recommend passage.

RESOLUTION NO. TWO - LICENSURE OF PRIVATE PROCESS SERVER – 12 O.S.2001, SECTION 158.1

Civil Procedure Committee Chairperson James Milton summarized the resolution. The board voted to recommend passage.

RESOLUTION NO. THREE - DEPOSITIONS - RECORD- ING TESTIMONY BY NON- STENOGRAPHIC MEANS – 12 O.S. 2001, SECTION 3230

Civil Procedure Committee Chairperson James Milton reviewed the content of the resolution. The board voted to recommend passage.

RESOLUTION NO. FOUR - SUBPOENAS AND DISCOVERY – 12 O.S. 2001, SECTIONS 2004.1, 3226, 3233, 3234 AND 3237

Civil Procedure Committee Chairperson James Milton reviewed the resolution. The board voted to recommend passage.

RESOLUTION NO. FIVE - DISCOVERY CONFERENCE – 12 O.S. 2001, SECTION 3226

Civil Procedure Committee Chairperson James Milton reviewed the resolution. Professor Gensler, who serves on the committee, helped answer questions. The board voted to not recommend passage.

REQUEST OF BONUS FOR MOCK TRIAL COORDINATOR

Mock Trial Committee Chairperson Erin Moore said the success of the Young Lawyers Division's High School Mock Trial Program is largely due to the efforts of Coordinator Judy Spencer, who is being asked to do more work. She asked the board to approve a one-time bonus for Ms. Spen-

cer and said the committee has sufficient funds in its budget to cover the expense. The board approved the one-time bonus.

RESOLUTION NO. SIX - PAYMENT OF JURY TRIAL FEES - 28 O.S. 2001, SECTION 152.1

Civil Procedure Committee Chairperson James Milton reviewed the resolution and action taken last year on a similar proposal. The board voted to take no position on this resolution. Governor Dirickson abstaining from voting.

RESOLUTION NO. SEVEN - SCHEDULING AND PRE- TRIAL CONFERENCES - RULE 5 OF THE RULES FOR DISTRICT COURTS OF OKLAHOMA

Civil Procedure Committee Chairperson James Milton reviewed the resolution. The board voted to recommend passage.

RESOLUTION NO.EIGHT - SERVICE OF COPY OF JUDG- MENT, DECREE OR APPEAL- ABLE ORDER - SUPREME COURT RULE 1.21

Civil Procedure Committee Chairperson James Milton reviewed the resolution. The board tabled taking any action. The work of committee members Orval Jones and Professor Gensler was acknowledged. President Parsley asked Chairperson Milton to convey the board's appreciation to the committee for its hard work. *Editor's Note: Update – The Civil Procedure Committee has since withdrawn this resolution.*

PROPOSED 2010 OBA BUDGET

President-Elect Smallwood pointed out the bottom line of the 2010 proposed budget changes very little from the current budget. He said the only special project he has planned is a February mortgage foreclosure workshop that will involve partnering with Legal Aid Services. The board approved the proposed budget and will submit it for Supreme Court approval.

ABA REQUEST TO TAKE A POSITION AGAINST FTC OVER RED FLAGS RULE

Executive Director Williams reported the ABA has filed a lawsuit against the Federal

Trade Commission to exempt lawyers from the red flags rule, and he reviewed the details. The board voted to join with the ABA in taking a position against the FTC. Approximately 25 states have taken a similar position.

SOLO AND SMALL FIRM CONFERENCE

Director Calloway reported the Downstream Resort & Casino in Quapaw has been selected as the location for the 2010 Solo and Small Firm Conference on June 24-26. He briefed the board on the facilities available at the resort, located in the far northeastern corner of the state. Board members expressed their

request for continued emphasis on child-friendly activities.

EMERSON HALL RENOVATIONS

Executive Director Williams encouraged board members to go downstairs after the meeting and see the completed project.

EXECUTIVE SESSION

The board voted to go into executive session, met in executive session and voted to come out of executive session.

NEXT MEETING

The Board of Governors will meet in Guymon on Friday, Oct. 16, 2009.

GEORGE LAW OFFICE

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Alecia Felton George has 19 years experience, including 12 years as an Assistant Attorney General. She routinely practices in state and federal courts throughout Oklahoma and in the 10th Circuit Court of Appeals. Call for all of your pre-trial, trial, and appellate needs.

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The 2009 Oklahoma Bar Foundation Grants — Oklahoma Lawyers Transforming Lives

By Richard A. Riggs

On Sept. 22, I had the pleasure of attending the banquet concluding the OBA Women in Law Conference. Congratulations to Deborah Reheard and the OBA Women in Law Committee for what was, by all accounts, a very successful conference. The Oklahoma Bar Foundation was pleased to be one of the conference sponsors. The banquet featured the recognition of five distinguished women attorneys who received Mona Salyer Lam-bird Spotlight Awards.

The banquet's keynote speaker was Cherie Blair. Cherie Blair is an author, mother, attorney and champion of women's rights. Her passion for women's rights is evident and has led her to establish the Cherie Blair Foundation for Women, dedicated to promoting economic independence of women throughout the world. Her story is a reminder of what can be accomplished with a passion to do good works, a vision and the dedication and energy to see that vision into reality.

As I reflected on Cherie Blair's accomplishments I was reminded of the similar

contributions of the many Oklahoma lawyers who have caused the Oklahoma Bar Foundation to be what it is today. I was reminded of the original organizers of the foundation who, in 1946, envisioned a charitable arm of the Oklahoma Bar Association. This vision led to the creation of one of the first bar foundations in the United States. I was reminded of the many OBF Trustees who have led the organization through the years. Their guidance has seen OBF through such changes as the implementation of the OBF Fellows program, collaboration with the OBA in the construction, and later expansion, of the bar center — and the introduction of IOLTA, first as a voluntary, and later a mandatory program. Finally, I was reminded of the many OBF Fellows (currently in excess of 1,500) who, through their generous financial contributions, have made all the good works of the foundation possible. I am not aware of any greater testament to the collective generosity of Oklahoma lawyers than the story of the Oklahoma Bar Foundation.

That generosity was highlighted again on Sept. 24, when OBF Trustees approved the foundation's 2009 grant awards. The grant process involved a thorough evaluation of grant proposals by the foundation's Grants and Awards Committee, chaired by Judge Valerie Couch, and a unanimous approval of the committee's recommendations by OBF Trustees. The Trustees are pleased to announce this year's OBF grants, which are listed on the next page.

This year, the foundation adopted a new mission statement — *Lawyers Transforming Lives through the Advancement of Education, Citizenship and Justice for All*. I would like to invite you to glance over the programs supported by the foundation to see exactly how lives are being transformed by Oklahoma lawyers. I also invite you, if you are not already an OBF Fellow, to become a part of this effort. You will find a Fellows enrollment form following the list of OBF grants. Finally, I invite you to celebrate the vision, commitment and generosity of the many Oklahoma lawyers who have been a part of the OBF story.

**2009 Oklahoma Bar
Foundation Grant Awards**

YMCA, Youth & Government Program, statewide \$4,000
Continued funding of high school officer training program \$2,000; 7th & 8th Grade Model Legislative Day \$2,000
- *statewide area*

Oklahoma Court Appointed Advocates for Vulnerable Adults, statewide \$20,000
Funding to continue support of the OCAAVA volunteer program. Funds are used to recruit and train volunteers, work with judges within judicial districts, and provide overall administrative program oversight - *Oklahoma, Logan & Pontotoc counties plus Washington & Tulsa counties*

Teen Court Inc. of Comanche County \$15,000
Support of the first-time offenders peer program with addition of the Just Walk Away elementary gang education program
- *Comanche County*

Oklahoma Lawyers For Children \$44,000
Program funding to provide free legal services by volunteer attorneys for deprived children in Juvenile Court and representation at emergency show cause hearings - *Oklahoma County*

Family Shelter of Southern OK, Domestic Violence Intervention Service Programs in Love County \$10,000
Continued support for the Marietta satellite office to provide a Love County Victims Court Advocate for domestic violence victims
- *Love County area*

William W. Barnes Children's Advocacy Center for Educator Child Abuse Training \$5,000
Fund for training of school and child care personnel to be able to Recognize, Respond and Report child abuse; educator workshops to include child welfare and law

enforcement personnel
- *Rogers, Mayes & Craig Counties*

Marie Detty Youth & Family Services Center, Legal Education and Legal Services in Comanche County \$17,500
Support for domestic violence shelter victims for provision of a Victims Court Advocate - *Comanche County area*

Domestic Violence Intervention Services in Tulsa & Creek Counties \$17,500
Continued funding toward legal and support staffing of the Domestic Violence Intervention Services - *Tulsa & Creek Counties*

Tulsa Lawyers For Children \$34,500
Continued funding for the administrative and director positions, professional liability insurance for volunteer attorneys and training materials - *Tulsa County area*

University of Tulsa Boesche Legal Clinic, Immigrant Rights Project \$7,500
Funding for the clinical legal education program to provide vital legal services to vulnerable non-citizen residents of Oklahoma while providing law students with educational and professional development opportunities
- *Tulsa County*

OBA/YLD, OK High School Mock Trial Program \$45,000
Total program presentation costs of the Oklahoma High School Mock Trial Program - *statewide*

Oklahoma Indian Legal Services, Low Income Taxpayer Clinic, statewide \$20,000
Support staff funding to match IRS funds for provision of free legal tax services for Oklahoma's poor
- *statewide area*

University of Oklahoma College of Law Legal Clinic, Family Law Mediation Training Project \$4,500
Funding for an intensive law-student and certified

volunteer Family Law Dispute Mediation Training Project performed by the Early Settlement Program designed to provide assistance and relief to the courts through mediation - *Cleveland County*

Trinity Legal Clinic of Oklahoma, Oklahoma City area \$3,000
Funding to be applied toward legal case file subscription services - *Greater OKC area*

Legal Aid Services of Oklahoma Inc., statewide \$250,000
Funding to help in the provision of free legal services to Oklahoma's poor and elderly citizens - *statewide area*

Senior Law Resource Center, Free Senior Citizens Educational Outreach Program \$20,000
Funding to provide law-student interns to assist with free legal services and educational outreach programs to promote informed, thoughtful incapacity planning, and to help in prevention of elder exploitation - *Oklahoma County & outlying areas*

Oklahoma CASA Association Inc., Statewide Training Conference \$7,500
Continued funding to help underwrite the cost of the Statewide Court Appointed Special Advocates for Children (CASA) Training Conference that annually provides mandatory training for directors, staff and volunteers
- *statewide area*

Center for Children & Families, Divorce Visitation Arbitration Program \$7,500
Funding to sustain court-ordered adult and children intakes, training and supervised visitation, and exchange services - *Cleveland County*

**Total Oklahoma Bar
Foundation Grant Awards**
\$532,500



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)

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Lives through educa-
tion, citizenship and
justice for all. Join the
OBF Fellows today!*

Signature & Date: _____ OBA Bar #: _____

Make checks payable to:
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OBF SPONSOR: _____

☐ *If 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!

3rd Annual Bioethics & Law Conference

Register ONLINE with Visa, MasterCard or Discover at:
<http://www.fammed.ouhsc.edu/palliative-care/index.htm>
 OR by mail:

Registration Form: \$100 fee includes lunch. Mail this form with check or money order to:

Annette Prince, Dept. of Family Medicine
 900 N.W. 10th Street
 Oklahoma City, OK 73104

Name: _____

E-mail: _____

Address: _____

Phone: _____

I will attend _____ in person _____ via web cast..

Free Live Web Cast

Participants have the option of live, interactive webcast from any high-speed internet connection. The web cast is offered free of charge. However, both live and internet participants who wish to receive continuing education credit MUST pay a registration fee. The fee is \$100 or \$90 for early registration received on or before **October 9, 2009**. Cancellations are subject to a \$25 service charge if received at least 48 hours prior to the conference. Otherwise, refunds will not be available.

Location/Parking

This conference will be held at the OUHSC, College of Nursing, Room 138, 1100 N. Stonewall Ave., Oklahoma City, OK 73117. A shuttle runs every 15 minutes from the conference parking lot on the south side of Harold Hamm Oklahoma Diabetes Center (which is identified by its old name "Center for Healthy Living" on the map at link below. See lower left corner of map for **conference parking** and shuttle.

http://oupts.ouhsc.edu/oupts_conference_parking.pdf

Accommodations on the basis of disability are available by calling Annette Prince, (405) 271-5362, ext. 32308, 48 hours in advance of workshop. • The University of Oklahoma is an equal opportunity institution. • Printed and distributed at no cost to the taxpayers of the State of Oklahoma.

Sponsored by:
The Oklahoma Palliative Care Resource Center, University of Oklahoma College of Medicine
Department of Family & Preventive Medicine.

Co-sponsored by Linda and Drew Edmondson, St. John Health System, OU College of Nursing, OU College of Law, and Excell Home Care & Hospice.

Questions?

E-Mail: Annette-prince@ouhsc.edu
 Phone: 405-271-5362, ext. 32308
 Oklahoma Palliative Care Resource Center
<http://www.fammed.ouhsc.edu/Palliative-Care/>

7.5 hours Continuing Legal Education **\$100**

This program has been approved for 7.5 hours of continuing legal education, including 2 hours of ethics, for Oklahoma attorneys.

Agenda, November 6, 2009

8:30-9:00 a.m. **Registration**

9:00-9:30 a.m. **The Tipping Point: Ethics & the Law**,
 Annette Prince, J.D., L.C.S.W.

9:30-10:30 a.m. **Hospital-Based Ethical Dilemmas and the Law**, Krista Reyna, R.N., M.A.

10:30-10:40 a.m. **Break**

10:40-11:40 a.m. **Promise Me I Won't Be In Pain: Legal & Ethical Challenges**, Peter Winn, M.D.

11:40-12 Noon **Lunch** Provided by "Excell Home Care & Hospice"

12-1:00 p.m. **Luncheon Keynote:**

The Oklahoma Academy of Palliative Care Education: Jan Slater, J.D., M.B.A., M.P.H.; Nancy Van Winkle, Ph.D.; Marcia Howland, M.R.E.

1:00-1:50 p.m. **Spirituality & Dignity: Legal & Ethical Issues**, Danny Cavett, M.L.S.

1:50-2:40 p.m. **Who Decides About Feeding Tubes in Oklahoma: A Judicial Perspective**, Janice Dreiling, J.D., Retired District Judge

2:40-2:50 p.m. **Break**

2:50-3:40 p.m. **Ethical/Legal Issues: Caring for Children with Life-limiting Illnesses**, Roger Sheldon, M.D.

3:40-4:40 p.m. **Health Care Rationing: Should We Always Get What We Need? Ethics or Law?**
 Jane Carney, M.S.W.

4:40-5:20 p.m. **Evaluations**



2010 YLD Leadership



RICHARD L. ROSE

Immediate Past-Chairperson

Rick is an associate at the law firm of Mahaffey & Gore PC in Oklahoma City, practicing in their litigation division. Rick graduated from Southern Nazarene University (B.S. 2000, distinguished achievement award) and Oklahoma City University (J.D. 2003, magna cum laude). Rick has been active on the OBA/YLD board since 2002, serving as secretary (2005-06), treasurer (2006-07), chairperson 09-10, co-chairing the Gift of Life and Wills for Heroes Committees. Rick is also the past chair of the Oklahoma County YLD (2006-07), serving on its board since 2004. In law school, Rick was president of the Student Bar Association, where he received the Dean's Service award and he was named to the Order of the Barristers. Currently, in addition to being the chair of the OBA/YLD, Rick is also a board member for the Western District Chapter of the Federal Bar Association. In addition to his elected positions, Rick serves as the

vice chair of the Disaster Relief Committee, and Rick and his family participate in the Edmond adopt-a-street program.



MOLLY A. ASPAN

2010 Chairperson

Molly has been an associate at Hall, Estill, Hardwick, Gable, Golden & Nelson in its Tulsa office for six years. Her primary practice area is labor and employment defense litigation. Molly provides employment counseling and advice to numerous employers and represents employers in employment litigation and administrative matters. Molly has been active on the OBA/YLD Board of Directors since 2004, serving as treasurer, secretary and an elected board member for District 6. Molly is also active in the American Bar Association YLD and has served as an Oklahoma Delegate to the ABA/YLD Assembly since 2005. In addition, Molly has been a Tulsa delegate to the OBA House of Delegates since 2007, has served

on the Tulsa County Bar Association Board of Directors, is a past chair of the TCBA/YLD and was named the TCBA Young Lawyer of the Year in 2006. Molly has also been active in the Council Oak/Johnson-Sontag American Inns of Court and has served as an administrator since 2006. Molly received her J.D. from the University of Kansas School of Law in May 2003. While at Kansas, Molly received the Rice Scholarship, a full tuition scholarship and was a member of the *Kansas Law Review*. Molly earned her bachelor of arts degree, with honors, in economics and political science from Fort Hays State University in May 2000. While at Hays, Molly was a state finalist for both the Rhodes and Truman Scholarships. Molly is admitted to practice in all federal and state courts in Oklahoma and Kansas. In addition to legal activities, Molly is also active in the Junior League of Tulsa and Kirk of the Hills Presbyterian Church, volunteers at the Community Food Bank of Eastern Oklahoma and is a member of the Fort Hays State University Alumni Association Board of Directors.

UNCONTESTED ELECTIONS:

The following persons have been nominated. They are running uncontested and will be declared elected at the Annual Meeting of the Oklahoma Bar Association Young Lawyers Division.



NATHAN JOHNSON

Chairperson-Elect

Nathan practices law and serves as a part-time municipal judge in Lawton. He was born and raised in Oklahoma. He graduated from the University of Oklahoma (B.A., economics, 1999) and the University of Oklahoma College of Law (J.D., 2002). He is a member of the Oklahoma, District of Columbia and Comanche County Bar Associations. Nathan is a past president of the Comanche County Bar Association. He also serves on the Board of Directors for the Lawton Food Bank, OBA/YLD Board of Directors and is a Fellow of the Oklahoma Bar Foundation. In his free time he enjoys reading, traveling, watching Formula One races and cheering for the OU Sooners football team. He also enjoys training for and competing in road races and triathlons.



ROY D. TUCKER

Treasurer

Roy has served in various capacities on the OBA/YLD Board of Directors since 2005. He was named as an Outstanding Director by the YLD in 2006 and 2007. In 2008, Roy was elected to serve as secretary for the YLD board, a position he has greatly enjoyed. Roy will continue to serve the YLD in 2009 as treasurer. He is a 2003 graduate of the University of Tulsa College of Law. Roy was admitted to the OBA in the same year, and has since been admitted to practice before all federal courts in Oklahoma, as well as the 10th Circuit Court of Appeals. He is very active in the TU Law Alumni Association, and concurrently serves as the co-chair of the Editorial Board. He is a board member for the Muskogee Area Arts Council and is an advisory board member for Health Outreach Prevention Education Inc. Currently, Roy serves as the assistant city attorney for the City of Muskogee, a position he has held since May 2008. Prior to accepting that position, Roy was in private practice in Tulsa focusing on employment discrimination and civil rights.



ROBERT R. FAULK

District Four

Robert is originally from Oklahoma City. He graduated from Northwest Classen High School in 1996. After graduation he attended Oklahoma State University where he was president of several organizations including Lambda Chi Alpha Fraternity, Political Science Club and College Republicans. Upon his graduation from OSU in 2001, he was awarded the Kenny Gallagher Award for top Arts & Science Male. Robert then attended Oklahoma City University School of Law on a prestigious Hatton W. Sumners Scholarship. While at OCU law he founded the Criminal Law Association and was active in many other organizations including Merit Scholars, American Trial Lawyers Association and the Federalist Society. He received CALI awards, which denote the highest grade in the class, for Legal Research & Writing, Contracts, Interviewing, Negotiating & Counseling, Evidence and Labor Law. He was named to the Faculty Honor Roll four times. In 2004 he graduated magna cum laude from OCU law and was admitted to the Oklahoma bar in October 2004. He now lives in Enid with his wife Samana, stepson Baylor and daughter Sophia. He is the managing member of Faulk Law Firm PLLC and practices in the areas of criminal defense, general civil litigation, family law,

personal injury, workers' compensation, custody and divorce. He is a member of the OBA, the Garfield County Bar Association treasurer and social chair, member of the American Bar Association, Enid Noon Ambucs Past President, is an Oklahoma Bar Foundation Fellow, a member of the Federal Bar of the Western District of Oklahoma, graduate of Leadership Greater Enid and is on the Board of Directors for several civic and community organizations including Main Street Enid, Leadership Greater Enid and the Cherokee Strip Chapter of the Oklahoma State University Alumni Association. He has been a member of the Board of Directors of the Young Lawyers Division representing both the rural counties of the state including Enid, as well as the 4th District since 2006. He was also selected to the OBA's inaugural Leadership Academy and recently received an award from the Garfield County Bar Association for Outstanding Young Lawyer.



BRIANA J. ROSS
District Six

Briana works for American Eagle Title Insurance Company as vice president of commercial underwriting. She graduated in 1997 from Oklahoma State University with a B.S.B.A. in finance. She went on to earn her M.B.A. from the University of Phoenix in 2002

and her J.D. from the University of Tulsa College of Law in 2005. She is licensed with the Oklahoma Insurance Department and is a member of the Tulsa Title and Probate Lawyers Association, Tulsa County Bar Association, OBA and American Bar Association. Briana currently serves as secretary for the OBA Real Property Section. In addition, she is active with the TU College of Law Alumni Association. She also finds time to serve her community as a member of the Board of Directors for Tulsa Society for the Prevention of Cruelty to Animals (TSPCA).



JOE VORNDRAN
District Eight

Joe is an associate with the Shawnee law firm of Canavan & Associates PLLC. His practice is focused on general civil litigation, family law and municipal law. Joe received his B.A. from the University of Oklahoma in May 2003, where he was a member of the OU Scholars program, Order of Omega Honor Fraternity and numerous other campus committees. He received his J.D. from the University of Oklahoma College of Law in May 2006, where he was a class representative, on the Dean's Council and a member of the SBA Board of Governors. Joe was admitted to the practice of law before all Oklahoma state courts in September 2006. Joe currently serves as the District 8

Representative for the YLD Board of Directors, is on the Community Service Committee, is a volunteer for the Oklahoma Bar Foundation Mock Trial Program, attended the 2007 OBA Leadership Conference and was recently selected as a delegate to the 2009-2010 OBA Leadership Academy. He is a member of the Pottawatomie County Bar Association and has served as president since 2007, a member of the American Bar Association and a Fellow of the Oklahoma Bar Foundation. In 2008 he received the District 5 Child Abuse Prevention Task Force "Child Advocate of the Year" Award. Joe also serves on the Board of Directors for the OU Chapter of Sigma Alpha Epsilon and is involved with charities such as the Children's Miracle Network.



KALEB HENNIGH
At Large Rural

Kaleb was born and raised near Laverne, a small town located near the Oklahoma panhandle. Upon obtaining his J.D. from the University of Oklahoma College of Law, he moved to northwestern Arkansas where he attended the University of Arkansas School of Law and obtained his LL.M. in agricultural law. While working to obtain his LL.M., he served as a graduate assistant at the National Agricultural Law Center, where he conducted extensive research on multiple issues within agricultural law and drafted his

thesis on the new National Animal Identification System and the application of FOIA laws. Upon completing his LL.M. degree, he remained in northwestern Arkansas, working as an associate attorney in an intellectual property law firm. There he worked with several agricultural corporations regarding intellectual property protection and helped establish an agricultural bankruptcy practice which received regional recognition for its efforts in assisting immigrant farmers. Kaleb is an attorney with the regional firm of Mitchel, Gaston, Riffel and Riffel PLLC, where he practices in the areas of estate planning, asset protection, bankruptcy, real estate, corporate and transactional law. Kaleb, his wife Jennifer, and their two sons Karsen and Jase, currently reside in Enid.

CONTESTED ELECTIONS:

ROBERT R. FAULK

Secretary

(Biography appears on page 1887)



JENNIFER H. KIRKPATRICK

Secretary

Jennifer is an attorney with Elias, Books, Brown & Nelson PC. During her career, she has represented both privately-held and public companies in the areas of civil litigation, bankruptcy/creditors' rights, public utility regulation, oil

and gas, and ad valorem tax law. Jennifer is admitted to practice before all Oklahoma courts, the U.S. District Courts for the Western, Eastern and Northern Districts of Oklahoma and the 10th Circuit Court of Appeals. She has appeared before state and federal courts and various state administrative agencies. Jennifer received her education at Cameron University (B.A. 1996), the University of Oklahoma (M.A. 1999) and Oklahoma City University (J.D. 2002). While at OCU, she was a member of Phi Delta Phi, the American Bar Association National Appellate Advocacy team (2001 regional finalist) and The Order of Barristers. Additionally, she was the recipient of the Cason Conger Law Scholarship and a Merit Scholarship and was awarded a CALI Award for Excellence in Litigation Practice. She is a member of the Oklahoma County Bar Association, the OBA, for which she currently serves on the Board of Directors for the Young Lawyers Division, the American Bar Association and the Oklahoma City Mineral Lawyer's Society. She is also actively involved with the Oklahoma Academy for State Goals for which she serves on the Board of Directors and the Executive Committee.

JENNIFER H. KIRKPATRICK

District Three and At Large

(Biography appears above)



LUCAS J. MUNSON

District Three and At Large

Lucas graduated from the University of Oklahoma College of Law in 2005. While there, he received Am Jur awards for Legal Research and Advocacy and Energy Law. During his third year, Lucas served as the editor-in-chief of the OBA Mineral Law Newsletter. Upon graduation, he was licensed to practice in Oklahoma as well as Wyoming. Lucas has been a guest lecturer to the oil and gas class at the University of Oklahoma and has presented to the Oklahoma City Mineral Lawyers Society. He is currently a sole practitioner in Edmond. His practice is devoted exclusively to serving oil and gas producers in Oklahoma and Wyoming.



LANE RUDDER NEAL

District Three and At Large

Lane is an assistant district attorney for the Oklahoma County District Attorney's Office. He is presently assigned to the prosecution of drug-related crimes. Lane received his B.B.A. from the University of Oklahoma in December of 2004, where he

was a member of the first class at OU to be conferred a degree in Entrepreneurship. During his undergraduate career, Lane served as president of the Sigma Alpha Epsilon Fraternity and chief justice of the OU Interfraternity Council, as well as participated in several other student organizations. Following graduation, Lane worked as a business analyst for MEDIBIS LLC in Oklahoma City. He received his J.D. from the University of Oklahoma College of Law in May 2008. During law school, he was a member of Phi Delta Phi, a note editor for the American Indian Law Review, member of OU's 2007 ABA moot court competition team and member of OU's 2008 AAJ trial competition team. Lane was admitted to the practice of law in Oklahoma in September 2008. He is a member of the Oklahoma County Bar Association, American Bar Association and is a Fellow of the Oklahoma Bar Foundation. Lane is an associate in the Luther Bohannon Inn of Court. He is currently a member of the 2009-2010 OBA Leadership Academy. Lane also serves on a regional alumni board for his college fraternity.



KAROLINA ROBERTS

District Three and At Large

Karolina's practice is mainly in the areas of civil litigation, bankruptcy, ad valorem and secured transactions. She

graduated with honors from the University of Oklahoma Law School, where she was on the Dean's Honor Roll every semester. She received, amongst other awards, the Nathalie Pierrepont Comfort Scholarship and the Oklahoma Bar Foundation Scholarship. Additionally, she earned an Academic Achievement Award in Interviewing and Counseling. Karolina was a member of the American Indian Law Review. During the 2007-2008 school year, she was elected articles development editor where she helped create and implement a new peer-review program. For her contribution to the law review, she received the AILR Outstanding Third Year Law Student Award. She graduated with a bachelor of arts in political science in 2005.



JEFF TREVILLION

District Three and At Large

Jeff is a native of Tulsa and has been admitted to practice law in Oklahoma, the U.S. District Court, Western District of Oklahoma and the U.S. Tax Court. He formerly clerked as an intern for Judge David B. Lewis, Oklahoma Court of Criminal Appeals. Jeff is currently an assistant municipal counselor with the City of Oklahoma City and is a certified public accountant. Jeff obtained his law degree from the University of Oklahoma Law School in 2007 along with an M.B.A. from the Michael F. Price College of

Business. Jeff is an active member of the OBA, serving on the YLD Board and graduating from the 2008-2009 Leadership Academy. He is also a member of the American Bar Association, the National Bar Association, the Oklahoma County Bar Association, the Oklahoma Society of Certified Public Accountants and Phi Alpha Delta International Legal Fraternity. Jeff is also the Worshipful Master of the King Solomon Lodge number 57, F. & A.M. in Norman. He currently resides in Oklahoma City with his wife and children.



COLLIN R. WALKE

District Three and At Large

Collin graduated magna cum laude from Oklahoma City University School of Law in 2008. While in law school, Collin was a Merit Scholar, on the Dean's Honor Roll, the Faculty Honor Roll, a member of Phi Delta Phi honor fraternity and the recipient of CALI Awards for Constitutional law, ADR/Family Law, Professional Responsibility and Religion and the Constitution. Additionally, Collin served on the American Bar Association Law Student Division's Board of Governors from 2006 until 2007. Aside from his academic achievements, Collin is a volunteer at City Rescue Mission and he serves on the Board of Christian Education at his church. Collin is also on the

Oklahoma County Bar Association's Young Lawyers Division committee and the Oklahoma County Bar Association's Family Law Committee. Collin is currently an appellate attorney at the Oklahoma County Public Defender's Office.



BRYON WILL

District Three and At Large

Bryon is a solo practitioner at The Law Office of Bryon J. Will PLLC. He is a third-gen-

eration Oklahoman born and raised in Morrison. He graduated from Oklahoma State University with a bachelor's degree in animal science and began his career as a sales representative for an animal health supply company and a broadband Internet vendor, then later worked for Bank of Oklahoma. While with the bank, he worked in the commercial agricultural lending department. Bryon earned his M.B.A. degree at the University of Central Oklahoma and his J.D. at Oklahoma City University School of Law. During law school, Bryon earned his Oklahoma Legal Intern's License and worked for the Oklahoma County District Attorney's Office, then later took an internship with Haupt Brooks Vandruff Clor. Bryon

practices in estate planning, elder law and long-term care planning, probate and business transactions. He is admitted to practice before the Supreme Court of Oklahoma and the U.S. District Court for the Western District of Oklahoma. He is also a member of the OBA, Oklahoma Bar Foundation, Oklahoma County Bar Association, American Bar Association, National Academy of Elder Law Attorneys and an associate member of the William J. Holloway American Inn of Court. Bryon is involved in community and civic organizations through the Edmond Chamber of Commerce, Edmond Young Professionals Elite Partnership and Uptown Kiwanis of Oklahoma City.



Dean of the University of Oklahoma College of Law

The University of Oklahoma invites nominations and applications for the joint positions of Dean of the College of Law and Fenelon Boesche Chair, Director of the OU Law Center and University Vice President for Legal Studies. The Dean and Director will be a visionary, dynamic and energetic leader who will chart a bold course for the future with creative vision, integrity and passion to lead the College of Law in the pursuit of excellence. The College of Law was founded in 1909 and remains the only public law school in Oklahoma. It is accredited by the American Bar Association. The University of Oklahoma Law Center comprises the College of Law, the Law Library, the Legal Assistance Education Program, the *Oklahoma Law Review*, the *American Indian Law Review*, the *Oklahoma Journal of Law and Technology*, the American Indian Law and Policy Center and the Clinical Legal Education Program.

The Dean and Director provides overall academic, intellectual and administrative leadership for the College of Law and reports jointly to the Senior Vice President and Provost and to the President on broad policy and budget issues, and external relations of the College of Law. The successful candidate will be awarded the endowed Fenelon Boesche Chair.

Candidates must have appropriate academic and professional credentials. Preference will be given to candidates with a strong commitment to and understanding of legal education; proven leadership, managerial and administrative abilities in academic or professional settings, capacity to secure resources that support college activities, including fundraising; and the ability to develop and maintain supportive relationships within the college, the university, the state, the community, and among alumni, practicing professional and professional organizations.

Initial screening of candidates will begin on November 1, 2009 and the search will continue until the position is filled. The preferred start date is July 1, 2010. Candidates are requested to submit a letter of interest demonstrating how the candidate fulfills the qualifications for this position, a detailed resume, and the names of at least five references (including mail and email addresses and telephone/fax numbers). All nominations and applications should be directed to: Paul B. Bell, Jr., Law Dean Search Committee Chair, Dean, College of Arts and Sciences and Vice Provost for Instruction, Ellison Hall, Room 323, Norman, OK 73019. Email: pbell@ou.edu; Phone: (405) 325-2077 FAX: (405) 325-7709. For more information: <http://lawdeansearch.ou.edu>.

The University of Oklahoma is an Equal Opportunity/Affirmative Action employer.
Further information about the College of Law can be found at <http://law.ou.edu>.

OBA YOUNG LAWYERS DIVISION

2009 OFFICIAL BALLOT

All members of the division (members of the OBA in good standing admitted to practice in any jurisdiction 10 years ago or less) are eligible to vote. All voters shall:

1. Mark the ballot for candidates as set forth below;
2. Affix the voter's *Oklahoma Bar Journal* mailing label to the ballot where indicated below;
3. Sign the ballot, which shall certify the voter is qualified and entitled to cast a ballot; and
4. Mail or deliver the ballot to the following address:

Kimberly Warren
531 Couch Drive, Ste. 200
Oklahoma City, OK 73102

Ballots must be received at the above address no later than 5 p.m., October 30, 2009.

FAILURE TO CAST A BALLOT IN STRICT CONFORMITY WITH THESE RULES SHALL INVALIDATE THE ENTIRE BALLOT

For the office of Secretary of the OBA/YLD, **VOTE FOR ONE** person by circling his/her name. **All members of the OBA/YLD are eligible to cast a vote for this office.**

Robert Faulk

Jennifer Kirkpatrick

For the office of Director, Judicial District No. 3 of the OBA/YLD (Oklahoma County), **VOTE FOR NO MORE THAN TWO** people by circling their names. (Note: There are 2 seats open on the Board for District No. 3; the two people receiving the most votes will be elected.) **Only OBA/YLD members residing in District No. 3 are eligible to cast a vote for this office.**

Jennifer Kirkpatrick

Lucas Munson

Lane Neal

Karolina Roberts

Jeff Trevillion

Collin Walke

Bryon Will

For the office of Director, At Large of the OBA/YLD, **VOTE FOR NO MORE THAN THREE** people by circling their names. (Note: There are 3 seats open on the Board for At Large; the three people, not elected above, receiving the most votes will be elected.) **All members of the OBA/YLD are eligible to cast a vote for this office.**

Jennifer Kirkpatrick

Lucas Munson

Lane Neal

Karolina Roberts

Jeff Trevillion

Collin Walke

Bryon Will

Signature _____

There will be no disclosure of voter ballots. Members of the Nominating Committee are not eligible to vote except in the case of a tie, which shall be broken by secret ballot of the Nominating Committee.

Election results will be announced at the Annual Meeting of the Division held in conjunction with the OBA Annual Meeting.

Attach OBJ Mailing Label Here

October

- 16 OBA Board of Governors Meeting;** Guymon; Contact: John Morris Williams (405) 416-7000
OBA Lawyers Helping Lawyers Assistance Program Committee Meeting; 12:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Thomas Riesen (405) 843-8444
- 17 OBA Young Lawyers Division Committee Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Rick Rose (405) 236-0478
- 19 OBA Alternative Dispute Resolution Subcommittee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Andrea Braeutigam (405) 640-2819
OBA Alternative Dispute Resolution Section Meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Andrea Braeutigam (405) 640-2819
- 20 OBA Civil Procedure Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton (918) 591-5229
Hudson Hall Wheaton Chapter of American Inns of Court; 5:30 p.m.; Page Belcher Federal Building, 333 West Fourth St.; Contact: Michael Taubman (918) 260-1041
- 21 Oklahoma Council of Administrative Hearing Officials;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212
Ruth Bader Ginsburg American Inn of Court; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donald Lynn Babb (405) 235-1611
- 22 OBA Bench & Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jack Brown (918) 581-8211
- 23 Oklahoma Black Lawyers Association Scholarship Banquet;** 4:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Kyshe Williams (405) 512-1466
- 24 OBA Young Lawyers Division Committee Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Rick Rose (405) 236-0478
- 27 Oklahoma Board of Bar Examiners Workshop;** 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Board of Bar Examiners (405) 416-7075

Calendar

November

- 4-6 OBA 105th Annual Meeting;** Sheraton Hotel, One North Broadway, Oklahoma City
- 6 OBA Board of Governors Meeting;** Sheraton Hotel, One North Broadway, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- 11 OBA Closed – Veterans Day Observed**
- 13 OBA Family Law Section Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Amy Wilson (918) 439-2424
- 18 Ruth Bader Ginsburg American Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donald Lynn Babb (405) 235-1611
- 19 Oklahoma Council of Administrative Hearing Officials;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212
- 26-27 OBA Closed – Thanksgiving Holiday**



FOR YOUR INFORMATION

Bar Member Joins OBA Staff

The OBA General Counsel Department welcomes Katie Ogden as a staff attorney. Ms. Ogden has worked for the OBA for nearly three years as a law clerk for the General Counsel Department and as an intern to the executive director, where she specialized in reviewing litigation and making recommendations to the Administration of Justice Task Force. She'll continue to use her research and writing skills in the General Counsel's office, supporting the two assistant general counsels.



Know a Creative Kid?

Oklahoma students in pre-kindergarten through 12th grade are invited to enter the OBA's Law Day art and writing contests with the opportunity of winning cash prizes up to \$500. The theme for this year's contest is "Our History: Milestones in the Law," and the contest deadline is Dec. 18. Complete details can be found at www.okbar.org.

Columbus Day Notice

The Supreme Court Clerk's office will be open on Columbus Day, Oct. 12. If your appeal-time trigger occurred 30 days before this date, your time to bring an appeal will not be extended by failing to file on Columbus Day.

New Location Announced for 2010 Solo & Small Firm Conference

The Downstream Resort & Casino in Quapaw in north-eastern Oklahoma will be the location of the OBA 2010 Solo & Small Firm Conference on June 24-26, 2010.

"We are very excited to bring our members to this new resort location in Oklahoma with its sparkling new facilities," said Jim Calloway, OBA Management Assistant Program director.



The conference content focuses on legal education of special interest to solo and small firm lawyers, including general practice topics, lawyer's quality of life, law office management and technology suited to smaller firms.

The resort's Web site is www.downstreamcasino.com, and it is owned by the Quapaw Tribe of Oklahoma.

OBA Member Reinstatements

The following members of the OBA suspended for noncompliance with the Rules for Mandatory Continuing Legal Education have complied with the requirements for reinstatement, and notice is hereby given of such reinstatement:

Rodney A. Bassel
OBA No. 587
316 N. Broadway Ave.
Lawton, OK 73532

Joseph Andrew Flores
OBA No. 19658
917 S. Louisville Ave.
Tulsa, OK 74112

David P. Rowland
OBA No. 7795
P.O. Box 1436
Bartlesville, OK 74005

OBA Member Reinstatement

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

Joseph Andrew Flores
OBA No. 19658
917 S. Louisville Ave.
Tulsa, OK 74112

OBA Member Resignation

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

M. Benjamin Singletary
OBA No. 8273
74 James River Lane
Newport News, VA 23606

Bar Employee Receives Social Studies Award

OBA Law-related Education Coordinator Jane McConnell was awarded the 2009 OCSS Service Award at the Oklahoma Council for Social Studies Annual Conference held Oct. 1. The award acknowledges her commitment to the advancement of civics education. Kelly Curtright, director of Social Studies Education at the State Department of Education, and



Matthew Holtzen, president of the Oklahoma Council for the Social Studies, presented the award to Ms. McConnell.

YLD Teams up with Prevent Child Abuse Oklahoma for Annual Meeting

Due to the current economic situation, donations are down for many charities. As a result, the OBA Young Lawyers Division will be collecting donations for Prevent Child Abuse Oklahoma during the OBA Annual Meeting next month. Some of the items needed are baby clothing, blankets, diapers, bottles, safety gates, outlet covers, safety locks, cribs and mattresses, car seats, books and cash. Collections will be taken at the Young Lawyers Division suite and during Casino Night.

Last year in Oklahoma, there were almost 12,000 confirmed cases of child abuse. Thirty-two children died as a result of child maltreatment. The Exchange Club Center for the Prevention of Child Abuse seeks to solve this problem through its mission: to prevent the abuse and neglect of Oklahoma's children. The agency provides services to families with risk factors for child abuse so that children never have to experience abuse and its aftermath. Social workers provide home visits to highest-risk families to ensure homes are safe and clean and to help parents in crisis find the resources they need. Parent education classes are taught in several local high schools to pregnant and parenting teens with an emphasis on self-esteem and the importance of education. Infant simulators are provided to middle and high school students so they may have a "realistic" parenting experience that will impact their decisions regarding sexual activity. Parenting information is available on numerous topics for the public in the organization's parenting library and its resource room has baby items for struggling parents to use such as diapers, formula, cribs and car seats.

Unfortunately, Prevent Child Abuse Oklahoma can't meet the overwhelming need for its services and is always seeking new volunteers and resources. Please consider joining one of its committees. These groups meet monthly and are focused on fundraising, awareness or operations. The organization also needs legal assistance for families enrolled in its program, particularly around custody arrangements and domestic violence issues. Financial contributions are always appreciated as well and are used efficiently. Eighty-four percent of every dollar donated goes directly to families. Please consider supporting Prevent Child Abuse Oklahoma's efforts to help provide a safe and healthy home for children in Oklahoma.

For more information, please contact either Micah Stirling, executive director of Prevent Child Abuse Oklahoma, at (405) 232-2500; or Kimberly Warren, YLD past-chairperson, at (405) 218-4735.

Kudos

Judge Nancy Coats-Ashley has been appointed by Gov. Brad Henry to serve as a member of the Oklahoma Forensic Review Board. She has previously served as president of the Oklahoma Bar Foundation, the Federal Bar Association (Western District of Oklahoma Chapter) and the William J. Holloway Jr. American Inn of Court. She is the recipient of the OBA Judicial Excellence Award and the Mona Lam-bird Spotlight Award. She was inducted into the Oklahoma Women's Hall of Fame in 2005.

Hugh M. Robert was recently elected to the international executive board of The Kappa Sigma Fraternity. He was elected as the second vice president and will serve a two-year term on the five-man board. He was also added to the board of directors of Upsideo and selected for the TU College of Law Alumni Board.

Walter R. Echo-Hawk II was recently selected by the Federal Bar Association to receive the Sarah T. Hughes Civil Rights Award. The award is given annually to honor a person who has promoted civil and human rights and who exemplifies the spirit and legacy of devoted service and leadership in the cause of equality of Judge Hughes, who was a pioneer in the fight for civil rights.

On The Move

The law firm of Holden Carr & Skeens has moved. Its new address is First Place, 15 E. 5th St., Suite 3900, Tulsa, 74103; (918) 295-8888.

McAfee & Taft announces that **Rusty N. LaForge** has joined the firm as a corporate transactional attorney and **Dr. Matthew S. Gibson, H. Cole Marshall** and **Curtis J. Thomas** have joined the firm as associates. Mr. LaForge earned his law degree from OU in 2002. Before joining the firm, he served as director of investor relations for a large publicly traded financial services holding company and as an associate in the financial services section of the law firm Bracewell & Giuliani. He practices regulatory and transactional matters affecting banks, bank holding companies and other financial firms. Dr. Gibson is a registered patent attorney whose practice focuses on all aspects of intellectual property law, with an emphasis in biotechnical, medical and pharmaceutical related matters. Mr. Marshall is a corporate lawyer whose practice encompasses a broad range of business matters, including corporate and securities, commercial transactions, business law, and real estate as well as energy, oil and gas. In school, he served as note editor of the *Oklahoma Law Review*, for which he was awarded the Gene and

JoAnn Sharp Award for best law review note. Mr. Thomas is a trial lawyer whose practice focuses on business and commercial litigation as well as labor and employment law. While attending OU law, he served as an articles editor for the *Oklahoma Law Review*.

Hartzog Conger Cason & Neville announces that **Derek Ensminger** has joined the firm as an associate. He received his J.D. in 2009, summa cum laude, from OCU where he was a Hatton W. Sumners Scholar, staff editor of the *Law Review* and winner of five CALI awards for excellence in law. He holds a B.B.A. in marketing and management with special distinction from OU. His practice includes litigation and employment law.

Stoops & LaCourse announces that **A. Todd Laster** has joined the firm. Mr. Laster practices in the area of bankruptcy representing debtors in Chapters 7 and 13.

Hayes Legal Group PC announces that **Melissa R. Peros** has joined the firm. She recently graduated summa cum laude from OCU School of Law and was given the OBA's Outstanding Senior Law Student Award for OCU. She will be practicing in the areas of federal and state civil litigation; federal Qui Tam law; employment law; federal false claims and whistleblower law; Social Security disability and wills, trusts and estates.

GlassWilkin PC announces that **Robert P. Skeith** has joined the firm as of

counsel. He earned his J.D. from TU with honors in 1994. His practice is concentrated in the areas of banking, business transactions, collections and appellate practice, commercial litigation and real estate. In addition to his litigation practice, he also provides ongoing general counsel services to financial institutions and business enterprises and has served as lead counsel in numerous merger and venture capital transactions.

Best & Sharp announces that **Zachariah O. Lindsey** and **Benjamin D. Reed** have recently joined the firm as associates. Mr. Lindsey graduated from the University of Michigan Law School in 2007. Since then, he has been an assistant district attorney with the Tulsa County District Attorney's Office. His practice will include medical malpractice defense, general insurance defense litigation, civil rights matters and other tort litigation. Mr. Reed earned his J.D. from TU in 2009. He will practice in the areas of medical malpractice defense, insurance defense, research and writing, appellate advocacy and related tort litigation.

The law firm of Hall, Estill, Hardwick, Gable, Golden & Nelson PC announces that **Jada D. Stiner**, **Leah V. Ammons** and **Ashley M. Epperly** have joined the firm's Tulsa office and **Nathaniel T. Haskins** has joined the Oklahoma City office. Ms. Stiner graduated with honors from the TU College of Law where she was an editor of the *Tulsa Law Review*. Ms. Ammons received her J.D. cum laude from Southern Methodist University where she served

as staff editor for the *SMU Science and Technology Law Review*. Ms. Epperly received her J.D. from the University of Kansas where she was senior publications editor of the *Kansas Journal of Law and Public Policy*. Mr. Haskins received his J.D. cum laude from OU where he served as articles development editor for the *American Indian Law Review*. All attorneys practice litigation.

Hugh M. Robert recently joined the Tulsa firm of Sherwood & McCormick as an associate where he practices complex litigation including business, real estate transactions and nursing home or medical negligence.

McDaniel, Hixon, Longwell & Acord PLLC announces that **Cheryl A. Dixon** has joined the firm as an associate. She received her J.D. with honors from TU. While in law school, she was president of the Women's Law Caucus, was clerk of Phi Delta Phi honors fraternity, served on the *Energy Law Journal* and was awarded the Order of the Curule Chair. She is currently a member of the Hudson-Hall-Wheaton chapter of the American Inns of Court and serves on the OBA Women in Law Committee and the Tulsa County Women Lawyers Association.

Atkins & Markoff announces that **Tommy Adler** has become a partner in the firm and **Jerri K. Neighbors** has joined the firm. Mr. Adler is a 2003 graduate of the OU College of Law. He practiced at the Oklahoma County Public Defender's Office for three years and then joined the firm where he is currently the head of the criminal

defense division. Ms. Neighbors practices family, personal injury, bankruptcy and consumer law. She is a 2001 graduate of OCU School of Law. Prior to joining the firm she was an attorney for Norman & Edem in Oklahoma City for seven years practicing in the area of catastrophic personal injury.

Hornbeek Vitali & Braun PLLC announces that **Tommy Dean** has become an associate with the firm. He received his J.D. summa cum laude from OCU in 2008. While in law school, he received the Judge Tomas Brent Criminal Law Award, the OCU Law Alumni Association Service Award and the Oklahoma City Real Property Lawyers Association Award.

Richards & Connor announces that **R. Scott Savage** has joined the firm of counsel. He received his law degree from OU in 1978. Before joining the firm, he worked at the law firm of Moyers, Martin, Santee & Imel where he practiced civil litigation and at eLynx Technologies as general counsel. He will practice civil litigation with an emphasis in business and commercial issues, employment, and oil and gas litigation.

At The Podium

Mark D. Spencer will be a featured guest panelist at the 2009 American Conference Institute's Forum on Defending and Managing ERISA Litigation on Oct. 19-20 in New York City. He will present on "Service Provider

Relationships: Defending and Managing Litigation that Arises Between Plans and Providers.”

Molly Aspan spoke at the Annual Substance Abuse Program Administrators Association conference in Austin, Texas, in September. Her presentation specifically covered the area of drug and alcohol testing policy and procedures for employers.

Garvin Issacs spoke at the Western Trial Advocacy Institute at the University of Wyoming School of Law in June. His presentations were

“How to Use Jury Instructions” and “The Substance of Cross Examination.” He also gave a lecture in June to the Indiana Public Defenders in Indianapolis titled “Never Give Up.”

Compiled by Rosie Sontheimer

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:

Melissa Brown
Communications Dept.
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152
(405) 416-7017
Fax: (405) 416-7089 or
E-mail: barbriefs@okbar.org

Articles for the Nov. 14 issue must be received by Oct. 26.

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Corwin Vane Edwards of Ft. Belvoir, Va., died July 19. He was born Dec. 30, 1914, in Oklahoma City. He earned a degree from OU in 1937, an LL.B. from OU College of Law in 1939 and a J.D. in 1970 from the University of Virginia. **In 1940 he went to North Africa and Europe as an artillery officer with Oklahoma's 45th Division, the Thunderbirds. As a forward observer he saw major action in Sicily, France and Germany. During the war, he earned numerous medals and awards including the Silver Star for valor. When the fighting ceased in Europe he stayed on as a Judge Advocate on the Nuremberg Trials. After four years in civilian practice, he rejoined the U.S. Army for a career that spanned 27 years of service in places such as Korea, Japan and Panama, as well as tours as an instructor in law at the Army's JAG School in Charlottesville and in Washington, D.C. Upon retirement from the military he put in another 16 years as a civilian attorney to the U.S. government, serving in Washington and overseas. Throughout his life, he made time for his church, St. John's United Methodist, where he was an elder and later for his retirement community where he served on the council. He reached the rank of 32nd degree in the Freemasons, was a Shriner and served as an officer in the Civil Air Patrol. He also provided free tax preparation assistance each April to those in need and was a 10-gallon blood donor to the American Red**

Cross. Memorial donations may be made to the charity of your choice.

Charles Place Gotwals Jr. of Tulsa died Sept. 2. He was born in Muskogee on May 19, 1917, and graduated from the OU College of Law in 1940. At OU, he was a member of Phi Beta Kappa national academic honor society and the Order of the Coif. **In 1942, he was called into the Army where he was assigned to the Judge Advocate General Corps and served as the Executive of the Military Justice Division during the allied occupation of Germany following World War II. He landed in Normandy six weeks after the invasion and remained in the European theatre for the duration of his active duty. He continued in the Army Reserve after returning home, finally resigning his commission in 1963, having risen to the rank of Lieutenant Colonel and being awarded the Bronze Star. After returning from active duty he continued his law career in Tulsa, joining with Ellis Gable as a founding partner of the GableGotwals law firm. He specialized in banking, real estate, insurance and litigation. He was active in his community serving as a past president of Kiwanis Club, a member and past president of Wauhillau Outing Club and a Deacon at Trinity Episcopal Church. Memorial contributions may be made to Trinity Episcopal Church or the SPCA.**

Harry G. Scoufos III of Sallisaw died Sept. 27. He was born Aug. 17, 1943, in

Oklahoma City. He was a graduate of Okemah High School and East Central University in Ada. He received his J.D. from OCU. He was an avid hunter and average fisherman and loved spending time on Lake Tenkiller. Memorial donations may be made to the American Cancer Society, c/o June Downey, 1100 Pennsylvania Ave., Kansas City, Mo., 64105, or the charity of your choice.

Jon B. Wallis of Tulsa died Sept. 24. He was born Feb. 8, 1945, in Dallas, Texas. He was educated in Tulsa and graduated from Nathan Hale High School and Northeastern State University. He earned his law degree from TU in 1972. He practiced law for 36 years in Tulsa. He was a 32nd Degree Mason, Shriner and member of the Royal Order of Jesters.

Fred Wright of Oklahoma City died Sept. 3. He was born Dec. 1, 1932, in El Reno. **He served as a Captain in the U.S. Air Force and was stationed in Korea and at Pope Air Force Base in North Carolina. He received his law degree from OU in 1960 and co-founded his own law firm. During his 49-year legal career, he practiced in the areas of business, taxation, estate planning and probate and taught several courses in federal taxation at OCU School of Law. He was a member of Grace United Methodist Church in Oklahoma City where he pursued his passion for fellowship, lay leadership and teaching in the Disciples Bible Study program.**

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CLASS "A" OFFICE SPACE FOR LEASE - CHERRY STREET: (1) 1,700SF and (1) 3,000 SF offices available on Cherry Street at the NE/C of 15th and Quaker Ave. These second story offices are built out with conference rooms, server rooms, reception areas, granite kitchens, and Class A crown molding trim and beautiful finishes. New construction including new elevator in 2005. Excellent dedicated parking for tenant and clients. Great proximity and access to downtown and all expressways. Both spaces adjacent to rooftop patio with outdoor fireplaces that overlooks Cherry Street. Call (918) 605-2807.

POSITION WANTED

EXPERIENCED CORPORATE / TRANSACTIONAL ATTORNEY SEEKS OPPORTUNITY involving relocation to Tulsa or OKC. 10+ years of experience in a wide range of corporate and transactional practice areas. Extensive experience within the energy industry. Large firm and in-house experience. Licensed in Texas and Oklahoma. Partnership with regional firm or senior in-house position preferred. Please send inquires to Fall2009OBJadvertisement@gmail.com.

LOST WILL

ATTN: ALL WILL DRAFTING ATTORNEYS: If any attorney has any information regarding the existence of a formal or handwritten Last Will of a decedent named BEULAH M. LONGENECKER, who died on August 28, 2009, a resident of Tulsa County, please contact the undersigned who is representing Mr. Mark Hovis, surviving son of BEULAH M. LONGENECKER. Curtis J. Shacklett, Barber & Bartz, 525 S. Main Street, Suite 800, Tulsa, Oklahoma 74103-4511, (918) 599-7755, E-mail: cshacklett@barberbartz.com.

POSITIONS AVAILABLE

NORTHEASTERN OKLAHOMA GENERAL PRACTICE with strong concentration in real estate, business transactions and estate planning seeking attorney with 1-2 years experience. Compensation commensurate with experience and performance. Send resumes to "Box D," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

RICHARDS & CONNOR HAS AN IMMEDIATE OPENING for an associate with 3-7 years experience in civil litigation who also possesses excellent writing skills. Applicants must exhibit a history of being self-motivated, detail oriented and have a strong work ethic. Applicants should have experience with taking depositions, researching and writing motions and briefs, and making court appearances. Send resume with references, a transcript and a writing sample to Tracey Martinez, 525 S. Main St., 12th Floor, Tulsa, Oklahoma, 74103. Only applicants with the criteria listed will be considered.

SMALL AV-RATED DOWNTOWN TULSA LAW FIRM seeks experienced legal assistant. Successful applicant will have a minimum of five (5) years law firm experience. Applicant must have strong organizational skills, be detail-oriented, computer-proficient, and possess the ability to multitask. Applicant must have the ability to maintain professionalism and strict confidentiality. Bachelor degree preferred. Legal Assistant Certification and knowledge of Amicus Attorney and TABS a plus. Please email resume and references to: legalrecruit09@yahoo.com.

THE OKLAHOMA DEPARTMENT OF HUMAN SERVICES SEEKS A PROFESSIONAL LEGAL SECRETARY for the Office of General Counsel (Litigation Unit) in Oklahoma City. A minimum of five (5) years experience in state and federal litigation-related matters is required. Starting salary based on experience and qualifications and position includes an excellent State benefits package. Please send resume to: Retta Hudson, Department of Human Services, Legal Division, P.O. Box 25352, Oklahoma City, OK 73125.

PLAINTIFF'S FIRM SEEKING PERSONAL INJURY ATTORNEY with no less experience than 10 jury trials. Potential to make great income. Must be an energetic, hard-working self starter. Please provide a list of defense counsel with whom you have tried cases as part of the resume. All contacts kept confidential. Send resumes to "Box T," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

ASSOCIATE WITH 3-7 YEARS DEFENSE LITIGATION EXPERIENCE needed by AV-rated Tulsa firm. Insurance defense a plus. Very busy, fast-paced, expanding office offering competitive salary, health/life insurance, 401k, etc. Send resume and writing sample (10 pg. max) in confidence via facsimile to (918) 582-5504 or legalrecruit500@yahoo.com.

SOCIAL SECURITY DISABILITY LAWYER NEEDED FOR TULSA OFFICE. We are swamped with calls and need someone immediately! Base plus percentage. Send resume to "Box A," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

OKC AV-RATED LITIGATION FIRM SEEKS ASSOCIATE with 2-5 years experience. Insurance defense or personal injury a plus. Health Ins., Dental, and 401K. Send resume to "Box Z," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

DIRECTOR OF COURT SERVICES: OKLAHOMA COUNTY is seeking a Director of Court Services Programs, including the Own Recognizance Bond, Conditional Bond Release, and Community Service programs. Candidates should be knowledgeable about the Oklahoma District Courts system, and have experience managing a large client base of offenders. This position reports to the Board of County Commissioners. Requirements of the job include a BS/BA degree in Criminal Justice or related field, law enforcement or equivalent combination of education and experience. Experience in criminal law field or social services dealing with risk assessments is highly desired. Candidates should have excellent communication and presentation skills, with experience in managing a diverse workforce. Compensation package includes competitive pay, medical, dental, vision, and employer paid retirement plan. Pay range is \$55,000 – \$70,000 dependent on experience. Candidates should e-mail countyhr@oklahomacounty.org, or mail resume, with salary history, and a completed Oklahoma County employment application to: Director of Human Resources, Oklahoma County HR Department, 320 Robert S. Kerr, Suite 222, OKC, OK 73102. Applications can be downloaded from www.oklahomacounty.org or picked up at the above address. Applications will be accepted until October 16, 2009. Oklahoma County is an Equal Opportunity Employer.

LEGAL SECRETARY/ASSISTANT: City of Del City. Assists City Attorney in providing legal services for the City. Min. qualifications include prior legal secretarial exp., confidentiality, strong work ethic & dependability, communication skills, word processing, and computer skills. Salary range \$ 33,622 - \$45,033 + benefits. Mail applications/resumes to PO Box 15040 Del City, Ok. 73155. Deadline Oct. 20, 2009. EOE.

SR. LEGAL ASSISTANT: This full time day position provides general paralegal support which includes preliminary review of legal documents, legal research, claims and transaction assistance, as well as management of litigation files and compliance program files. Responsible for all administrative duties within the Corporate Compliance/Risk department. Minimum two years experience in law firm or equivalent. Excellent organizational skills, attention to detail, knowledge of office machines, and interpersonal skills necessary. A minimum of two years college in paralegal studies or equivalent training in a law firm preferred. Qualified candidates may apply online at: www.mercycareers.net. Mercy Health Center, 4300 W. Memorial Road, OKC, OK 73120.

POSITIONS AVAILABLE

CITY ATTORNEY II: THE CITY OF BROKEN ARROW is seeking applicants for Assistant City Attorney II. This position performs advance professional and administrative work in the provision of legal services to the city. Major duties include advising city officials and personnel on legal matters; offers advice concerning the mitigation of damages; researches laws, codes, ordinances, regulations and treatises in order to advise the city on legal matters; prepares legal briefs for litigation; litigates lawsuits in state or federal court; provides legal advice; performs other related duties as assigned. Salary \$57,200.62-\$63,138.82. Excellent benefits. Resumes/applications may be sent to Human Resources, P.O. Box 610, Broken Arrow, OK 74013 or may be faxed to (918) 251-9210. Applications may be obtained at the City Hall Annex or at our website www.brokenarrowok.gov. Deadline to receive applications: October 31, 2009. EOE.

PLAINTIFF'S FIRM SEEKING PERSONAL INJURY ATTORNEY with no less experience than 2-5 years. The attorney must be a motivated, self-starter and have a strong work ethic. The position allows an attorney to handle his or her own case load with supervision. Applicants should have experience with taking depositions, researching, writing motions and briefs, and making court appearances. Send resume and salary requirements to "Box F," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152

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:

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Model Prisoner

By Lisbeth L. McCarthy

In a case of convictions for manslaughter and shooting with intent, I was in the process of preparing a proposition of error regarding excessive sentences on behalf of my client. Despite the charges and the convictions, resulting in two life sentences, there was evidence that my client had been fighting for his life when the incidents occurred. Because his culpability for criminal charges was in question, I was also preparing a Rule 3.11 motion on his behalf.

For the record and unfortunately for my client, the case was later affirmed. Also for the record, nothing that violates attorney-client privilege is being revealed herein.

My client fit the stereotype of a dream candidate for sentence modifica-

tion. Prior to the fateful night which resulted in his eventual convictions, he had never been in trouble of any kind in his entire life, not even a traffic ticket.

This particular client also had a bachelor's degree in industrial engineering from Southeastern Oklahoma State University. During a telephone conversation, my client also mentioned to me that he

had served three years in the military, receiving an honorable discharge.

I asked him if he had ever had any write-ups during incarceration. He responded, "No, ma'am. I've been locked up for four years and have not had a single write-up."

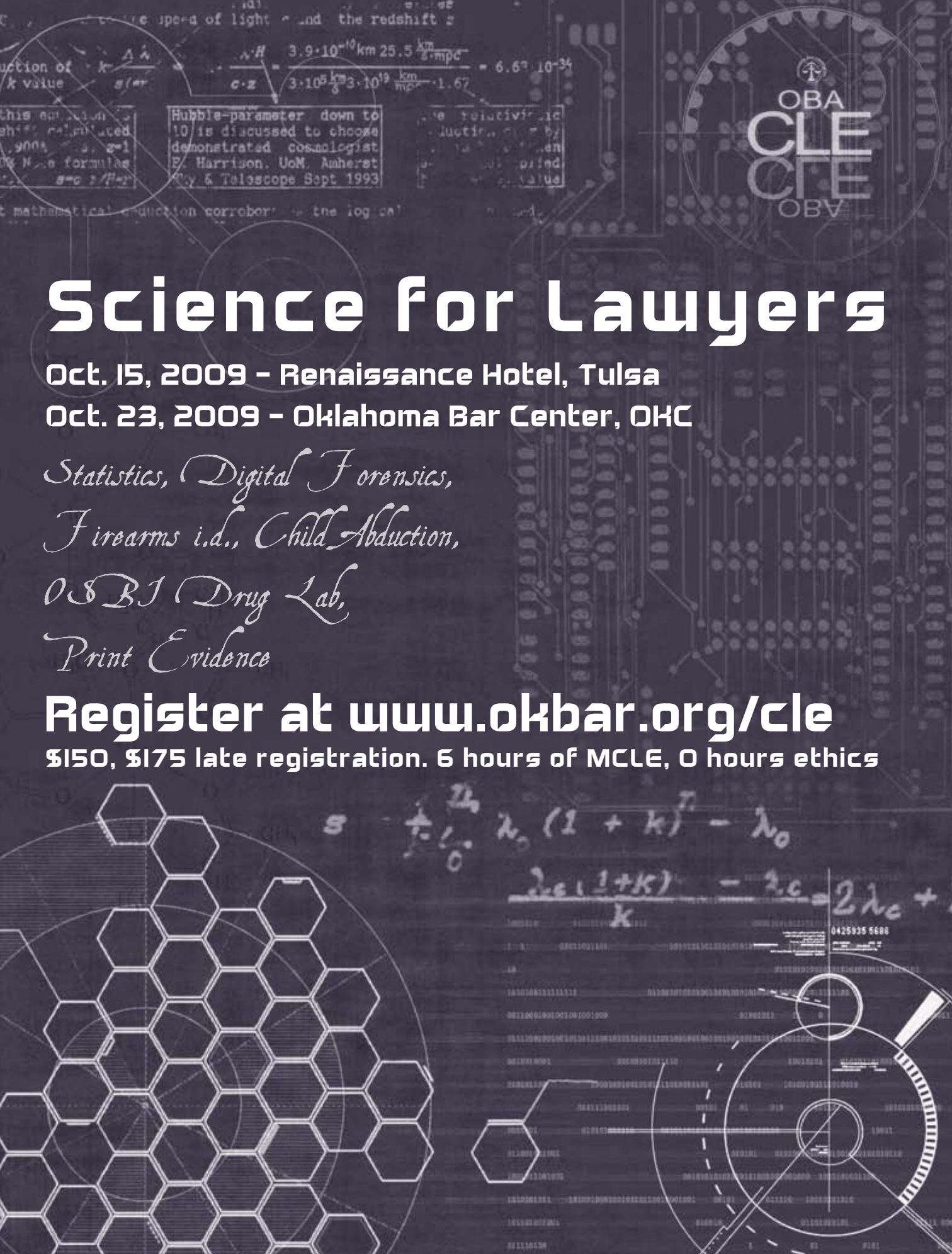
"So," I asked. "You have been a model prisoner?"

My client's intelligence was evident when he responded, "Well, 'model prisoner' is an oxymoron, but if you want to call it that, yes, I've been a model prisoner."

Ms. McCarty practices in Norman.

Editor's Note: Have a short, funny or inspiring story to share? Law-related topic preferred, but not required. E-mail submissions to carolm@okbar.org.





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