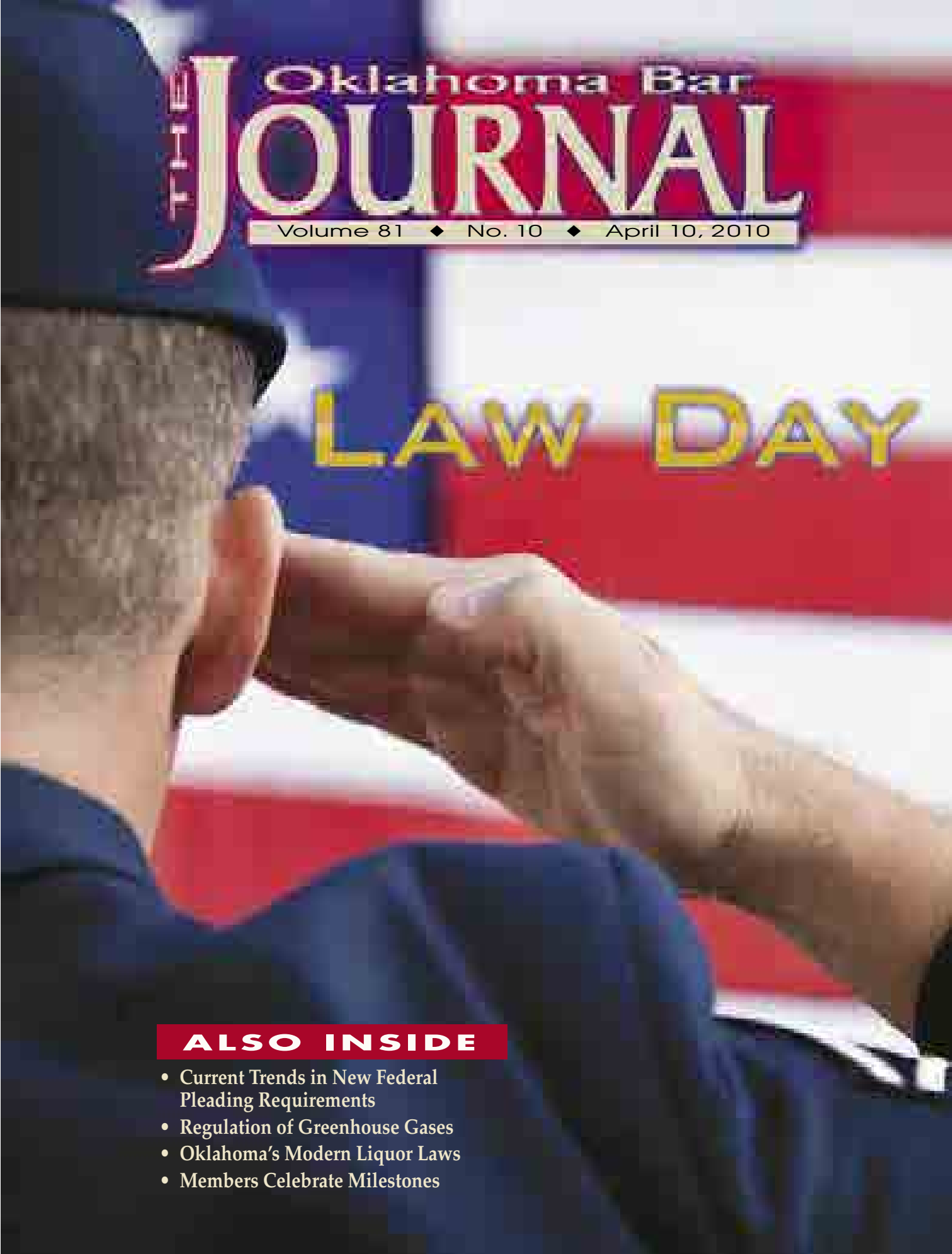
THE Oklahoma Bar JOURNAL
Volume 81 ◆ No. 10 ◆ April 10, 2010

LAW DAY



ALSO INSIDE

- Current Trends in New Federal Pleading Requirements
- Regulation of Greenhouse Gases
- Oklahoma's Modern Liquor Laws
- Members Celebrate Milestones

serving up HAND PICKED OBA/CLE APRIL WEBCASTS

REGISTER AT WWW.LEGALSPAN.COM/OKBAR

FAIR DEBT COLLECTION PRACTICES ACT – THE GOOD, THE BAD, AND THE UGLY

APRIL 14, NOON, YOUR COMPUTER, $125, 2.5 HOURS MCLE/.5 ETHICS, TEXAS CREDIT PENDING

Presenter: Joseph B. Miner, Law Office of Miner & Associates, P.C., Oklahoma City

Are you called on by clients to collect consumer debt? Are you adding attorney's fees to your collection notices? Are you properly giving the necessary FDCPA warnings in all communications? A continuing string of lawsuits against attorneys has shown that even lawyers who think they are complying with the act may not be! In this informative webcast our seasoned faculty will get you up to speed on the latest developments in the FDCPA.

FACEBOOK, TWITTER & BLOGGING...OH MYSPACE!

APRIL 14, YOUR COMPUTER, $325, 6.5 HOURS MCLE/1 ETHICS

This program explores how one of the fastest growing phenomenons in our society, the social networking or media site, impacts a variety of legal disciplines. From intellectual property, to employment law, to legal ethics, to litigation strategy, the social networking site has profound implications for most attorneys and their clients. This course will take a broad look at many of the ways social networking and media sites are changing the landscape of the practice of law. This fast paced and lively course will keep you on the cutting edge!

BASICS OF E-DISCOVERY – APRIL 20, 8 A.M., YOUR COMPUTER, $250, 5 HOURS MCLE/0 ETHICS

In this technologically modern era in which we live and work, virtually every document that has the potential to lead to discoverable evidence is stored in a digital format. Knowing how to access and preserve this electronic information is crucial. Failure to pursue electronic discovery limits the litigation arsenal and potentially exposes practitioners to malpractice liability. This brand new, back to basics seminar will provide you with an introduction to e-discovery. This program defines electronic discovery, explains how to search for discoverable information, shows you how to properly produce and preserve electronic documents and most importantly, shows you how to do all of this in a cost-effective manner.

OFFICER AND DIRECTOR LIABILITY – APRIL 23, 11 A.M., YOUR COMPUTER, $200, 3.5 HOURS MCLE/0 ETHICS

This program will review the fiduciary duties of officers and directors. The panel will examine the fundemental duties owed and how these duties become relevant in litigation.

ADOBE ACROBAT 9: BASICS FOR ATTORNEYS (WEBINAR) – APRIL 27, 11 A.M., YOUR COMPUTER AND TELEPHONE, $125, 2 HOURS MCLE/0 ETHICS

Presenter: Daniel Siegel, Law Offices of Daniel J. Siegel, LLC, Havertown

Adobe Acrobat is a tool that every attorney should have in his or her toolbox. Join Daniel J. Siegel, Esquire, of Integrated Technology Services for this Tele-Web Seminar as he shows you how to utilize Adobe Acobrat 9 to its fullest potential. The basics of making and using PDFs are just the tip of the iceberg for this powerful and useful program.

ATTORNEY EMAIL ETIQUETTE AND ETHICS (TELE-SEMINAR) – APRIL 28, 11:30 A.M., YOUR PHONE, $50, 1 HOUR MCLE/ALL MAY BE APPLIED TOWARD ETHICS

Presenter: Ellen Freedman, CLM, Pennsylvania Bar Association, Harrisburg

You use email to communicate with your clients and your colleagues. But are you sure you are following your ethical obligations while utilizing email? Are you aware of proper email etiquette? Ellen Freedman will take you through what you need to know about using email in legal practice. She will discuss the etiquette of email and explain the ethical issues of which you need to be aware, including client confidentiality and security of email messages.

The Oklahoma Lawyers Association

Your Voice at the Capitol

As a champion for Oklahoma's system of justice, the OLA advocates on behalf of its members through the political and legislative processes.

OLA promotes the interests of the legal profession, advocating positions on law-related issues, encouraging public understanding of the law, and promoting the effective administration of our system of justice.

HERE ARE A FEW OF THE BENEFITS OF JOINING OLA:

1. A year-round weekly e-mail Capitol Call (except in July), covering legislative developments, pre-session interim studies, etc, for each practice area (civil procedure, criminal procedure, family law, estate planning, employment law, etc.).
2. Capitol Alert e-mail newsletter during session updating members on bills of interest and legislative alerts as needed.

For a complete list of benefits visit us at www.oklaywers.org.

Join OLA Today!

www.oklawyers.org

405.633.1803 | tbalkman@oklawyers.org

OKLAHOMA LAWYERS ASSOCIATION

THEME:
LAW DAY

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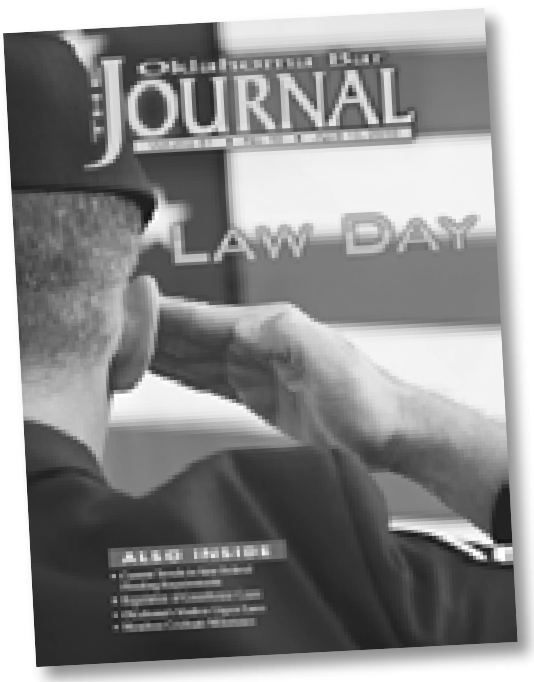

FEATURES

DEPARTMENTS

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Members Celebrate Significant Anniversaries

PLUS

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High School Mock Trial

Law Day — A Different Perspective

By Allen Smallwood

We are all justifiably proud of our state and one of its lawyers as the genesis of nationally celebrated Law Day. We should all be well aware of the Hicks Epton story from Seminole County and how his vision served as a template for the May 1 celebration enjoyed by not only lawyers, but by all Americans. In thinking about what Law Day means, several concepts immediately come to mind — the separation of powers doctrine; the importance of an independent judiciary, whether elected or appointed, regardless of term limits or service during good behavior; the state and federal constitutional Bill of Rights protections — all of which we generally describe as "the rule of law."

…we all often ignore what I believe to be an example of one of America's finest virtues — what I believe could be described as our habit of obedience.

"The rule of law" is most often used to describe the majority's obligation to ensure that the rights of minorities, or individuals, are protected and fostered. While this sentiment is both correct and laudable, I submit to you that we all often ignore what I believe to be an example of one of America's finest virtues — what I believe could be described as our habit of obedience.

President Smallwood practices in Tulsa.
amsmallw@swbell.net
(918) 582-1993

That may sound like a strange description of a country's virtue which rightly prides itself on concepts of rugged individualism and respect for individual rights. However, a thriving and stable democracy cannot exist where we are all totally free, or where the government is all powerful. Striking that compromise requires not only that those in power, whether formally in the government or not, respect the rights of those not in power, it is just as important that those out of power or those who have momentarily been on the losing side of the political process, acquiesce in the rule of the majority and submit, within the confines of due process and guarantees of freedom, to the majority's will. While an in-depth survey of our country's history to support my proposition is far beyond the scope of this article, a few striking examples come to mind that underscore this virtue.

Our entire system of government is based upon the concept of compromise — agreeing to peacefully accept less than what you want. While politicians are constantly decried as "compromisers," who their detractors claim fail to adhere to principles they espouse during political campaigns, we must remember that without compromise the social and political fabric of this country could not be sustained.

I recently attended OBA Day at the Capitol and for a few hours viewed arguments, questions and votes in both our state House and Senate.

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

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Board of Bar Examiners (405) 416-7075
Oklahoma Bar Foundation (405) 416-7070

EVENTS CALENDAR

APRIL 2010

14 **OBA Government and Administrative Law Practice Section Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jami Fenner (405) 844-9900

15 **OBA Access to Justice Committee Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Kade A. McClure (580) 248-4675

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

17 **OBA Title Examination Standards Committee Meeting;** Stroud Community Center, Stroud; Contact: Kraettli Epperson (405) 848-9100

19 **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;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton (918) 591-5229

22 **New Admittee Swearing-In Ceremony;** Supreme Court Courtroom; Contact: Board of Bar Examiners (405) 416-7075

OBA Leadership Academy; 11 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Heidi McComb (405) 416-7027

23 **OBA Board of Governors Meeting;** McAlester, Oklahoma; Contact: John Morris Williams (405) 416-7000

Association of Black Lawyers Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donna Bacy (405) 424-5510

24 **OBA Young Lawyers Division Board of Directors Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Molly Aspan (918) 594-0595

27 **OBA New Lawyer Experience;** 8 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jim Calloway (405) 416-7051

OBA Young Lawyers Division New Admittee Receptions; 5:30 p.m.; Mickey Mantle's Steakhouse, Oklahoma City and Leon's in Brookside, Tulsa; Contact: Molly Aspan (918) 594-0595

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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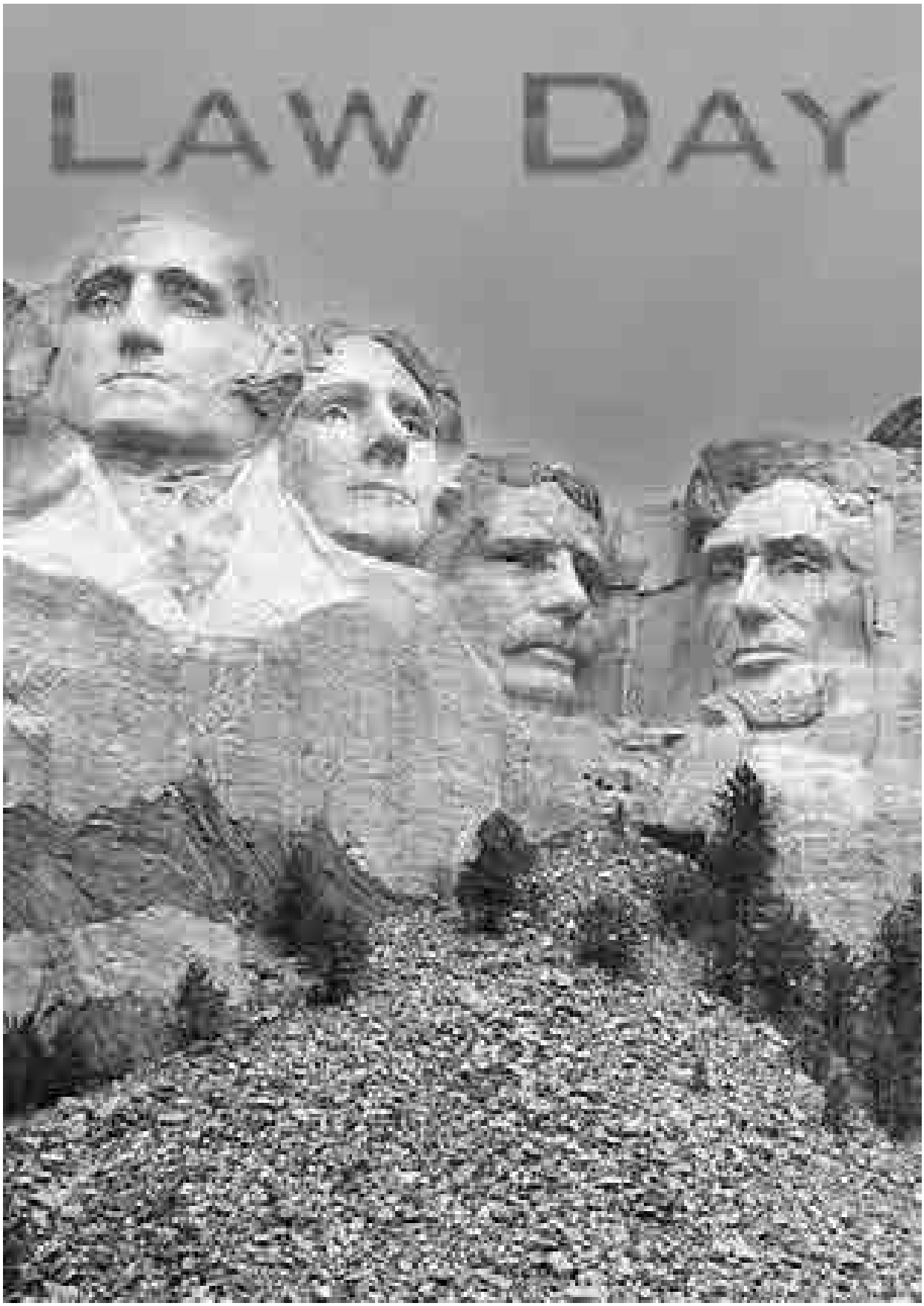

LAW DAY

LAW DAY
2010

Annual Celebration Focuses on Milestones in the Law

By Tina L. Izadi, Law Day Committee Chair

It's time for Law Day! Law Day is an exciting opportunity to celebrate the rights and liberties we are afforded under the law; educate the public about the law; and celebrate and highlight the important work lawyers do for the community and the law. The Law Day tradition was developed by Wewoka attorney and past OBA President Hicks Epton and developed into a national celebration. This celebration has continued for over 50 years both nationally and locally. The OBA Law Day Committee is very proud to carry these traditions forward every year. On April 29, Oklahoma will be celebrating Law Day with events and activities throughout the state.

Oklahoma is keeping its tradition in celebrating Law Day in a big way. We have continued our annual art and writing contests. Also we have put together an informative television show, highlighting the important impact lawyers have on the lives of individuals and the law. Additionally, with the help of all our attorney volunteers, we will continue to offer 12 hours of nonstop free legal advice.

ASK A LAWYER TV SHOW

This year's Ask A Lawyer television program will air April 29 at 7 p.m. on OETA stations across the state. The show provides information about current legal issues facing individuals in this state and how Oklahoma lawyers are making an impact. The show will feature a segment on child support and the alternative sentencing program, illustrating how a father was able to rebuild his life, self-worth, and help him fulfill his financial responsibilities to his children. The show features Oklahoma County Judge Lisa Hammond discussing the positive impact the alternative sentencing program has on families and the community. The show will include a segment on children and the law and the work of Blaine County Judge Mark Moore, who has created a community for foster children by starting an annual, fun-filled youth conference for foster children in the Watonga area. Consumer law will also be a topic covered in the show and will highlight a widow's struggle to receive the new modular home she was promised and how her attorney helped her find justice. The show will also feature Chief Justice Edmondson and the winners of the Law Day contests.

The show will continue its town hall format, where audience members will have an opportunity to ask the legal panelists questions. The town hall forum is an exciting way to include

the public in the Law Day activities. For anyone interested in participating in the town hall, the taping will be held on April 23, 2010, at the OETA studios in Oklahoma City and may contact me at tina.izadi@oag.ok.gov or AskALawyer@okbar.org for more information.

Kerri Robinson (left) and her lawyer, Grace Yates, review evidence that supported her claim in a fraud case.

Judge Mark Moore presents a baseball to former foster child Gypsy Lee. Judge Moore gives signed baseballs to children after an adoption.

CONTESTS AND ACTIVITIES

This year's theme for Law Day is "Our History: Milestones in the Law." This year 1,500 students from across the state submitted entries centered around this year's theme. The OBA's Law Day contests included the second annual YouTube video contest; the entries for this contest more than doubled this year.

The judging was difficult as usual, given the numerous wonderful entries we received. The

Law Day contest winners display their artwork at a state Capitol ceremony attended by Oklahoma Supreme Court Chief Justice James Edmondson (back row, left) and Law Day Committee Chair Tina Izadi (back row, second from right).

winners have been announced, and the winning entries can be viewed at www.okbar.org/lawday and on page 878 of this issue. Be sure to watch the winning video and the video that received honorable mention at www.okbar.org/lawday.

Additionally, high school juniors and seniors were encouraged to learn more about how the law affects each of them differently after reaching the age of majority. On the Law Day Web site, the committee has provided the Legal Guide for Young Adults in Oklahoma, which is prepared by the OBA's Law-related Education Committee.

FREE LEGAL ADVICE

Final preparations are under way for the statewide Ask A Lawyer call-in event, to be held on April 29, where for 12 nonstop hours free legal advice is provided to the public. The Ask A Lawyer call-in event is one of the best ways all Oklahoma bar members can participate in the national celebration of Law Day. This annual event gives us a unique opportunity to provide a valuable community service while promoting a positive public image of attorneys and the OBA.

Callers statewide will be able to reach an attorney by calling (800) 456-8525 throughout the day on April 29. The OBA and the committee work with each county Law Day chairperson in setting up a network of local phone numbers during the broadcast. Volunteer attorneys in each participating county staff the phones and answer questions for a predetermined time period. Oklahoma and Tulsa County attorneys work together to staff the toll-free, statewide phone number from 9 a.m. - 9 p.m.

To make this community service project a success, the Law Day Committee needs your help! It takes a total of 30 attorneys for each two-hour shift to fully staff the statewide number. That effort, combined with the local county bars, creates a huge need for attorneys to step forward. To volunteer, contact your local county Law Day chairperson. The contact information for each county Law Day chairperson and the activities planned for each county are listed in a related story in this issue.

Volunteer attorneys answer calls for free legal advice during last year's Ask A Lawyer event in Oklahoma County.

The Law Day Committee has again committed to branch out to the Latino community by offering free legal advice in Spanish. Each shift in Tulsa and Oklahoma City will need Spanish-speaking volunteers. If you speak Spanish or know non-attorneys who would volunteer to translate, we need your help!

DIRECTIVE AND PROCLAMATION

In continuing with OBA Law Day tradition, Chief Justice Edmondson signed the Law Day directive, encouraging courts to host Law Day events. Also this year, Gov. Brad Henry signed a proclamation designating May 1, 2010, as Law Day in Oklahoma.

GET INVOLVED

Law Day provides an exciting opportunity for all of us to educate the public and remind everyone of the positive work attorneys do. We hope all of you will participate in Law Day, whether it is volunteering to provide free legal advice in your county, making a presentation to a local school group or organization, participating and recruiting town hall participants or joining us on the Law Day Committee. Planning for the 2011 celebration of Law Day begins almost as soon as the 2010 celebration ends, and we need your ideas! If you'd like to join this fun, yet hardworking committee, contact me at (405) 522-2931 or at tina.izadi@oag.ok.gov. With the commitment of the Law Day Committee, county Law Day chairpersons, and the help of each and every one of you, I am confident this year's Law Day celebration will be a wonderful success! Happy Law Day!

¿Habla Español?

We need you!

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

Non-attorney translators are also needed.

The OBA is reaching out to the Latino community, so we expect to hear from Spanish-speaking callers.

When: Thursday, April 29
9 a.m. – 9 p.m. (two-hour shifts)
OETA Studios in Oklahoma City and Tulsa

To sign up:

Oklahoma City

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

Tulsa

Dan Crawford • (918) 796-5790
dan@dlcrawfordlaw.com

¡Alli los miramos!

Ask A Lawyer
Town Hall Forum

The town hall forum will allow panelists to answer questions and discuss issues on the topics of consumer protection, children and the law and child support.

Taping is set for:

Friday, April 23
Noon – 3 p.m.

OETA Studios
7403 N. Kelley Ave.
Oklahoma City

The forum is open to all OBA members and to the public. If you're interested in attending, RSVP to AskALawyer@okbar.org.

If you are interested in asking a question during the town hall forum, please submit the question in writing along with your RSVP. If your question is chosen, you will be notified at the taping and will be given an opportunity to ask your question during the panelist portion of the program. Attire is business casual.

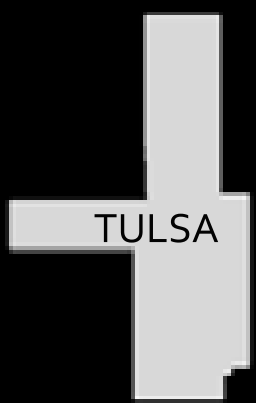
OETA
THE OKLAHOMA NETWORK

OETA Studios in Oklahoma City and Tulsa
Food and snacks will be served

Sign up now!

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

*Other counties, call your law day chairperson to answer phones.



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dan@dlcrawfordlaw.com

Volunteer Lawyers Needed to Give Free Legal Advice

LAW DAY 2010

Contest Winners

Our History: Milestones in the Law

The OBA Law Day Committee would like to thank Oklahoma educators, students and their families for participating in the 2010 Law Day contests. Nearly 1,600 entries were received from across the state.

This year's theme, "Our History: Milestones in the Law," encouraged children to revisit our nation's wonderful and influential past that has enormously impacted the world as we know it today.

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

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

Law Day's YouTube contest was open to anyone and came through with a breakout second year! The entries this year increased by more than two-fold and produced very high quality works of art.

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

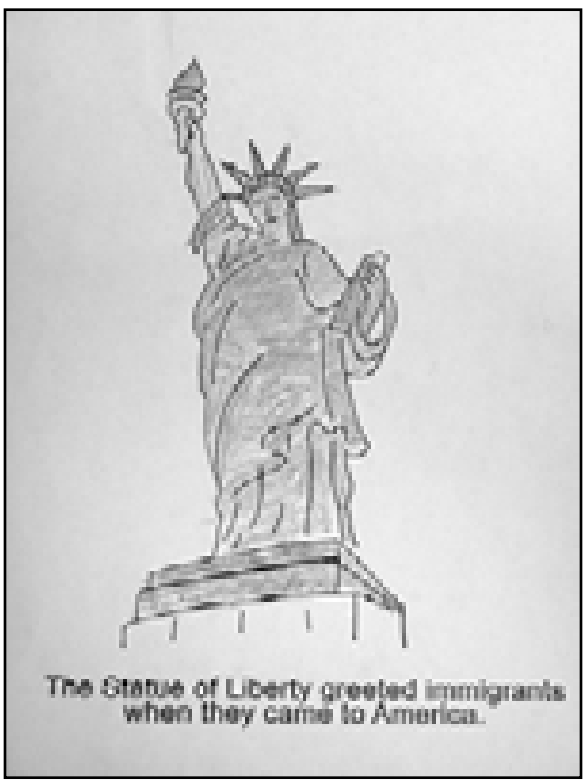
County bar associations will officially present the contest winners in their county with plaques and prize money later this school year.

The *Oklahoma Bar Journal* is proud to present the 2010 contest winners…

Coloring Contest Winners ★ Pre-Kindergarten

1st Place:
Cooper Kemery

Christian Heritage Academy,
Del City
Teacher: Dawn Conrad



2nd Place:
Jeanet Morales

George Early Childhood Center, Idabel
Teacher: Nancy Marshall

Honorable Mentions:

Holly Best, Christian Heritage Academy, Del City
Ian Bryant, Coleman Elementary
Kenly Gore, Taloga Elementary
Destiny Hopkins, Deer Creek-Lamont Elementary
Seth Manning, George Early Childhood Center, Idabel
Akira Page, Monroe Elementary, Oklahoma City

Coloring Contest Winners ★ Kindergarten

1st Place: Thomas Buchanan

Virginia Smith Elementary, Harrah
Teacher: Terri Farmer

2nd Place: Victoria Schmidt

All Saints Catholic School, Norman
Teacher: Rosemary Sisson

Honorable Mentions:

Kashyn Clanton, All Saints Catholic School, Norman
Isabella Cobb, Emerson Elementary, Coalgate
Emmerson McDonald, Westwood Early Childhood Center, Woodward
Dacey Moore, Hillcrest Elementary, Oklahoma City
Kaitlyn Siandua, Maryetta Elementary, Stilwell
Jackson Wallace, Graham Elementary, Weleetka
Tiffany Wilder, Graham Elementary, Weleetka

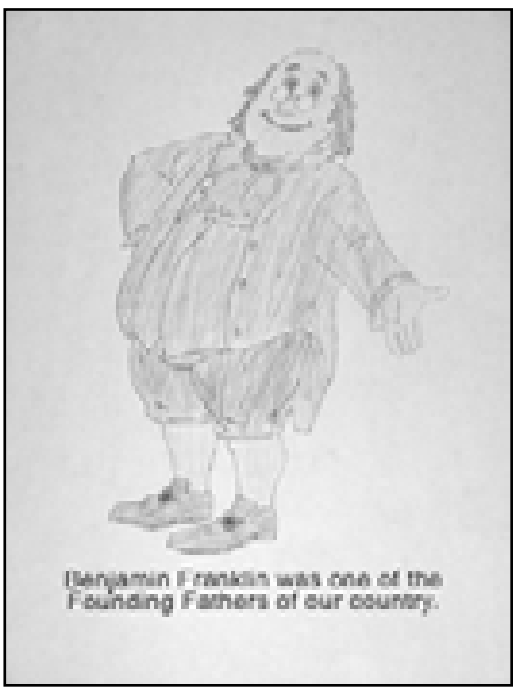
Coloring Contest Winners ★ Transitional First Grade

1st Place:
Averie Cary

Cordell Elementary
Teacher: Lorry Wilkie

Honorable Mentions:

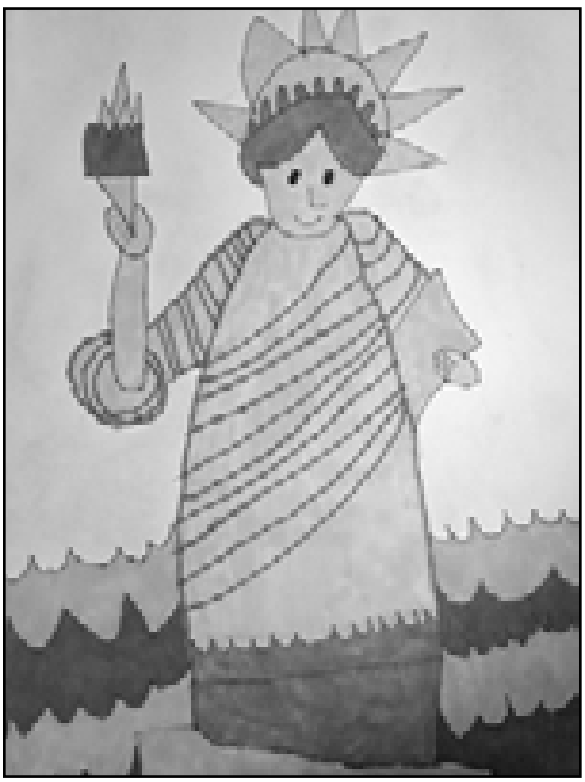
Braden Bingham, Pleasant Vale Elementary, Enid
Amaya Carli, Cordell Elementary
Kaytem Garmon, Cordell Elementary
Hailey Jones, Pleasant Vale Elementary, Enid
Blaine Larsen, Cordell Elementary
Abbygail Priebe, Cordell Elementary



2nd Place:
McKenna Wedel

Cordell Elementary
Teacher: Sherri Goeringer

Drawing Contest Winners ★ First Grade

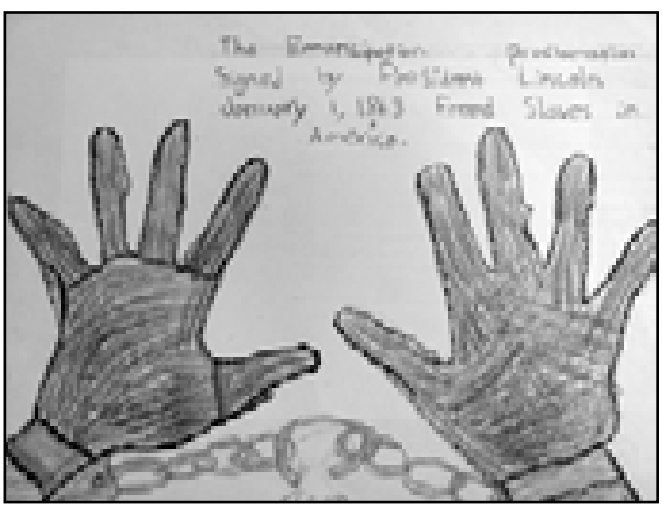


1st Place:
Karlie Stanley

Maryetta Elementary, Stilwell
Teacher: Samilou Smith

Honorable Mentions:

Athena Begay, Eufaula Elementary
Colton Everett, Covenant Community School, Stillwater
Gordon Kidd, Horace Mann Elementary, Duncan
Code Light, Deer Creek-Lamont Elementary
Brett Mitchell, Covenant Community School, Stillwater
Lane Nasalroad, Covenant Community School, Stillwater
Danae Ray, Covenant Community School, Stillwater
Curtis Taron, Eufaula Elementary



2nd Place:
Olivia Hara

Covenant Community School, Stillwater
Teacher: Rhonda Charene

Drawing Contest Winners ★ Second Grade

1st Place:
Katie Stephenson

Maryetta Elementary, Stilwell
Teacher: Samilou Smith

Honorable Mentions:

Austin Banfield, Covenant Community School, Stillwater
Tanasia Cochran, Maryetta Elementary, Stilwell
Issac Stouffer, Deer Creek-Lamont Elementary
Lauren Vaca, Central Fine Arts Academy, Tulsa

2nd Place:
Kaitlyn Lewis

Horace Mann Elementary, Duncan
Teacher: Teresa Blalock

Collage Contest Winners ★ Third Grade

1st Place:
Jaycee Everett

Covenant Community School,
Stillwater
Teacher: Ronda Peek

2nd Place:
Olie Weaver

Covenant Community School, Stillwater
Teacher: Ronda Peek

Honorable Mentions:

Amethyst Chitwood, Covenant Community School, Stillwater
Samantha DeLeon, Houchin Elementary, Moore
Brittany Long, Prague Elementary
Shyanne Martin, Coleman Elementary
Cord Powell, Prague Elementary
Ivie Schwarz, Covenant Community School, Stillwater
Korea Stromski, Covenant Community School, Stillwater
Matthew Warnock, Covenant Community School, Stillwater

Collage Contest Winners ★ Fourth Grade

1st Place:
Hannah McDonald

Durant Intermediate
Teacher: Terecia Webb

2nd Place:
Parker Terrell

Prague Elementary
Teacher: Barbara Hutchens

Honorable Mentions:

Aaron Bickerstaff, Centennial Elementary, Mustang
Matthew Chalson, Prague Elementary
Bryce Day, Prague Elementary
Brayden Pitner, Antioch Christian Academy, Oklahoma City
Tyger Walters, Covenant Community School, Stillwater

Diorama Contest Winners ★ Fifth Grade

1st Place:
Sidni Blalock

Horace Mann Elementary, Duncan
Teacher: Kasy Clauson

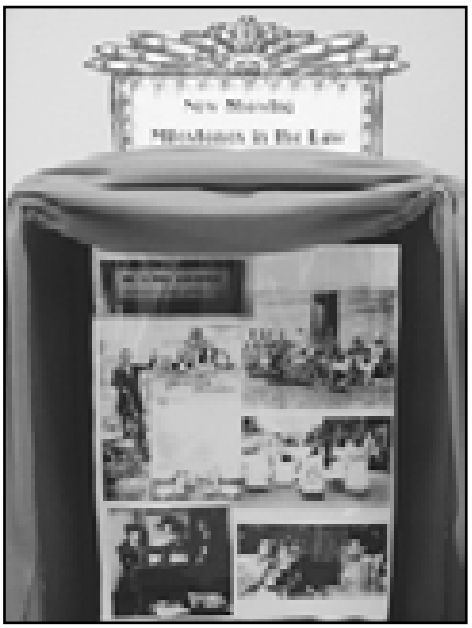
Honorable Mentions: Sydney Gallaro, Houchin Elementary, Moore
Hope Yandell, Central Elementary, Moore

Diorama Contest Winners ★ Sixth Grade

1st Place:
Shane McDonald

Central Elementary, Moore
Teacher: Lois Sturch

Diorama Contest Winners ★ Sixth Grade



2nd Place: Kelsey Fox

Houchin Elementary, Moore
Teacher: Lois Sturch

Honorable Mentions:

Dylan Hestand, Central Elementary, Moore
Santana Scott, St. Elizabeth Ann Seton Catholic School, Edmond

Diorama Contest Winners ★ Seventh Grade

Honorable Mentions:

Tiffany Musgrove, Thomas Jefferson Middle School, Oklahoma City
Cassie Shannon, Central Middle School, Moore

Creative Writing Contest Winners ★ Fifth Grade

1st Place: Abby Webster

Deer Creek-Lamont Elementary
Teacher: Lee Ann Hobbs

2nd Place: Megan Wilson

Jenks East Intermediate
Teacher: Stacy Howerton

To read Megan's poem, go to www.okbar.org/lawday

Honorable Mentions:

Molly Blaser, Deer Creek-Lamont Elementary
Ben Hamm, Deer Creek-Lamont Elementary
Grace Janes, Jenks East Intermediate
Joe Mora, Deer Creek-Lamont Elementary
Trace Smith, Jenks East Intermediate

I AM

I am a son.
I am a husband.
I am a father.
I am a Christian.
I am a Harvard graduate.
I am a teacher.
I am African American.
I am a motivator.
I am a community organizer.
Ii am a fighter for civil rights.
I am controversy.
I am change.
I am making a difference.
I am "Yes we can."
I am the 44th President of the United States.
I am Barack Obama.
The first African American to hold the office of President.
Who will you be?

Creative Writing Contest Winners ★ Sixth Grade

My Life as a Slave in 1863

1st Place: Heather Morris

Houchin Elementary, Moore
Teacher: Lois Sturch

I was running, not wanting to turn around, too afraid to see the faces of whom may be the last thing I see. I am an escaped slave, running from my owner. Actually, I wouldn't call him my owner; I am not a lost puppy. The people chasing me are his guards. They are white though, because the person in charge, Thomas, thinks that the slaves wouldn't catch people but let them go free instead. So here I am, running for my life, wanting to find a place to escape to!

They are getting slower as I hear their footsteps fall heavily and their panting sounds harder, but distant. I hear a low shout as I run through a stream and feel splashes lightly sprinkle my back as a dog gets free, running faster than the owner, slowly catching up to me. I jump up to a tree, almost falling, almost losing my grip, only to grab a branch right under, but still out of reach of the vicious dog snapping his bloodthirsty jaws and almost nipping my foot. I pull myself up to the branch above my head climbing so high I almost hit a nest as I pass it. I sit there and think of my day after checking to see that the guards can't catch me.

My life is flashing before my eyes. I am only thirteen, but I could die right now. The chances are about 5% that I escape, 35% I survive the lashing, and 60% I die today. I am not surprised that I feel a slight tear run down my face, only to be followed by what feels like a sea of tears, racing down fast and swerving like flat waves. I have run away to meet the rest of the family in Georgia. They got away about three months ago, but I got caught and we agreed that if one got caught we'd either go get them or leave them. I said for them to leave me. I planned on running away later, because if they came back for me they might get caught and no one would get away. We might even be killed. Thomas was furious, and he almost lashed me, but decided to keep me alive.

I remembered when I was eight, and my family talked of a land where they were treated like what they were…people. They told me one day we'd reach it. One day we'd be free of lashing and get real food. And when we get enough money , maybe even three meals a day! Sandra's eyes looked far off and distant. She died the next day of a lashing from accidentally knocking over a barrel of Thomas's good wine.

Some people die of lashings, but most just come back with huge cuts. She died because the guards were drunk, and they wanted more wine. They were so mad they killed her and let her bleed out just to make sure. Her funeral was the next day. Thomas hadn't found out yet so we secretly buried her. Sandra was special to me. She was my mom.

I laugh at the men to myself while up in the tree. Those guards were lashed and then fired after Thomas found out. He was furious, and since she wasn't intended to die he gave us a little bit of extra food for the next week. We accepted the food, but it didn't help the grief. I will remember those days for the rest of my life. My mother was the only one not able to reach the free land, and I may follow in her footsteps.

All of a sudden the yells for stop one by one. I look down to see the men grab thick sturdy branches. They remind me of logs so it was strange to see them holding branches that looked like logs. They piled the logs neatly to where they could climb up them. The small skinny one started climbing the logs. He was almost half way up the tree! I had to do something quick!

I shut my eyes, not wanting to see myself do this. I thought I was crazy because I though that maybe I will wake up, my life only a nightmare. I shook my head and jumped. I surprised myself by opening my eyes, grabbing the rough tree beside the first, climbed to the other side and went to another, and another. I felt like a monkey, never stopping, swinging from tree to tree skillfully, and not slipping once. I was almost positive that I was dreaming now, but just in case, I kept swinging.

Feeling air headed I stopped, not knowing what to do next. I sat at the top of the tree trying to regain my grip of reality, as well as my vision of the surroundings. I realized I was at the top of a tall oak. I was also about eight trees away from the gaping wide-eyed guards that had stopped in mid action of all sorts. I felt like time had stopped. The guards looked like fools so that means I was at a safe distance from six fools.

I did a small laugh, mostly because I was in a daze, rather than in happiness. I watched, as they too realized what was happening and regathered themselves. They still seemed in shock so I acted like the bigger person and stood and waved tauntingly. They almost seemed to smile. I stuck out my tongue and made a funny face and they continued to stare. I realized I was losing precious time

continued on next page…

then told myself that it was actually a good thing that I was doing this and kept on. It was my new strategy – a little thing I call stalling. I stalled while thinking of my next action.

My mind went blank so I yelled in my head to think of anything. Anything to get out of here. My mind was racing, wanting an idea; suddenly I decided to jump into the thicket, only to be caught by another branch. The thicket being in the way of their view of me they would think I had fallen into it and race over, and I would climb to the other side, jump down and hit the ground running. I put my plan into action!

I ran to the edge of the long prickly branch, jumped, and grabbed a branch. My hand slipped and I thought for sure I was dead meat. I grabbed furiously at air, trying to grab anything – not falling! I found another branch and latched on, this time grabbing the branch safely. I hear shouts of the guards grow loud over pounding in my head and my own panting. I had to move quickly, so I climbed quietly over to the other side as loudly as I dared. I feel to the ground while hearing sounds of confusion from the guards, not knowing what just happened, and ran. I ran and ran again, not knowing how much longer I could keep this up when I found a small cottage.

After checking for guards I crept closer. I looked through the window to see a round smiling woman giving a poor feeble slave soup. I recognized the former slave as a girl from the plantation a couple acres away. I cautiously knocked on the door. The woman opened it up and looked at me, looked around the place, and quickly led me inside. The former slave, also known as Alandra, waved a feeble hello and the woman suddenly piled me with questions, words of sympathy and soup. The creamy soup felt so good on my raspy burning throat. I did not want to open my mouth. She took a big breath and stopped.

I told her my name – Winitinsasia, and that they were after me, not mentioning whom, and I had barely escaped. I also told her about my family in Georgia and then almost cried. She told me she has been to Georgia. She said I was lucky to have found her, because she was in a small elite organization that helped save runaways in need. She said she planned to leave for her trip in about a day, but so they will not find me she can take us today.

We set away at night, running about a half mile when we saw a wagon. She greeted him and he hid us in the back under a board, making it look like the bottom of the wagon and covered that with hay and boxes of apples to look convincing. Once we were situated, he rode off into the distance. Every bump felt like rocks hitting me repeatedly. I did not care. I was on my way to my family! I succeeded in the 5% that I should not die, but escape. I was overjoyed, and barely kept myself from screaming with joy!

Hours later I felt the wagon stop, realizing the cart was being checked for slaves or anything suspicious. My heart was pounding so hard I thought for sure we would be caught. I felt them touch the fake "bottom of the wagon," scoot back, tell the driver it was clear, and we left. I feel asleep long afterwards, only be awakened by another stop. No guards were next to us and the driver was getting out. He lifted the board and told us to get out. I was still sleepy; not registering what was going on and got out. I saw a big house in front of me, and turned in confusion to the man. I asked him whose house it was, fully awake now, and he told me to knock and see. I knocked.

A person I know as my dad opened the door. I squealed in joy and relief of the sight of him. I heard my sisters run to the door wanting to be in on the action. I almost fainted at the sight of my family, embracing me with hugs. We went inside and I had so much to say! After they stopped gaping in disbelief, they told me how they got here, and how they were treated kindly and respectfully. They could sleep in with ease, eat three whole meals a day and work an easy job without being lashed or scolded. They showed me to my room that they had kept vacant, worried that it would never be filled, but they trusted God that I would return, and I did!

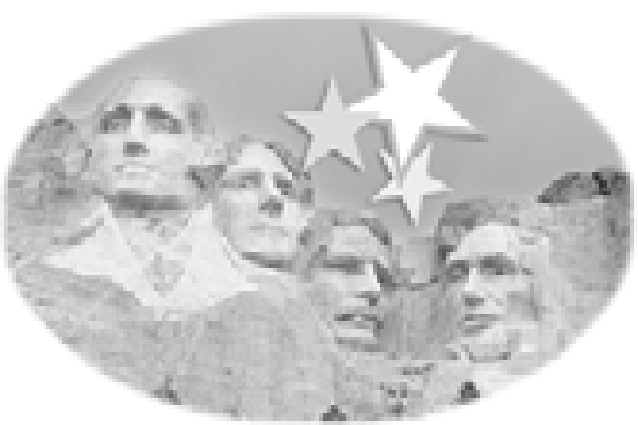
Epilogue

Two years later the law was passed that slaves are to be set free, and be forbidden to be cooped up in a plantation as a slave. They were overjoyed! Wintinsasia lived her life in ease with her four sisters and dad, never again worried about Thomas or the guards.

2nd Place:
Sarah Jane Brooks

St. Elizabeth Ann Seton Catholic School, Edmond
Teacher: Joan Krauss

To read Sarah Jane's poem, go to www.okbar.org/lawday



Creative Writing Contest Winners ★ Seventh Grade

Our History: Milestones in the Law

Who would have known way back when
Our country would be as it is now
Just because the pilgrims sailed in
From forming the thirteen original colonies
Separation from British's rule
Creating a Declaration of Independence
And the United States Constitution which rules our great land
Civil war which ended slavery
The rights of women
That created equality of people across our land
Our great nation has survived many wars
And will continue to prosper
And make new milestones forever more

1st Place:
Blake Goss

Canute Jr. High
Teacher: Dana Goss

2nd Place:
Amanda Higgins

Canute Jr. High
Teacher: Dana Goss

To read Amanda's poem, go to www.okbar.org/lawday

Honorable Mention:

Christy Henley, Canute Jr. High

Creative Writing Contest Winners ★ Eighth Grade

1st Place:
Sophia Alvarez

Monte Cassino Middle School, Tulsa
Teacher: Catherine Zedalis

The Constitutional Convention

The Articles were the law
When this country was newborn.
But confederation did not work,
And soon the nation became torn.
So the wise men of the age,
Gathered together, to make this government better.
They planned just to amend, but instead overhauled,
Laying the new law out in those famous letters.
They met one stifling summer,
A nation they wished to write.
They debated and talked,
And did not hesitate to fight.
They discussed who should make laws,
And how they would be elected,

continued on next page…

Who should lead and who should judge
And how the people would be affected.
They argued over how many representatives
Would come from each state,
And a bicameral Congress
They did create.
By the end of that summer,
The men had made our law.
It took a while to be ratified
But its righteousness the people saw.
So the Constitution passed,
And the law of America it became.
To other countries, its justice and freedom
Is this nation's fame.

Creative Writing Contest Winners ★ Eighth Grade

2nd Place:
Charlie Robson

Monte Cassino Middle School, Tulsa
Teacher: Catherine Zedalis

To read Charlie's poem, go to www.okbar.org/lawday

Honorable Mentions:

Levi Aleman, Ardmore Middle School
Shubhekshya Bhandari, Ardmore Middle School
Emily Corrigan, St. Elizabeth Ann Seton Catholic School, Edmond
Maggie Hickman, St. Elizabeth Ann Seton Catholic School, Edmond
Evan Sack, Monte Cassino Middle School, Tulsa
Rebecca Smith, Ardmore Middle School
Aniecia Stanback, Ardmore Middle School
Blair Louise Tarman, St. Elizabeth Ann Seton Catholic School, Edmond
Luke Walker, Ardmore Middle School

Creative Free For All Contest Winners ★ Ninth Grade

1st Place:
Rachel Lowe

Lawton High School
Teacher: Andi Janoe

A Tea Party for the Ages

I was a young sentimental man,
Who lived off the Massachusetts shore
I was beginning to grow perplexed with England
Whose taxes were becoming more and more
As time progressed it came to such a severity
I had to pay an arm and a leg for just a simple cup of tea!
I was beginning to become burdened with this unfair taxing
Which a man such as I should never be,
I only wanted a peaceful life
In this Harbor by the sea
But however ever am I to survive
Without my beloved tea?
I marched to the house of Samuel Adams,
Leader of the Sons of Liberty
He had a lovely little house,
On the Harbor by the sea
He revealed to me a plan that was being devised there in his home
It was a plan intended to send the British running home!
One chilly December night in 1773
We quietly boarded ships in that Harbor by the sea
We together yelled "No taxation without representation!"
And dumped into the harbor hundreds of crates full of tea.

continued on next page…

Creative Free For All Contest Winners ★ Ninth Grade

2nd Place: Ellen Halverson

Lawton High School
Teacher: Andi Janoe

To read Ellen's poem, go to www.okbar.org/lawday

Oh! The surprise the British had in the morning
Whenever they woke up to see
Hundreds upon hundreds of crates
Floating in that Harbor by the sea
Our little rebellion sparked a revolution sensation that shook all creation
In our Harbor by the sea
It affected later laws that carried on our cause
Which began in our Harbor by the sea
It was an act of rebellion I shall remember ages and ages hence,
It was a tea party that the British won't soon forget!

Honorable Mentions:

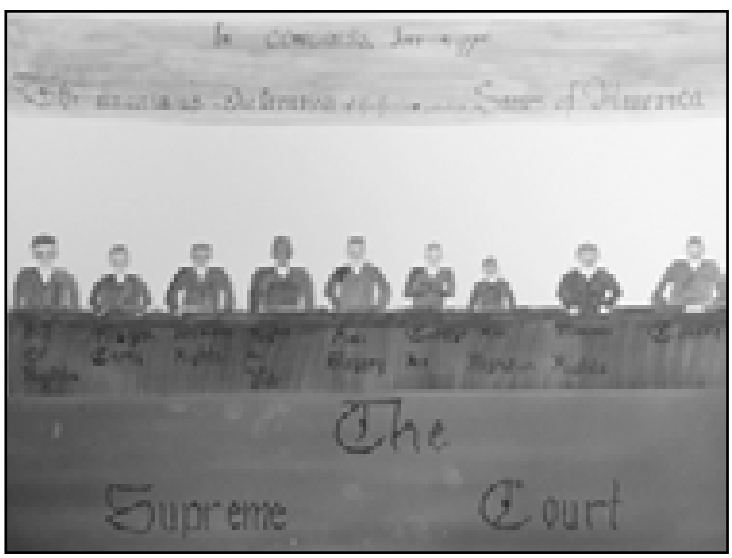
For Art:
Jason Brewer, Maud High School
Chris Martin, Ponca City High School
Andrew Weatherly, Maud High School

For Creative Writing:
Dominique Burnett, Lawton High School
Ashley Gallagher, Lawton High School
Sydnie Pozniak, Lawton High School
Rachel Vanover, Lawton High School

Creative Free For All Contest Winners ★ Tenth Grade

1st Place: Dustin Williams

Ponca City High School
Teacher: Tim Wehrle



2nd Place: Patrick Bender

Edmond Memorial High School Teacher: Jenna Klein

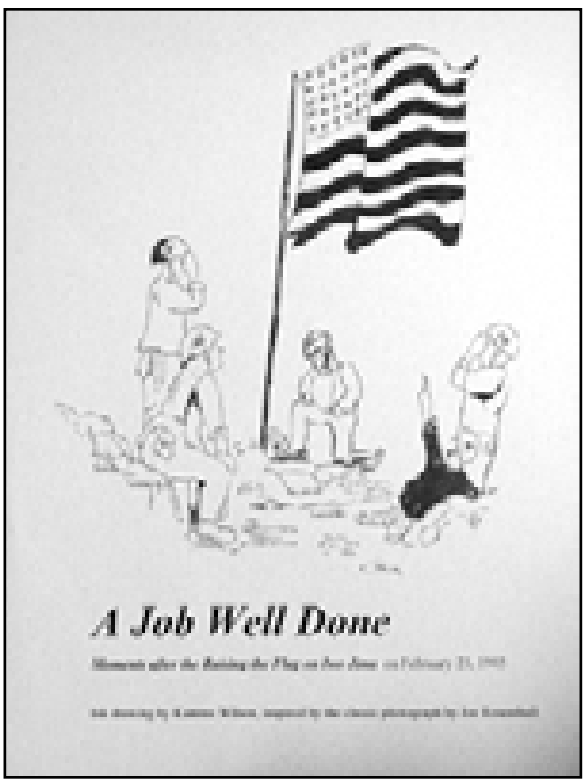
To read Patrick's short story, go to www.okbar.org/lawday

Honorable Mentions

For Art:
A.J. Martin, Ponca City High School
Dillon Medford, Elmore City-Pernell High School
Kristian Schuleman, Ponca City High School

For Creative Writing:
Thalia Astello, Lawton High School
Drew Lucas, Edison Prepatory School, Tulsa
Christina McGuire, Edison Prepatory School, Tulsa
Levi Pennington, Lawton High School

Creative Free For All Contest Winners ★ Eleventh Grade



1st Place: Kamree Wilson

Barnsdall High School
Teacher: Wilma Logue

2nd Place: Kellyn Pollard

Lawton High School
Teacher: Terrance Freeman

To read Kellyn's poem, go to www.okbar.org/lawday

Honorable Mentions:

For Art:
Heather Lanphear, Barnsdall High School
Dylan Pietrzyk, Panola High School
Haley Smith, Maud High School

For Creative Writing:
Tabatha Dickinson, Lawton High School
Devin Dorsey, Lawton High School
Robert Evans, Lawton High School
Natalie Fife, Lawton High School
Anna Halverson, Lawton High School
Amanda Hunter, Evangelistic Temple School, Tulsa
Joelle McMillan, Evangelistic Temple School, Tulsa
Megan Norris, Lawton High School
Lynssey Richardson, Lawton High School
Chelsea Robinette, Lawton High School
Sean Usher, Lawton High School

Creative Free For All Contest Winners ★ Twelfth Grade

1st Place: Alex Kelley

Ponca City High School
Teacher: Tim Wehrle

2nd Place: Tabitha Saylors

Ponca City High School
Teacher: Tim Wehrle

Honorable Mentions:

For Art:
Kaylee Jackson, Ponca City High School
Alec Overacker, Barnsdall High School

For Creative Writing:
Jessica Crabtree, Barnsdall High School
Andrewe Hansen, Barnsdall High School
Kaycie Jackson, Barnsdall High School
Haley Perkins, Barnsdall High School
Austin Vance, Edmond Santa Fe High School

YouTube Video Contest Winners

Honorable Mentions:

Fort Cobb-Broxton High School Academic Team:

Reed Allen, ninth grade
Dylan Circles, ninth grade
Mallory Clift, ninth grade
McKenna Clift, ninth grade
Ashley DeVaughan, tenth grade
Danielle Hammons, ninth grade
Jake Hill, ninth grade
Ashton Lierle, ninth grade
Cheyenne Pierce, ninth grade
Lyndsi Vaughan, tenth grade
Lisa Wade, tenth grade
Zak Bates, eleventh grade
Stacy Hill, eleventh grade
Laken Lierle, eleventh grade
Colby May, eleventh grade
Morgan McCullough, eleventh grade
Kelly Sokolosky, eleventh grade
Brett Bellamy, twelfth grade
Chelsea DeVaughan, twelfth grade
Matt Ferrell, twelfth grade
Trinity Goombi, twelfth grade
Adalynn Klugh, twelfth grade
Rachel Wade, twelfth grade

To watch these videos, go to www.okbar.org/lawday

1st Place: Jacob Pittman

Oliver Middle School, Broken Arrow
Teacher: Justin Ennis

Grand Prize Winner

Sarah Smith

Maud High School • Teacher: Rob Kopp

Oklahoma Criminal Defense Lawyer's Association Presents
ADVANCED FIELD SOBRIETY AND DRE SEMINAR

When: **May 7, 2010 8:30am to 5:00 pm**

Where: **Rose State College Technical Training Center** Cost: **$295.00**

This seminar is designed to be in depth, so the *CLASS SIZE WILL BE LIMITED TO 35 PEOPLE* on a first come basis.

This course is designed to provide an advanced understanding of SFSTs and DRE. You will learn the actual training of the course the officers go through including what they are supposed to consider BEFORE giving a SFST. You will understand how to interpret a DRE Face Sheet, DRE Narrative Report, and DRE Matrix, and how a 12-Step DRE evaluation is actually given. At the close of the course, you will be able to effectively cross examine a DRE or SFST officer when they testify that your client had all the clues. Every faculty member is a NHTSA certified SFST Instructor with previous SFST teaching experience and is formally trained as a Drug Recognition Expert.

As part of the course, you will receive the DRE Manual and the SFST manual on CD.

Faculty:

Anthony Palacios, of Impaired Driving Specialists, LLC, is the former SFST State Coordinator for the State of Georgia and was one of three full time Impaired Driving Instructors for the Georgia Police Academy. He is a former IACP certified Drug Recognition Expert Instructor as well as a NHTSA DUI/SFST Instructor. Mr. Palacios has trained over 3,000 Georgia, South Carolina and Tennessee law enforcement officers and prosecutors, as well as hundreds of criminal attorneys from all over the nation in the NHTSA/IACP Impaired Driving curriculum. Additionally, Mr. Palacios has lectured at the national and state level on the topics of SFSTs and DRE.

John Hunsucker, Hunsucker DUI Defense Firm, is the co-author of Oklahoma DUI Defense, The Law and Practice (Lawyers & Judges Publishing), *The Oklahoma DUI Survival Guide*, 1st and 2nd Ed, as well as Survival Guides for Georgia, Minnesota, and Florida (Whitehall Publishing). Mr. Hunsucker is a NHTSA certified SFST Instructor and is formally trained as a Drug Recognition Expert.

Bruce Edge, Edge Law Firm is the co-author of Oklahoma DUI Defense, The Law and Practice (Lawyers & Judges Publishing), *The Oklahoma DUI Survival Guide*, 1st and 2nd Ed, as well as Survival Guides for Georgia, Minnesota, and Florida (Whitehall Publishing). Mr. Edge is a NHTSA certified SFST Instructor and is formally trained as a Drug Recognition Expert.

Josh D. Lee, Ward & Lee Law Firm, is a NHTSA certified SFST Instructor and is formally trained as a Drug Recognition Expert

Agenda:	8:30-8:45	Welcoming Remarks and Introduction
	8:45-1045	The Proper Administration, Interpretation, and Scoring of the SFSTs- Palacios, Hunsucker, Edge
	10:45-12:00	Common Mistakes Made by Officer's during the SFSTs- Palacios, Hunsucker, Edge
	12:00-1:00	Lunch on your own
	1:00-2:30	The 12-Step DRE Evaluation-Palacios, Hunsucker, Edge
	2:30-4:00	Understanding the DRE Face Sheet, DRE Narrative, and DRE Matrix- Palacios, Hunsucker, Edge
	4:10-5:00	Applying Case law to SFST and DRE-Lee

Visit www.OCDLAOKLAHOMA.com to sign up or mail a copy of this ad with payment to:
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LAW DAY 2010

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Veva Daugherty
(580) 623-7029

Bryan
Abby Rogers
(580) 920-0700

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(405) 619-8252

Carter
Melanie Blackburn
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and
Todd Hicks
(580) 223-5800

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Cimarron
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and
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(580) 249-9100

Grant
Judge Jack Hammontree
(580) 395-2258

Greer
Judge Danny R. Deaver
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Harmon
Judge Mike Warren
(580) 688-2553

Jackson
Sommer Robbins
(580) 480-3601
and
Capt. Daphne LaSalle
(Ask A Lawyer Coordinator)

Johnston
Dustin Rowe
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Woodward
Michael Meinders
(580) 254-5551

If your county information has changed, please contact Melissa Brown at melissab@okbar.org.

LAW DAY
2010

County Bar Association Activities

☆ Bryan County Bar Association

The Bryan County Bar Association is sponsoring a county-wide contest for kids of all ages for Law Day 2010. The contest features a coloring contest for the younger children and writing and creative arts projects for the older children. Winners of both the BCBA's contest and the local winners of the OBA's statewide competition will be honored at an awards ceremony April 29. Additionally, members of the BCBA will be visiting local classrooms throughout the month of April as part of its Law Day Activities. Members of the BCBA will also have articles discussing legal issues placed in the local newspaper during the week preceding Law Day, and the BCBA will be placing an advertisement in the newspaper showcasing the BCBA and its members. Finally, the BCBA will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone on April 29.

☆ Canadian County Bar Association

The Canadian County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 5-9 p.m. on April 29. The event will be publicized in newspapers throughout Canadian County. In addition, association members will present a program on Oklahoma's court system to civic organizations in the county in the months of April and May.

☆ Carter County Bar Association

The Carter County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-9 p.m. on April 29. The Carter County Bar will also be speaking at the local high schools on the topic of "Know Your Legal Rights." Bar members also plan to join the Carter County Sheriff's Department for a blood drive. Lastly, the Carter County Bar will present its annual Law Day scholarships.

☆ Cherokee County Bar Association

The Cherokee County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-8 p.m. on April 29. In addition, Ask A Lawyer programs will be held at Northeastern State University and the Cherokee Nation Tribal complex the week leading up to Law Day.

☆ Choctaw County Bar Association

The Choctaw County Bar Association will participate in the Tri-County Law Day Banquet (along with McCurtain and Pushmataha counties) the evening of April 23.

☆ Cleveland County Bar Association

The Cleveland County Bar Association, in celebration of this year's Law Day theme, "Milestones in the Law," will conduct a mock trial in the Cleveland County Courthouse on April 27 from 7-9 p.m. This trial will be a modified re-enactment of the famous Scopes Monkey Trial from 1925. Judge Tom Lucas will be presiding. Retired Court of Civil Appeals Judge Glenn Adams will act as prosecutor William Jennings Bryan, and local attorney Mike Salem will portray defense counsel Clarence Darrow. Local citizens will serve as jury members. This trial will be open

to the public and attorneys who attend will be given two hours CLE credit. The trial date will be publicized in the *Norman Transcript*. In addition, attorneys will make visits to local schools through the Lawyers in the Classroom program. Local attorneys and judges will also write articles to be included in the *Norman Transcript* during Law Week. The Cleveland County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 6:30-8 p.m. on April 29. On April 30 events will be concluded with a hamburger cookout for local attorneys and courthouse staff. During the cookout, a silent auction will be held with proceeds going to the Cleveland County Bar Foundation, which makes contributions to local charities.

☆ Comanche County Bar Association

On April 28, the Comanche County Bar Association will hold its annual Law Day luncheon featuring Oklahoma Supreme Court Justice James R. Winchester as the keynote speaker. Each year the CCBA holds an essay contest for local high school students in recognition of Law Day, and four winners will be presented scholarship awards at the luncheon. The Comanche County Bar Association will also participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 6:30-8 p.m. on April 29. On April 30, the CCBA will have its annual Law Day golf tournament at the Lawton Country Club.

☆ Custer County Bar Association

The Custer County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-8 p.m. on April 29.

☆ Garfield County Bar Association

The Garfield County Bar Association will be speaking and giving out pocket Constitutions to more than 600 eighth graders on April 28 about the Bill of Rights as a part of Lawyers in the Classroom. The association is having a Law Day coloring contest for elementary school students, an art contest for middle school and an essay contest for high school. The association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 5:30-8 p.m. on April 29. The bar will have an ad in the local paper celebrating Law Day and listing the call-in number for Ask A Lawyer. Additionally, the association will have a "donate-a-thon" to raise money for the local legal aid office. Different lawyers will appear on the local radio morning show each day during the week to explain what lawyers do.

☆ Grant County Bar Association

The Grant County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-8 p.m. on April 29.

☆ Jackson County Bar Association

The Jackson County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-8 p.m. on April 29.

☆ Kay County Bar Association

The Kay County Bar Association will participate in the Ask A Lawyer Program in conjunction with the statewide campaign to answer legal questions by phone from 6-8 p.m. on April 29. The association will also be sponsoring an essay contest for 11th and 12th grade students.

☆ Kingfisher County Bar Association

The Kingfisher County Bar Association will be commemorating Law Day with a luncheon on May 3 in the main courtroom of the Kingfisher County Courthouse. A guest speaker will be featured, addressing the bar and guests on the Law Day theme, and the annual Liberty Bell Award will be presented to this year's recipient. Throughout the week, Judge Robert Davis and various alumni will be speaking to students at the high schools throughout the county about careers and information on the law.

☆ LeFlore County Bar Association

The LeFlore County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 6-8 p.m. on April 29.

☆ Lincoln County Bar Association

The Lincoln County Bar Association will celebrate Law Day by holding its annual Law Day picnic at the Chandler Senior Citizens Center on May 7.

☆ Marshall County Bar Association

The Marshall County Bar Association will celebrate Law Day 2010 on April 29. Local students will be invited to participate in a mock trial under the direction of District Court Judge John H. Scaggs. A presentation covering historical milestones in the law will emphasize this year's theme. The trial will be followed by a question and answer session with the judge and students. The students will enjoy their sack lunches on the courthouse lawn and return for a mock election using the county election board's voting machines. Various county officials will discuss their work and provide tours of their offices, explaining the everyday issues at the courthouse. The Marshall County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-8 p.m. on April 29.

☆ Mayes County Bar Association

The Mayes County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions from 6:30-8 p.m. on April 29. The association will also send various speakers to local elementary schools in Mayes County to speak with children regarding the legal profession and how the judicial system works.

☆ McIntosh County Bar Association

The McIntosh County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-8 p.m. on April 29.

☆ McCurtain County Bar Association

The McCurtain County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-8 p.m. on April 29. Other Law Day activities will include a radio call-in show on May 1 and sending speakers to the local schools in the last two weeks of April and first two weeks of May. The big highlight will come on the evening of April 23 at the Tri-County Law Day Banquet (for McCurtain, Choctaw and Pushmataha counties).

☆ Muskogee County Bar Association

The Muskogee County Bar Association will hold a Wills for Heroes event from 10 a.m. — 4 p.m. on April 27 and April 28 at Arrowhead Mall for all first responders. The association will conduct an Ask A Lawyer event from 10 a.m. – 4 p.m. on April 29 at Arrowhead Mall. On May 1, bar members will participate in the YLD statewide Community Service Project Day at the Muskogee Public Library.

☆ Okfuskee County Bar Association

The Okfuskee County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-8 p.m. on April 29.

☆ Oklahoma County Bar Association

- **Law Day Luncheon – April 30, Skirvin Hotel Grand Ballroom, Oklahoma City**

The Oklahoma County Bar Association is sponsoring the luncheon this year featuring Judge Vicki Miles-LaGrange, U.S. chief judge of the Western District of Oklahoma. Chief Judge Miles-LaGrange is known for her reverence for the rule of law, a passion for human rights and the administration of justice. The *Journal Record* will present this year's *Journal Record* Award as well as recognize the "Leadership in Law" Award recipients. The Liberty Bell Award and the Howard K. Berry Sr. Award will also be presented at this year's Law Day luncheon. The centerpiece stuffed animals will be donated to several of the police departments in Oklahoma County. Tickets are available by calling the OCBA at (405) 236-8421.

- **Ask A Lawyer Program – April 29 at OETA**

Volunteers will be handling phone calls from 8:45 a.m. to 9 p.m. Lance Leffel will be chairing this subcommittee and volunteers may sign up by going on the OCBA Web site at www.okcbar.org or by calling the bar office at (405) 236-8421.

• **COALA Student Program**

The Central Oklahoma Association of Legal Assistants (COALA) will be sponsoring approximately 20 high school students who will tour the Oklahoma County Courthouse and speak with various judges the morning of April 30. Students will then attend the Law Day luncheon.

• **Douglass High School Moot Court Team**

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

• **Civic Speakers**

The OCBA Law Day Committee is providing lists of speakers at various civic clubs and other venues in Oklahoma County. These groups have been contacted in an attempt to provide legal speakers during the Law Day week.

☆ Payne County Law Day Activities

Members of the Payne County Bar Association provided pocket Constitutions to the general public at the recent Career Paths Expo. The association will hold its Law Day banquet on April 23 at Meditations in Stillwater. The meet and greet starts at 5 p.m. with dinner starting at 7 p.m. Tickets are $23 each. Additionally, the association is hosting an Ask A Lawyer event at the Stillwater Public Library on April 29. There will be a presentation on estate planning at 10 a.m., and lawyers will be available for questions between 11 a.m. and 6 p.m. Bar members will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-8 p.m. on April 29. On May 6, the association will recognize local Law Day contest winners at its Honor Docket with Judge Donald L. Worthington presiding.

☆ Pittsburg County Bar Association

The Pittsburg County Bar Association will hold its Law Day banquet at Pete's Place in Krebs on April 22 at 7 p.m. Andrew M. Coats will deliver the keynote address. The association will hold a golf tournament at the McAlester Country Club on April 23. Bar members will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-9 p.m. on April 29. Pittsburg County bar members also plan on planting trees at the Kiowa Public Library in celebration of Law Day on May 1 at 10 a.m.

☆ Pontotoc County Bar Association

The Pontotoc County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-8 p.m. on April 29.

☆ Pushmataha County Bar Association

The Pushmataha County Bar Association will participate in the Tri-County Law Day Banquet (along with Choctaw and McCurtain counties) the evening of April 23.

☆ Seminole County Bar Association

The Seminole County Bar Association's annual Law Day activities are scheduled for April 28. This year's Law Day forum will feature presentations by Rep. Ryan Kiesel, OU College of Law professor Mary Sue Backus, OU College of Law professor Randall T. Coyne, Bradley West of the West Law Firm in Shawnee, OBA President Allen Smallwood and OBA Executive Director John Morris Williams.

☆ Stephens County Bar Association

On May 7, the Stephens County Bar Association will sponsor its annual Law Day luncheon at the Duncan Golf and Country Club. The luncheon begins at 11:45 a.m. and features Robert E. "Gene" Christian, executive director of the Oklahoma Office of Juvenile Affairs, as the keynote speaker. During the luncheon, the James C. Benson and Liberty Bell awards will be presented to those individuals who have made outstanding contributions to our community. Following the luncheon, the Stephens County Bar Association will host the annual James Patterson Memorial Golf Tournament at The Territory.

☆ Tulsa County Bar Association

• **Law Day Luncheon — April 30**

TU law professor Dr. Robert Spoo will speak on this year's Law Day topic, "Law in the 21st Century: Enduring Traditions, Emerging Challenges," on April 30 at 11:30 a.m. at the Downtown Doubletree in Tulsa. Dr. Spoo is an accomplished author and editor of numerous books and articles and served for 10 years as editor of the

James Joyce Quarterly. From 2001-2002, he served as law clerk for Justice Sonia Sotomayor in the U.S. Court of Appeals for the 2nd District. He is a tenured professor of law at the TU College of Law where he teaches many subjects including copyright and intellectual property law, media and entertainment law, law and literature, and contracts. Dr. Spoo is also of counsel with Doerner, Saunders, Daniel & Anderson LLP and concentrates his practice in the areas of intellectual property, copyrights and general litigation.

• Naturalization Ceremony

On April 14, the Tulsa County Bar Association and the Tulsa County Bar Foundation will sponsor a naturalization ceremony at the U.S. Courthouse at 333 E. 4th St. Fifty to 55 new naturalized citizens will be present. Also, about 40 Hamilton Middle School children are scheduled to be guests of the TCBA for the ceremony. At Hamilton, TCBA sponsors a lunch buddy program and runs a Law Career Day Fair each year, among other activities at the school. TCBA Executive Board member and naturalized citizen Marvin G. Lizama will welcome the new citizens on behalf of the TCBA. Mr. Lizama was born in Honduras, Central America. His remarks will focus on the privileges and immunities that come with U.S citizenship and the importance of participation in the electoral process and knowledge about our system of government.

• Law Week Student Art Contest

The student art and creative writing contest is open to all Tulsa County schools students, public and private, pre-K to 12th grade. Home-schooled students in Tulsa County are also eligible. Separate prizes will be awarded for each grade level. Those students who have entered the OBA statewide contest will be automatically entered into our TCBA/TCBF contest. Rules and forms are available under the Law Day subjects the TCBA Web site, www.tulsabar.com. Judging will be held during Law Week and cash prizes awarded at the law fair.

• Lawyers in the Library

This event will be held April 26 from 10 a.m.-4:30 p.m. in the Tulsa County Law Library. Sign up forms will be available at the Tulsa County Law Library at the Tulsa County Court House. Contacts are Joyce Pacenza (jpacenza@tulsacounty.org) or from Kimberly Moore-Waite (kimberly.waite@laok.org) or the TCBA. "Lawyers in the Library" is a long-standing Law Week event, offering the community free advice sessions on a variety of topics. Volunteer lawyers are asked to sign up for a one- or two-hour time slot, but can assist for any length of time if they are not available for a full one-hour period. Consultations are 15 minute sessions offered on a walk-in basis. All library materials will be made available to the volunteer attorney, and copies requested by the volunteer attorney for the patron are made without charge. Volunteer attorneys do not assume pro bono obligations or representations of the counseled patrons.

• Ask A Lawyer

Our annual Ask A Lawyer call-in program will be held on April 29 from 9 a.m.-9 p.m. at the OETA studios at 811 N. Sheridan Rd. Volunteers should expect to receive all kinds of legal (and a few non-legal) questions, but "cheat sheets" are provided, and you can always ask a fellow attorney for help if you get a question outside your area of expertise. The TCBA Auxiliary will provide free food and drinks all day. To volunteer, contact Dan Crawford at (918) 796-5790 or dan@dlcrawfordlaw.com.

• Community Law Fair

The Community Law Fair is an event assembling charitable organizations and legal service organizations together to inform the public of services available to them. The law fair will again be held at Woodland Hills Mall on April 24 from 11 a.m.-4 p.m. If you are a member of an organization interested in hosting a table at the law fair, please contact Rachel Gusman at (918) 592-6907, rgusman@gblaw.org. Award winners in the Law Week student art contest are also announced at the law fair.

• Youth and the Law

Elementary school children will be judge and jury for "Teacher on Trial" at the county courthouse, thanks to Judge Kirsten Pace and Carnegie Elementary's third grade

class annual field trip. The award-winning Lakeside Home mock trial team will give demonstrations once again to Thoreau Demonstration Academy and discuss their experience and mistakes that led them to be placed in the juvenile justice system. Finally, "legal civics" presentations will be made to more than 900 eighth grade social studies students at the Owasso eighth grade center. Contact District Judge Daman Cantrell for further details, daman.cantrell@oscn.net.

• Liberty Bell Award

We all know individuals or corporate citizens who work tirelessly to promote the law, increase access to legal services, and attempt to keep the legal system responsive to the needs of the people of Tulsa County, despite not being lawyers. We are indebted to those people, as many times their vision of what is needed may have clarity that ours lacks. Every profession or business benefits from the viewpoint of those who are not technically a part of the process.

The only requirement for consideration for this award is that the nominee be a non-lawyer, although they may work within the profession, and work in Tulsa County. Past award winners have included individuals, corporations, committees or other groups organized to promote access to justice. The award is patterned after similar state and national Law Week awards.

Anyone may nominate a person or group for consideration for this award. Nominations should be sent to the Tulsa County Bar Association, 1446 S. Boston Ave., Tulsa, 74119-3612. They should be addressed to the attention of Judge Richard A. Woolery, c/o TCBA Law Week Committee. Nominations should be received by April 16.

☆ Washington County Bar Association

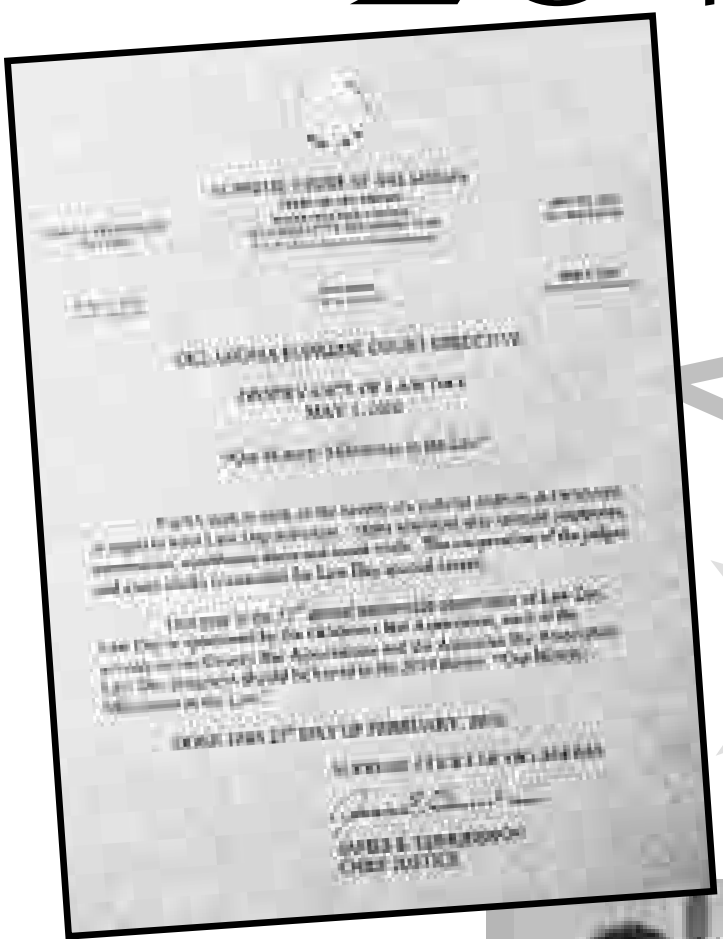
The Washington County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 6:30-8:30 p.m. on April 29.

☆ Woodward County Bar Association

The Woodward County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-8 p.m. on April 29. Additionally, bar members will speak to Woodward County High School seniors on various topics that will be applicable to them upon turning 18. Such topics will include contracts, family law and criminal law.

Missed the deadline to include your county bar's activities? There's still time for it to be added to the OBA Law Day Web site; e-mail melissab@okbar.org.

LAW DAY 2010



OBA Law Day Committee Chair Tina Izadi and OBA President Allen Smallwood witness Chief Justice James Edmondson (seated) signing the directive.

STATE OF OKLAHOMA

EXECUTIVE DEPARTMENT

Proclamation

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

Whereas, *this country was founded on the principle that voluntary adherence to the rule of law expands, rather than limits, the opportunities for freedom; and*

Whereas, *as Americans, we are proud of our heritage as a free nation and know that the law safeguards our rights and freedoms; and*

Whereas, *a truly democratic society requires understanding of the laws and history of our land; and*

Whereas, *the Law Day Child theme, "Our History Welcomes the Law," encourages us to explore the legacy and impact of law in individual and western cities established the United States as the Land of the Free;*

Now, therefore, I, Brad Henry, *Governor of the State of Oklahoma, do hereby proclaim Saturday, May 1, 2010 as*

"Law Day"

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

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

Done at the Capitol, in the City of Oklahoma City, this 26th day of March, in the Year of Our Lord two thousand and Ten and of the State of Oklahoma in the one hundred seventh year.

Brad Henry

M. Susan Savage

8:30 a.m. -- REGISTRATION AND CONTINENTAL BREAKFAST

9 a.m. -- PROGRAM BEGINS

OPENING A LAW PRACTICE
-Resources for starting a law practice
-Life as the business owner versus as an employee
-Business entity selection and practice setting options
-Establishing practice areas and other business planning
*Jim Calloway

PROFESSIONAL LIABILITY INSURANCE AND OTHER RISK MGMT. ISSUES
*Phil Fraim, President, OAMIC, Oklahoma City

THE CRITICAL NATURE OF GOOD COMMUNICATION
-Client communications - Easy in theory, often hard in practice
-Establishing reasonable client expectations
-Communication and dealing with attorneys and the court
-Dealing with "bad news" and "bad clients"
*Jim Calloway

TRUST ACCOUNTING & LEGAL ETHICS
-The role of OBA General Counsel
-The role of OBA Ethics Counsel
-Trustworthy Trust Accounts
-File and document retention
-Ethical issues facing small firm lawyers
-Simple guidelines for ethical conduct
*Gina Hendryx, OBA General Counsel

PROFESSIONALISM IN THE PRACTICE OF LAW
*Judge David B. Lewis
Oklahoma Court of Criminal Appeals

MANAGEMENT - MANAGING YOUR FINANCES, YOUR FILES AND YOUR STAFF
-The importance of good financial reports
-The importance of building work flow systems and tracking work in progress
-Client file management
-The digital law practice – The future is here today
-Billing (retainers, mechanics of billing, "alternative billing," getting paid)
-Disaster planning, business continuity and other risk mgmt.
*Jim Calloway

TECHNOLOGY
-Law office hardware, from computers to copiers to phones
-The small law firm technology software shopping guide
-Practice management software
-Using technology to provide better client services
-The Internet and the 21st Century lawyer - Online research and other resources
-Mobile phones, PDAs and other gadgets. What do you really need?
-Q & A
*Jim Calloway

MARKETING
-Developing a marketing plan
-Professional and ethical marketing strategies
-Generating referrals - Word of mouth is your best marketing tool
-Budgeting - Marketing on a tight budget or no budget
-Paid Advertising: From the newspaper to the Yellow Pages
-Internet-based marketing (So many options!)
*Jim Calloway

pregistration required,
e-mail marks@okbar.org
or call (405) 416-7026

Plausible Pleadings: New Trends in Federal Pleading Requirements

By Micheal Salem

When it comes to entertainment, the magical world of Federal Rule of Civil Procedure 8(a)[1] rivals America's Cup racing. Unless you are on the boat, it is just like watching paint dry. Yet every federal lawsuit must comply with Rule 8(a)(2) which provides:

> (a) Claim for Relief. A pleading that states a claim for relief must contain:
>
> (2) a short and plain statement of the claim showing that the pleader is entitled to relief.

Until recently, federal pleading practice required plaintiffs to plead "claims" sufficient to give notice to defendants what the lawsuit was about. Two recent Supreme Court decisions now appear to require more than a recitation of claims. The Supreme Court has altered the application of Rule 8(a), which remained essentially unchanged since 1937 and has been definitively defined by case law since 1957. It is a rule neither the Rules Advisory Committee nor Congress has had reason to alter.

In *Bell Atlantic Corp. v. Twombly*[2] and *Ashcroft v. Iqbal*,[3] the Supreme Court altered the standard for pleading by bolstering the power of federal courts to disregard "conclusory" allegations and requiring statements of fact sufficient to make a claim "plausible."

One effect is to move forward to the pleading stage the "plausibility" standard of summary judgment the Court identified in *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*[4] ("…the issue of fact must be 'genuine.' …When the moving party has carried its burden under [Federal] Rule 56(c), its opponent must do more than simply show that there is some metaphysical doubt as to the material facts. . . . if the factual context renders respondents' claim implausible — if the claim is one that simply makes no economic sense — respondents must come forward with more persuasive evidence to support their claim than would otherwise be necessary.") But in measuring "plausibility" the court also seems to have curtailed the doctrine that "… the inferences to be drawn from the underlying facts ... must be viewed in the light most favorable to the party opposing the motion."[5]

These two decisions appear to authorize courts to speculate about facts before the parties have presented any evidence or before they have even had the opportunity to discover the evidence they will present. Attorneys drafting pleadings[6] must now satisfy requirements that appear to signal a return to the fact-based pleading of the Field Code and away from modern forms of claim and notice pleading.

In *Twombly*, an antitrust case, the Supreme Court, without benefit of the rules amendment

process,[7] grafted a new standard onto Rule 8(a) which now requires that factual allegations about the claim must be "plausible."

Some suggested *Twombly* was limited to antitrust or complex cases only, but two years later, the court in *Ashcroft* made it clear that its broadened pleading requirement applies to all federal litigation.

The court, perhaps mindful of the increasing difficulties in discovery, has now erected a significant additional barrier at the pleading stage before litigation can proceed.

A CHANGE FROM WITHIN

Twombly changed the longstanding test of *Conley v. Gibson*[8] for evaluating motions to dismiss under Fed.Rul.Civ.Pro. 12(b)(6). ("[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.")

Conley's standard allowed a claim to go forward with a minimum threshold, giving the plaintiff an opportunity to seek discovery of facts sufficient to defeat summary judgment. Failing that, the case would be disposed of at summary judgment.

Under the new *Twombly* standard, pleading may again become a minor art form in which plaintiff's counsel gingerly balances the sufficiency of the complaint under Rule 8(a) against the axe of Fed.Rul.Civ.Pro. 11. An obvious result is that a plaintiff must know enough about the case before discovery to avoid pleading conclusory allegations so as to get past a motion to dismiss.

Pleading more than you know puts you at risk of sanctions if you cannot show that your "…factual contentions have evidentiary support, or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery." Fed.Rul.Civ.Pro. 11(b)(3)[9]

Claims in pleadings must now meet a standard of "plausibility" in order to survive a motion to dismiss. Plausibility allows some flexibility on the part of the court to consider the sense of the allegations of the complaint and to allow them to advance only if they meet a standard, judged by the court, that the claim is justified by the facts alleged. In *Iqbal*, the court noted that judges would apply their "judicial experience and common sense" when deciding whether a plaintiff's complaint advances a plausible claim for relief.[10]

PLEADING AND THE FEDERAL RULES — SOME HISTORY[11]

The modern Federal Rules of Civil Procedure were adopted in 1938, in part to eliminate the existing emphasis on the pleading stage which presented the opportunity for "gamesmanship" to stop or hinder litigation in its early stages. The drafters chose to expand access to the litigation process by reducing the importance of pleading and motion practice and its consequential delays, so as to permit a plaintiff to proceed to discovery to find facts that would allow adjudication on the merits. Discovery and the opportunity to uncover the facts of the case were to be a focal point of the litigation process.[12]

The concepts of technicality and delay that existed before the Federal Rules go back to English common-law practices. Pleadings before these early courts emphasized the "correctness" of pleadings instead of focusing on the substance of a claim.[13]

Such a focus favored defendants. Plaintiffs in England in the Middle Ages had two choices, neither of them easy. They could either take the highly technical pleading route through courts of law, or follow the factually burdensome route in the equity courts. Make wrong claims in the wrong court and you might be required to restart in the other.[14]

King Henry II established the "Court of the Common Bench" (or Common Pleas) in A.D. 1178 "…to hear all the complaints of the kingdom, and do right."[15]

Securing a defendant's presence sometimes required resort to the "Court of the Exchequer" or "King's Bench," which adjudicated matters involving the King.[16] Here a litigant would go to the court of equity and charge a fictitious legal claim against the King such as a "trespass" (considered an offense against the King) — along with the intended actual claims, then obtain the arrest (arrest on mesne process)[17] of the defendant who would be brought before the court. The trespass claim might be dropped or the intended claims substituted leaving the court to adjudicate those claims instead of the fictitious trespass.[18]

In courts of law, such arrest warrants could not be obtained except where specific prece-

dent existed, meaning plaintiffs had to skillfully and strictly fit their case into existing precedent in order to secure a writ from the clerk of the court. If the case did not fit, there could be no writ because the court did not have jurisdiction.[19]

Courts of equity had greater flexibility with fewer rigid rules. But this involved other complex burdens in pleading equity claims since litigants were bound by their allegations and new evidence in the middle of the case could sink or damage any chance for success if the facts proved to be wrong or insufficient.[20]

The 1800s brought a relaxation of procedures for commencement of actions such as allowing cases to proceed in the absence of the defendant once the defendant was served by summons. With passage of the Civil Procedure Act of 1833 and "Hilary Rules of 1834," (The General Rules published by the Court of Common Pleas in Hilary Term, 1834) procedural uniformity increased, but under the strong influence of common law pleading requirements, a tendency to complexity and formal pleadings persisted.[21]

The English rules and processes were transplanted to the United States. But in the 19th Century, states began abandoning English practices in favor of simplified practices including passage of the Field Code in New York in 1848 (authored by David Dudley Field).[22]

The Field Code emphasized liberal construction of pleadings: simplified requirements by pleading facts that showed a cause of action, followed by a demand for relief.[23]

But the Field Code still required a "cause of action" be stated by pleading "facts" rather than "conclusions." Sometimes it was difficult to determine the "cause of action" and technicalities were now overshadowed by arguments over what were facts, what was evidence, and what were conclusions. See *Twombly*, 550 U.S. at 574:

> . . ."it is virtually impossible logically to distinguish among 'ultimate facts,' 'evidence,' and 'conclusions.' Essentially any allegation in a pleading must be an assertion that certain occurrences took place. The pleading spectrum, passing from evidence through ultimate facts to conclusions, is largely a continuum varying only in the degree of particularity with which the occurrences are described." Weinstein & Distler, Comments on Procedural Reform: Drafting Pleading Rules, 57 Colum. L.Rev. 518, 520-521 (1957).

Prior to the Federal Rules, federal courts had some uniform rules, but followed state court procedural rules for actions in law. This created obvious disconnections when cases were appealed which required appellate courts to keep track not only of their own procedural rules but those of the various states.[24]

To alleviate an ever worsening situation, Congress authorized the Supreme Court to create rules of procedure. This eventually resulted in the Federal Rules of Civil Procedure, a massive undertaking in which advisory committees spent countless hours in consultation and drafting.

Rule 8 of those Rules has remained relatively unchanged since adoption by the Advisory Committee in 1937, being one of the least amended. The Advisory Committee's reports of amendments in 1966, 1997 and 2007 say that changes in those years were either "stylistic," "technical" or adopted with the broad purpose of "unification."

ALONG COME *TWOMBLY* AND *ASHCROFT*

Twombly appeared to be a case where "plausible pleading" might be justified if limited to complex areas like antitrust, where simple allegations might trigger reams of discovery that would not abate until summary judgment. It first seemed as if the court took only a small detour to accommodate a special case.

But was *Twombly* a special case? Probably not. In reassessing *Conley* and reversing 50 years of its control over the pleading process, *Twombly* is one of several recent cases that appear to signal a shift of the balance that favored plaintiffs under the liberalized pleading rules.

Twombly was an outgrowth of the breakup of AT&T and the Sherman Act case brought by the Justice Department in 1974 contending AT&T was monopolizing long distance as well as local services. The consent decree split AT&T into local Regional Bells (Regional Bell Operating Companies (RBOC) or Incumbent Local Exchange Carriers (ILECs)) that provided local telephone service while allowing competition in the long-distance service area. ILECs were obligated to share their local networks with competitors (Competitive Local Exchange Car-

> The Second Circuit reversed, holding that these 'plus factors' did not need to be pled under the Federal Rules.

riers (CLEC)) providing them access to the network at "wholesale" prices.[25]

William Twombly and Lawrence Marcus represented a class of plaintiffs consisting of "subscribers of local telephone and/or high-speed internet services."[26] They alleged that the ILECs restrained trade in a manner which resulted in inflating charges for local telephone and internet services. Twombly claimed that ILECs worked to discourage CLECs by providing inferior connections to networks, overcharging and billing in ways to sabotage the CLECs' relationship with their customers. Twombly also contended that ILECs worked among themselves to refrain from competing with each other, and, among other matters, that they failed to meaningly press "attractive business opportunities" and pursued "parallel business behavior" which suggested an agreement by the parties to stifle competition.[27]

The district court concluded that circumstantial evidence of "parallel business behavior" might suggest an agreement, or conspiracy, but did not state a claim under §1 of the Sherman Act unless there were additional facts (plus factors) to show that the action in restraint was affected by a contract, combination or conspiracy. 15 U.S.C. §1[28]

The Second Circuit reversed, holding that these "plus factors" did not need to be pled under the Federal Rules. It may be enough if plaintiffs plead facts that include "conspiracy" among the possible allegations of parallel business behavior — but "parallel business behavior" alone may be consistent with other rational decisions about business.[29] Plaintiffs did need to plead facts to support a conspiracy, among other possible choices.[30]

The Supreme Court took certiorari to decide the proper standard of pleading in antitrust.[31]

For the majority, Justice Souter started with the language of the Sherman Act noting that it did not prohibit all unreasonable restraints of trade, but only restraints affected by "… contract, combination or conspiracy." Parallel business behavior is circumstantial evidence which might imply agreement, but does not conclusively establish an agreement that constitutes a Sherman Act offense.[32]

The court recognized that Rule 8(a)(2) only requires a "short and plain statement of the claim showing that the pleader is entitled to relief" in order to "give fair notice of the claim and the grounds upon which it rests." While the complaint does not need "detailed factual allegations," the obligation to show that the pleader is entitled to relief so as to give fair notice to the defendants requires more than "labels and conclusions and a formulaic recitation of the elements of a cause of actions will not do."[33]

The court still seems to suggest that some old standards survived:

> Factual allegations must be enough to raise a right to relief above the speculative level, see 5 C. Wright & A. Miller, Federal Practice and Procedure §1216, pp. 235-236 (3d ed.2004) … (" [T]he pleading must contain something more ... than ... a statement of facts that merely creates a suspicion [of] a legally cognizable right of action"), on the assumption that all the allegations in the complaint are true (even if doubtful in fact), see, *e.g., Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 508, n. 1, 122 S.Ct. 992 (2002); *Neitzke v. Williams*, 490 U.S. 319, 327, 109 S.Ct. 1827 (1989) ("Rule 12(b)(6) does not countenance ... dismissals based on a judge's disbelief of a complaint's factual allegations"); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683 (1974) (a well-pleaded complaint may proceed even if it appears "that a recovery is very remote and unlikely").

Twombly, 550 U.S. at 555-56.

Applying these standards to the complaint, the court explains that its "plausibility" standard is not a "probability" requirement:

> . . . it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. And, of course, a well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable,

> and "that a recovery is very remote and unlikely." *Ibid*. In identifying facts that are suggestive enough to render a §1 conspiracy plausible, we have the benefit of the prior rulings and considered views of leading commentators, already quoted, that lawful parallel conduct fails to bespeak unlawful agreement. It makes sense to say, therefore, that an allegation of parallel conduct and a bare assertion of conspiracy will not suffice. Without more, parallel conduct does not suggest conspiracy, and a conclusory allegation of agreement at some unidentified point does not supply facts adequate to show illegality. Hence, when allegations of parallel conduct are set out in order to make a §1 claim, they must be placed in a context that raises a suggestion of a preceding agreement, not merely parallel conduct that could just as well be independent action.

Twombly, 550 U.S. at 555-57.

Souter then goes on to give some specific examples of sufficiency and plausibility:

> The need at the pleading stage for allegations plausibly suggesting (not merely consistent with) agreement reflects the threshold requirement of Rule 8(a)(2) that the "plain statement" possess enough heft to "sho[w] that the pleader is entitled to relief." . . .. An allegation of parallel conduct is thus much like a naked assertion of conspiracy in a §1 complaint: it gets the complaint close to stating a claim, but without some further factual enhancement it stops short of the line between possibility and plausibility of "entitle[ment] to relief." *Cf. DM Research Inc. v. College of Am. Pathologists*, 170 F.3d 53, 56 (1st Cir., 1999) ("[T]erms like 'conspiracy,' or even 'agreement,' are borderline: they might well be sufficient in conjunction with a more specific allegation — for example, identifying a written agreement or even a basis for inferring a tacit agreement, ... but a court is not required to accept such terms as a sufficient basis for a complaint")

Twombly, 550 U.S. at 557.

Souter acknowledges that proceeding to antitrust discovery can be expensive and seems to suggest that these additional requirements are related to showing the sufficiency of plaintiffs' claims before unleashing the discovery process. This particular case could involve 90 percent of all local subscribers not to mention the associated business records. These are not cases amenable to weeding out early in the discovery process through careful case management.[34] Souter notes that *Conley's* "no set of facts" has been subjected to significant criticism.[35]

The difference is a gap between conceivable and plausible:

> Here, in contrast, we do not require heightened fact pleading of specifics, but only enough facts to state a claim to relief that is plausible on its face. Because the plaintiffs here have not nudged their claims across the line from conceivable to plausible, their complaint must be dismissed.

Twombly, 550 U.S. at 570.

Despite rejecting the "no statement of facts" standard and grafting a plausibility requirement onto pleading, Souter contends the court is not adopting the heightened pleading standard it had rejected several times in the past. He acknowledged Fed.Rul.Civ.Pro. 9 as the only source of an additional requirement of pleading with particularity.[36]

ERICKSON V. PARDUS

Shortly after *Twombly* was decided on May 21, 2007, the Supreme Court seemed to signal its new pleading rules were only incremental and that although facts were now required to show plausibility of a claim, the court would not require specific facts. On June 4, 2007, the court decided *Erickson v. Pardus*,[37] entered a GVR (Grant, Vacate and Remand), and reversed a decision of the 10th Circuit,[38] which affirmed a magistrate's ruling that a Colorado prisoner failed to state a claim when he did not allege "substantial harm" because of his removal from a Hepatitis C treatment regimen.

This case arose out of a prison's discontinuance of treatment of a prisoner for Hepatitis C because a missing syringe suggested the prisoner was using drugs which would complicate his treatment. The prison removed him from treatment for a period of 12 months and for six months of mandatory drug education afterwards.

Although the prisoner alleged serious consequences of his removal from treatment, including irreversible damage to his liver and possibly death, the 10th Circuit rejected his complaint because he made only "conclusory allegations" and had failed to allege "substantial harm,

[other] than what he already faced from the Hepatitis C itself."[39]

In entering its GVR, the Supreme Court said that although the district court ultimately may be right, that was not the test at this stage of the litigation. It was not for the circuit to conclude that Erickson's allegations were too conclusory or had not used "magic words" in setting out his complaints. The court also repeated its standard that pro se complaints were to be liberally construed.[40]

ASHCROFT V. IQBAL

Speculation that the pleading standards announced in *Twombly* would only apply to large complex cases where discovery would be extensive were laid to rest with *Ashcroft v. Iqbal*[41] decided May 18, 2009.

In *Ashcroft*, the court specifically concluded that restricting *Twombly* requirements to an antitrust dispute would be "incompatible with the Federal Rules of Civil Procedure… Our decision in *Twombly* expounded the pleading standard for 'all civil actions,' *ibid.*, and it applies to antitrust and discrimination suits alike."[42]

Ashcroft involved a challenge by a Muslim Pakistani pretrial detainee alleging that certain current and former government officials took a series of unconstitutional discriminatory actions against him resulting in confinement under harsh conditions in claims sounding under the *First* and *Fifth Amendments*. The district court denied, in part, a motion to dismiss based upon qualified immunity. The Second Circuit affirmed in part and reversed in part. *Ashcroft* only involved a claim of "purposeful and unlawful discrimination" involving national origin and religion and did not include other possible claims of violations of the Fourth Amendment or due process.

The claim arose under *Bivens v. Six Unknown Fed. Narcotics Agents*.[43] Justice Kennedy makes it clear that the court does not favor "implied private actions" for "damages against federal officers alleged to have violated a citizen's constitutional rights."[44] He also points out the court has not found an implied damages remedy under the Free Exercise Clause.

The ironic unstated assumption of Kennedy's statement of disfavored implied private actions is that the Bill of Rights, instituted as protection for the individual against encroachment by the federal government, has only a hobbled enforcement against the very federal officials it was designed to operate against.

While the court recognized the equal protection component of due process under *Bivens*, because petitioners did not press the argument, it assumed, without deciding, that a respondent's First Amendment claim is actionable under *Bivens*.

The Supreme Court took certiorari and reversed, holding that the detainees' complaint did not plead facts sufficient to state a claim for purposeful and unlawful discrimination.

Ashcroft's vote was a narrow 5-4 and Souter, the author in *Twombly*, dissented, joined by Stevens, Ginsburg and Breyer.

Justice Kennedy's opinion notes that liability for a civil rights violation may not be imposed on the basis of "respondeat superior," but instead, ". . . a plaintiff must plead that each Government-official defendant, through the official's own individual action, has violated the Constitution."[45] The heart of the question of liability varies with the constitutional provision at issue.

Qualified immunity is not only a defense to liability for matters that are not "clearly established," but also represents a limited entitlement not to stand trial or face the other burdens of litigation including discovery.[46]

For a claim of invidious discrimination in contravention of the First and Fifth Amendments, Kennedy indicated that the plaintiff must plead and prove the defendant *acted with discriminatory purpose*. This requires proof of "purposeful discrimination" more than "intent as volition or intent as awareness of consequences," and a specific course of action for a defendant with adverse effects upon an identifiable group:

> It follows that, to state a claim based on a violation of a clearly established right, respondent must plead sufficient factual matter to show that petitioners adopted and implemented the detention policies at issue not for a neutral, investigative reason but for the purpose of discriminating on account of race, religion or national origin.

Ashcroft, 129 S.Ct. at 1948-49.

The court specifically rejected any form of "supervisory liability" for "knowledge and acquiescence in their subordinates' use of discrimina-

tory criteria." Mere knowledge by a supervisor is not enough. Each government official is only liable for his or her own misconduct.[47]

Kennedy then turns to the complaint, recounting the requirements of *Twombly* that although a pleading under Rule 8(a)(2) does not require "detailed factual allegations" it does ". . demand more than an unadorned, the-defendant-unlawfully-harmed-me accusation… A pleading that offers 'labels and conclusions' or 'a formulaic recitation of the elements of a cause of action will not do.' Nor does a complaint suffice if it tenders 'naked assertion[s] devoid of 'further factual enhancement.'"[48]

Kennedy then applies the *Twombly* plausibility requirement to the complaint:

> To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Id.*, at 570, 127 S.Ct. 1955. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. *Id.*, at 556, 127 S.Ct. 1955. The plausibility standard is not akin to a "probability requirement," but it asks for more than a sheer possibility that a defendant has acted unlawfully. *Ibid*. Where a complaint pleads facts that are "merely consistent with" a defendant's liability, it "stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Id.*, at 557, 127 S.Ct. 1955 (brackets omitted).
>
> Two working principles underlie our decision in *Twombly*. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. *Id.*, at 555, 127 S.Ct. 1955 (. . . for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we "are not bound to accept as true a legal conclusion couched as a factual allegation" . . .). Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. *Id.*, at 556, 127 S.Ct. 1955. Determining whether a complaint states a plausible claim for relief will, as the court of appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. 490 F.3d, at 157-158. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged — but it has not "show[n]" — "that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2).

Ashcroft, 129 S.Ct. at 1949-50.

The clearest change that the court has imposed is that certain bare assertions are not entitled to a presumption that they are true, even when those claims establish a direct line between the imposition of a policy and the harm suffered by the plaintiff:

> These bare assertions, much like the pleading of conspiracy in *Twombly*, amount to nothing more than a "formulaic recitation of the elements" of a constitutional discrimination claim, 550 U.S., at 555, 127 S.Ct. 1955, namely, that petitioners adopted a policy "'because of,' not merely 'in spite of,' its adverse effects upon an identifiable group." *Feeney*, 442 U.S., at 279, 99 S.Ct. 2282. As such, the allegations are conclusory and not entitled to be assumed true. *Twombly, supra*, 550 U.S., at 554-555, 127 S.Ct. 1955. To be clear, we do not reject these bald allegations on the ground that they are unrealistic or nonsensical. We do not so characterize them any more than the Court in *Twombly* rejected the plaintiffs' express allegation of a " 'contract, combination or conspiracy to prevent competitive entry,'" *id.*, at 551, 127 S.Ct. 1955, because it thought that claim too chimerical to be maintained. It is the conclusory nature of respondent's allegations, rather than their extravagantly fanciful nature, that disentitles them to the presumption of truth.

Ashcroft, 129 S.Ct. at 1951.

Simply put, words are not to have their ordinary import when they allege facts the court apparently considers as "formulaic recitation of the elements" of a constitutional discrimination claim. While they may be assumed to be "conclusory," their recitation as facts still does not mean they are plausible. In context, after 9-11, it is arguable that many decisions and/or policies were implemented which were directly

intended to affect or had a disproportionate effect against persons of Muslim faith. But that may not be enough.

Remarkably, the court discounted allegations in the complaint that FBI Director Mueller:

> "… arrested and detained thousands of Arab Muslim men ... as part of its investigation of the events of September 11." …It further claims that "[t]he policy of holding post-September-11th detainees in highly restrictive conditions of confinement until they were 'cleared' by the FBI was approved by Defendants ASHCROFT and MUELLER in discussions in the weeks after September 11, 2001." . . . . Taken as true, these allegations are consistent with petitioners' purposefully designating detainees "of high interest" because of their race, religion or national origin. But given more likely explanations, they do not plausibly establish this purpose.

Ashcroft, 129 S.Ct. at 1951.

The "more likely explanations" discussed by the court immunize discriminatory action in this instance if it is exercised as plan of government action. The court supplements the complaint with its own allegations that the "… September 11 attacks were perpetrated by 19 Arab hijackers who counted themselves members in good standing of al Quaeda" and "headed by another Arab Muslim-Osama bin Laden — and composed in large part of his Arab Muslim disciples." In other words, because the persons detained were in some ways like the hijackers, an allegation that the government's conduct constituted invidious discrimination was not plausible.[49]

The court acknowledges that mass arrests could be the result of unconstitutional discrimination, but for a plaintiff "To prevail on that theory, the complaint must contain facts plausibly showing that petitioners purposefully adopted a policy of classifying post-September-11 detainees as 'of high interest' because of their race, religion or national origin," but "… the complaint fails to do so."[50] Limiting its analysis only to the appealing defendants, the court concludes that this same "plausibility" requirement would not necessarily apply to all defendants who were sued:

> Accepting the truth of that allegation, the complaint does not show, or even intimate, that petitioners purposefully housed detainees in the ADMAX SHU due to their race, religion or national origin. All it plausibly suggests is that the nation's top law enforcement officers, in the aftermath of a devastating terrorist attack, sought to keep suspected terrorists in the most secure conditions available until the suspects could be cleared of terrorist activity. Respondent does not argue, nor can he, that such a motive would violate petitioners' constitutional obligations. He would need to allege more by way of factual content to "nudg[e]" his claim of purposeful discrimination "across the line from conceivable to plausible."

Ashcroft, 129 S.Ct. at 1952.

This suggests that law enforcement could conduct a mass roundup of Arabs and hold suspected terrorists in "the most secure conditions available" until the suspects could be cleared of terrorist activity, despite decisions that distinctions drawn according to "race" are subjected to the "most rigid scrutiny" (See *Parents Involved in Community Schools v. Seattle School Dist. No. 1*[51] citing *Korematsu v. United States*[52]).

Because no Fourth Amendment violations were alleged, the court's opinion assumes that probable cause existed for the arrest and detention of these suspects prior to their move to a secure facility (again on its own initiative the court supplements the complaint to suggest that a lack of Fourth Amendment violations equates to an admission of probable cause), but the court still does not view the factual allegations in the light most favorable to plaintiff. The court does not appear to consider the arrest of massive numbers of Muslim men who were then held in detention as evidence of discriminatory behavior.

The court also rejected three other arguments raised by the plaintiffs.

Plaintiffs argued *Twombly* should be confined to antitrust. The court concludes that *Twombly* interpreted Rule 8 as it applied to all civil actions.[53]

Second, plaintiffs contended the court's judgment should be tempered by the circuit's suggested course of discovery to preserve petitioners' defense of qualified immunity. The court said a "careful-case-management approach" did not permit it to "relax the pleading requirements on the ground that the Court of Appeals promised minimally intrusive discovery"

because this was "cold comfort in this pleading context, where we are impelled to give real content to the concept of qualified immunity for high-level officials who must be neither deterred nor detracted from the vigorous performance of their duties. Because respondent's complaint is deficient under Rule 8, he is not entitled to discovery, cabined or otherwise."[54]

Finally, the court rejects plaintiff's contention that Fed.Rul.Civ.Pro. 9(b) allows "malice, intent, knowledge, and other conditions of a person's mind [to] be alleged generally." The court concludes that Rule 9 does not control Rule 8(a):

> But "generally" is a relative term. In the context of Rule 9, it is to be compared to the particularity requirement applicable to fraud or mistake. Rule 9 merely excuses a party from pleading discriminatory intent under an elevated pleading standard. It does not give him license to evade the less rigid — though still operative — strictures of Rule 8.

Ashcroft, 129 S.Ct. at 1954.

Kennedy concluded with an offer to the court of appeals to consider a remand to the district court so that respondent could seek leave to amend his deficient complaint.[55]

SOUTER AND BREYER'S SEPARATE DISSENTS IN *ASHCROFT*

Justice Souter[56] dissented claiming that the court *sua sponte* decided issues of supervisory liability not framed by the questions accepted on certiorari. Souter agrees that there is no respondeat superior liability for civil rights violations but contends that a "…supervisor may be liable, under certain conditions, for the wrongdoing of subordinates, and it is this very principle that the majority rejects."[57] The majority's consideration of this issue prejudiced *Iqbal* who relied upon a concession of supervisory liability for actual knowledge by Ashcroft and Mueller.

Souter also thought the application of plausibility to the claim was overly broad when the court substituted a reason that could negate discriminatory intent and so deemed the allegations as untrue, when the analysis for motions to dismiss is the opposite. His sole concession is allegations "sufficiently fantastic to defy reality" such as "claims about little green men or the plaintiff's recent trip to Pluto, or experiences in time travel."[58]

Breyer wrote separately in agreement with Souter and disagreement with the court's rejection of case management techniques to protect the qualified immunity defense. Breyer suggests that discovery could proceed with lower level officials before proceeding to higher government officials. Breyer concludes that nothing shows these "alternative case-management tools inadequate, either in general or in the case before us."[59]

Under the new standards, it appears that Form 11 in the Appendix of Forms to the Federal Rules of Civil Procedure does not satisfy *Twombly* or *Ashcroft* in that it conclusorily states that "… the defendant negligently drove a motor vehicle against the plaintiff."

Even more confusing is Form 12, "Complaint for Negligence When the Plaintiff Does Not Know Who is Responsible." How can you plead facts to "nudge" your claim across the line if you can't plead who is responsible?

POSSIBLE CONGRESSIONAL REMEDIAL ACTIONS?

Direct evidence of a conspiracy to commit antitrust is ordinarily unavailable before discovery because, unsurprisingly, defendants don't usually leave that kind of evidence exposed. "Crime in the suites" is not the same as "Crime in the streets."

Evidence of parallel action which suggests an antitrust violation may be all on which a claim initially can be raised, and construing that allegation in the light most favorable to the plaintiff, a court could allow a complaint to proceed to discovery. But it appears that the court has changed this "in the light most favorable" standard by imposing the "plausibility" requirement previously applied only at summary judgment.

Ashcroft, with its alteration of liability of supervisors, seems, at least for violations that require "purposeful" intent, to isolate upper-level governmental officials from liability for policies they create unless there is evidence of their direct purposeful discriminatory action.

Both *Twombly* and *Ashcroft* have not gone unnoticed by Congress. Senator Arlen Spector, D-Pa, on July 22, 2009, introduced Senate Bill 1504, the Notice Pleading Restoration Act of 2009, seeking to reverse what Spector classified as an end-run around the *Rules Enabling Act* that bypassed amendment of Rule 8.

While no related legislation has yet been introduced in the House of Representatives, the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a hearing on Oct. 27, 2009, titled "Access to Justice Denied — *Ashcroft v. Iqbal*."[60]

Meanwhile the Senate Judiciary Hearing held a hearing on Dec. 2, 2009, on a possible *Ashcroft* rollback.[61] It is too early to predict the effect of any proposed legislation. One thing is for certain: this subject will linger.

CONCLUSION

Twombly and *Ashcroft* have significantly altered the previous "rules of engagement" in pleading. *Conley's* "No statement of facts" test has given way to a plausibility test that appears to allow or even encourage courts to refuse to construe facts in the light most favorable to the plaintiff on a motion to dismiss.

This is clearly illustrated by the court's view in *Ashcroft* that discriminatory behavior may appear to have occurred, but that it was justified, or, in the parlance of the court, "not plausible" that it was unlawful under the particular circumstances. This appears to allow courts, prior to any discovery, to fabricate explanations for discriminatory behavior unstated in the complaint or suggested by defendants in motions to dismiss under an analysis of "plausibility."

Courts may also reject words in a complaint as conclusory and lessen their effect in deciding motions to dismiss. Whether this will resurrect problems from the Field Code era of separating "ultimate facts," "evidence" and "conclusions" remains to be seen.

Plaintiffs drafting complaints will need specific language measured for each and every claim. A matrix which sets out claims with the necessary facts alleged to support each claim against each defendant will be helpful. Reviewing allegations and expanding conclusory statements elaborating the factual allegations will be advisable. Collective references to "defendants" or "employees," if not clear in context, could be considered conclusory and might need to be differentiated. Avoid boilerplate allegations or substitute specific allegations or the court may be entitled to disregard them or treat them as untrue.

As a matter of prefiling strategy, I used to think people were nuts who came to me with letters of complaint which they copied to everybody from the president to the attorney general, to senators, governors and local officials. Now I am not so sure. If involved early in a case with complaints about the particular actions of an agency or official, you may want to consider copying the letter to a supervisor, agency head, the governor, attorney general or others to establish facts of actual knowledge as potential defendants.

If faced with a motion to dismiss, include in the response a proposition or a short prayer for leave to amend if it be determined the complaint is insufficient. If you lose, carefully review the court's opinion and file a motion for leave to amend to allege specific changes to include since you may not have any idea of what the court thinks is plausible until you see an order on dismissal. If you lose, no leave to amend is granted, and an appeal is taken, or if a defendant takes a qualified immunity appeal, include a request for leave to amend with the brief at the circuit. *Ashcroft* is now authority for leave to amend even after appeal because it was remanded to the Second Circuit to decide about amendments.[62]

The Supreme Court's changeup on pleading must really be characterized as an experiment that could be permanent. There is, of course, no guarantee that Congress will act to change the pleading standard.

1. Rule 8 has been referred to as the "keystone" of federal civil procedure. 5 Wright & Miller, *Federal Practice & Procedure: Federal Rules of Civil Procedure §1202,* at p. 87 (3rd Ed., 2004).

2. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S.Ct. 1955 (2007).

3. *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (May 18, 2009).

4. *Matsushita Elec. Indus. Co. Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S.Ct. 1348 (1986).

5. *Matsushita*, 475 U.S. at 587.

6. By Fed.Rul.Civ.Pro. 7(a), "pleadings" are limited to a complaint; an answer to a complaint; an answer to a counterclaim designated as a counterclaim; an answer to a cross-claim; a third-party complaint; an answer to a third-party complaint; and, if ordered by the court, a reply to an answer. Other filings are either "Motions or Other Papers." See Fed.Rul.Civ.Pro. 7(b). This substantive distinction is acknowledged by Fed.Rul.Civ.Pro. 7(b)(2) which provides, "The rules governing captions and other matters of form in pleadings apply to motions and other papers."

7. It appears that the Supreme Court changed pleading standards without following congressionally mandated requirements, under the rule-making authority granted the Supreme Court. See 28 U.S.C. §§2071 - 2077.

As an issue of separation of powers, the Supreme Court makes rules governing its own procedures without interference from Congress. The Federal Rules of Civil Procedure, however, are rules of the inferior courts which the Constitution authorizes Congress to create under Article III, Section 1 of the Constitution.

Sections 2071 to 2075 and 2077 prescribe a process for rulemaking that requires advisory committees, public notices and an opportunity to comment, and, in some instances, submission of proposed rule changes to Congress for possible modification or alteration prior to adoption. Just as Congress can create federal court jurisdiction or create a cause of action, it may arguably also set the threshhold of a federal court's exercise of jurisdiction, except as otherwise limited by the Constitution (*e.g.*, requiring a case in controversy).

Ironically, although the Supreme Court itself changed the standard of Rule 8(a) without any resort to the formal rule process, it recently chided a California district court for amending its rules in a manner which "likely violated a federal statute" when the district court approved an amendment to a local rule forbidding televising proceedings involving a challenge to California's anti-gay marriage Constitutional amendment because ". . . it appears that the District Court failed to 'giv[e] appropriate public notice and an opportunity for comment,' as required by federal law." See *Hollingsworth v. Perry*, 130 S.Ct. 705, 711 (Jan. 13, 2010).

8. *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99 (1957).

9. Rule 11 also applies to defendants in that "the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information" See Fed. Rul.Civ.Pro. 11(b)(4) Defendants are also bound to show that "… defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed.Rul.Civ.Pro. 11(b)(2).

10. *Ashcroft v. Iqbal*, 129 S.Ct. at 1950.

11. *Caveat Emptor Notice*: None of the English legal history recited herein has been read, approved or critiqued by Justice Opala, yet.

12. See *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514, 122 S.Ct. 992 (2002):

> The liberal notice pleading of Rule 8(a) is the starting point of a simplified pleading system, which was adopted to focus litigation on the merits of a claim. See *Conley, supra*., at 48, 78 S.Ct. 99 ("The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits")

13. For the historical section of this article, I am indebted to Damon Amyx in that I have borrowed heavily from his note, "*The Toll of Bell Atlantic v. Twombly*: An Argument for Taking the Edge Off the Advantage Given Defendants." 33 Ver. L. R. 323, 324-25 (2008) (hereinafter *Toll of Bell Atlantic*).

14. *Toll of Bell Atlantic*, 33 Ver. L. R. at 324.

15. *Toll of Bell Atlantic*, 33 Ver. L. R. at 324.

16. The Court of Common Pleas was forbidden by Clause 15 of the Magna Carta from handling certain matters of the King. See "Judicial Activism in an Historical Context: of the Necessity for Discretion," 24 Memphis St. U. L. Rev. 297, 306, Ftnte. 44 (Winter, 1994).

17. "Arrest on mesne process" was an arrest before trial in a civil case. *Black's Law Dictionary* 116 (8th Ed., 2004); See *Toll of Bell Atlantic*, 33 Ver. L. R. at 325-26; See also "Arrest of a Defendant on Mesne Process in a Civil Proceeding," 26 Columbia Law Rev. 1007-14 (1926).

18. *Toll of Bell Atlantic*, 33 Ver. L. R. at 325-26.

19. *Toll of Bell Atlantic*, 33 Ver. L. R. at 326.

20. *Toll of Bell Atlantic*, 33 Ver. L. R. at 327.

21. *Toll of Bell Atlantic*, 33 Ver. L. R. at 327-29.

22. *Toll of Bell Atlantic*, 33 Ver. L. R. at 330-31; *Twombly*, 550 U.S. at 574.

23. *Toll of Bell Atlantic*, 33 Ver. L. R. at 330-31; *Twombly*, 550 U.S. at 574.

24. *Toll of Bell Atlantic*, 33 Ver. L. R. at 332-33.

25. *Twombly*, 550 U.S. at 549-50.

26. *Twombly*, 550 U.S. at 550.

27. *Twombly*, 550 U.S. at 550-01.

28. *Twombly*, 550 U.S. at 552-53.

29. *Twombly*, 550 U.S. at 552.

30. *Twombly*, 550 U.S. at 553.

31. *Twombly*, 550 U.S. at 553.

32. *Twombly*, 550 U.S. at 553-54.

33. *Twombly*, 550 U.S. at 554-55.

34. *Twombly*, 550 U.S. at 558-59.

35. *Twombly*, 550 U.S. at 560-63.

36. *Twombly*, 550 U.S. at 569, Ftnte. 14.

37. *Erickson v. Pardus*, 551 U.S. 89, 127 S.Ct. 2197 (June 4, 2007).

38. *Erickson v. Pardus*, 198 Fed.Appx. 694, 2006 W.L. 2640394 (10th Cir., 2006).

39. *Erickson*, 551 U.S. at 93.

40. *Erickson*, 551 U.S. at 93-94.

41. *Ashcroft v. Iqbal*, 129 S.Ct. 1937 (2009).

42. *Ashcroft*, 129 S.Ct. at 1953.

43. *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388, 91 S.Ct. 1999 (1971).

44. *Ashcroft*, 129 S.Ct. at 1947.

45. *Ashcroft*, 129 S.Ct. at 1948.

46. *Ashcroft*, 129 S.Ct. at 1945-6.

47. *Ashcroft*, 129 S.Ct. at 1948-49.

48. *Ashcroft*, 129 S.Ct. at 1949.

49. *Ashcroft*, 129 S.Ct. at 1951-52.

50. *Ashcroft*, 129 S.Ct. at 1952.

51. *Parents Involved in Community Schools v. Seattle School Dist. No. 1*, 551 U.S. 701, 759, 127 S.Ct. 2738 (2007).

52. *Korematsu v. United States*, 323 U.S. 214, 216, 65 S.Ct. 193 (1944).

53. *Ashcroft*, 129 S.Ct. at 1953.

54. *Ashcroft*, 129 S.Ct. at 1953-54.

55. The Court of Appeals did not decide the issue itself but instead remanded to the district court for a decision on whether to grant or deny leave to amend. *Iqbal v. Ashcroft*, 574 F.3d 820 (2nd Cir., July 29, 2009).

56. Souter was joined by Stevens, Ginsburg and Breyer.

57. *Ashcroft*, 129 S.Ct. at 1957.

58. *Ashcroft* 129 S.Ct. at 1959.

59. *Ashcroft*, 129 S.Ct. at 1961-62.

60. The hearing, testimony and a video webcast are here: http://judiciary.house.gov/hearings/hear_091027_1.html.

61. The hearing, testimony, and a statement of Chairman Patrick Leahy are here: http://judiciary.senate.gov/hearings/hearing.cfm?id=4189.

62. See *Iqbal v. Ashcroft*, 574 F.3d 820 (2nd Cir., July 29, 2009).

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Regulation of Greenhouse Gases: New Reporting Requirements Effective Immediately

By Wade D. Gungoll

Beginning on Jan. 1, 2010, certain businesses whose operations emit greenhouse gases, including carbon dioxide, must report their emissions to the federal government.

INTRODUCTION

The beginning of the year 2010 marks a watershed occasion for federal regulatory policy. For the first time, the private sector is subject to mandatory greenhouse gas reporting requirements, which includes the monitoring of carbon dioxide emissions. Although the new regulations do not impose any affirmative obligations upon industry beyond reporting emissions levels, it is a definite signal that additional regulations will be forthcoming.

BACKGROUND TO THE NEW REGULATIONS

On Dec. 7, 2009, the administrator for the Environmental Protection Agency (EPA), Lisa P. Jackson, signed off on perhaps the most far-reaching executive rule in U.S. history. Under a release styled as "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act" the EPA officially declared greenhouse gases (GHGs), including *carbon dioxide*, to "reasonably be anticipated both to endanger public health and to endanger public welfare." 74 F.R. 66497.[1] The assumption underlying the rationale for the EPA's endangerment finding is, of course, that anthropogenic (human) greenhouse gas sources, including CO2 gas emissions, have an appreciable effect on global climate patterns and thus human health and welfare.[2]

While the notion that the federal government has classified the very air we exhale as dangerous to human health and welfare may seem utterly foolish, one's personal views on the wisdom of public policy prescriptions will be unavailing against the rubric of regulations to come. Although the EPA's endangerment findings do not specifically enforce any new regulatory regime against the private sector, it is a clear indication that substantial regulation is on the horizon.[3] As an example, the EPA has *already* mandated certain GHG reporting requirements, which will undoubtedly affect some Oklahoma businesses beginning in 2010. This article aims to inform practitioners of the new GHG reporting regulations to which their clients may be subject.

THE NEW GHG REPORTING REQUIREMENTS

25,000 metric tons of CO2 emissions per year is the critical threshold

Effective Jan. 1, 2010, thousands of corporate entities from various sectors of the U.S. economy are required to report their greenhouse gas emissions to the EPA under recently promulgated Clean Air Act (CAA) regulations. The justification for the EPA's decision to require GHG reporting is to obtain a clearer picture of

U.S. emission sources for future regulations.[4] The EPA estimates that the new reporting requirements will document approximately 85 percent of all U.S. anthropogenic GHG emissions. Presumably, the collected data will then be used as a guideline for enacting future mandatory emissions cuts which will be enforced in a manner similar to existing CAA regulations.

As with most executive agency rule promulgations, the mandatory GHG reporting scheme is codified in piecemeal fashion — the regulations can be found at 40 C.F.R. pts. 86, 87, 89, 90, 94, 98, 1033, 1039, 1042, 1045, 1048, 1051, 1054 and 1065. The text of the regulations and supporting impact analysis is staggeringly voluminous at well over 1,000 pages in length. Additionally, because the GHG rules have been inserted into existing CAA regulations, it is exceedingly difficult to understand the new regulations without a broader grasp of the CAA. However, as intimidating as the foregoing may sound, there are a few helpful barometers to determine whether or not your client is required to report its GHG emissions.[5]

The most critical threshold for practitioners to bear in mind when evaluating a client's GHG situation will be whether their client owns or operates a facility[6] that emits 25,000 or more metric tons of CO2 per year. According to the EPA, 25,000 metric tons of CO2 emissions is equivalent to the annual energy use of approximately 2,300 homes, 4,600 passenger vehicles, the consumption of 58,000 barrels of oil or 131 railcars worth of coal.

However, businesses in certain industries are required to report their annual CO2 emissions *regardless* of whether their annual CO2 emissions meet or exceed the 25,000 metric ton threshold. Businesses in the adipic acid production, aluminum production, ammonia manufacturing, cement production, electricity generation, HCFC-22 production, HFC-23 destruction process, lime manufacturing, manure management systems, municipal solid waste landfill, nitric acid production, petrochemical production, petroleum refinery, phosphoric acid production, silicon carbide production, soda ash production and titanium dioxide production industries *must* monitor and report their GHG emissions beginning on Jan. 1, 2010, without regard to their total GHG emission levels.

Under 40 C.F.R. 98 subpart (A), numerous facilities covering a variety of different economic sectors fall under the ambit of the EPA's new GHG regulations. Table 1 of 74 F.R. 56260-56261 provides an elaborate list of facilities which may be subject to the new reporting requirements, broken down by category. Bear in mind that the below-listed examples include both facilities that must report emissions without regard to actual emissions levels and facilities that must report only if they meet or exceed 25,000 metric tons of CO2 emissions on an annual basis. The list is not exhaustive, but it does provide practitioners with a workable reference point.

"As with most executive agency rule promulgations, the mandatory GHG reporting scheme is codified in piecemeal fashion..."

Quite clearly, many Oklahoma businesses may be subject to the new reporting requirements based on the extensive list, however, practitioners still need to examine their clients' situation(s) on a case-by-case basis.

For example, while the list suggests that "extractors of crude petroleum and natural gas" may be required to report under the "General Stationary Fuel Combustion Sources" category, the reality is that many Oklahoma oil and gas exploration and production companies will likely not be subject to the reporting

EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	Examples of Affected Facilities
General Stationary Fuel Combustion Sources	Facilities operating boilers, process heaters, incinerators, turbines and internal combustion engines. Extractors of crude petroleum and wood products. Manufacturers of lumber and wood products. Pulp and paper mills. Chemical manufacturers. Petroleum refineries and manufacturers of coal products. Manufacturers of rubber and miscellaneous plastic products. Steel works, blast furnaces. Electroplating, plating, polishing, anodizing and coloring. Manufacturers of motor vehicle parts and accessories. Electric, gas and sanitary services. Health and educational services.
Electricity Generation	Fossil-fueled fired electric generating units, including units owned by federal and municipal governments and units located in Indian Country.
Adipic Acid Production	Adipic acid manufacturing facilities.
Aluminum Production	Primary aluminum production facilities.
Ammonia Manufacturing	Anhydrous and aqueous ammonia manufacturing facilities.
Cement Production	Portland Cement manufacturing plants.
Ferroalloy Production	Ferroalloys manufacturing facilities.
Glass Production	Flat glass manufacturing facilities. Glass container manufacturing facilities. Other pressed and blown glass and glassware manufacturing facilities.
HCFC - 22 Production and HFC-23 Destruction	Chlorodifluoromethane manufacturing facilities.
Hydrogen Production	Hydrogen manufacturing facilities.
Iron and Steel Production	Integrated iron and steel mills, steel companies, sinter plants, blast furnaces and basic oxygen process furnace shops.
Lead Production	Primary lead smelting and refining facilities. Secondary lead smelting and refining facilities.
Lime Production	Calcium oxide, calcium hydroxide and dolomitic hydrates manufacturing facilities.
Nitric Acid Production	Nitric acid manufacturing facilities.
Petrochemical Production	Ethylene dichloride manufacturing facilities. Acrylonitrile, ethylene oxide and methanol manufacturing facilities. Ethylene manufacturing facilities. Carbon black manufacturing facilities.
Petroleum Refineries	Petroleum refineries.
Phosphoric Acid Production	Phosphoric acid manufacturing facilities.
Pulp and Paper Manufacturing	Pulp mills. Paper mills. Paperboard mills.
Silicon Carbide Production	Silicon carbide abrasives manufacturing facilities.
Soda Ash Manufacturing	Alkalies and chlorine manufacturing facilities. Soda ash, natural, mining and/or beneficiation.
Titanium Dioxide Production	Titanium dioxide manufacturing facilities.
Zinc Production	Primary zinc refining facilities. Zinc dust reclaiming facilities, recovering from scrap and/or alloying purchased metals.
Municipal Solid Waste Landfills	Solid waste landfills. Sewage treatment facilities.
Manure Management	Beef cattle feedlots. Dairy cattle and milk production facilities. Hog and pig farms. Chicken egg production facilities. Turkey production. Broilers and other meat type chicken production.
Suppliers of Coal Based Liquids Fuels	Coal liquefaction at mine sites.
Suppliers of Petroleum Products	Petroleum refineries.
Suppliers of Natural Gas and NGLs	Natural gas distribution facilities. Natural gas liquid extraction facilities.
Suppliers of Industrial GHGs	Industrial gas manufacturing facilities.
Suppliers of Carbon Dioxide	Industrial gas manufacturing facilities.
Mobile Sources	Heavy-duty vehicle manufacturing facilities. Small non-road, and marine spark-ignition engine manufacturing facilities. Personal watercraft manufacturing facilities. Motorcycle manufacturing facilities.

requirements because the entity would have to own or operate a facility that emits 25,000 or more metric tons of CO2 per year.[7] Accordingly, practitioners must conduct a fact-sensitive inquiry with their clients in order to determine whether said clients are subject to the reporting requirements. One must consider both the industry in which the client conducts business and whether he, she, or it possesses a facility that emits 25,000 or more metric tons of CO2 per year.

In the event that a practitioner discovers that he or she has a client that is subject to the new regulations, but that the client is not in compliance with the EPA's mandatory reporting requirements, there is a temporary solution available until April 1.[8] Entities subject to the GHG reporting requirements can compile estimates of their monthly emissions through the end of March by using the best monitoring methods available to the entity at that time. 74 F.R. 56268. An example of this technique would be to derive an emissions estimate based upon daily fuel usage for a particular facility. However, entities subject to the reporting requirements must install monitoring equipment on their subject facilities no later than April 1. *Id.*

CONCLUSION

The new reporting requirements are merely the tip of the iceberg for GHG regulation

Although the new GHG rules require nothing from effected entities beyond reporting their emissions, these new requirements should be regarded as a precursor to significant forthcoming regulations. The Endangerment Findings promulgated by the EPA in December of 2009 are a further indication that the federal government will be increasingly engaged in regulating GHG emissions. Given that GHG policy directives have emanated almost entirely from the executive branch, and that the current administration has demonstrated a desire to aggressively approach GHG regulation, practitioners will want to stay abreast of this ever-changing regulatory field in order to effectively advise their clients.

1. The Endangerment Findings were a direct response to the U.S. Supreme Court's decision in *Massachusetts v. EPA*, 549 U.S. 497 (2007), wherein the court held that GHGs could be considered "air pollutants" under the Clean Air Act, and that the EPA would have to make a scientific judgment about whether GHGs contributed to climate change before enacting GHG regulations.

2. Gases other than CO2 which are considered to be GHGs and thus subject to regulation include: methane, nitrous oxide, hydrofluorocarbons, perfluorochemicals, sulfur hexafluoride and other fluorinated gases.

3. On its Web site regarding the Endangerment Findings, the EPA explicitly acknowledges that future regulations will be forthcoming: "These findings do not themselves impose any requirements on industry or other entities. However, this action is a prerequisite to finalizing the EPA's proposed greenhouse gas emission standards for light-duty vehicles, which were jointly proposed by EPA and the Department of Transportation's National Highway Safety Administration on Sept. 15, 2009." www.epa.gov/climatechange/endangerment.html.

4. www.epa.gov/climatechange/emissions/ghg_faq.html.

5. The overarching focus of this article is on CO2 emissions because greenhouse gases other than CO2 have a prior history of being regulated. CO2 is unique because, at least until very recently, it was considered a benign, odorless gas. Furthermore, the actual mechanics of how your client must report, monitor, and/or measure its emissions is beyond the scope of this article. However, practitioners should advise their clients that they must obtain appropriate monitoring devices and measuring equipment for their subject facilities. Effected entities will submit their emissions reports to the EPA via its online submission Web site, which is expected to be complete by March of 2010. The first reports are due on March 31, 2010.

6. According to 40 C.F.R. 98.6, the definition of a "facility" is:

> [A]ny physical property, plant, building, structure, source or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control, that emits or may emit any greenhouse gas.

7. The EPA has a very helpful flowchart on its Web site which is helpful in determining whether a client could be subject to the new reporting requirements. *See*: www.epa.gov/climatechange/emissions/downloads/infosheets/generalprovisions.pdf; Additionally, the EPA's site contains an "Applicability Tool" that is likewise helpful. See: www.epa.gov/climatechange/emissions/GHG-calculator/index.html.

8. As the article was written well in advance of the EPA's April 1 deadline, and, because the publication date now postdates April 1, 2010, any potentially affected entity which may be subject to the reporting requirements should immediately contact knowledgeable counsel in order to effectively remedy any possible noncompliance with EPA mandates.

ABOUT THE AUTHOR

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An Examination of Oklahoma's Modern Liquor Statutes

By John A. Maisch

This past year marked the 50th year since Oklahoma formally ended Prohibition in the state. Oklahoma was late to the country's efforts to reintroduce lawful alcoholic beverage consumption. Prohibition ended in 1933 when Utah became the 36th state to ratify the 21st Amendment. While Oklahoma never ratified the 21st Amendment, it finally permitted the lawful consumption of alcoholic beverages with the adoption of Article 27, §1 to the Oklahoma Constitution in 1959.[1]

It would be another quarter century, in 1985, before Oklahoma counties would be permitted to choose whether to allow liquor-by-the-drink.[2] Since that time, there have been a number of legal challenges to those liquor statutes. As we enter the 51st year of Oklahoma's modern liquor statutes, we examine several legal challenges being made to liquor statutes in Oklahoma and across the United States.

HISTORIC OVERVIEW: ALCOHOLIC BEVERAGE REGULATION THROUGH THREE-TIER SYSTEM

Liquor has always presented challenges to society and those government officials charged with regulating the same. Before Prohibition, government fought the harmful effects of saloons that were owned or controlled by the manufacturers of alcoholic beverages, called tied houses.

Tied houses were harmful because they promoted excessive liquor consumption, especially consumption of those alcoholic beverages produced by the manufacturer tied to the saloon. A tied house had a very real incentive to maximize sales of the manufacturer's beverages irrespective of the health or safety risks to its patrons.

Prohibition was intended to address the risks associated with alcoholic beverage consumption, including the harmful effects created by tied houses. Unfortunately, Prohibition didn't stop bootleggers or organized crime from manufacturing, selling or transporting alcoholic beverages. In most parts of the country, Prohibition may have only led to alcoholic beverages becoming more expensive and less safe.

The 21st Amendment gave states nearly unlimited power to regulate alcoholic beverages.[3] Like a majority of states, Oklahoma has chosen to exercise these regulatory powers through a three-tier system, dividing the market players into three distinct classes: manufacturers, wholesalers and retailers (restaurants, bars and liquor stores).

The three-tier system addressed the tied house problem by requiring each tier to be separate and independent from the other. It is no longer permissible for a first-tier manufacturer to have a significant ownership interest in a second-tier wholesaler or third-tier retailer. By prohibiting vertical integration, states eliminated the harmful effects of tied houses.

In addition to banning tied houses, the three-tier system also provides states with the regu-

latory structure necessary to monitor the flow of alcoholic beverages within their borders. The three-tier system allows a state to track every single liter of alcoholic beverage from the moment it is brought into the state until the time it is sold by the licensed restaurant, bar or liquor store.

Monitoring the flow of alcoholic beverages is important for several reasons. By accounting for the product at every level, Oklahoma reduces the likelihood that adulterated or contaminated alcoholic beverages will enter the marketplace. Effective monitoring also reduces the likelihood that those alcoholic beverages end up in the hands of minors or intoxicated persons.

While Oklahoma has made progress in reducing youth access to alcoholic beverages, it is a continuing battle. The Centers for Disease Control reports that 165,000 high school students in Oklahoma consume alcoholic beverages every year. According to that same survey, 43 percent of Oklahoma high school students surveyed had at least one drink in the past 30 days, 28 percent had five or more drinks in one sitting (binge drinking) in the past 30 days, and 23 percent had their first drink of alcohol before age 13 (up from 15 percent in 2001).[4]

Oklahoma also has a vested interest in eliminating the instances in which intoxicated persons are served more alcoholic beverages. Every year, an estimated 11,773 people die in alcohol-related crashes nationwide — that's one person every 45 minutes. Three in every 10 Americans will be involved in an alcohol-related crash some time in their lives.[5]

In addition to these public safety benefits, the three-tier system also contains important anti-discrimination and anti-franchising provisions. This system prevents a big manufacturer from strong-arming a wholesaler into selling only that manufacturer's beverages or giving preferential treatment to only specific wholesalers by requiring every manufacturer to treat every wholesaler the same.

These anti-discrimination restrictions apply to wholesalers, as well. Therefore, if a wholesaler sells a bottle of whiskey to the state's largest liquor store for $5 per bottle, that wholesaler must sell that same bottle to the state's smallest liquor store at the same price, regardless of the volume of whiskey purchased.

The Oklahoma Legislature has recently affirmed the importance of the state's three-tier system by stating in pertinent part:

> "The purpose of the state's regulatory system is to promote these interests by requiring economic separation between the tiers that contributes to a fair, open and competitive market… and prevents disorderly market conditions, including but not limited to the domination of local markets and the undue influence of one tier over another."[6]

The three-tier system has been a very effective model for most states in addressing these public safety challenges, but it has faced several legal challenges, especially during the past few years. While the three-tier system has been the subject of criticism, when one looks back at government's past attempts to regulate liquor, it is easy to understand the three-tier system's importance in protecting the public and ensuring an orderly marketplace.

CONSTITUTIONAL CHALLENGES TO THREE-TIER SYSTEM

Commerce Clause

While the three-tier system has withstood numerous assaults since the end of Prohibition, perhaps one of the greatest challenges came this past decade in *Granholm v. Heald*.[7] *Granholm* involved statutes that permitted local wineries, but not out-of-state wineries, to sell their wine to local consumers. Out-of-state wineries challenged Michigan and New York statutes on interstate commerce grounds, alleging that both statutes discriminated against out-of-state competitors in violation of the Commerce Clause.[8] The U.S. Supreme Court, in a 5-4 vote, agreed with the out-of-state wineries and invalidated the statutes as unconstitutional infringements on interstate commerce:

> "States have broad power to regulate liquor under §2 of the Twenty-first Amendment. This power, however, does not allow States to ban, or severely limit, the direct shipment of out-of-state wine while simultaneously authorizing direct shipment by in-state producers. If a State chooses to allow direct shipment of wine, it must do so on evenhanded terms. Without demonstrating the need for discrimination, New York and Michigan have enacted regulations that disadvantage out-of-state wine producers. Under our Commerce Clause jurisprudence, these regulations cannot stand."[9]

The *Granholm* case had immediate implications in Oklahoma, whose citizens had amended Article 28, §3 of the Oklahoma Constitution to allow in-state wineries, but not out-of-state wineries, to sell directly to retail stores and restaurants in 2004.[10] The *Granholm* case was used to challenge the constitutionality of Oklahoma's new constitutional provision in *Action Liquor v. Oklahoma ABLE Commission*.[11] As anticipated, the federal court struck down Oklahoma's constitutional amendment, stating that:

> "Given the similarity between the issues determined in *Granholm* and the issues raised in this action, it should be obvious that *Granholm* could hardly be closer to being an 'all fours' case — favoring plaintiffs' contention that the challenged laws are unconstitutional."[12]

As a result, Oklahoma subsequently passed another constitutional amendment in November 2008, extending the direct shipment provisions to both in-state and out-of-state wineries, but this time replacing the geographic restrictions with restrictions based on the number of gallons an eligible winery may produce on an annual basis:

> "Any winemaker within or without this state that annually produces no more than ten thousand (10,000) gallons of wine and elects to directly sell its wine to retail package stores and restaurants in this state must self-distribute the wine using only vehicle(s) owned or leased by the winemaker, and without the use of a common or private contract carrier."[13]

Proponents of direct shipping may have cheered this new constitutional authority, but their gains did not come without a cost. The legislative companion to Article 28, §3(B) of the Oklahoma Constitution places severe restrictions on wineries wishing to bypass the traditional three-tier system and sell directly to retail stores and restaurants.[14]

Pursuant to this accompanying statutory change, winemakers who wish to self-distribute are restricted from selling their wine in quantities smaller than the case lot,[15] are prohibited from using common carriers to deliver their wine[16] and must discontinue selling their wine through licensed wholesalers.[17] As of today's date, the gallonage cap inserted in this latest constitutional amendment has not been challenged in Oklahoma.[18]

Sherman Anti-Trust Act

Several states have confronted another challenge to their liquor statutes. Specifically, retailers in other states have alleged that certain statutes restrain competition in violation of federal anti-trust laws. The Sherman Anti-Trust Act is an outgrowth of the powers granted to Congress by Article I, §8, clause 3, of the United States Constitution. Codified at Title 15, §1 of the United States Code, the Sherman Anti-Trust Act provides, in pertinent part, that:

> "Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal."[19]

Costco Wholesale Corporation v. Hoen is a recent 9th Circuit Court of Appeals case that has drawn significant attention.[20] In *Costco*, the Washington-based discount warehouse retailer challenged nine of that state's liquor statutes, including Washington's volume discount ban, central warehousing ban, minimum mark-up requirement and post-and-hold statute, alleging that these statutes constituted federal anti-trust violations.

Ultimately, the 9th Circuit dismissed all but two of Costco's challenges, but the statutes that it struck, specifically Washington's post-and-hold provisions, could have serious ramifications for that state's entire regulatory system over liquor. Although not binding on the 10th Circuit, the *Costco* case could also encourage parties to challenge Oklahoma's own post-and-hold provisions, which are not altogether dissimilar from Washington's.

Central to any state's efforts to regulate liquor is its anti-discrimination provisions, which require wholesalers to treat all retailers the same. Oklahoma's anti-discrimination provisions, for example, prevent a wholesaler from extending special prices or terms to certain retailers through bans on volume discounts, credit sales and central warehousing.[21]

All of these statutes support Oklahoma's overall objectives to promote temperance and an orderly marketplace. Post-and-hold provisions are a critical component to Oklahoma's efforts to enforce these anti-discrimination statutes, because it provides the state with a snapshot by which to verify that wholesalers are not extending discounts or other inducements to certain retailers.

Here's how Oklahoma's post-and-hold provisions work: On the 15th of every odd-month, each wholesaler submits its original price postings to the ABLE Commission.[22] (There are currently 11 wholesalers licensed to distribute liquor and wine in Oklahoma.) These original price postings are compiled and disclosed to the remaining wholesalers.

No later than the 25th of that same month, each wholesaler may subsequently reduce its mark-up to match the lowest mark-up submitted by its competitors on the 15th.[23] (Meanwhile, the wholesaler with the lowest mark-up is not permitted to raise its mark-up after the 15th.) Every wholesaler is required to maintain its adjusted price-postings for two months, from the first day of the upcoming month until the last day of the subsequent month.[24]

The *Costco* court articulated a two-part test to determine the validity of Washington's post-and-hold statutes. First, the 9th Circuit used the *Parker Immunity Doctrine*[25] to ascertain whether the challenged statute represented a unilateral or hybrid restraint on trade.[26]

If the restraint is determined to be unilateral, then the statute will likely survive *Costco's* challenge because the *Parker Immunity Doctrine* specifically provides that states are immune from federal anti-trust prohibitions. But in *Costco*, the court found that:

> "[The Washington Liquor Control Board] may police the procedures of posting and the adherence to the posted prices, but it retains no control over the prices themselves, which are left exclusively (with the exception of a minimum mark-up) within the control of the particular wholesalers…. Although each wholesaler is only required to adhere to its posted price and is not compelled to follow others' pricing decisions, the logical result of the restraints is a less uncertain market, a market more conducive to collusive and stabilized pricing, and hence less competitive market."[27]

The 9th Circuit was especially critical of Washington's hold provisions, finding that:

> "Such agreements to adhere to posted prices are anti-competitive because they are highly likely to facilitate horizontal collusion among market participants. When firms in a market are able to coordinate their pricing and production activities, they can increase their collective profits and reduce consumer welfare by raising price and reducing output…. An adherence requirement effectively removes a market uncertainty by making pricing behavior transparent and discourages variance."[28]

After concluding that Washington's post-and-hold statutes represented a hybrid restraint pre-empted by federal law, the *Costco* court proceeded to the second part of its analysis. The second test required the court to balance the state's interest in promoting temperance, as supported by the 21st Amendment, against the federal government's interest in promoting competition, as established by Congress in the Sherman Anti-Trust Act. As set forth by the 9th Circuit:

> "Because the Twenty-first Amendment and the Commerce Clause are both part of the same Constitution, 'each must be considered in the light of the other, and in the context of the issues and interests at stake in any concrete case.…'[29] '[T]he key question is whether the interests implicated by a state regulation are so closely related to the powers reserved by the Twenty-first Amendment that the regulation may prevail, notwithstanding that its requirements directly conflict with express federal policies.'"[30, 31]

Ultimately, the 9th Circuit was not persuaded that Washington's post-and-hold statutes promoted temperance. Invalidating the statutes in question, the *Costco* court concluded that there was little empirical evidence to support the proposition that pricing schemes affected consumption.

As set forth above, the *Costco* case has no precedential authority outside the 9th Circuit, but it serves as an important wake-up call to liquor regulators across the nation. Several commentators speculate that it was the Washington regulators' failure to persuasively articulate the 21st Amendment's continued relevance in the 21st Century that led to the defeat of its post-and-hold statutes.

Liquor regulators have already notched several legal victories in the post-*Costco* era. Recognizing that it simply was not sufficient to reference the 21st Amendment when defending its statutes, liquor regulators have gathered more empirical evidence to support their proposition that alcohol is a unique commodity that demands the special consideration it's afforded by the 21st Amendment.

Last year, Louisiana was able to defend its alcohol regulations against Commerce Clause and Sherman Anti-Trust attacks.[32] This past summer, the 2nd Circuit Court of Appeals rejected efforts by Indiana retailers to ship Internet purchases of alcoholic beverages into the state of New York.[33]

In his concurring opinion in support of the 2nd Circuit's decision to uphold New York's liquor regulations, Judge Calabresi cited the U.S. Supreme Court while recognizing the uniqueness of alcoholic beverage regulation in this country:

> "[I]t seems more likely that the Twenty-first Amendment, when enacted, meant to carve out from dormant Commerce Clause scrutiny the area of alcohol regulation…. [T]hose who created the Twenty-first Amendment 'determined that [alcohol] should be governed by a specific and particular constitutional provision. They did not leave it to the courts to devise special distortions of the general rules as to interstate commerce to curb liquor's 'tendency to get out of legal bounds.' It was their unsatisfactory experience with that method that resulted in giving liquor an exclusive place in constitutional law as a commodity whose transportation is governed by a special constitutional provision.'"[34]

CONCLUSION

Alcoholic beverages are unique commodities that must be strongly regulated. The 21st Amendment has given states broad authority to regulate these commodities using those methods best suited for each particular state. The three-tier system has proven to be an effective method of monitoring the sale and distribution of alcoholic beverages in many states, including Oklahoma.

As Oklahoma enters the next 50 years of enforcing its modern liquor statutes, the state joins with liquor regulators throughout the country in defending the three-tier system against attacks aimed at dismantling a regulatory system that has proven effective in preserving public safety and ensuring an orderly marketplace.

1. With passage of State Question No. 386, Ref. Petition No. 121, Oklahoma voters adopted Article 27 of the Oklahoma Constitution in a statewide election on April 7, 1959.

2. State Question No. 563, Initiative Petition No. 319, repealed Article 27 of the Oklahoma Constitution and adopted Article 28, on Sept. 18, 1984.

3. "The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited." U.S. Const., XXI Amendment, §2.

4. Centers for Disease Control, Youth Risk Behavior Surveillance (2007).

5. National Highway Transportation Safety Administration, Fatality Analysis Reporting System (2007).

6. 37 O.S.Supp.2009, §521.2(3).

7. *Granholm v. Heald*, 544 U.S. 460 (2005).

8. The Commerce Clause provides the United States with the power "*[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes*." Art. I, §8, cl. 3.

9. 544 U.S. 460, 493.

10. State Question No. 663, Legis. Ref. No. 297, adopted at election held Nov. 8, 2004.

11. 463 F.Supp.2d 1294 (W.D. Okla. 2006).

12. 463 F.Supp.2d 1294, 1301.

13. Okla. Const., Art. 28, §3(B).

14. 37 O.S.Supp.2009, §521(C) and (D).

15. 37 O.S.Supp.2009, §521(D).

16. 37 O.S.Supp.2009, §521(C)(b).

17. 37 O.S.Supp.2009, §521(C)(a).

18. In January 2010, the First Circuit Court of Appeals invalidated a Massachusetts' statute which prohibited direct shipments by in-state and out-of-state wineries that produce more than 30,000 gallonage annually. *Family Winemakers of California v. Jenkins*, 592 F.3d 1 (1st Cir. 2010).

19. 15 U.S.C. §1.

20. 522 F.3d 874 (9th Cir. 2008).

21. 37 O.S. §535, 536, OAC 45:30-3-6.

22. Rather than posting a specific dollar amount, the wholesalers are actually providing the percentage (%) in which their liquor and wine will be marked-up from the price in which the wholesaler purchased these alcoholic beverages from the manufacturers.

23. OAC 45:30-3-7.

24. OAC 45:30-3-8.

25. In *Parker v. Brown*, the United States Supreme Court found that the state was immune from liability under the Sherman Act. *Parker v. Brown*, 317 U.S. 341, 359 (1943).

26. As part of its *Parker Immunity Doctrine* analysis, the *Costco* court utilized another two-part test set forth in another U.S. Supreme Court case, *California Retail Liquor Dealers Ass'n v. Midcal Aluminum Inc.*, 445 U.S. 97 (1980), requiring the challenged restraint to be a clearly articulated state policy and actively supervised by the state.

27. 522 F.3d 874, 894.

28. *Id.* at 896.

29. 522 F.3d 874, 901, citing *California Retail Liquor Dealers Ass'n v. Midcal Aluminum, Inc.*, 445 U.S. 97 (1980).

30. 522 F.3d 874, 902, citing *Capital Cities Cable Inc. v. Crisp*, 467 U.S. 691, 714 (1984).

31. *Id.* at 901.

32. *Manuel v. State of Louisiana*. 982 So.2d 316 (La.App. 3 Cir. 2008).

33. *Arnold's Wine Inc. v. Boyle*, 571 F.3d. 185 (2nd Cir. 2009).

34. *Arnold's Wine Inc. v. Boyle*, (Calabresi, concurring), 571 F.3d. 185, 198, citing *Duckworth v. Arkansas*, (Jackson, J. concurring in result), 314 U.S. 390 (1941).

ABOUT THE AUTHOR

John A. Maisch has served as general counsel for the Oklahoma Alcoholic Beverage Laws Enforcement Commission since 2008. He received his law degree from the University of Tulsa in 1995. He received his B.S.B.A. in economics and management from Midland Lutheran College in Fremont, Neb., in 1992.

LEGAL AID SERVICES OF OKLAHOMA, INC.

FAMILY LAW ISSUES
Tuesday, May 4, 2010
Greenwood Cultural Center **322 N. Greenwood Avenue, East Hall**
Approved for 7 Hours MCLE Credit
FREE for Lawyers Actively Serving on the Legal Aid *Pro Bono* Panel

AGENDA

8:30 a.m.	Registration
9:00 - 9:50 a.m.	Bankruptcy Law for Family Law Attorneys by Sidney Swinson, Attorney
9:50 - 10:05 a.m.	BREAK
10:05 - 10:55 a.m.	**Track A (Basic)** Nuts and Bolts of a Dissolution Case 1: Pleadings, Domestic Violence, and Court Proceedings by Julie Goree, Attorney, Legal Aid Services of Oklahoma **OR** **Track B (Advanced)** Discovery and Entry of Evidence by Melissa Cornell, Attorney
10:55 - 11:10 a.m.	BREAK
11:10 - 12:00 noon	**Track A (Basic)** Nuts and Bolts of a Dissolution Case 2: by Julie Goree, Attorney, Legal Aid Services of Oklahoma **OR** **Track B (Advanced)** Jurisdiction: Refresher and New Directions by Marianne Blair, Professor, University of Tulsa College of Law
12:00 - 1:15 p.m.	LUNCH (On your Own)
1:15 - 2:05 p.m.	Players in the High-Conflict Divorce by Carol Swenson, Guardian *Ad Litem*, Nicole Kirkland, Tulsa County District Court High Conflict Coordinator, and Tulsa County Public Defender's Civil Division
2:05 - 2:55 p.m.	Topics on Elder Law by Robert Farris, Attorney
2:55 - 3:15 p.m.	BREAK
3:15 - 4:05 p.m.	Interviewing, Counseling, and Negotiating by J. Kenton Francy, Attorney
4:05 - 5:00 p.m.	Courtroom Decorum: A View from the Bench, moderated by Kathryn Herwig, presented by the Honorable Theresa Dreiling, Tulsa County District Court, the Honorable Carl Funderburk, Tulsa County District Court, and the Honorable Jane Wiseman, Oklahoma Court of Civil Appeals

To reduce our costs, we are no longer printing materials. The materials will be available on our *pro bono* support website. A link is posted on **www.probono.net/ok** or at go to this **www.probono.net/link.cfm?14557** Information about accessing the website is emailed to you when you register online!

Register by Mail or Fax:

- ☐ Please register me; I am an active member of the Legal Aid Pro Bono Panel in my area
- ☐ Sign me up as a Volunteer and register me for the seminar

Karen Langdon, Legal Aid Services of Oklahoma, Inc., 907 South Detroit, Suite 907, Tulsa, OK 74120, Fax: (918) 584-3060

Name _____ OBA No. _____

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Address _____

Street City Zip County

Questions? Karen Langdon, Pro Bono Coordinator (918) 295-9422 or karen.langdon@laok.org

Overview of a Few Legislative Measures of Interest

By Duchess Bartmess

Even though the legislative session is speeding toward *sine die* and the budget is still grabbing all the headlines, there are still some pending measures that should be of interest to the general practitioner.

First, an update on the two bar association-sponsored bills, Senate Bills 2039 and 2040. These two bills were signed by the governor on April 5. **SB 2039** makes several housekeeping changes in civil procedure and authorizes two types of licenses for process servers. One type of license authorizes serving process in just one specific county and the other type authorizes serving process on a statewide basis. In addition to several provisions regarding service of process found in Title 12, this bill also addresses discovery issues for electronically stored information, procedures for discovery protective orders, duties relating to responding to subpoenas and limits on discovery. This is just a general synopsis of SB 2039, and because it is quite a comprehensive bill, all general practitioners are encouraged to take the time to read this bill in its entirety.

SB 2040 adds new language to the court fees provisions clarifying that payment of the jury fee is due at the time of the pretrial conference by the party requesting a jury.

SB 1379, designated the "Private Attorney Retention Sunshine Act," will require a state agency, if it anticipates an attorney fee to exceed $5,000, to follow a request for proposal process and establishes procedures to be followed in that process. In addition, a contract in excess of $500,000 is subject to gubernatorial review, and the bill authorizes public hearings on the contract approval issue. The governor is authorized to make suggested changes to the contract. Several specific procedural steps are included in the new language.

SB 1977 makes a significant change in Oklahoma marriage law. This act prohibits the recognition of common-law marriage in Oklahoma. The act provides that any common law marriage recognized as valid by a court of competent jurisdiction prior to Nov. 1, 2010, shall continue to be recognized as valid. The language of the act as of this writing does not specifically address the issue of how judicial recognition can be obtained if there is no connected legal issue for adjudication. Several issues are unaddressed by the automatic blanket invalidation of formerly legal marriages, such as what is the status of the children previously born to the common law married parents after the Nov. 1 effective date, and how or whether a surviving spouse of such a formerly legal marriage can qualify for Social Security benefits or entitlement to joint industry prop-

erty by intestacy, and whether those property rights were once vested as a matter of the marriage contract and can now be constitutionally cancelled by legislative act. Those who specialize in domestic law practice are encouraged to review this proposal.

HB 2648 addresses issues relating to payments to birth mothers in adoption cases.

HB 2733 modifies provisions regarding the transfer of the permanent care and custody of a child. It establishes procedures that authorize granting custody to a qualified relative of abandoned minor and defines a qualified relative to include grandparent, sibling, aunt, uncle, niece, nephew or spouse of a qualified relative.

Prior to the legislative session beginning this year, there was a great deal of discussion and publicity anticipating additional changes to the workers' compensation law. The most significant bill making its way through the process is **SB 1973**. This bill is over 100 pages. All of the changes and additions cannot be set out here. There are a few provisions however, that should be mentioned. A new provision authorizes a labor organization to opt out of the Workers' Compensation Act but requires approval of the administrator and assurance of a system of benefits for work-related injuries within the labor organization. There are a number of changes relating to the Workers' Compensation Court including reducing the number of judges from 10 to eight, limiting a judge to one eight-year term and requiring Senate confirmation of judges. The bill also creates the position of medical director, who must be a licensed physician, to oversee the medical maintenance of all claimants, makes mediation mandatory, ends permanent total disability when a claimant becomes eligible for Medicare, creates a panel of special magistrates to replace the appellate role of the court *en banc* and authorizes the Legislature to disapprove certain evaluation guides for permanent impairment.

The title has been stricken on this bill. Because of its size, and the number of bills that have been introduced on workers' compensation, there is a good likelihood that this bill will go to conference. Again, those involved in the practice of workers' compensation law are encouraged to read the changes and additions that the Legislature will be working with as they work out the final draft.

Also in the area of workers' compensation law issues is **SJR 66**. It is somewhat unusual in that it is a legislative referendum to amend the Workers' Compensation Act. It is more common for the Legislature to submit amendments to the Constitution through the referendum procedure. Unlike constitutional amendments, even if the people approve a change, that change can be amended by the Legislature without another vote of the people. The proposed change addresses legal fees in workers' compensation cases.

This article is only intended to provide some general information regarding some of the passed and pending legislation which might be of interest. Obviously, all measures of significance cannot be covered here. Practitioners in the general practice as well as lawyers practicing in specialized areas of the law are encouraged to make an effort to review changes in the law that might affect their individual practice. The Legislative Monitoring Committee stands ready to help any member of the bar in locating specific measures of interest or help those unfamiliar with the overall legislative process in accessing legislation.

Ms. Bartmess practices in Oklahoma City and is chairperson of the Legislative Monitoring Committee.

High School Mock Trial Committee Wraps Up Another Successful Year

The 2009-2010 Oklahoma High School Mock Trial Competition included 47 teams from across the state. This year's competition culminated in the Oklahoma High School Mock Trial Championship with a third time face-off between Del City's Christian Heritage Academy and Ada High School. The preparation and skill of both teams was admirable, with Christian Heritage Academy defeating Ada High School. Previous two-time state champion Christian Heritage Academy will have the honor of again representing Oklahoma at the National High School Mock Trial Championship to be held in Philadelphia in May.

The other top finishing teams are third place, Clinton High School (Gold team); fourth place, Okarche High School; fifth place, Jenks High School (Blue team); sixth place, Owasso High School (Rams team); seventh place, Ada High School (Maroon team); and eighth place, Jenks High School (Red team).

"Besides giving students an understanding of how a trial is conducted, this program encourages students to be independent learners and to think about issues that may affect them in real life, as the cases are crafted to be relevant to today's youth," said Mock Trial Committee Chair Erin M. Moore. "Thanks to the bar's active participation in this program, a positive impact has been made on the lives of students in the state of Oklahoma."

Mock Trial Committee members staffing the final round were (from left, front row) Nicole Longwell, Erin Moore, Coordinator Judy Spencer, Leslie Porter, Jacob Rowe, Joe Carson, (back row) Marsha Rogers, Christine Cave and Christian Szlichta.

The semifinal rounds took place the week of Feb. 23 in Tulsa at the U.S. Bankruptcy Court and in Oklahoma City at the U.S. Western District Courthouse. The championship round was held March 2 in the Bell Courtroom at the OU College of Law in Norman. The Mock Trial Committee is a project of the Young Lawyers Division and was funded this year by the Oklahoma Bar Foundation and the OBA Litigation Section.

Serving with Chairperson Moore on the committee are Executive Vice Chairperson Nicole Longwell, Immediate Past Chairperson Jennifer Bruner, Vice Chairperson Marsha Rogers, Vice Chairperson Christian Szlichta, Vice Chairperson of Case Development Nicole Longwell, Rachel McCombs, Joe Carson, Christine Cave, Chanteau Orr, Scott Inman, Antonio Jeffrey, Jacob Rowe, Amanda Thrash and Leslie

Porter. Judy Spencer serves as the program coordinator.

It is the donation of time and energy by hundreds of judges and lawyers across Oklahoma that made this program possible. The following list of individuals graciously volunteered their time and experience to high school students who are likely to become the future leaders of this state.

ATTORNEY COACHES

Blayne T. Allsup
Clifton Baker
Judge James Bland
Chris Box
Gary Briggs
Scott Brockman
Dawn Brockman
Mary Bundren
Judge Daman Cantrell
Martha Rupp Carter
Kristen Caruso
Mary Ann Coleman
Travis Crocker
Erin Dailey
Tim Daniel
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Susan Eades
Christine Ford
Dennis Gay
Forrest Hess
Judge Dennis Hladik
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Michael Horn
Jennifer Howland
Rebecca Hunter
Steven Kuperman
Greg Laird
Pat Layden
Julie Lombardi
Jennifer Miller
Tim Mills
Jeff Mixon
Sarah Powers
Matt Roberts
Russell Singleton
Don L. Smitherman
Frank Stout
Julie Strong
Charles Sullivan
Kyle Sweet
Melissa Taylor

Judging the championship round were (from left) Judge Kenneth Dickerson, Judge David Lewis, Retired Judge Edward Cunningham, Judge Dana Rasure, Judge Daman Cantrell and Judge Jequita Napoli.

James Thornley
Jim Tillison
Doug Todd
Roy Tucker
Shannon C. Weis
Ginger Williamson
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FINAL PRESIDING JUDGE

Retired Judge
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FINAL SCORING JUDGES

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Judge Kenneth Dickerson
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Judge Jequita Napoli
Judge Dana Rasure

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Ryne Miller
Marianne Miller

Oklahoma City attorney Jennifer Miller (center) gives her Christian Heritage Academy team a few pointers before the final round began.

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Jacob Rowe***
Lara Russell
Linda L. Samuel-Jaha
John Sawney
John Schneider
Mike Segler
Jeff Shaw
Judge Houston Shirley
Zach Shreiner
James Simms
Dewayne Smoot
Paul Sobieski
Cliff Stark
Taylor Stein
Kim Stevens
Linda Stevens
Sheila Stinson
Joshua Stockton
Justin Stout
Khristan Strubhar**
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Cesar Tavares
Emmit Tayloe
Andrew Tevington
Laura Thomas
Mat Thomas
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Jennifer Thompson**
Amanda Thrash*
Shelley T. Tipps
Jill Tontz
Roy Tucker
Le'Shawn Turner
Breanna Vollmers
Joe Vorndran
Jill Walker-Ambdovis
Dara Wanza
Kyle Waters
Randall Wiley
Tressa Williams
Betty Williams
Tanya Wilson
Greg Wilson
Sloan Wood
Ryan Wyrick
** served twice*
*** served three times*
**** served four times*
***** served five times*

CLERK OF COURT WANTED

The United States Bankruptcy Appellate Panel of the Tenth Circuit in Denver, Colorado is accepting qualified applications for the position of Clerk of Court. The clerk is responsible for managing and supervising the operational and administrative activities of the Clerk's Office and overseeing the statutory duties of the office. Applicants must have at least 10 years' administrative or legal experience, at least three years of which must have been in a position of supervisory, managerial, or professional work. Salary range: $87,815 - $134,899 depending on qualifications and experience. For a full description, please visit: www.ca10.uscourts.gov.

THE OKLAHOMA STATE DEPARTMENT OF HEALTH, Office of General Counsel and the Health Law Section of the Oklahoma Bar Association, is accepting applications for a Legal Intern position funded by a grant underwritten by the OBA Health Law Section. This is a 10-week full time seasonal/temporary position, starting on June 1, 2010, and ending on August 10, 2010. The Intern will spend 2 weeks with the Office of Administrative Hearings. The remainder of the internship will be spent learning the various practice areas in the Office of General Counsel, what the functions of each area of the Department are, and how the General Counsel's office interacts with and supports these agency functions. Position requires general knowledge of electronic research and drafting of legal memoranda, briefs and correspondence. Candidate should have interest in practicing in health care law and be willing to perform a wide range of related tasks. Education and experience: students entering Third year fall of 2010 at accredited law school, top 50% of class. Prior experience and/or Intern's License helpful but not required. Demonstrated legal writing skills are necessary. This is a paid internship at $12.50/hr. with no benefits. To apply, send resume, law school transcript, and writing sample to: Pat Cantrell, 1000 N.E. 10th Street, Room 206, OKC, 73117, or email to patriciac@health.ok.gov. Application period closes April 30, 2010. Qualified candidates will be interviewed by a panel compromised of representatives of the General Counsel office and the OBA Health Law Section.

The Oklahoma Bar Association applauds these members who in 2010 reach significant milestone anniversaries.

70 YEARS

1940-2010

Custer County Bar Association President Paul Kluver presents a 70-year OBA member certificate to Glea Tutwiler. Photographer: Robert Bryan, Clinton Daily News

CUSTER COUNTY
Glea Hatcher Tutwiler
Clinton

ELLIS COUNTY
Woodrow R. Walton
Shattuck

PAYNE COUNTY
Albert J. Schott
Stillwater

OUT OF STATE
Catherine Smith Dodson
Granger, IN

60 YEARS

1950-2010

CARTER COUNTY
James Frank Thomas
Ardmore

CLEVELAND COUNTY
Herbert Maxwell Darks
Oklahoma City

COMANCHE COUNTY
Retired Judge
Kenneth L. Youngblood
Lawton

CREEK COUNTY
Samuel Thomas Allen III
Sapulpa

GRADY COUNTY
L. Leon Storms
Chickasha

HARMON COUNTY
William M. Fancher
Hollis

KAY COUNTY
Paul E. Northcutt
Ponca City

MARSHALL COUNTY
Floyd Miller Jr.
Madill

MUSKOGEE COUNTY
John D. Luton
Muskogee

Kenneth L. Meyer Jr.
Muskogee

Judge Adelbert Carl Robinson
Muskogee

OKLAHOMA COUNTY
George Camp
Oklahoma City

Donald L. Fuhrman
Oklahoma City

Richard D. Hampton
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Herbert F. Hewett
Oklahoma City

Judge William J. Holloway Jr.
Oklahoma City

Creed T. Huddleston
Oklahoma City

Burton Joseph Johnson
Oklahoma City

Richard J. Lee
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Boyd C. Pruet
Oklahoma City

John Gerald Sullivan
Oklahoma City

John Paul Walters
Edmond

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Winfrey David Houston
Stillwater

Judge Donald L. Worthington
Stillwater

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Tulsa

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Wesley Monroe Shrum
Merced, CA

Jerry C. Spellman
Washington, DC

Robert G. Williams
McAllen, TX

George Smith Wolbert Jr.
Houston, TX

Burton C. Wood
Washington, DC

1960-2010

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Anadarko

CARTER COUNTY
William Carlyle Chapman
Ardmore

F. Lovell McMillin
Ardmore

CLEVELAND COUNTY
Edward R. Adwon
Norman

James K. Dewbre
Oklahoma City

Velmer J. Dimery
Norman

Fred Allen Gipson
Norman

Robert E. L. Richardson
Norman

Irby Roy Taylor
Norman

Preston Albert Trimble
Norman

COMANCHE COUNTY
Ralph W. Newcombe
Lawton

DELAWARE COUNTY
Sevier M. Fallis Jr.
Kansas

GARFIELD COUNTY
Raymond Dean North
Enid

KAY COUNTY
William James Miller
Ponca City

LEFLORE COUNTY
James E. Hamilton
Heavener

Pat Pate
Poteau

LINCOLN COUNTY
Joseph A. Young Jr.
Chandler

MAJOR COUNTY
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Fairview

MCCLAIN COUNTY
Andrew J. Moore Jr.
Goldsby

Bob A. Smith
Blanchard

MUSKOGEE COUNTY
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OKLAHOMA COUNTY
Peter L. Boatright
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Oklahoma City

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ROGERS COUNTY
T. Gavin King
Claremore

TULSA COUNTY
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Tulsa

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Tulsa

Orlin Woodie Hopper
Tulsa

Joseph Robert McGraw Jr.
Tulsa

William McGaugh Northcutt
Tulsa

Joseph Rankin Roberts
Tulsa

Gail R. Runnels
Tulsa

S. J. Sakelaris
Tulsa

Robert Harold Tips
Tulsa

Edward Wagner
Tulsa

WASHINGTON COUNTY
Lewis Bebout Ambler
Bartlesville

James H. Hughes
Bartlesville

OUT OF STATE
Paul H. Durham
Bluffton, SC

Gary Michael Jay
Arden, NC

Jerry Delbert Kirk
Westlake, LA

Thomas W. Lynch
Dallas, TX

G. A. Mandeville
Whitney, TX

Robert P. Santee
Pagosa Springs, CO

Robert E. Shaw
Fair Oaks, CA

Steve F. Shaw
Buena Vista, CO

Don Allen Smith
Fort Smith, AR

Richard Lewis Whitton
Houston, TX

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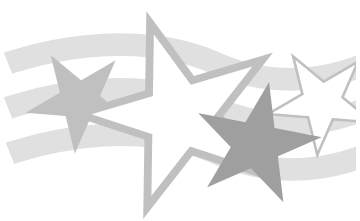
While I was not privileged to see any heated debates on controversial issues, I was pleasantly surprised to see the degree of civility that existed among the members of the House and Senate, which often goes unappreciated and unreported. We can rightly pride ourselves that our system of political compromise failed us only once, in 1861, over the fundamental social issue of slavery. In retrospect, that was an issue which proved to be simply beyond compromise and would, perhaps, have led inevitably to a civil war at some point.

Historical examples support the proposition that, despite our well-deserved reputation for principled individualism, we, as a society, as well as individually, acquiesce in the rule of the majority to create the necessary order all need. The presidential elections of 1960 and 2000 are examples of strong individuals and competing political principles ultimately acquiescing in hotly contested disputes.

While most of us will acknowledge that Richard Nixon's character was fatally flawed in certain aspects, he accepted the results of an extraordinarily close election loss in 1960 to John F. Kennedy despite his firmly held belief the election was stolen from him by voter fraud in Texas and Illinois. Recent examinations of that election strongly support Nixon's position he may very well have been the true winner of the popular vote.

Likewise, we all remember the presidential election of 2000. But some may have forgotten the extraordinary tension which resulted from what seemed an interminable Florida recount that culminated in the *Bush v. Gore* decision, which the winners touted as a vindication of the rule of law and the losers decried as an example of a totally polarized and politicized U.S. Supreme Court. The latter opinion was augmented by the fact that the five to four decision in favor of George Bush's victory broke down in the Supreme Court on straight political fault lines. Despite the heated rhetoric and emotions of that election and Supreme Court decision, we didn't see civil insurrections nor any attempted coup d'états by disgruntled politicians nor any other civil disruptions that appear to be endemic to many societies, even those who tout themselves to be parliamentary democracies.



Regardless of your opinion of the 2000 election results or the Supreme Court's decision in *Bush v. Gore*, I submit to you the decision itself is less important than the reaction to it, particularly from those on the losing side. George Bush was determined the winner and was inaugurated. All of us, those who voted for him and those who didn't, held him to be our president, and our country continued down its path with all of us recognizing that America, not any individual, should always come first.

This "habit of obedience," I believe, should always be remembered when we think of "the rule of law" and celebrate Law Day. All of us, particularly lawyers, like to win. While there is certainly nothing wrong with us making legal arguments on behalf of our clients, particularly when we personally believe in them, we need to understand the concept of compromise is central to our system of government, and when we as a culture fail to acquiesce in the rule of the majority, we put the entire system we all love and cherish, and which protects us, at risk.

I think this is a particularly timely reflection in a judicial election year when we are all going to be stressed by those divisions that percolate every four years and cause us to be temporarily divided with respect to our support for one candidate or another. I have been through many of these; I don't like them, and I wish our state could do something to totally eliminate popular elections of judges. However, I simply do not believe that is in the cards. While we should always strive to support our principals and candidates, we must live with the results and the "rule of law" will survive all of us individually.

To sum up, the "habit of obedience" might be described as a recognition of the constant fine tuning our legal and political process engages in with respect to the tension between freedom and order. We all must recognize that any demand for all of one necessarily results in the destruction of all of the other.

OBA SOLO and SMALL FIRM CONFERENCE

JUNE 24-26 2010 • DOWNSTREAM RESORT • QUAPAW, OK

DAY 1 • Friday June 25

Come & Enjoy the Fun!

8:25 a.m.	**Welcome** Allen Smallwood OBA President			
8:30 a.m. – 9:20 a.m.	**50 Hot Tips in 50 Minutes** Catherine Sanders Reach Jim Calloway			
9:20 a.m.	**Break**			
9:30 a.m. – 10:20 a.m.	**Cloud Computing for Lawyers** Jack Newton Travis Pickens			
10:20 a.m.	**Break**			
10:30 a.m. - 11 a.m.	**The Oklahoma Supreme Court: Current Issues and Other Stuff** Chief Justice James E. Edmondson			
11 a.m. - 11:30 a.m.	**Favorite Law Office Tech Tools** Catherine Sanders Reach Jim Calloway			
11:30 a.m. - 12:45 p.m.	**LUNCH BUFFET** *(Included in Seminar Registration Fee)*			
	Black Hawk	**Sacred Elk**	**Victor Griffin**	**Saracen**
12:45 p.m. – 1:45 p.m.	**Why Practicing Law is Killing Your Law Practice** Don Pope	**Learning from Legends: Oklahoma Criminal Law Practice** Allen Smallwood Mack Martin	**Powerful Client Communications Tools** Catherine Sanders Reach	**Fair Debt Collection Practices Act - The Good, the Bad, and the Ugly (Part 1)** Joseph B. Miner
1:45 p.m.	**Break**			
2 p.m. - 3 p.m.	**How to Deal With Difficult Clients** Debbie Maddox	**Recent Developments in Family Law** Kimberly Hays Lori Pirraglia	**The Traveling Lawyer** Jim Calloway	**Fair Debt Collection Practices Act - The Good, the Bad, and the Ugly (Part 2)** Joseph B. Miner

12 Hours CLE Credit – Including Ethics

DAY 2 • Saturday June 26

DOWNSTREAM RESORT – QUAPAW

8:25 a.m.	**Welcome** John Morris Williams OBA Executive Director			
8:30 a.m. – 9:20 a.m.	**Can I Take This Case? A Primer on Conflicts - ETHICS** Gina Hendryx OBA General Counsel			
9:20 a.m..	**Break**			
9:30 a.m. – 10:20 a.m.	**Everything You Wanted to Know About Indian Law, But Were Afraid to Ask** O. Joseph Williams Jeff Keel			
10:20 a.m.	**Break**			
10:30 a.m. - 11:30 a.m.	**Keys to Managing a Twenty-First Century Law Office** Jim Calloway			
11:30 a.m.	**LUNCH** *(Included in Seminar Registration Fee)*			
	Black Hawk	**Sacred Elk**	**Victor Griffin**	**Saracen**
12:30 p.m. – 1:20 p.m.	**Advanced Training in PDF Files** Catherine Sanders Reach	**Estate Planning and Undue Influence** Lee Ann Drummond	**Indian Child Welfare Act Transfers to Tribal Courts and Sex Offender Registration in Indian Country** Steve Hager Chrissi Ross Nimmo	**Why Practicing Law is Killing Your Law Practice** Don Pope
1:20 p.m.	**Break**			
1:30 p.m. - 2:20 p.m.	**Criminal Defense Motions Practice** Debbie Maddox	**Domestic Violence and the Court System** Deb Stanaland	**Unclaimed Property in Oklahoma** Kathy Janes	**Starting a Law Practice Q & A** Jim Calloway
2:20 p.m.	**Break**			
2:30 p.m. - 3:30 p.m.	**What's Hot & What's Not in Running Your Law Practice** Catherine Sanders Reach Jim Calloway			

2010
OBA SOLO & SMALL FIRM CONFERENCE
& YLD MIDYEAR MEETING

DOWNSTREAM CASINO RESORT, QUAPAW, OK JUNE 24-26, 2010

Register online at www.okbar.org/solo or return this form.

Full Name: _____ OBA#: _____

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Phone: _____ Fax: _____ E-mail: _____

List name and city as it should appear on badge if different from above: _____

Registration Fees: Registration fee includes 12 hours CLE credit, including one hour ethics. Includes all meals: Thursday evening, poolside buffet, breakfast buffet Friday & Saturday, buffet lunch Friday & Saturday, Friday evening buffet.

	Circle One
Early-Bird Attorney Registration **(on or before June 10, 2010)**	$175
Late Attorney Registration **(June 11, 2010 or after)**	$225
Early-Bird Attorney & Spouse/Guest Registration **(on or before June 10, 2010)**	$275
Late Attorney & Spouse/Guest Registration **(June 11, 2010 or after)**	$325
Spouse/Guest Attendee Name: _____	
Early-Bird Family Registration **(on or before June 10, 2010)**	$325
Late Family Registration **(June 11, 2010 or after)**	$375

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Spouse/Guest: _____ Family: _____ Age: _____

Family: _____ Age: _____ Family: _____ Age: _____

Total $: _____

Thursday, June 24 - 18 Hole Golf (_____ of entries @ $50 each) Total $: _____

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CC: _____

Expiration Date: _____ Authorized Signature: _____

No discounts. Cancellations will be accepted at anytime on or before June 10, 2010 for a full refund; a $50 fee will be charged for cancellations made on or after **June, 11 2009. No refunds after June 16, 2010. Call 1-(888) 396-7876 for hotel reservations. Ask for the special OBA rate.**

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Expectations

By John Morris Williams

Not too long ago I had the chance to go to Disney's Epcot Center. I had been before and thought it would be fun to see how much it had changed over the years — and to relive some fond memories. It was a fun time.

While I was there, I observed several episodes of parents and children that seemed counterintuitive for the "Happiest Place on Earth." In fact, I saw one father yelling, screaming and using language I had not heard since I was in an accident in a taxi in New York City. The recipient of this barrage was a 6-year-old.

From the best I could tell the explosion was over the fact the father had expended time and money, and the child was not acting happy enough. As outlandish as that sounds, it appeared to be what was happening. Here was one stressed out adult transferring all of his fears and frustrations on a 6-year-old. I have to wonder if this was the result of unmet expectations. Did the father expect that if he spent his time and money taking his child to Epcot that somehow this would transform his clan into one happy family? Given what I observed, child protective services and some serious counseling and anger management might have been the better use of time and money. In short, it was obvious that the father's expectations, however misguided, were not met and as a consequence he was stressed, abusive and irrational.

Not every failure to meet expectations has this severe of a reaction. However, failure to have our expectations met is disappointing. In an age where real time and instantaneous is the advertised standard, our expectations are not always met. Sometimes I question whether our expectations are reasonable. I marvel when something actually works. However, perhaps I am in the minority. To me ATM machines are still a miracle. I remember when you had to go to the bank between 9 a.m. and 3 p.m. to get cash or make a deposit. However, I have seen people pretty upset over an ATM that was down at 10 p.m. The fact is that in today's world, if you put it out there, it better work.

> "The fact is that in today's world, if you put it out there, it better work."

I realize that OBA members live very much in a world of real time and instantaneous. We are a small organization compared to big banks, large online retailers and other big companies providing real-time, instantaneous services. However, we realize that if we put it out there, it better work. That is a constant challenge for us. With limited resources we are striving to replicate the real-time, instantaneous experiences that our members are having with other organizations that many times have thousands of times more resources.

It is my personal goal to enhance the professional lives of our members. I want each of you to have a good experience in using our systems and dealing with our staff. Although we are pretty good, we are not perfect. Every member of our staff strives to give great customer service, and I see examples of that every day. Likewise, we have tried to build and maintain online systems that give a high level of service. I am aware that those systems are not always perfect and that we need to increase our efforts, within our resources, to improve those services.

The fact is that we live in a world that has created some pretty high expectations without sometimes knowing the resources and efforts it takes to meet those expectations. Another fact is that we are a member organization, and we are using member dues to create and maintain these systems. It is a real balancing act to stay between the lines of responsible expenditures and to meet the expectations of online, real-time, instantaneous member services.

In the coming months, we will be reviewing and evaluating all of our online services. I hope that as we continue to build upon these systems that we can meet your expectations and continue to give you great value in your membership.

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

Oklahoma Bar Journal Editorial Calendar

2010

- May:
  Commercial Law
  Editor: Jim Stuart
  jtstuart@swbell.net
  Deadline: Jan. 1, 2010

- August:
  Oklahoma Legal History
  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

2011

- January:
  Meet Your OBA
  Editor: Carol Manning

- February:
  Tort/Civil Litigation
  Editor: Leslie Taylor
  leslietaylorjd@gmail.com
  Deadline: Oct. 1, 2010

- March:
  Criminal Law
  Editor: Dietmar K. Caudle
  d.caudle@sbcglobal.net
  Deadline: Jan. 1, 2011

- April:
  Law Day
  Editor: Carol Manning

- May:
  Real Estate and Title Law
  Editor: Thomas E. Kennedy
  kennedy@gungoll
  jackson.com
  Deadline: Jan. 1, 2011

- August:
  Children and the Law
  Editor: Sandee Coogan
  scoogan@coxinet.net
  Deadline: May 1, 2011

- September:
  Bar Convention
  Editor: Carol Manning

- October:
  Labor and Employment Law
  Editor: January J. Windrix
  janwindrix@yahoo.com
  Deadline: May 1, 2011

- November:
  Environmental Law
  Editor: Emily Y. Duensing
  emily.duensing@oscn.net
  Deadline: Aug. 1, 2011

- December:
  Ethics & Professional Responsibility
  Editor: P. Scott Buhlinger
  scott@bwrlawoffice.com
  Deadline: Aug. 1, 2011

Your Next Cell Phone Should be More than Just a Phone

By Jim Calloway, Director, OBA Management Assistance Program

This month's column is dedicated to all of the people who have said, "I just want my cell phone to work like a phone… and I sure don't want to try to type anything into it."

The last few months have featured a lot of media items about phones. Nielsen has released projections indicating that even though smart phones are used by 21 percent of the U.S. market now, that number will soar to over 50 percent by the end of 2011. That explains the flood of ads about phones we have all noticed on TV the last few months. If you have shopped for a new phone recently, you have probably already encountered a sales push toward smart phones and the realization that the lower-end "feature phones" available are starting to look more like cheap junk. Recently *The Wall Street Journal* broke the story that Apple would be producing iPhones this year for Sprint and Verizon users, ending AT&T's iPhone monopoly.

This is big news for many Oklahoma lawyers who could not use the AT&T network in their area due to network coverage issues or personal preference. When over half of mobile phone users are using these high-powered phones, my guess is that well over half of lawyers will be too.

But it won't be a pushy phone salesperson that convinces a reluctant lawyer to upgrade to a new phone. It will be seeing or reading of something someone does with their phone that sounds really useful. And it is dead easy to use this next generation of phones.

At ABA TECHSHOW in Chicago this past month, I was struck by the fact that almost all attendees were using their phones to do many things effortlessly, from e-mail exchanges with the office to posting updates to social networking sites to getting directions. In fact, if any group of people needed to know something, a few seconds later someone would start reciting the answer from their phone. I saw lots of iPhones at ABA TECHSHOW and the session "60 iPhone Apps in 60 Minutes" was packed. (See list of those apps in the sidebar).

It is also noteworthy that on April 3, 2010, many excited buyers lined up to pick up their new iPads, the tablet computers that operate a lot like iPhones do.

As to just wanting a simple phone that just makes and receives calls, I respect that. I've even said it. But I urge those readers to keep an open mind. My iPhone is perhaps the best piece of technology I have ever owned if one uses ease-of-use to powerful features ratio as a comparison scale to make the determination. Colleagues tell me similar things about their Droid phones and the Blackberry line includes many powerful phones.

The phrase "smart phone" doesn't do justice to how smart, flexible and useful the current generation of state-of-the-art phones is today. Some are calling these phones app phones. But for simplicity's sake, this month's article will focus on the iPhone 3GS because that's what I've used for the last month and because the iPhone has by far the largest number of apps. Blackberry and Android users should read on anyway. Not only do many of these apps work on your phones, but I will include some links to expert's picks for the most popular apps for your phone of choice as well.

This is not to say that the iPhone will continue as the

dominant app phone. Recent statistics on mobile Web traffic indicate Android use may exceed that of the iPhone in the U.S. very soon. The iPhone still dominates worldwide. But the most telling trend is that phone browsing is up 193 percent in just one year.

Having said that, it still is true that the iPhone is nothing short of revolutionary. Gizmodo's technology columnist Jesus Diaz noted in his popular piece on the new iPad that "the iPhone changed the idea of what a phone should be without anyone truly realizing it." gizmodo.com/5506692/ipad-is-the-future

Mobile cell phones are game changers to begin with, as anyone who has been rescued from automobile trouble by making a call can attest. Most lawyers who want their phone to be "only a phone" have recognized that having your favorite phone numbers programmed into the phone is a necessity and having the calendar on the phone synced to the office digital calendar is a great benefit. This can be accomplished with the lower-priced feature phones. But the concept of having an easy-to-use pocket computer with Internet access with you at all times is very powerful.

Fastcase has released a free iPhone app so you can always find court opinions anytime you have your iPhone handy. Oklahoma lawyers should note that at the present time, you need to register for this service and this will be a different account than the one provided for you by the Oklahoma Bar Association. So you will not be able to access your favorites, history and other research customization you have created on your account via the iPhone.

But before I give you some more examples of the things that you can do with an app phone, let's address the "typing on the phone" issue. I hated trying to type on my Treo (and every other smart phone I have had previously). Typing was serviceable for doing calendar entries and four-word e-mail replies, but not much else for me. I do recognize that others have mastered typing into their phones at decent speeds.

Entering text on the iPhone is best done in the horizontal position via a surprisingly nice keyboard on the touch screen. It works very well for a guy with big fingers.

But the individual committed to avoiding typing on the phone can find a surprising number of ways to minimize it. First of all, let's look at the free Dragon Dictation iPhone app from Nuance. Yes, you read that correctly. The company that produces the Dragon Dictate Naturally Speaking speech recognition application for computers provides a free version for the iPhone. After installing the app, you just click on the red button to record and when you finish, Dragon processes your speech into text. Proofreading is strongly suggested, however.

Jott is another option. A lawyer who doesn't mind paying a monthly charge can use Jott from any phone. Many of us used this service when it was free and really liked it. For $3.95 per month, you can receive unlimited voice-to-text conversions with a maximum recording time per session of up to 15 seconds or with Jott Pro Unlimited voice-to-text conversions of up to 30 seconds for $12.95 per month. There is a pay-as-you-go plan at $6.95 for each five minutes of transcription. (jott.com/jott/jott-assistant-signup.html) There is a Jott iPhone app, which is probably really nice. But this service can obviously work with any phone as you are dialing a number and dictating text that is to be e-mailed to someone.

Interestingly some lawyers have adopted the practice of sending voice messages as e-mail attachments. These typically go to the lawyer's staff for quick assignments or items the lawyer doesn't want forgotten. Unlike calling the office, this does not interrupt your staff. When the staff person checks e-mail, they hear the lawyer's recorded words. With the iPhone, the lawyer can dictate into the Voice Memos app that comes standard with the iPhone and then send the file as an attachment to an e-mail. Then the voice memo can be played by the staff at the office. (Note: The default file format played in Quicktime. I did not try to use other audio players).

The fact that the iPhone has a GPS built in as a part of standard service means you can always know your location. The Maps feature of the iPhone can show your exact location on a map and map out routes to your destination, keeping track of your progress as you travel. I really like the free Around Me app. It will locate a wide range of businesses and landmarks close to your current location and direct you to the one you choose. This worked nicely to find the closest pharmacy to the Chicago Hilton while attending ABA TECHSHOW.

(The possible evidence generated by an iPhone that tracks its every location change has implications for law enforcement, family lawyers and many others. That will prove interesting).

Like Around Me app, there are many worthwhile iPhone apps that are free. For those that are not free, the typical price is 99 cents. The apps are installed on the iPhone via the App Store and iTunes. The apps can be acquired at any time. You can learn about a great app during lunch and install it right then while you are discussing it. When you learn of a new app, you can just tap on the App Store icon and type the name of the app to search for it.

The familiar view of the iPhone is called the home screen. It features the applications that are preinstalled with the iPhone. As more applications are installed, up to 10 additional home screens may be created. These can be used to group like applications together. The accompanying screen shot shows a home page configured for various news feeds. When the user decides to catch up on current events, having all the newsfeeds together lets one quickly review lots of headlines from various sources when deciding what to read. *The New York Times* app is frequently cited as a top news app. It is free at this point, although that may change later this year.

There really is an app for almost everything, including physical things. Install a magnifying glass app so you'll never have to struggle with fine print again. The GPS is so precise you can add a virtual level with a little bubble that tells you exactly when that

Using one Home Page for all newsfeeds is a time-saving technique.

diploma is hanging level on the wall.

Locating anything on the iPhone is a snap. Apple introduced Spotlight search with the iPhone OS 3.0 on March 17, 2009. This searches across everything. Searching for a person's first name will return contact info, e-mails from that person and perhaps even a song on your iPod with that name in the title. It is often much easier than locating something on a computer.

Most every list of top iPhone apps will include Pandora, the Internet radio service. Listening to Pandora is free for 40 hours per month and if you exceed the 40 hours you can pay 99 cents to be able to listen for the rest of month or you can upgrade to Pandora's Premium plan. I would venture a guess that most busy lawyers will not break the 40 hour per month barrier and will not mind the 99 cent charge if they elect to do so. Pandora lets you set up many custom radio stations that play your artists combined with artists you may not have heard of that have a similar sound. You can set up a Jimmy Buffett station or a Lady Gaga station or an '80s "hair band" station.

The camera in the iPhone has three megapixel resolution. There are many apps that provide more powerful camera utilities and controls. But you can also use the iPhone camera for different types of things.

RedLaser is a very popular app that, among other things, allows you to scan the bar codes on products in stores and learn whether that price is competitive or whether there might be a better price in a store down the street or online.

With the JotNot app, you can photograph documents like receipts and the photograph will be automatically processed into something that looks like a scanned copy of the receipt. See "JotNot Turns Your iPhone's Camera Into A Document Scanner" at techcrunch.com/2009/03/17/jotnot-turns-your-iphones-camera-into-a-document-scanner. You can e-mail the result or keep track of your expenses to generate with a utility like Expensifiy, which is available for most types of smart phones.

Skype is perhaps an unlikely candidate for an iPhone app. After all, Skype is a VOIP phoning app and you already have the ability to call on the AT&T network. But Skype brings a couple of interesting features. As everyone has noted, the AT&T network is far from perfect. Sometimes a building design will keep you from being able to access the AT&T phone network. Skype will let one make calls over a wi-fi connection, calling other Skype users free of charge and land lines for pennies. One of the most interesting iPhone tips at ABA TECHSHOW was

Collections of Apps and Tips:

60 iPhone Apps in 60 Minutes as shown at ABA TECHSHOW 2010 - posted by the presenters:

www.lawyersuccesstips.com/?p=400

www.iphonejd.com/iphone_jd/2010/03/60-apps-in-60-minutes.html

"70 Sizzling & Lawyer-Friendly Apps" ABA Journal Oct. 2009 www.abajournal.com/magazine/article/70_sizzling_apps/

From March/April 2010
Law Practice Magazine
Essential Apps for Your Smartphone:

"Apps for the Lawyer's BlackBerry" by Toby Brown and Dan Pinnington www.abanet.org/lpm/magazine/articles/v36/is2/pg40a.shtml

"Apps for the Lawyer's iPhone" by Jeff Richardson www.abanet.org/lpm/magazine/articles/v36/is2/pg42.shtml

"Apps for the Lawyer's Palm Pre" by Erik Mazzone and Nerino J. Petro www.abanet.org/lpm/magazine/articles/v36/is2/pg46.shtml

If the monthly fees for an iPhone data plan give you pause, check out "10 Essential Money-Saving iPhone Apps" bit.ly/dv2FQw

Wired Magazine "20 Favorite iPhone Apps of 2009" www.wired.com/gadgetlab/2009/12/wired-favorite-iphone-apps/

iPhone short cuts from iPhoneJD www.iphonejd.com/iphone_jd/2008/12/more-iphone-shortcuts.html

"Five Apps for the Lawyer" www.tuaw.com/2009/08/06/five-apps-for-the-lawyer/

to load Skype and prepay $10 on your Skype account just in case, especially before traveling overseas.

Within days after I acquired an iPhone, I ordered *iPhone: The Missing Manual* by David Pogue from Amazon.com. The book is not required to operate the iPhone, but it has taught me a number of time-saving shortcuts in just the first few chapters. I could have opted to save a little bit of money and purchase iPhone Missing Manual app instead for only $4.99, but my internal old fuddy duddy decided having the book in one hand and the iPhone in the other might be a better learning experience. For more info see missingmanuals.com.

Finis Price, a practicing lawyer and iPhone user who produces the TechnoEsq blog is an unapologetic advocate of lawyers using the iPhone. "I certainly believe it is not only appropriate but a necessity," said Price. "The ability to screen share with my office computer in and of itself sets the iPhone as a superior phone to prior smart phones like the Blackberry or Palm. Coupled with the productivity apps allowing editing of documents, physical signatures of PDF documents and a host of other available apps, the iPhone outperforms any other smart phone when used in a legal environment."

It is certainly not the purpose of this article to convince lawyers to rush out and buy an iPhone today. For one thing, it is anticipated that a new iPhone 4.0 and lots of other really nice new phones utilizing the other platforms will be released over the next few months.

At ABA TECHSHOW, I told some people that I was trying to maintain my objectivity about the iPhone. My colleague Courtney Kennaday, practice management advisor for the South Carolina Bar Association replied, "It sounds like to me you have already drunk the Kool-Aid….or should I say Apple juice?"

IS THE IPHONE TOO INSECURE FOR LAWYERS?

Is the iPhone less secure than some other types of cell phones?

While I do not have the expertise to answer this question, the answer according to some security experts is yes. This has led some law firms to ban use of the iPhone.

My good friends and colleagues, Sharon D. Nelson and John Simek, have taken the lead in criticizing the iPhone's lack of security. (Sharon is my teammate on our monthly "Digital Edge: Lawyers and Technology" podcast). Their article, "Why Lawyers Shouldn't Use The iPhone: A Security Nightmare" bears reading by every lawyer who is contemplating an iPhone purchase. www.senseient.com/articles/pdf/iphone_security.pdf You should read that piece in its entirety to appreciate my responsive comments below.

One of the more interesting interactions of ABA TECHSHOW 2010 was the audience response when Sharon gave "don't use an insecure iPhone" as one or her 60 Tips. The #techshow Twitter tag immediately recorded lots of comments including one presenter on the Mac track who threatened to walk out. Many attendees disagreed with her comment. Others supported it and criticized the Mac "fan-

boys." It was pretty entertaining and I think I may have missed one or more tips reading the silent brouhaha on my iPhone.

I cannot dispute the things that Sharon and John say in their piece. But I don't arrive at exactly the same conclusion. I would admit that my view is somewhat informed (or would that be biased) by the observation that a lot of iPhone-toting lawyers are not about to give them up.

A true risk-management analysis has to take into account probabilities of risk. Likely every attorney would agree with the following sentence: "An attorney should do everything possible to protect client confidences." But "everything" is not only a very high standard, but one that is impossible to achieve. One could always do more.

Take your physical client files in your office for example. What steps would one take to make sure those confidential files are protected at night? All of us would agree that leaving the office unlocked at night where anyone could walk in would be negligent. Most would agree that deadbolt locks are a requirement as well. Do standards of legal ethics require a burglar alarm be set at night? I have not researched this question. I assume most law offices have a burglar alarm set at night to protect the firm from losing its equipment and other valuables to a burglar and the additional protection of confidential client information is a collateral benefit. But wouldn't an armed guard in the file room at night provide superior protection? Of course it would. And one armed guard might fall asleep or be bribed, so two would be even better. My point, obviously, is that the search for absolute security leads to madness.

So even though we all agree that our duty to protect client confidences is absolute, we should also be able to agree that when we design our systems we cannot ignore the cost-benefit analysis. Have there been situations where armed guards have been hired to protect unattended files? I would imagine so. There are corporate mergers and acquisitions where a premature leak of information could cost millions of dollars and temporary security guards might seem a reasonable precaution. Can the average law firm afford to do that year 'round? Absolutely not.

I recall learning many years ago of a law firm that had only one computer connected to the Internet located in the library. This provided absolute protection from hackers and others who might attempt to compromise information over the Internet. Yet today, most would be of the view that this practice would be impossible today. Few lawyers could practice effectively without access to e-mail, OSCN, Fastcase, Google and other online tools. But as we have all seen with episodes of spyware, malware, hackers and other bad things online, being connected to the Internet is not without risk.

Sharon and John's observations have certainly convinced me that I would have to think strongly about whether I would use an iPhone if my law practice was in corporate mergers where industrial espionage was a real possibility.

But I also note that lawyers have carried confidential client files in their briefcases for years. Surely I'm not the only lawyer who has found a lost briefcase at the courthouse and looked inside to determine whose it was so it could be returned to the lawyer. A briefcase is by definition less secure than a Passcode-protected iPhone – and a complete client file within it certainly carries with it a greater risk of compromising client confidences than stray bits of information that might be retained by an iPhone. So were those briefcases all potential ethical violations? Or were they only ethical violations if lost while unlocked?

Put another way, when does being a victim of the crime of information theft become my fault or, at least, my responsibility?

My take on iPhone security is that each person has to make their own decision. You owe it to yourself and your clients to take reasonable precautions, but you cannot guard against every contingency.

In the same way that you'd want to lock the door at the office at night, you need to set the four-digit passcode on your iPhone to protect yourself and others if it is lost or stolen. Absent that, anyone who finds a misplaced phone has complete ability to view your e-mail, your texts, your contacts, your photos and masquerade as you to anyone whom you communicate with via your iPhone.

Next you should consider what is contained on your iPhone. One of the primary issues is that images of things viewed on the phone are retained for a long time as well as deleted e-mails and deleted voice mails. Different lawyers have different degrees of expo-

sure depending on the type of practice and the way they use their phone.

Large-firm IT departments are more supportive of the Blackberry than the iPhone. One can appreciate that as the Blackberry was designed more as an enterprise tool while the iPhone was designed more for individuals. And if the IT department is supporting 100 mobile phones then the question is not whether a phone will be lost, but how many will be lost each year. With the many phone users, it is almost guaranteed that some phone will contain very sensitive information. And with a hundred users, one can count on at least 10 percent refusing to comply with reasonable security practices and the ability to force that compliance is valuable. A solo or small firm lawyer can become aware of the risks and take more appropriate actions.

One of these actions is to set the iPhone to wipe its data after 10 consecutive incorrect passcode attempts. While this feature has not been widely publicized, it seems a very sensible precaution. See details on how to do this at support.apple.com/kb/HT1212. If the iPhone is later recovered, it can be connected to the original setup computer to restore the settings via iTunes. While Sharon and John note the ability to bypass the passcode is of great concern, the person who finds your lost iPhone might not be a forensics expert and might take care of deleting your data for you.

Even besides security and privacy concerns, you do not want to lose your iPhone because it would be quite expensive to replace if you had to pay the full price and not the AT&T subsidized price. You will want to buy a protective case for your iPhone to protect it, so consider slipping a business card in the back of your case and writing on it "Reward offered for return of lost iPhone."

A service offered by Apple or MobileMe, costs $99 per year and provides you the ability to track the location of the phone, remotely wipe the data and display messages on the screen, like "Please return this phone. Call 555-1212." If you lost the phone in a grassy field, you can use MobileMe to make it beep.

I foresee some iPhone user and some law enforcement officer enjoying tracking down a stolen iPhone and watching the expression on the wrongdoer's face as the phone is made to beep while in the thief's hands. Here's an entertaining account of one individual's tracking and eventual recovery of an iPhone in a thief's hands: www.iphonetheif.blogspot.com.

I asked Finis Price of the TechnoEsq blog about cell phone security. He said, "While I believe that reasonable safety precautions should be taken, obviously the same security measures taken on a desktop PC cannot be taken with a cell phone. The iPhone and Blackberry's remote wipe capabilities should satisfy most state bar association ethics requirements on confidentiality." He noted that the Droid phone has neither encryption nor remote data wiping capability.

For those who want more information on remote wiping of data, the following seems to be a comprehensive article: "Inside iPhone 3.0's Remote Wipe Feature" www.macworld.com/article/141605/2009/07/remotewipe.html.

So let's summarize our security tips…

iPhone Security Tips:

1) Don't lose your iPhone. All of security questions about the iPhone revolve around what can be done if someone with expertise comes into possession of your iPhone.

2) Use a passcode to lock the phone. Yes, it makes the phone a little less easy to use, but it is the equivalent of locking your doors on your office.

3) Set the iPhone to automatically wipe its data after 10 consecutive incorrect passcode attempts. support.apple.com/kb/HT1212

4) Consider other remote wiping and lost phone locator options. MobileMe may sound like a good investment to many.

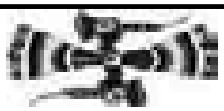
5) As soon as possible after losing an iPhone, change your passwords on your e-mail, contacts and social networking accounts.

6) Regularly sync the iPhone to iTunes to back up your apps and data.

7) Consider what data may be carried on your iPhone. Some may opt not to have the office e-mail on the phone. Others may do periodic wipes of the phone and then restore the settings and apps (but not the data) via iTunes.

8) Put your business card in the iPhone protective case with "Reward offered for return of lost iPhone" written on the back to help encourage someone to do the right thing.

9) Don't lose your iPhone.



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'No, I Can't…'

By Travis Pickens, OBA Ethics Counsel

Client: "Hey, I appreciate the job you did on collecting that receivable for my company. That guy had been stringing us along for the last three years and thought we would never do anything about it. It's amazing what some customers will tell you about paying their bills, when they have no intention of doing it!"

Lawyer: "Yes, well, I'm not 'amazed;' we lawyers get conned, too, sometimes. Anytime I hear 'I'm going to get you some money,' that means if I get paid at all, it will be not enough and no time soon."

Client: "Hey, I've got something else I want to talk to you about. My parents are ready to retire, and I just found out they have not done any estate planning… none at all…. Could you help them with that?"

Lawyer: "Well, I have been thinking of developing a small estate planning practice on the side, something with a lower stress level, but I have really not pursued it because I've been too busy with my commercial law practice… I guess I could get up to speed and give your folks a break for being my first real project."

Client: "I would feel comfortable with you doing it; you have done a great job for my company and are the smartest person I know. You need to know my parents can be difficult, though. They have a small but successful manufacturing business with about 20 employees, an office and land, and expensive equipment. They have saved every spare nickel the last 50 years. They are the kind of people who think a $2 jump in their copay is robbery. They don't tip the pizza boy and keep food months after the expiration dates. It's scary. Their idea of a 'going-nuts night on the town' is the early-bird special at Golden Corral, followed by the dollar movies. While you and I were 'letting it ride' in the stock market, they put all their savings into long-term, low-risk investments. With the value of their business, it's added up to quite a number, probably $3 - $4 million, not including their house and other things."

Lawyer: "Well, I could probably do this. There will be some tax issues and succession planning that need to be mulled over, but I'm sure your parents have a CPA they used that I could work with."

Client: "Accountants would be another 'extravagance' to my parents; they rarely used them. Usually, they just hired the bookkeeper that did the books for their small church. I would not put much stock in the final product, and God knows what an audit would find."

Lawyer: "I can't believe people who hold themselves out as something they are not or represent to people that they can get up to speed on something when they have no time to do so. They just end up procrastinating and causing more harm than good. They are really taking chances with someone else's money. At least I am telling you I'm not an estate planning lawyer."

Client: "I'm sure you learned all about this in law school, and it's no big deal... lots of ready-made documents. You probably can just get someone's forms and change the names, addresses and dates, and they'll be good to go."

Lawyer: "Not exactly, every situation is different. Using someone else's forms

is like using someone else's power tools; bad things can happen. I will really have to put some time in this to do it right. I probably need to go to several seminars and do a lot of reading. I never took tax class in law school… not my kind of fun, too boring, and I'm not the 'detail' type. I've got a friend or two who does this, so I can call them with questions, but that may be a hassle because they have busy practices themselves and won't be able to help on short notice. Plus, I have a couple of major hearings coming up and a trial next month, and another the month after that. Your parents have really done well, and it's going to take a lot of time and tax planning to do this right... hmm. Maybe, I shouldn't take this on right now."

Client: "Up to you, but I would love for you to do it. You've done a great job for me over the years. I know you can do this."

Lawyer: "But business advice and commercial litigation is what I do — and do well. Maybe, I should just stay away from this right now. I go home exhausted from the work I have now and never touch my briefcase. I just fall asleep on the couch after dinner watching TV.

"Maybe right now, the smart thing to say would be simply, 'No, I can't.'"

THE MORAL OF THE STORY

We lawyers often think we can do almost any kind of legal work. And most of us probably can, given the time, money and motivation to prepare. Problem is, if you have a relatively busy practice, it is difficult to take the time and make the effort to learn what you need to know in a new area.

Significantly, the first substantive rule of the Rules of Professional Conduct is "Competence," Rule 1.1:

> A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

The comments to the rule are helpful. In determining the "requisite knowledge and skill in a particular matter," the relevant factors from Comment [1] include:

- the relative complexity and specialized nature of the matter
- the lawyer's general experience
- the lawyer's training and experience in the field
- the preparation and study the lawyer can give the matter
- whether it is feasible to refer or associate or consult with a lawyer of established competence in that field.

Comment [2] says new lawyers can be as competent as a practitioner with long experience, although the more experienced lawyer may anticipate more problems and do the work in less time. Interestingly, Comment [3] indicates that "[i]n an emergency a lawyer may give advice or assistance in a matter in which the lawyer does not have the skill ordinarily required where referral to or consultation or association with another lawyer would be impractical," although assistance should be limited to that reasonably necessary in the circumstances.

The level of thoroughness and preparation necessary can vary, depending upon the complexity and consequence of the matter. Rule 1.2 c. allows lawyers to limit the scope of their representation, but two requirements must be met: 1) the client has given their "informed consent" (*see ORPC 1.0 e.*) and 2) it is reasonable to do so. Sometimes, these requirements are ignored by busy lawyers making snap decisions on behalf of their clients.

Finally, Comment [6] mandates a lawyer "should keep abreast of changes in the law and its practice… " The legal profession is evolving at a pace never before seen. Advances in technology, newly important legal areas, the increased number of specialized courts, and the dizzying number of laws and local rules that respond to today's multiplying issues make it increasingly difficult to keep up. I often hear experienced lawyers say they limit their practices to an area or two they really know — and stay out of the rest. These lawyers are generally very good at what they do. Unsurprisingly, these lawyers also seem to be among the happiest in their practices.

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.

March Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Holiday Inn Express in Weatherford on Friday, March 26, 2010.

REPORT OF THE PRESIDENT

President Smallwood reported he attended the OBA Day at the Capitol and served as moderator of the mortgage foreclosure seminar. He also discussed the Investment Committee's anticipated final report with committee members.

REPORT OF THE PRESIDENT-ELECT

President-Elect Reheard reported she attended the February Board of Governors meeting, McIntosh County Bar Association meeting, March Pittsburg County Bar Association luncheon honoring McAlester's first ever mock trial team and the ABA Bar Leadership Institute in Chicago. She also participated in Day at the Capitol activities including the legislative reception and chaired the Strategic Planning Committee meeting. She announced that Executive Director Williams has been elected National Association of Bar Executives secretary, which is a one-year term.

REPORT OF THE PAST PRESIDENT

Past President Parsley reported he attended the February board meeting, Strategic Planning Committee meeting and two meetings of the Texas County Bar Association.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the Audit Committee meeting, Investment Committee meeting, Lawyers Helping Lawyers Assistance Program meeting, NABE Program Committee meeting, Annual Meeting meeting, OETA night, OBA Day at the Capitol, staff meeting on trust account reporting, staff directors meeting, Supreme Court teacher and school of the year ceremony, Bar Leadership Institute in Chicago, Northwest Oklahoma Alliance reception and staff monthly celebration. He also met with the chair and vice-chair of the Bar Center Facilities Committee, the contractor regarding remodel of the reception area and with legislators regarding matters on the OBA legislative agenda. He participated on a panel at the OU College of Law on mental health and stress issues and in the Leadership Academy scavenger hunt.

BOARD MEMBER REPORTS

Governor Brown reported he attended the OBA/Legal Aid educational program, OBA Day at the Capitol and briefing, legislative reception, Tulsa County Bar Association Nominations and Awards Committee and co-chaired the OBA Bench and Bar Committee meeting. **Governor Carter** reported she attended the February board meeting and a two-day Professional Responsibility Tribunal hearing. **Governor Chesnut** reported he attended the February Board of Governors meeting and related activities, Audit Committee meeting, Investment Committee meeting, Day at the Capitol and legislative reception. **Governor Devoll** reported he attended the February Board of Governors meeting in Oklahoma City, Audit Committee meeting and the Garfield County Bar Association meeting. **Governor Hixson** reported he attended the February board meeting, Audit

Committee meeting, formal swearing-in ceremony for District Judge Gary E. Miller and OBA night at OETA Festival 2010. He also served as a quarterfinals scoring panelist for the High School Mock Trial Program. **Governor McCombs** reported he attended the Board of Governors Thursday night dinner, Friday board meeting and the McCurtain County Bar Association luncheon. **Governor Moudy**, unable to attend the meeting, reported via e-mail that she attended the February board meeting and OBA Day at the Capitol. **Governor Rivas** reported he attended the Thursday night board dinner, February board meeting, Day at the Capitol and reception honoring the Oklahoma Legislature. He also reviewed Bar Center Facilities Committee documents and attended the committee meeting by teleconference. **Governor Shields** reported she attended the Audit Committee meeting, Investment Committee meeting, Oklahoma County Bar Association meeting and OBA Day at the Capitol, including the reception for legislators. **Governor Stuart** reported he attended the February board meeting and related activities, Access to Justice Committee meeting, Communications Committee meeting and Pottawatomie County Bar Association meeting. He also worked on recruiting articles for the May *Oklahoma Bar Journal* issue.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Aspan reported new attorney receptions are planned in Oklahoma City and Tulsa. She said a YLD committee is working on updating the senior handbook, and she summarized plans for the division's May 1 community service project at libraries around the state.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the Office of the General Counsel is currently defending two matters wherein the OBA and/or one of its former employees is a named defendant. A third case, *Mothershed v. Oklahoma Bar Association*, was dismissed for a second time. The Professional Responsibility Commission authorized the general counsel to file two lawsuits in Tulsa County seeking injunctions against two individuals alleging the unauthorized practice of law. The Office of the Attorney General wants to join the civil lawsuits.

She also attended the Oklahoma County Bar Association Fee Grievance Committee meeting, February Professional Responsibility Commission meeting and spoke to the Custer County Bar Association at its monthly meeting.

A written status report of the Professional Responsibility Commission and OBA disciplinary matters for February 2010 was submitted for the board's review.

INDIAN LAW SECTION REQUEST TO FILE AMICUS BRIEF

Indian Law Section Chairperson Debra Gee reviewed issues related to the section's request to submit an amicus brief in support of the Osage Nation's petition for rehearing in *Osage Nation v. Kemp*, Tenth Circuit Court of Appeals, Appeal No. 09-5050. She said voting by section members was currently being conducted. Joseph Williams, Indian Law Section immediate past president, explained his firm has represented the Osage Nation in this lawsuit since 2001, and he reviewed the major issues in dispute. Thomas Kemp, Indian law Section member and Oklahoma Tax Commission chairman, stated his position that this was not a matter for the bar association. The board voted to deny the Indian Law Section request to file amicus brief.

INVESTMENT COMMITTEE REPORT

Governor Chesnut reported the committee met and reviewed an investment report prepared by Administration Director Combs. He said Paula Kerrigan, OBA account manager with Morgan Stanley Smith Barney, attended the meeting and described investment options. She explained the OBA investments are considered to be moderate on the risk scale, and the total portfolio for 2009 had an annualized return of 30.7 percent, beating the Standard & Poors 500 index by 4.2

percent. It was noted the OBA got into the fund just as the economic downturn occurred, and investment results appeared poor but have since improved. He said it was the Investment Committee's recommendation to continue the current investment strategy in investment Model 5.

APPROVAL OF AUDIT FIRM ENGAGEMENT

Governor Stuart reported the Audit Committee requested bids from four regional accounting firms for a five-year period, and three responded. He said the committee recommends Smith, Carney & Co. PC of Oklahoma City, which submitted the lowest bid. Each firm has an impressive list of clients and employees with numerous years of auditing experience. The board voted to retain Smith, Carney & Co. to conduct the OBA audit.

AWARDS COMMITTEE RECOMMENDATIONS

Governor Stuart, as committee vice-chair, reported the committee recommends no changes in the awards to be presented at the OBA Annual Meeting with one minor amendment to the description of the John Shipp Award for Ethics. The board approved the Awards Committee recommendations.

APPOINTMENT TO THE BOARD OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

President Smallwood reported he is submitting the names and resumés of Joel Carson, Oklahoma City; Clif Gooding, Oklahoma City; and Tom Riesen, Oklahoma City, to Gov. Henry for his appointment to one governing board position for the Oklahoma Department of Mental Health and Substance Abuse Services.

RESOLUTIONS

The board voted to issue resolutions expressing appreciation to the Custer County Bar Association and to Past President Stephen Beam for their hospitality in hosting the Board of Governors in Weatherford for the March meeting.

EXECUTIVE SESSION

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

SOLO AND SMALL FIRM CONFERENCE

Executive Director Williams reviewed the merits of Downstream Casino Resort, which is a new location for the conference this year to be held June 24-26. He said overflow hotels are expected to be utilized.

CLAIM OF BRIAN L. BROWN

The board voted to deny the claim submitted by Brian L. Brown.

BAR CENTER REPORT

Executive Director Williams reported the lobby is to be painted soon, and the reception desk will be moved. He said work on meeting room 131 and the adjacent break area will begin in late May. He explained the plan for repairing the two bleach stains to the carpet in the east wing on the basement level.

NEXT MEETING

The Board of Governors will meet in McAlester on Friday, April 23, 2010.

SEMINOLE COUNTY LAW DAY FORUM
SEMINOLE COUNTY COURTHOUSE, SOUTH COURTROOM
WEWOKA, OKLAHOMA
WEDNESDAY, APRIL 28, 2010

Location: Seminole County Courthouse, South Courtroom
120 South Wewoka Ave., Wewoka, Oklahoma

Program: CLE for LAW DAY. MODERATOR: Gordon R. Melson, Law Day Co-Chair

8 a.m. – 8:30 a.m.	**REGISTRATION & WELCOME** **(coffee & donuts will be served)**
8:30 a.m. – 9:10 a.m.	**CURRENT LEGISLATIVE DEVELOPMENTS** **presented by Rep. Ryan Kiesel, State Representative & Adjunct Professor of Law, OU College of Law**
9:10 a.m. – 10 a.m.	**"OMG! EVIDENCE CHALLENGES IN AN ELECTRONIC WORLD"** **presented by Mary Sue Backus, Professor of Law, University of Oklahoma College of Law**
10 a.m – 10:10 a.m.	**BREAK**
10:10 a.m. – 11 a.m.	**THE INTERNET AGE & REDUCED EXPECTATIONS OF PRIVACY UNDER THE FOURTH AMENDMENT** **presented by Randall T. Coyne, Frank & Edna Elkouri Professor of Law, University of Oklahoma College of Law**
11 a.m. – 11:50 a.m.	**NEGOTIATING WITH INSURANCE COMPANIES IN THESE "TRYING" TIMES** **presented by Bradley West, West Law Firm, Shawnee, Ok.**
12 p.m. – 12:30 p.m.	**LAW DAY LUNCHEON**
12:30 p.m. – 1:10 p.m.	**JUDICIAL INDEPENDENCE IN THE 21ST CENTURY** **presented by Allen Smallwood, President of the Okla. Bar Assn.**
1:15 p.m – 2 p.m.	**RECEPTION & UPDATE ON THE RESPONSIBILITIES OF THE OKLAHOMA LEGAL PROFESSION** **presented by John Morris Williams, OBA Executive Director**

Approved for 5 Hours of CLE

Registration Form

Complete One Form Per Person. Feel Free to Duplicate for Additional Registrations

Full Payment of $70 (includes lunch) Must Accompany this Form.

Name and OBA #_____

Address _____

Phone Number: _____ E-Mail _____

Mail to: Judge Tim Olsen, P.O. Box 678, Wewoka, Ok. 74884-0678; (405) 257-3386

Grants and Awards — Site Visits Planned

By Phil Frazier

The Grants and Awards Committee, chaired by Judge Valerie Couch, met Feb. 25, 2010. The meeting was in preparation for the annual grants and awards meeting where grant applicants are interviewed following a thorough review of written applications for funding.

Those in attendance, in addition to Judge Couch, were trustees Brooke Murphy, Cathy Christensen, Gabe Bass, Bob Farris, Phil Frazier and Director Nancy Norsworthy. Also attending by telecommunications were Judge Millie Otey, Leonard Logan, Deirdre Dexter, John Munkacsy and Judge Shon Erwin.

Many of the regular grantees have either lost all their funding from previous sources, other than OBF, or have been told to expect significant reductions in funds. The OBF is also expecting a decrease in available grant funds due to the sagging economy and the nearly nonexistent return on investments and IOLTA receipts.

The committee has decided to schedule on-site visits to several of the OBF grantees within the next few weeks. A goal of the committee is to include the county bar associations within the county of the on-site grantee. It is hoped that the county bar associations will participate in the review activity report and this might help to boost awareness and support. Nancy Norsworthy will coordinate the on-site visits with each of the committee members assigned to visit various grantees.

> **"We hope to strengthen relationships with our grantee organizations, especially during the economic slump," reports OBA Grants and Awards Chair Valerie Couch.**

The goal of this endeavor is to enlighten the foundation as to the activities, needs and performance of the grantees, as well as to explore procedure and improvements which would simplify the grant application procedure. We hope to strengthen relationships with our grantee organizations, especially during the economic slump, reports Judge Couch.

One of the grantees OBF partially funds has already presented a final report for the funded period. OBF awarded the Native American Legal Resource Center $20,000 to fund a project for the processing of wills and estate planning services for American Indian beneficiaries of Indian Trust land in Oklahoma.

The Native Legal Resources Center (NALRC) operates within the Oklahoma City University Law School. It is an academic center that encourages scholarship in the area of Indian law and policy. NALRC provides a variety of legal services to tribal governments within Oklahoma. Under the program, OCU law students are able to receive course credit through the externship program for client representation. The representation is done under the supervision of a licensed attorney.

Casey Ross-Petherick is an adjunct professor of law at Oklahoma City University and serves as a deputy director of OCU Law's Wills

Externship Program. The project, under her direction, teams up with OBF Office of Special Trustees for American Indians and the U.S. Department of Interior to offer assistance in preparing wills for Indian trust beneficiaries. This program is made possible by the Oklahoma Bar Foundation and the department of interior. It was the first of its kind in the United States. The project has been tremendously successful benefiting not only Oklahoma Indians but the OCU Law School and, in particular, the students participating within this program.

This is but one more example of the many programs which are funded by the Oklahoma Bar Foundation and without this funding the program would either be seriously hampered or cease to exist entirely.

Most important to the NALRC, and the many other successful programs like it, is the funding participation from all the lawyers of Oklahoma who make such endeavors possible. Without the help from Oklahoma lawyers, and their generosity, such success stories and our pride in being an Oklahoma lawyer would simply not exist.

Phil Frazier is president of the Oklahoma Bar Foundation. He can be reached at pfrazlaw@swbell.net.

Oklahoma Bar Foundation

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☐ Seasonal Greeting/New Year Wish ☐ Speaker Honorarium ☐ Other_____

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Many thanks for your support & generosity!

Making Time to Do It — Pro Bono Publico

By Emily J. Hufnagel and A. Gabriel Bass

There is an effort in the Oklahoma Legislature to eliminate a significant percentage of funding utilized by Legal Aid Services of Oklahoma Inc. and Oklahoma Indian Legal Services Inc., which is currently allocated to these organizations by the state's Legal Services Revolving Fund. Despite the dedication of pro bono and public service attorneys in Oklahoma and across the country, some 80 percent of Americans have unmet legal needs because they cannot afford to pay an attorney.[1]

Throughout the year, Legal Aid Services of Oklahoma continues to address unmet legal needs of impoverished Oklahomans through its pro bono attorney referral system. Approximately 671,000 Oklahomans qualify for Legal Aid Services, which means that these individuals are living at or below 125 percent of the federal poverty guidelines.[2] It has been estimated that if Legal Aid Services loses funding from the Legal Services Revolving Fund, this could result in the loss of as many as 18 staff attorney positions throughout the state that handle primarily family and domestic violence cases.

At a time when the confluence of the economic crisis and jeopardized funding could leave many Oklahomans facing grave consequences, it is crucial that the private bar increase its commitment to pro bono services and funding to nonprofit legal organizations. Keep in mind that discharging bad debt for unpaid fees does not mean that you have provided pro bono representation.[3] It is the act of accepting a matter for representation with the expectation of doing so at no charge or for a substantially reduced charge that defines the representation as pro bono publico — for the public good.[4]

The ABA's Model Rules of Professional Responsibility Rule 6.1 states:

> Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of pro bono publico legal services per year.[5]

While 29 states state a specific aspirational goal in their professional responsibility code, Oklahoma does not.[6] The Oklahoma Rules of Professional Conduct Rule 6.1, adopted in 1988, states:

> A lawyer should render public interest legal service. A lawyer may discharge this responsibility by:
>
> (a) providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations;
>
> (b) serving without compensation in public interest activities that improve the law, the legal system, or the legal profession; or
>
> (c) financial support for organizations that provide legal services to persons of limited means.[7]

Of the 29 states with specific hourly goals for annual pro bono service, eight states' rules provide a specific monetary contribution to legal services organizations as an alternative to the hourly goal.[8]

The comments to Oklahoma Rule 6.1 clarify that the policy is intended to mirror that of the ABA House of Delegates which encourages the provision of legal representation at no charge or at a substantially reduced fee in one or more of the following areas: "poverty law, civil rights law, public rights law,

charitable organization representation and the administration of justice."[9] The Oklahoma Supreme Court in *State v. Lynch* encouraged the formation of voluntary pools to represent indigent defendants, commending lawyers who provide pro bono representation:

> Attorneys are licensed by the Supreme Court of Oklahoma to practice law, and an attorney owes his/her first duty to the Court. Likewise, the Court has an immediate interest in the character and function of the bar — a good bar is necessary for a good bench. We applaud attorneys or associations of attorneys who volunteer to provide pro bono legal representation or representation of indigent defendants at rates which may be drastically under the market rate of the lawyers skills and services.[10]

Agreeing to provide pro bono representation does not necessarily require a long-term commitment. Representing a Section 8 or public housing tenant in an eviction case is not terribly time consuming and could prevent the client from losing housing benefits. Agreeing to represent a client in an expungement case is a manageable time commitment that could be vitally important to the person's ability to obtain employment. Another example of an unmet need that is not going to break the bank is helping a victim of domestic violence obtain a victim's protective order.

For the week of Oct. 25-31, 2009, the ABA Standing Committee on Pro Bono and Public Service sponsored the first National Pro Bono Celebration Week in recognition of pro bono attorneys across the nation — to raise awareness and to recruit increased involvement. There were over 600 coordinated and registered events nationwide, with three Oklahoma-sponsored events by the University of Oklahoma College of Law, Oklahoma City University School of Law and the Tulsa County Bar Foundation/Tulsa County Bar Association.

For information about how you can become more involved in pro bono representation in your area, contact your local county bar association.

Ms. Hufnagel practices in Oklahoma City with the Bass Law Firm.

Mr. Bass is president of the Bass Law Firm with offices in El Reno and Oklahoma City. He is president of the Canadian County Bar Association.

1. Schickman, Mark I., In Honor of Pro Bono Service, *Perspective Daily Journal* (Oct. 23, 2009).
2. U.S. Department of Health and Human Services: *Administration for Children and Families — LIHEAP Clearinghouse*, http://liheap.ncat.org/profiles/povertytables/FY2010/popstate.htm (last updated Jan. 27, 2010).
3. Okla.R.P.C., Rule 6.1; *William K. Warren Medical Research Center Inc. v. Payne County Board of Equalization*, 1994 OK CIV APP 167, 905 P.2d 824.
4. *In re Busetta-Silva*, 314 B.R. 218, 227 (10th Cir, NM 2004).
5. ABA Model Rule Prof. Conduct, Rule 6.1.
6. American Bar Association, *Policies — State Pro Bono Ethics Rules: State-by-State Pro Bono Service Rules*, www.abanet.org/legalservices/probono/stateethicsrules.html#appendix_b (last updated March 15, 2010).
7. Okla.R.P.C., Rule 6.1
8. American Bar Association, Policies – *State Pro Bono Ethics Rules: State-by-State Pro Bono Service Rules*, www.abanet.org/legalservices/probono/stateethicsrules.html#appendix_b (last updated March 15, 2010).
9. Okla.R.P.C., Rule 6.1.
10. *State v. Lynch*, 1990 OK 82, 796 P.2d 1150, 1159 – 1160.

Statewide Community Service Projects Scheduled for May 1

By Molly Aspan, YLD Chairperson

One of the purposes of the YLD is to provide its members with a more effective means to participate in activities promoting involvement in public service activities. Along these lines, the YLD is often referred to as the "public service arm of the bar." In order to effectuate this purpose, the YLD created a Community Service Committee and is planning and organizing a Statewide Community Service Project Day benefiting public libraries to be held on Saturday, May 1 in conjunction with Law Day.

The Board of Directors of the YLD consists of directors elected from each of Oklahoma's nine judicial districts and at-large. Each of this year's directors has taken responsibility for a project in their area. Thus, on May 1st, the YLD is hosting its first ever Statewide Community Service Project Day at 13 public libraries across the state. We would like to encourage all YLD members, as well as any other attorneys who would like to be involved, to select a library to help on May 1. Each of these projects are "done-in-a-day" projects and will most likely last, at most, a few hours. This event provides an avenue for lawyers across the state to network with each other while giving back to their local communities. We hope to have a good turnout at each of these libraries to show Oklahoma how attorneys care about the public and our communities. The libraries and contact information for each project are:

Guthrie Public Library

Project Coordinator:
LeAnne McGill
leanne@mcgillrodgers.com
(405) 285-8048

The Guthrie Public Library has requested our assistance cleaning the Oklahoma history section and helping to rebind some books. Please meet at the Guthrie Public Library at 9 a.m. to help with this project.

Mary Kimberly Library (Kiowa)

Project Coordinator:
Hannah Cable
hannahangela@gmail.com
(918) 426-6765

The Mary Kimberly Public Library has a particular tie to the OBA, as it was started a few years ago by a local attorney, Kimberly Adams, who saw a need for a library in the rural community. The Mary Kimberly Library sits on a large double lot and needs some landscaping help. Please meet at 10 a.m. on May 1 to help us plant 10 Bradford pear trees along one side of the lot and plant five maple trees in front. We also plan to make the library a flower bed to add some color.

Lawton Public Library

Project Coordinator:
Nathan Johnson
njohnson@cityof.lawton.ok.us
(580) 581-3266

The lawyers of Comanche County will be washing windows and picking up trash around the library grounds. Please plan to join us at the Lawton Public Library on May 1 at 8 a.m.

Library of Enid and Garfield County

Project Coordinators:
Kaleb Hennigh
khennigh@westoklaw.com
(580) 234-8447

Robert Faulk
Robert@faulklawfirm.com
(580) 249-9100

The Library of Enid and Garfield County has requested our assistance rearranging several areas of the library and moving books from one area to another. Please skip your weight lifting regimen and join us on May 1 at 10 a.m. We will have lunch following this workout, so please be sure to let us know if you plan to volunteer.

Muskogee Public Library

Project Coordinators:
Roy Tucker
rtucker@muskogeeonline.org
(918) 684-6276

Doris Gruntmeir
doris.gruntmeir@va.gov
(918) 577-3983

The Muskogee Public Library has requested our assistance in a redesign of the rest area outside the front entrance to the facility, which will include the preparation for expanding the existing sidewalk area and general cleanup of the surrounding grounds. Those interested in participating should meet at the front entrance of the library by 10 a.m. on May 1.

Norman Public Library

Project Coordinator:
Breea McCorkle
breea.diane@gmail.com
(405) 473-5974

We will be hosting a two-part service project at the Norman Public Library. From noon to 2 p.m., we will be assisting in organizing, reshelving and alphabetizing the library's ever-growing collection of DVDs. Then at 2 p.m., we will be setting up for the Law Day celebration, a program to be held in the Children's Department. This program will involve crafts, games and guest speakers like Mayor Cindy Rosenthal, Rep. Scott Martin, Rep. Wallace Collins, Officer Flores of the Norman Police Department, other elected city officials and many more! Come for either part of the project, or participate in both!

Oklahoma City Metropolitan Library System

Project Coordinators:
Jennifer Kirkpatrick
jhkirkpatrick@eliasbooks.com
(405) 232-3722

Lane Rudder Neal
lrneal@gmail.com
(405) 713-1600

Karolina Roberts
kroberts@eliasbooks.com
(405) 232-3722

Jeff Trevillion
jeff@mycpalawyer.com
(405) 297-3844

Collin Walke
walkelaw@gmail.com
(405) 752-6000

The Oklahoma City Metropolitan Library System has requested our assistance cleaning up the outdoor area and landscaping around the Belle Isle Library located at 5501 N. Villa, Oklahoma City, 73112. Please meet at 9 a.m. with your gloves and gardening tools ready.

Perry Carnegie Public Library

Project Coordinator:
Bryon Jay Will
bryon@bjwilllaw.com
(405) 308-4272

We will be meeting at the Perry Carnegie Library at 9 a.m. on May 1 to paint hand rails, power wash the front of the library, clean flower pots and plant new flowers. Please wear your work clothes and come join us!

Ponca City Library

Project Coordinator:
Jacob Biby
jbiby@mjjlawfirm.com
(580) 765-9967

The Ponca City Library has requested our assistance cleaning out flower beds and planting new flowers, as well as replacing some glass on coffee tables. Please meet at the Ponca City Library at 9 a.m. on May 1 to help with this project.

Shawnee Public Library

Project Coordinator:
Joe Vorndran
joe@scdtlaw.com
(405) 833-2005

Please meet at the Shawnee Public Library at 10 a.m. with your gardening tools in hand! We will be removing some old plants and planting many new ones as well as general upkeep and mulching.

Tulsa City-County Library System

Project Coordinators:
Molly Aspan
maspan@hallestill.com
(918) 594-0595

Kimberly Moore-Waite
Kimberly.moore-waite@laok.org
(918) 295-9433

Amber Peckio Garrett
amber@garrettlawcenter.com
(918) 895-7216

Briana Ross
bross@ameagletitle.com
(918) 894-4150

The Tulsa City-County Library System has identified three branches in Tulsa for volunteers to help spruce up the landscaping outside by cleaning out flower beds and planting new flowers and plants. The branches and their addresses are:

- Brookside Library - 1207 E. 45th Pl., Tulsa, 74105 (near 45th & Peoria)
- Schusterman-Benson Library - 3333 E. 32nd Pl., Tulsa, 74135 (near 32nd & Harvard)
- Nathan Hale Library - 6038 E. 23rd St., Tulsa, 74114 (near 21st & Sheridan)

Please join us at one of the three branches to help at 10 a.m. on May 1. Also, don't forget to bring your gardening gloves and any gardening tools you may have!

Save the Date
Tuesday, April 27

New Admittee Receptions

5:30 p.m.

Mickey Mantle's Steakhouse
Bricktown ◆ Oklahoma City

Leon's Brookside ◆ Tulsa

Join the OBA
Young Lawyers Division in
welcoming the newest members of
the Oklahoma Bar Association
at these two receptions.

All new admittees are invited
and current bar members
are encouraged to attend.

For more information,
contact Doris Gruntmeir,
Doris.Gruntmeir@va.gov

Or Molly Aspan,
maspan@hallestill.com

Print or Electronic?

You now have a choice.

Continue receiving your printed *Oklahoma Bar Journal* court issues (two per month) in the mail – ***or*** receive an e-mail with a link to the electronic version instead. Mailed copies stop. There's no dues reduction, but you save some trees.

If you want the electronic version of the court issues and didn't indicate that on your dues statement go online to http://my.okbar.org/Login and sign in. Click on "Roster Info" to switch to electronic. Be sure your e-mail address is current.

Want the print version?

No need to do anything.

Calendar

April

14 **OBA Government and Administrative Law Practice Section Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jami Fenner (405) 844-9900

15 **OBA Access to Justice Committee Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Kade A. McClure (580) 248-4675

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

17 **OBA Title Examination Standards Committee Meeting;** Stroud Community Center, Stroud; Contact: Kraettli Epperson (405) 848-9100

19 **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;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton (918) 591-5229

22 **New Admittee Swearing-In Ceremony;** Supreme Court Courtroom; Contact: Board of Bar Examiners (405) 416-7075

OBA Leadership Academy; 11 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Heidi McComb (405) 416-7027

23 **OBA Board of Governors Meeting;** McAlester, Oklahoma; Contact: John Morris Williams (405) 416-7000

Association of Black Lawyers Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donna Bacy (405) 424-5510

24 **OBA Young Lawyers Division Board of Directors Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Molly Aspan (918) 594-0595

27 **OBA New Lawyer Experience;** 8 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jim Calloway (405) 416-7051

OBA Young Lawyers Division New Admittee Receptions; 5:30 p.m.; Mickey Mantle's Steakhouse, Oklahoma City and Leon's in Brookside, Tulsa; Contact: Molly Aspan (918) 594-0595

28 **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

OBA Professionalism Committee Meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Sharisse O'Carroll (918) 584-4192

29 **OBA Ask A Lawyer;** OETA Studios, Oklahoma City; Contact: Tina Izadi (405) 521-4274

May

5 **OBA Law-related Education Project Citizen Showcase;** 8:30 a.m. – 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024

OBA Women in Law Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Renee DeMoss (918) 595-4800

7 **OBA Diversity Committee Meeting;** 11 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Marvin Lizama (918) 742-2021

10 **OBA Uniform Laws Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Fred Miller (405) 325-4699

11 **Death Oral Argument;** Nicholas Alexander Davis; D-2007-891;10 a.m.; Court of Criminal Appeals Courtroom

OBA Law-related Education Committee Meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jack G. Clark (405) 232-4271

13 **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

14 **OBA Family Law Section Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Kimberly K. Hays (918) 592-2800

15 **OBA Title Examination Standards Committee Meeting;** Tulsa County Bar Center, Tulsa; Contact: Kraettli Epperson (405) 848-9100

18 **OBA Civil Procedure Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton (918) 591-5229

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

20 **OBA Access to Justice Committee Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Kade A. McClure (580) 248-4675

21 **OBA Board of Governors Meeting;** Tulsa County Bar Center, Tulsa; Contact: John Morris Williams (405) 416-7000

22 **OBA Young Lawyers Division Board of Directors Meeting;** Tulsa County Bar Center, Tulsa; Contact: Molly Aspan (918) 594-0595

26 **OBA Professionalism Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Sharisse O'Carroll (918) 584-4192

31 **OBA Closed** – Memorial Day Observed

June

2 **OBA Women in Law Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Renee DeMoss (918) 595-4800

4 **OBA Diversity Committee Meeting;** 11 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Marvin Lizama (918) 742-2021

Oklahoma Bar Foundation Meeting; 12:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070

9 **OBA Government and Administrative Law Practice Section Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jami Fenner (405) 844-9900

11 **OBA Family Law Section Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Kimberly K. Hays (918) 592-2800

15 **OBA Civil Procedure Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton (918) 591-5229

16 **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

17 **OBA Access to Justice Committee Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Kade A. McClure (580) 248-4675

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

18 **Association of Black Lawyers Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donna Bacy (405) 424-5510

OBA Board of Editors Meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Carol Manning (405) 416-7016

19 **OBA Title Examination Standards Committee Meeting;** Stroud Community Center, Stroud; Contact: Kraettli Epperson (405) 848-9100

21 **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

23 **OBA Professionalism Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Sharisse O'Carroll (918) 584-4192

24-26 **Solo and Small Firm Conference;** Downstream Casino Resort; Quapaw, Oklahoma; Contact: OBA Management Assistance Program (405) 416-7008

YLD Midyear Meeting; Downstream Casino Resort; Quapaw, Oklahoma; Contact: Molly Aspan (918) 594-0595

25 **OBA Board of Governors Meeting;** Downstream Casino Resort; Quapaw, Oklahoma; Contact: John Morris Williams (405) 416-7000

New Dean Named at OU Law

Joseph Harroz Jr. was recently named dean of the OU College of Law. Before becoming president of Graymark Healthcare in 2008, he served as OU's general counsel for 12 years. He has also served as a volunteer adjunct faculty member at the OU law school for more than a decade.

Mr. Harroz will assume his new duties on July 1, when current dean Andy Coats leaves the deanship to return to teaching full time. Mr. Coats will continue to serve as dean emeritus of the college.

"Joe Harroz possesses both a keen intellect and great administrative skill," said OU President David L. Boren. "He has a deep commitment to academic excellence, and I'm confident that he will strongly support the scholarly role of the law school. He is the ideal person to build upon the solid progress made at the law school under the leadership of Dean Andy Coats."

Harroz received his undergraduate degree in economics with distinction from OU. He earned his law degree from Georgetown University Law Center in Washington, D.C., where he was an associate editor of the *Journal of Law and Policy in International Business*.

OBA Staff Member Marks Silver Anniversary

Mandatory Continuing Legal Education Administrator Beverly Petry celebrated her 25th anniversary at the OBA on April 1. Over the years, she has seen a number of changes in both the work and the environment at the OBA.

As bar membership grew, so did the amount of paper and course offerings. Today, the department has changed its reporting methods and the number of paper compliance filings has been reduced substantially. However, with online course offering exploding, the number of providers to track and approve has quadrupled in the last 10 years.

OBA Executive Director John Williams said, "Bev has the best member service model. She really loves the work, she loves the members and she loves the people she works with."

Coworker Brenda Card said, "Working with Bev is an absolute joy. She really cares about all of us and never gets frustrated or appears stressed even at the times when the work was stacked to the ceiling."

Those who want to send her a word of congratulations may do so at beverlyp@okbar.org.

OBA Member Resignations

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

LaNell Webb Collins
OBA No. 13590
4129 E. Van Buren St., Suite 250
Phoenix, AZ 85008

Hal F. Morris
OBA No. 10587
801 Park Boulevard
Austin, TX 78751

B. Wendell Routon
OBA No. 17795
P.O. Box 593
North Anson, ME 04958

Patrick G. Stoia
OBA No. 8653
P.O. Box 1499
Winter Haven, FL 33882

Bar Supports Public Television

The OETA raised more than $5,000 in private donations as part of its volunteer effort to support the state's PBS-TV station during the annual OETA Festival. The donation sustained the association's top "Underwriting Producers" level that is recognized in the station's monthly programming guide.

President Allen Smallwood presents a check to on-air personality and lawyer Kim Brasher during the OETA Festival March 16.

Bar members turned out in force the evening of March 16, taking pledges by phone during the fundraiser. This year's volunteers were Melinda Alizadeh-Fard, Lou Barlow, Bill Baze, Stephen Beam, Mary Jane Coffman, Brian Hermanson, Mark Hixson, Frank Holdsclaw, Tina Izadi, Ashley Little, Stephanie Lorance, Ed Oliver, Nancy Parrott, Charles Rouse, Linda Ruschenberg, Tony Scott, Michael Shanbour, Allen Smallwood, Sarah Soles, Margaret Travis, Mary Travis, Rex Travis, Tim Wallace and Ricki Walterscheid.

Law Group Gives Back

The Oklahoma City Association of Black Lawyers recently made a sizeable donation to the earthquake relief effort in Haiti.

ABL President Emmanuel Edem of Oklahoma City said, "The members of the Association of Black Lawyers were devastated by the horrific events that have occurred in the beautiful country of Haiti and felt it was our humanitarian duty to help the victims in some small way to rise from the ashes. We hope our contribution will show the Haitian people that the black lawyers of Oklahoma City care about their plight and have them in our prayers as they struggle to put their lives back together."

Those wishing to contribute may contact Lynne Saunders by e-mail at lsaunders1956@live.com or (405) 496-0591.

The ABL's purpose is to educate, support and encourage experienced and new young African American lawyers in the practice of law. The ABL works hand in hand with the OBA on issues such as diversity in the law, increase of minority law students in Oklahoma's law schools, retention of minority law students, and recruitment and retention of minority lawyers in Oklahoma law firms. The ABL is often new minority lawyers' first point of contact with Oklahoma City's legal community and its efforts are to engage all facets of the community in order to advance the causes important to the African American population and have input into those processes that strengthen us all as a nation and community.

The Oklahoma City ABL is 30 years old this year. The organization will hold a black tie affair in honor of this historic achievement in the fall of 2010. As planning moves forward, the ABL extends an open invitation to Oklahoma's legal community to join in celebrating its 30-year anniversary this fall. More information will be announced in upcoming issues of *The Oklahoma Bar Journal*.

Supreme Court Ruling on Foreign Nationals and Deportation

The U.S. Supreme Court issued a decision on March 31, protecting the right to counsel for noncitizens charged with committing a crime. The court held that criminal defense lawyers must inform noncitizen clients of any deportation consequences for a particular crime if they enter a guilty plea. The case, *Padilla v. Kentucky,* involved a Vietnam War veteran who was a lawful permanent resident of the United States. LPRs may still face deportation in certain circumstances, including convictions for certain crimes. The court recognized that current immigration laws impose harsh and mandatory deportation consequences onto criminal convictions.

Padilla alleged his criminal defense lawyer told him not to worry about the immigration consequences of pleading guilty to a crime, but advice was wrong. In fact, the guilty plea made Mr. Padilla subject to mandatory deportation from the United States. The state of Kentucky said Mr. Padilla had no right to withdraw his plea when he learned of the deportation consequence. The landmark decision reversed the Kentucky court, but more importantly rejected the position adopted by several courts that a noncitizen is protected only from "affirmative misadvice" and not from a lawyer's failure to provide any advice about the immigration consequences of a plea.

Summary Source: American Bar Association and Oklahoma City attorney Kelli J. Stump.

SECOND NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill the following two judicial offices: All positions are for a six-year term: July 1, 2010 – June 30, 2016.

Judge, Oklahoma Workers' Compensation Court, Position 6
Judge, Oklahoma Workers' Compensation Court, Position 7

[There is no residency requirement imposed upon appointees to the Oklahoma Workers' Compensation Court. To be properly appointed, one must have been licensed to practiced law in the State of Oklahoma for a period of not less than five years prior to appointment.]

This is the second Notice of Judicial Vacancy for Judge of the Workers' Compensation Court. Oklahoma Statutes and the Constitution require a minimum of three nominees, in addition to the incumbent, be sent to the Governor and Chief Justice of the Supreme Court for selection of the next Judges of the Workers' Compensation Court. Each judge shall continue to serve until his or her successor has been appointed and qualified. (Okla. Const. Art. 7B §4, 85 O.S. §1.2)

Application forms can be obtained by contacting Tammy Reaves, Administrative Office of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521 2450, or online at www.oscn.net under the link to Judicial Nominating Commission. Applications must be submitted to the Chairman of the Commission at the same address **no later than 5:00 p.m., Friday, April 16, 2010. If applications are mailed, they must be postmarked by midnight, April 16, 2010.**

Mark D. Antinoro, Chairman
Oklahoma Judicial Nominating Commission

Kudos

Gary Butler has been elected judge of Wichita County Court in Wichita County, Texas. He will take office in January 2011. The court is a general jurisdiction court hearing criminal, family, civil and probate matters.

Bob Burke was the first recipient of the Lee Allan Smith Oklahoma Legacy Award, established this year to honor someone who has worked to grow pride in the community for future generations. Mr. Burke has written nearly 100 historical books about prominent Oklahomans and their life stories.

Jonathan D. Woods was recently elected to the Board of Directors of the Association of Governmental Risk Pools, which serves more than 300 public entity risk and benefits pools in North America and is committed to providing educational and professional support to achieve excellence in pool governance, management and services. He will serve a four-year term on the board.

Jennifer Henshaw McBee was recently appointed by Gov. Brad Henry as a member of the Carl Albert State College Board of Regents.

Walter R. Echo-Hawk Jr. was honored at the annual Native Justice Powwow March 20 at TU. The Powwow recognizes organizations and individuals who have contributed to the legal field through law enforcement, legal services and legal scholarship. Mr. Echo-Hawk has worked as a lawyer for the Native American Rights Fund for more than 35 years. He was instrumental in securing passage of two federal laws that respect Indian and religious freedoms and also the repatriation of Native American remains to Indian tribes.

Phil Busey Sr. was honored by the U.S. Small Business Administration as the 2010 Oklahoma Small Business Person of the Year. Mr. Busey is chairman and chief executive officer of the Oklahoma City-based Delaware Resource Group.

Steven L. Rahhal has been named a "Client Service All-Star" by The BTI Consulting Group. Mr. Rahhal was one of only 13 employment attorneys in the country to earn this distinction.

On The Move

Keith D. Magill and **Nathan T. Weems** announce the formation of their new practice, Magill & Weems PLLC. **Jerry D. Magill** joins the firm in an of counsel capacity. The new practice will emphasize family law while also offering general legal services, as well as mediation services (both family/domestic and general civil). The firm's offices are located at 4216 N. Portland Ave., Suite 102, Oklahoma City, 73112; (405) 948-7716.

Susan L. Gates has been named the national director of Washington D.C.-based "America's Edge," a nonprofit organization that mobilizes business leaders who work to ensure the success and competitive edge of American businesses through proven investments in children and youth. Previously, she spent five years as the general counsel of the Children's Defense Fund, also located in Washington, D.C. Prior to coming to D.C., Ms. Gates practiced for 18 years with Hall Estill in Tulsa. She may be reached at sgates@americasedge.org or (202) 408-9284.

Winningham, Stein & Basey announces **Ken Feagins** has joined the firm as of counsel in its Oklahoma City office. Mr. Feagins will focus his practice in the areas of immigration-related export controls and employer sanctions. He received his bachelor's degree from OU, his J.D. from Vanderbilt and his LL.M. from Columbia. Prior to his association with the firm, Mr. Feagins worked for eight years at the Oklahoma State Department of Health. The firm concentrates its practice in the areas of immigration, naturalization and consular law.

Secrest Hill & Butler of Tulsa has named **W. Joseph Pickard** as a shareholder of the firm. The firm name has also changed to Secrest Hill Butler & Secrest.

The Tulsa law firm of SneedLangHerrold announces that **Nik Jones** has become of counsel to the

firm and **Michael J. Cooper** has joined the firm as an associate. Mr. Jones is a 1973 graduate of the TU College of Law and received his bachelor's degree from OSU in 1971. His practice is concentrated in oil and gas title work and related mineral issues. Mr. Cooper is a 2009 graduate of OCU Law School, where he also received his bachelor's degree. He practices in the areas of civil litigation, family law and Native American law.

Mason & Olson Law Firm of Oklahoma City announces **Ann H. Butler** has joined the firm as an associate attorney. Ms. Butler earned her B.B.A. from OU with a major in finance, minor in accounting in 1988 and earned her law degree from OCU in 1991. She was previously employed by State Farm Insurance and focuses her practice in catastrophic personal injury and insurance disputes/bad faith litigation. The firm also announces a new location: 2516 NW Expressway, Oklahoma City, 73112; (405) 600-9300; Fax: (405) 600-9301; www.masonolsonlaw.com.

Carolyn S. Thompson and **Jennifer L. Thompson** announce the formation of Thompson Law Office PLLC. Carolyn Thompson has practiced family law for more than 25 years, and Jennifer Thompson has been in practice for 10 years. This mother and daughter team will continue to limit their practice to family law matters. The firm is located at 119 N. Robinson Ave., Suite 840, Oklahoma City, 73102; (405) 778-6381.

H. Leo Austin announces the formation of H. Leo Austin & Associates. Mr. Austin was a longtime member of the law firm of Wyatt Austin & Associates DBA Wyatt, Austin, Kingery & Hale. Mr. Austin will focus his practice in the areas of Oklahoma workers' compensation claimants' cases, personal injury and Social Security. He may be reached at (866) 436-6002.

Tulsa law firm Norman Wohlgemuth Chandler & Dowdell has named **James Matthew Tilly** as an associate. He will practice in the area of business litigation. Mr. Tilly graduated with honors from the OU College of Law in 2009, where he served as articles editor for the *Oklahoma Law Review*, president of the Oklahoma Law Board of Advocates and president of the Federalist Society. He earned a B.A. in political science from OSU.

The Tulsa firm of McDaniel, Hixon, Longwell & Acord is now McDaniel, Longwell, Acord & Kroll PLLC. The firm remains located at 320 S. Boston Ave., Suite 700, Tulsa, 74103; (918) 382-9200. The firm's Web site has changed to www.mlak-law.com.

At The Podium

Joseph B. Miner was the featured speaker at the February meeting of the Oklahoma City Commercial Law Attorneys Association. He presented "Consumer Protection Act – Oklahoma Style."

Leslie Lynch, Paul Rossler, Amy Stipe and **Melissa Taylor** spoke at the OSU Women Entrepreneurs Inspire Conference last month in Oklahoma City. Their presentation was titled, "Do I Need a Lawyer: Legal Challenges for Start Ups."

UCO professor **Marty Ludlum** recently made two presentations to the Southern Academy of Legal Studies in Business. His presentations were on legal ethics and California's compassionate use of marijuana law.

L. Paul Goeringer recently gave a presentation at the Arkansas Women in Agriculture annual conference in Little Rock. The presentation was over Arkansas's right to farm law, the statutory defenses the law provides against nuisance suits and what it means for Arkansas agricultural producers.

D. Michael McBride III participated in a panel discussion at the Tribal Energy Economies: Investing in a Sustainable Future CLE Conference last month at Arizona State University, Sandra Day O'Conner College of Law in Tempe, Ariz. The discussion, titled "Federal Initiatives that Will Help Define the Future," addressed the federal government's role as a policy maker and promoter of domestic energy resources and development and how it affects the energy industry within Native American lands.

Chris A. Paul spoke on "Environmental Law

and Regulation" at the 2010 American Institute of Chemical Engineers spring meeting in San Antonio in March.

❑

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:

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Articles for the May 15 issue must be received by April 19.

Oklahoma Bar Association
Management Assistance Program Assistant

The OBA seeks a staff assistant for the Management Assistance Program. The OBA Management Assistance Program has been nationally recognized for delivery of management and technology assistance to OBA members.

The MAP assistant assists the department director with many projects. Organization and proofreading skills are important, as well as a friendly customer service-oriented attitude. For more information about the department, go to www.okbar.org/map.

Requirements:

Three or more years experience working in a law firm or legal department.

Fast, accurate keyboarding skills. Proficiency in Microsoft Word and PowerPoint. Familiarity with other software applications and Internet tools.

Willing to commit to a position requiring constant learning and teaching.

Competitive benefit package. EOE. Send resume and cover letter to OBA-MAP Assistant Search, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

Richard B. Kells Jr. of Oklahoma City died March 6. He was born Sept. 10, 1953. He received a B.S. in accounting from Central Connecticut State University in 1975, his J.D. from OCU in 1977 and an LL.M. in taxation from New York University Law School in 1979. He was a lawyer and CPA in Oklahoma City and a partner with the firm Hartzog Conger Cason & Neville PC. Prior to his work at this firm, he was a partner at the firm Andrews Davis Legg Bixler Milsten & Price. His primary areas of practice were federal and state taxation, wealth transfer planning, wills, trusts and estates, and tax controversies. He practiced in these areas for more than 30 years. He was a member and past chairman of the OBA Taxation Law Section, a member and past chairman of the Oklahoma Society of CPAs Tax Committee and served on the board of directors for the Oklahoma Society of CPAs. He was named the 2009 Outstanding Oklahoma Tax Lawyer by the Taxation Law Section of the OBA. He spoke at many national and Oklahoma seminars and served as an adjunct professor of income tax and oil and gas tax at OCU School of Law. He enjoyed studying Civil War history and visiting historical sites. He led an active lifestyle that included skiing, running, hiking and traveling. Memorial donations may be made to the Oklahoma City Community Foundation, P.O. Box 1146, Oklahoma City, 73101.

Cindy (CC) Cooper Smith of Oklahoma City died Dec. 21, 2009. She was born Sept. 17, 1946, in Odessa, Texas, and lived in the area until she left for college at the University of Texas in Austin. She graduated with a degree in advertising. She moved to Oklahoma in 1979. During her lifetime, she had many careers including teacher, writer and advertising executive. However, at the age of 42, she went to law school and added attorney to her vocations, graduating from OCU School of Law in 1991. She loved to travel and visited more than 30 countries. She viewed life as a great adventure and will be truly missed by all those who knew her. Memorial contributions may be made to the American Cancer Society.

Linda Louise Moran Rasmussen Stevens of Mustang died March 17. She was born Aug. 25, 1948, in Wichita, Kan. She was a 1966 graduate of John Marshall High School in Oklahoma City. She pursued 23-year career with the Internal Revenue Service while raising her two children. She retired early from the IRS, switched careers and completed her bachelor's degree at the University of Central Oklahoma in 1997 and then followed that up with a juris doctor degree at OCU in 2000. She had since then focused on family law, bankruptcy law and estate planning, helping people who were in dire straits on one hand, but perhaps also occasionally bringing joy to adopting parents on the other. She had a boundless faith in people to reach their potential and she saw the good in everybody and everything (perhaps even in stray dogs that might be eating her furniture). One of her many passions in life was music. She was active in church choir for many years, and her personal relationship with the Lord was evident in all that she did. Memorial contributions may be made to Mustang United Methodist Church or Ronald McDonald House Charities.

Everett John Sweeney of Norman died March 8. He was born March 22, 1945, and grew up in Thomas. He graduated from Thomas High School in 1963, Southwestern Oklahoma State University in 1967 and the OU College of Law in 1970. He practiced law for 40 years. He was an artist and writer, an attorney, historian, professor, teacher, storyteller and school bus driver. He served as Norman's Civil Right's Commissioner, a hugger in the Special Olympics, a cook for the homeless, piano player for nursing homes, ringer of the Salvation Army bell, president of the Sweeney Clan in North America, and was an active member of McFarlin Methodist Church and the Norman Kiwanis Club. Well known for his dedication, ethics and compassion, he frequently defended and protected the underprivileged and the oppressed. He carved totem poles and alabaster, flutes and bears; he played the piano, the fiddle, the guitar, the harmonica and a djembe drum. Memorial donations may be sent to the Meals on Wheels or Food for Friends Homeless Shelter.

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DOWNTOWN ATTORNEY'S OFFICE FOR RENT. This fully furnished office is located on ground floor (Storefront) in a very busy, prominent downtown Tulsa area. If interested or would like additional information, call (918) 533-2680 or (918) 914-0780.

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LAW FIRM SEEKING ASSOCIATE ATTORNEY in downtown Oklahoma City, with 1-5 years experience, and a commitment to representing tribes and tribal organizations. Preference will be given to attorneys with demonstrated experience and/or education in American Indian Law. Applicant must be licensed to practice in at least one jurisdiction; membership in good standing in the Oklahoma Bar Association is preferred, if not a member of the Oklahoma Bar, the applicant must pass the Oklahoma Bar Exam within 15 months. Applicant should possess excellent analytical, writing and speaking skills, and be self-motivated. Compensation commensurate with experience. Excellent benefits. Please send cover letter that illustrates your commitment to promoting tribal governments and Indian rights, a current resume, a legal writing sample, proof of bar admission, and contact information for three professional references to: dbond@hobbsstraus.com.

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AV-RATED DOWNTOWN TULSA FIRM SEEKS ASSOCIATE 0-2 years experience. The firm has a diverse practice featuring civil litigation, estate and tax planning, as well as family law. Drafting, brief writing, and some courtroom work can be expected. The successful candidate will have a positive attitude and the ability to effectively communicate and then follow through with assignments. Salary commensurate with experience and ability. Send resumes to "Box N," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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Half a Haircut

By Retired Judge David A. Barnett

One of the most interesting things about maturing is that we begin to understand why we have certain fears, biases or predispositions. As I have grown older, I have realized that I have a strong disdain for getting a haircut. Not until I reached middle-age did I begin to understand this dislike. After thoughtful reflection, the reason for my phobia has become quite clear.

When I was a child, our family lived on a farm about 13 miles south of Frederick. We normally made no more than a couple of shopping trips per month to Frederick. These shopping trips, when scheduled, generally took most of the day, and the itinerary included trips to the grocery store, clothing store, barbershop and, occasionally, a movie for my brothers and me. In general, whatever needed to be done in town had to be done on a Saturday.

During one such Saturday shopping trip (when I was 7 or 8 years old), my mom left me and my two older brothers at the Hotel Barber Shop while she did some other shopping. The barber shop was very busy, and our wait was quite long. As the third boy, I was the last of our crew to hit the barber chair. By the time the barber got to me, a thunderstorm had begun to develop. The barber started on my haircut and got about half done when we heard a loud boom and saw a flash of light. Within seconds, the electric power went out. By this time, my mother was back, and the barbers announced their departure to the cellar. My mother hurriedly grabbed her three urchins and herded us to the car to get home before the storm.

Not until we were on the way home was I able to communicate to my mom that my haircut had not been finished. She assured me it would be okay. However, when we got home and the storm had passed, she realized that it was not okay. The barber had done the requested "white-sidewalls" haircut, but it had only been completed to the middle of my head. The result was a perfect illustration of a boy badly needing a haircut (left side) and the same boy with his completed "white-sidewalls" haircut (right side).

Needless to say, I was devastated — knowing that I looked ridiculous and fearing some ribbing for my funny haircut. However, when we went to church the following day, it was much worse than I had even feared. I felt that I was the entertainment for the entire church. I felt even more humiliated at school on Monday and Tuesday, and it wasn't until Wednesday afternoon that my mom was finally able to take me back to town to finish the haircut. After this ordeal, I never again looked forward to the trips to the barber shop. If a storm was brewing, I wouldn't dare go near a barber shop.

Today, I sometimes avoid going to the barber shop until my family or friends make it clear that my social standing is being jeopardized by my shaggy look. I would be remiss if I did not mention that the natural attrition of my hair has helped me avoid haircuts more often, as much of my hair has turned "loose" rather than simply turned gray. Every time "haircut" is mentioned, I remember my half a haircut from 55 years ago.

Retired Judge Barnett lives in Frederick.

OBA/CLE LIVE PROGRAMS APRIL 2010

ISSUES IN JUVENILE LAW

Tulsa: April 15 - Renaissance Hotel, 6808 S. 107th E. Ave.
OKC: April 16 - Oklahoma Bar Center, 1901 N. Lincoln Blvd.

PROBATE FROM PLEADING AND BEYOND

OKC: April 15 - Oklahoma Bar Center, 1901 N. Lincoln Blvd.
Tulsa: April 23 - Renaissance Hotel, 6808 S. 107th E. Ave.

LEGAL ISSUES IN CONSTRUCTION LAW

Tulsa: April 22 - Renaissance Hotel, 6808 S. 107th E. Ave.

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OKC: April 27 - Oklahoma Bar Center, 1901 N. Lincoln Blvd.

OKLAHOMA INSURANCE LAW UPDATE 2010

Tulsa: April 29 - Renaissance Hotel, 6808 S. 107th E. Ave.
OKC: April 30 - Oklahoma Bar Center, 1901 N. Lincoln Blvd.

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