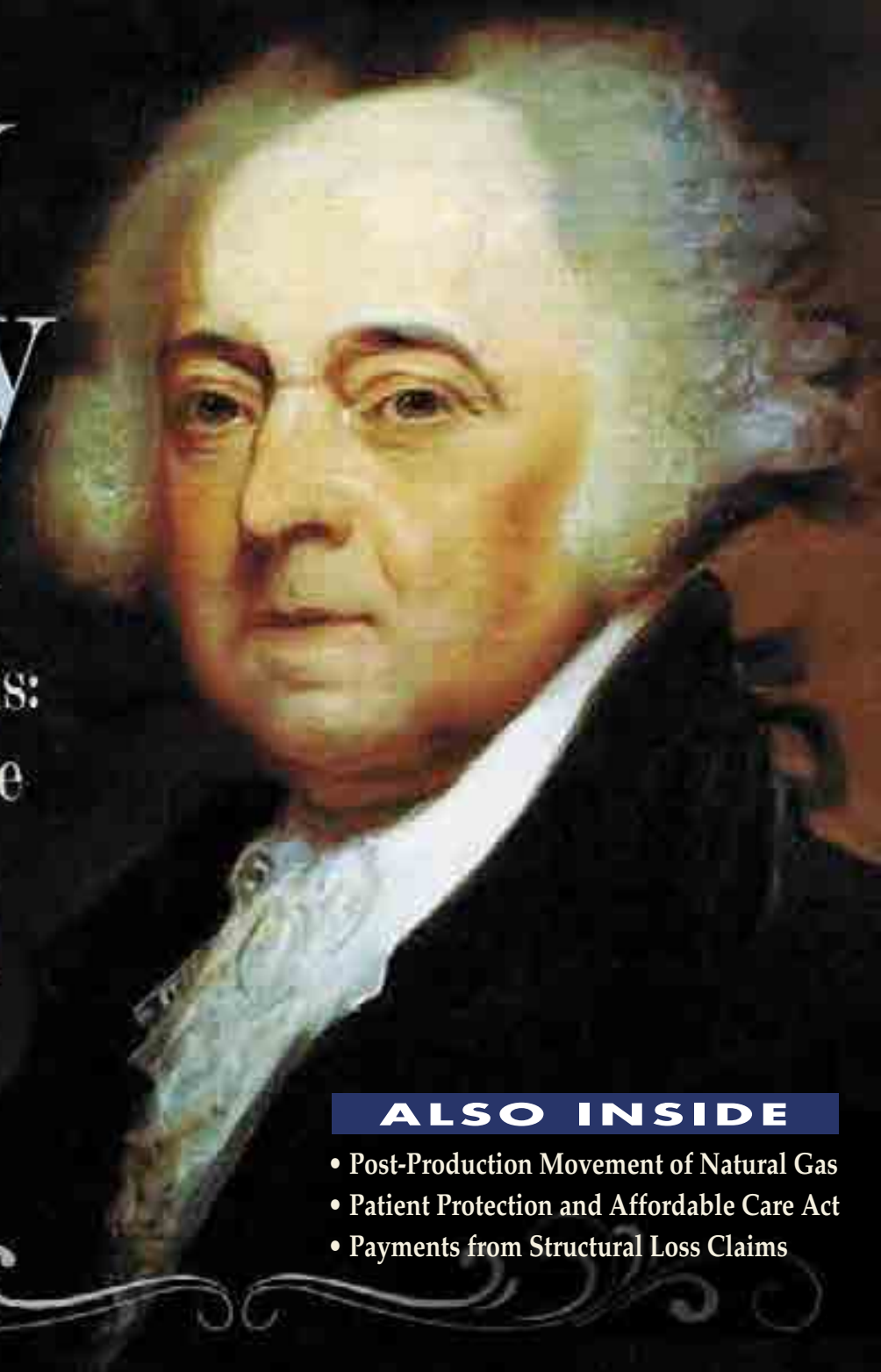
THE Oklahoma Bar JOURNAL
Volume 82 ◆ No. 11 ◆ April 16, 2011

Law Day

The Legacy of John Adams: Defending the Rights of the Accused



ALSO INSIDE

- Post-Production Movement of Natural Gas
- Patient Protection and Affordable Care Act
- Payments from Structural Loss Claims

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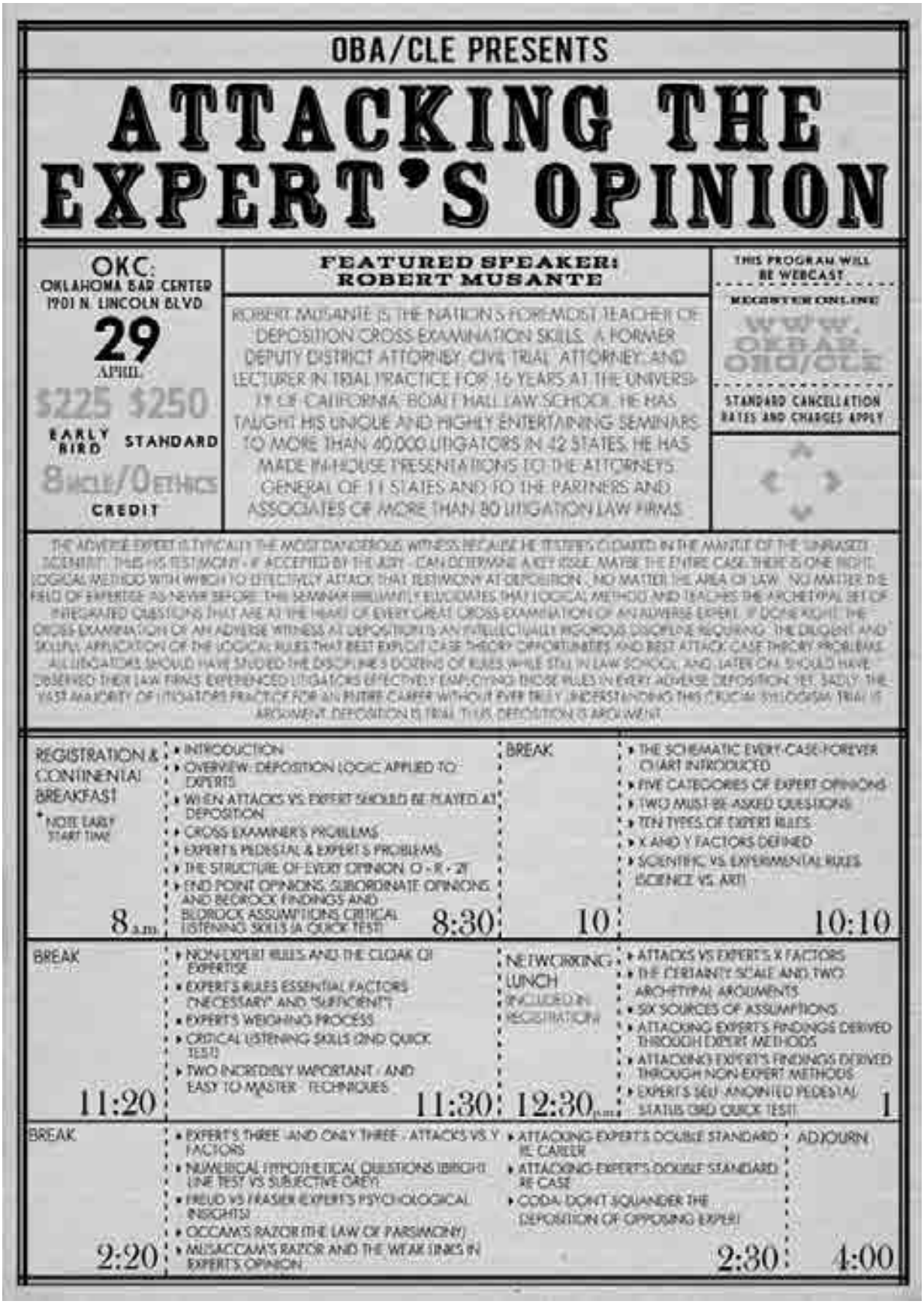
OBA/CLE PRESENTS
ATTACKING THE EXPERT'S OPINION
OKC:
OKLAHOMA BAR CENTER
1901 N. LINCOLN BLVD
29
APRIL
$225 $250
EARLY BIRD STANDARD
8 MCLE/0 ETHICS
CREDIT
FEATURED SPEAKER:
ROBERT MUSANTE
ROBERT MUSANTE IS THE NATION'S FOREMOST TEACHER OF DEPOSITION CROSS-EXAMINATION SKILLS. A FORMER DEPUTY DISTRICT ATTORNEY, CIVIL TRIAL ATTORNEY AND LECTURER IN TRIAL PRACTICE FOR 16 YEARS AT THE UNIVERSITY OF CALIFORNIA, BOALT HALL LAW SCHOOL, HE HAS TAUGHT HIS UNIQUE AND HIGHLY ENTERTAINING SEMINARS TO MORE THAN 40,000 LITIGATORS IN 42 STATES. HE HAS MADE IN-HOUSE PRESENTATIONS TO THE ATTORNEYS GENERAL OF 11 STATES AND TO THE PARTNERS AND ASSOCIATES OF MORE THAN 80 LITIGATION LAW FIRMS.
THIS PROGRAM WILL BE WEBCAST
REGISTER ONLINE
WWW.OKBAR.ORG/CLE
STANDARD CANCELLATION RATES AND CHARGES APPLY
THE ADVERSE EXPERT IS TYPICALLY THE MOST DANGEROUS WITNESS BECAUSE HE TESTIFIES CLOAKED IN THE MANTLE OF THE UNBIASED SCIENTIST. THIS HIS TESTIMONY - IF ACCEPTED BY THE JURY - CAN DETERMINE A KEY ISSUE, MAYBE THE ENTIRE CASE. THERE IS ONE RIGHT LOGICAL METHOD WITH WHICH TO EFFECTIVELY ATTACK THAT TESTIMONY AT DEPOSITION - NO MATTER THE AREA OF LAW, NO MATTER THE FIELD OF EXPERTISE, NO NEVER BEFORE. THIS SEMINAR BRILLIANTLY ELUCIDATES THAT LOGICAL METHOD AND TEACHES THE ARCHETYPAL SET OF INTEGRATED QUESTIONS THAT ARE AT THE HEART OF EVERY GREAT CROSS-EXAMINATION OF AN ADVERSE EXPERT. IF DONE RIGHT, THE CROSS-EXAMINATION OF AN ADVERSE WITNESS AT DEPOSITION IS AN INTELLECTUALLY RIGOROUS DISCIPLINE REQUIRING THE DILIGENT AND SKILLFUL APPLICATION OF THE LOGICAL RULES THAT BEST EXPLOIT CASE THEORY OPPORTUNITIES AND BEST ATTACK CASE THEORY PROBLEMS. ALL LITIGATORS SHOULD HAVE STUDIED THE DISCIPLINE'S DOZENS OF RULES WHILE STILL IN LAW SCHOOL AND, LATER ON, SHOULD HAVE OBSERVED THEIR LAW FIRMS' EXPERIENCED LITIGATORS EFFECTIVELY EMPLOYING THOSE RULES IN EVERY ADVERSE DEPOSITION. YET, SADLY, THE VAST MAJORITY OF LITIGATORS PRACTICE FOR AN ENTIRE CAREER WITHOUT EVER TRULY UNDERSTANDING THIS CRUCIAL SYLLOGISM: TRIAL IS ARGUMENT. DEPOSITION IS TRIAL. THUS, DEPOSITION IS ARGUMENT.
REGISTRATION & CONTINENTAL BREAKFAST
* NOTE EARLY START TIME
8 a.m.
INTRODUCTION
OVERVIEW: DEPOSITION LOGIC APPLIED TO EXPERTS
WHEN ATTACKS VS. EXPERT SHOULD BE PLAYED AT DEPOSITION
CROSS-EXAMINER'S PROBLEMS
EXPERT'S PEDESTAL & EXPERT'S PROBLEMS
THE STRUCTURE OF EVERY OPINION: D - R - Z!
END POINT OPINIONS, SUBORDINATE OPINIONS AND BEDROCK FINDINGS AND BEDROCK ASSUMPTIONS: CRITICAL LISTENING SKILLS (A QUICK TEST!)
8:30
BREAK
10
THE SCHEMATIC EVERY-CASE-FOREVER CHART INTRODUCED
FIVE CATEGORIES OF EXPERT OPINIONS
TWO MUST-BE-ASKED QUESTIONS
TEN TYPES OF EXPERT RULES
X AND Y FACTORS DEFINED
SCIENTIFIC VS. EXPERIMENTAL RULES (SCIENCE VS. ART)
10:10
BREAK
11:20
NON-EXPERT RULES AND THE CLOAK OF EXPERTISE
EXPERT'S RULES: ESSENTIAL FACTORS ("NECESSARY" AND "SUFFICIENT")
EXPERT'S WEIGHING PROCESS
CRITICAL LISTENING SKILLS (2ND QUICK TEST!)
TWO INCREDIBLY IMPORTANT - AND EASY TO MASTER - TECHNIQUES
11:30
NETWORKING LUNCH
(INCLUDED IN REGISTRATION)
12:30 p.m.
ATTACKS VS EXPERT'S X FACTORS
THE CERTAINTY SCALE AND TWO ARCHETYPAL ARGUMENTS
SIX SOURCES OF ASSUMPTIONS
ATTACKING EXPERT'S FINDINGS DERIVED THROUGH EXPERT METHODS
ATTACKING EXPERT'S FINDINGS DERIVED THROUGH NON-EXPERT METHODS
EXPERT'S SELF-ANOINTED PEDESTAL STATUS (3RD QUICK TEST!)
1
BREAK
2:20
EXPERT'S THREE - AND ONLY THREE - ATTACKS VS. Y FACTORS
NUMERICAL ("HYPOTHETICAL QUESTIONS (BRIGHT LINE TEST VS. SUBJECTIVE GREY)
FREUD VS. FRASIER (EXPERT'S PSYCHOLOGICAL INSIGHTS)
OCCAM'S RAZOR (THE LAW OF PARSIMONY)
MUSACCAM'S RAZOR AND THE WEAK LINKS IN EXPERT'S OPINION
ATTACKING EXPERT'S DOUBLE STANDARD RE CAREER
ATTACKING EXPERT'S DOUBLE STANDARD RE CASE
CODA: DON'T SQUANDER THE DEPOSITION OF OPPOSING EXPERT
2:30
ADJOURN
4:00

THEME:
LAW DAY

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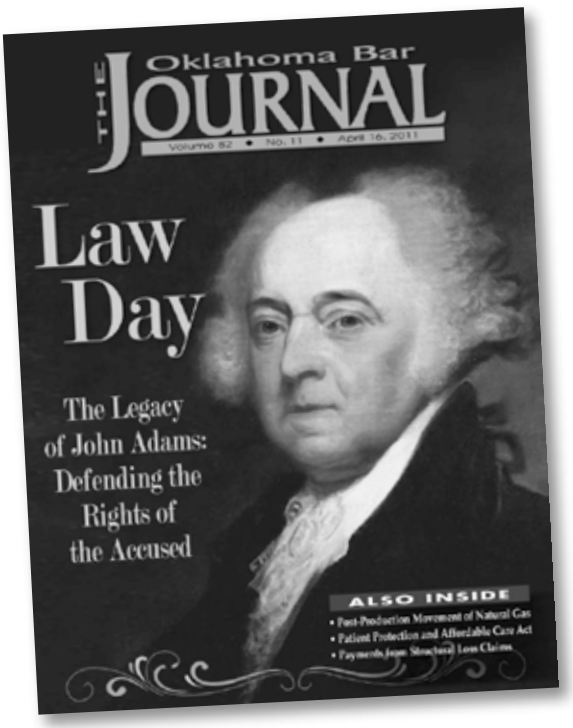

FEATURES

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Member Anniversaries

DEPARTMENTS

PLUS

pg. 1001
Mock Trial Program

Blind Justice

By Deborah Reheard

When Oklahoma lawyer Hicks Epton of Wewoka rallied his beloved Seminole County bar to organize the first Law Day on May 1, 1946, no one could have conceived that it would grow into an internationally recognized event. Today, Law Day is recognized around the globe and across the United States as a celebration of our forefathers' greatest legacy — the creation of a system of government based upon the rule of laws and not the rule of individuals or special interests.

Today, Oklahoma lawyers are again summoned to a higher cause — the cause of maintaining order, integrity and justice in our judicial system. We must maintain the independence of our judiciary above all else. As lawyers, we may differ in opinion on the need for certain laws. We may come from different backgrounds or perspectives that shape our individual thoughts on access to the courts and the right to have a jury of our peers decide our fates and our futures. As lawyers, we must defend the rights to have differing opinions. But it will not matter much what those laws are or to whom they are applied if we do not have an independent judiciary.

President Reheard practices in Eufaula.
dreheard@reheardlaw.com
(918) 689-9281

Judicial independence has absolutely nothing to do with the protection of judges. It has everything to do with the protection of the rule of law. If the legislative and executive branches of any government can dictate the outcome of lawsuits and trials, then there is no need for courts and judges. Those who seek redress for wrongdoing can just rent a lobbyist.

Retired U.S. Supreme Court Justice Sandra Day O'Connor recently spoke to the issue of judicial independence. She wrote these words for a law review article in Washington state, but her comments ring true throughout the land:

> The reason why judicial independence is so important is because there has to be a place where being right is more important than being popular, and where fairness trumps strength. That place in our country has been the courtroom; however, it can survive only so long as we keep out the worst of the political influences.[1]

It is our duty to educate the public about the need for an independent judiciary.

We lawyers are literally the *guardians of the gate* of the rule of law. We must support an independent judiciary and defend it against all detractors. It is our duty to educate the public about the need for an independent judiciary. We are the only profession bound to the judicial branch, and we have an absolute obligation to defend this magnificent system which was created for all citizens to resolve disputes.

It is our challenge to engage the public, to help them understand and support our system of law so that the spirit of the law may be strengthened and revitalized. Nowhere is the challenge more critically important than in helping the public understand and appreciate the importance of truly independent courts and the role they play in preserving the rule of law.

We must not remain silent and resign ourselves to insignificance only to forfeit our tradition of greatness and our sense of pride in our profession. We are the standard bearers of our forefathers' vision of a judicial system where parties are equal under the law — and it must remain that way.

1. Symposium: State Judicial Independence — A National Concern, 33 Seattle U. L. Rev. 559, 565 (2010).

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EVENTS CALENDAR

APRIL 2011

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

20 **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 Women in Law Committee Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Deborah Bruce (405) 528-8625

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

OBA Bench & Bar Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Barbara Swinton (405) 713-7109

OBA Bar Association Technology Committee Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Gary Clark (405) 744-1601

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

Oklahoma Uniform Jury Instructions Meeting; 10 a.m.; Court of Criminal Appeals Courtroom, State Capitol; Contact: Chuck Adams (918) 631-2437

OBA Communications Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Doerner Saunders, Tulsa; Contact: Mark Hanebutt (405) 948-7725

23 **OBA Young Lawyers Division Committee Meeting;** Muskogee, Oklahoma; Contact: Roy Tucker (918) 684-6276

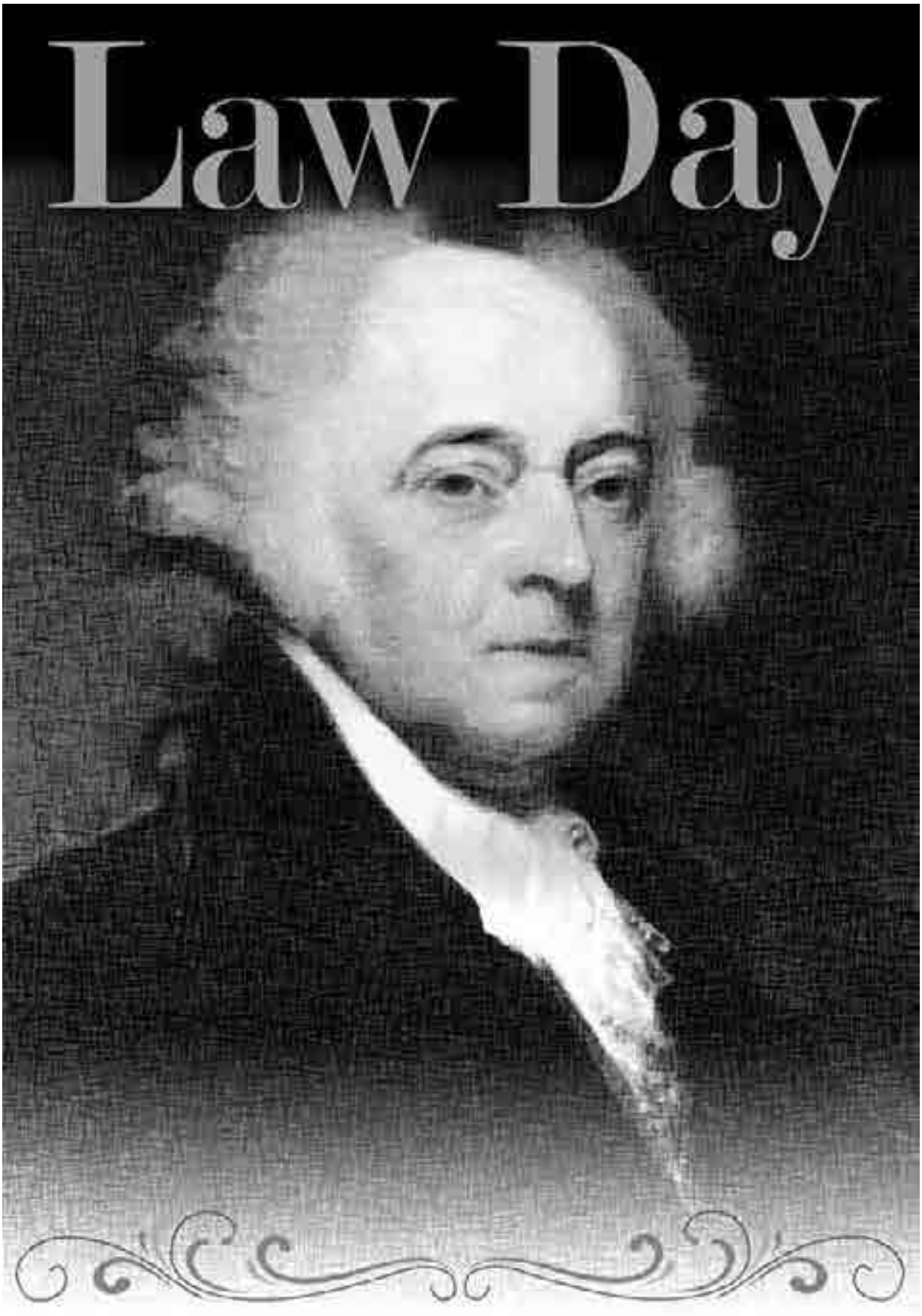
25 **OBA Alternative Dispute Resolution Section Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: D. Michael O'Neil Jr. (405) 239-2121

26 **OBA Rules of Professional Conduct Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Paul Middleton (405) 235-7600

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

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

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


Law Day

LAW DAY
2011

Annual Event Spotlights First Lawyer President

By Tina L. Izadi, Law Day Committee Chair

Founding Father John Adams was a leader during the American Revolution, but it was his defense of a British officer and soldiers involved in the Boston Massacre that perhaps best demonstrates his uncompromising commitment to the rule of law. This year as we get set to celebrate Law Day 2011, we are exploring Adams' legacy as we examine his willingness to take an unpopular stand to defend the rights of the accused. We can easily see how lessons learned more than 200 years ago directly apply to challenges our society is facing today and remain pertinent to the practice of law.

Law Day presents an opportunity to take a closer look at topics which inspire each of us in our profession, as well as educate the public about the important role the law plays in shaping our everyday lives. It is both an awesome and exciting opportunity! The OBA Law Day Committee believes it is a critical task to celebrate the important work lawyers do for the community. We've carried on the tradition for more than 50 years, a tradition born right here in Oklahoma. Wewoka attorney and past OBA President Hicks Epton developed the idea for Law Day in the late 1950s, and it has evolved into a national celebration. This year Oklahomans will observe Law Day on April 28 with events and activities throughout the state.

We have continued our annual art and writing contests focusing this year on the John Adams theme. We have also put together once again an informative television show, highlighting the important impact lawyers make 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 28 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 domestic violence, illustrating how a woman who was victimized by her husband found the courage to stop the abuse and start a new life with the help of Legal Aid Services. The show will also highlight the topic of disability law, focusing on a woman's battle to help her sister navigate the complex Social Security Disability system, and how an attorney guided her through the often-frustrating process.

Finally, the show details the OBA's efforts to launch a new initiative aimed at offering no-cost legal assistance to qualified military service members. We feature an interview with OBA President Deborah Reheard, who tells us the story of a naval officer she assisted several years ago when he was deployed in Iraq, and we will also hear from that officer, Commander Mike Whetstone, who explains what her intervention meant to him. President Reheard explains how Commander Whetstone's case was the inspiration for the Oklahoma Lawyers for America's Heroes program, detailing how often service members in the most need of help are the least able to afford it.

The show will continue its town hall format, where audience members will have an oppor-

(From left) OU College of Law Assistant Dean Stan Evans, Assistant U.S. Attorney Robert Don Gifford and OCU Law Library Associate Director Darla Jackson serve as a military assistance panel answering questions while taping the Ask A Lawyer TV show.

tunity to ask questions of legal panelists, and the show will also feature Chief Justice Steven Taylor and the winners of the Law Day contest along with their winning artwork.

CONTESTS AND ACTIVITIES

This year more than 1,500 students from across the state submitted entries centered on this year's theme, "The Legacy of John Adams: Defending the Rights of the Accused." The judging was difficult as usual, given the numerous wonderful entries we received. The winners have been announced, and the winning entries can be viewed at www.okbar.org/lawday and on page 941 of this issue.

Lawyer Athlea Adkisson prepares a case for a disabled client during a taped segment on disability law.

Ask A Lawyer

Thursday, April 28

7-8 p.m.

OETA stations

FEATURING SEGMENTS ON:

- ☆ Military Assistance
- ☆ Disability Law
- ☆ Domestic Violence

Hosted and Moderated by Dick Pryor

Special Guests:

Oklahoma Supreme Court Chief Justice Steven Taylor

OBA President Deborah Reheard

Oklahoma Supreme Court Chief Justice Steven Taylor welcomes Law Day contest winners to a ceremony at the State Capitol.

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 website, 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 28, 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.

Legal Aid attorney Robin Wilson counsels a client escaping an abusive marriage during a taped segment on domestic violence.

Callers statewide will be able to reach an attorney by calling (800) 456-8525 throughout the day on April 28. 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.

We Need Your Help

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.

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

During the town hall taping, Dewayne Moore, Judge Douglas Stults and Ryan Pack speak to the audience on the topic of disability law.

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 Taylor signed the Law Day directive, encouraging courts to host Law Day events. Also this year, Gov. Mary Fallin signed a proclamation designating May 1, 2011, 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 2012 celebration of Law Day begins even before 2011 celebration ends, and we need your ideas! If you'd like to join this fun, yet hardworking committee, contact me at

Volunteer attorneys answer calls for free legal advice during the 2010 Ask A Lawyer event in Oklahoma County.

(405) 522-3871 or at tizadi@odmhsas.org. With the commitment of the Law Day Committee, county Law Day chairpersons, and the help of each and every one of you, I remain confident this year's Law Day celebration will be a wonderful success and an important step toward creating an informed populace in Oklahoma.

Expert panelists Brady Henderson, Gail Stricklin and Susan Krug field questions on the topic of domestic violence.

¿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 28
9 a.m. – 9 p.m. (two-hour shifts)
OETA Studios in Oklahoma City and Tulsa

To sign up:

Oklahoma City

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ccreed@okcbar.org

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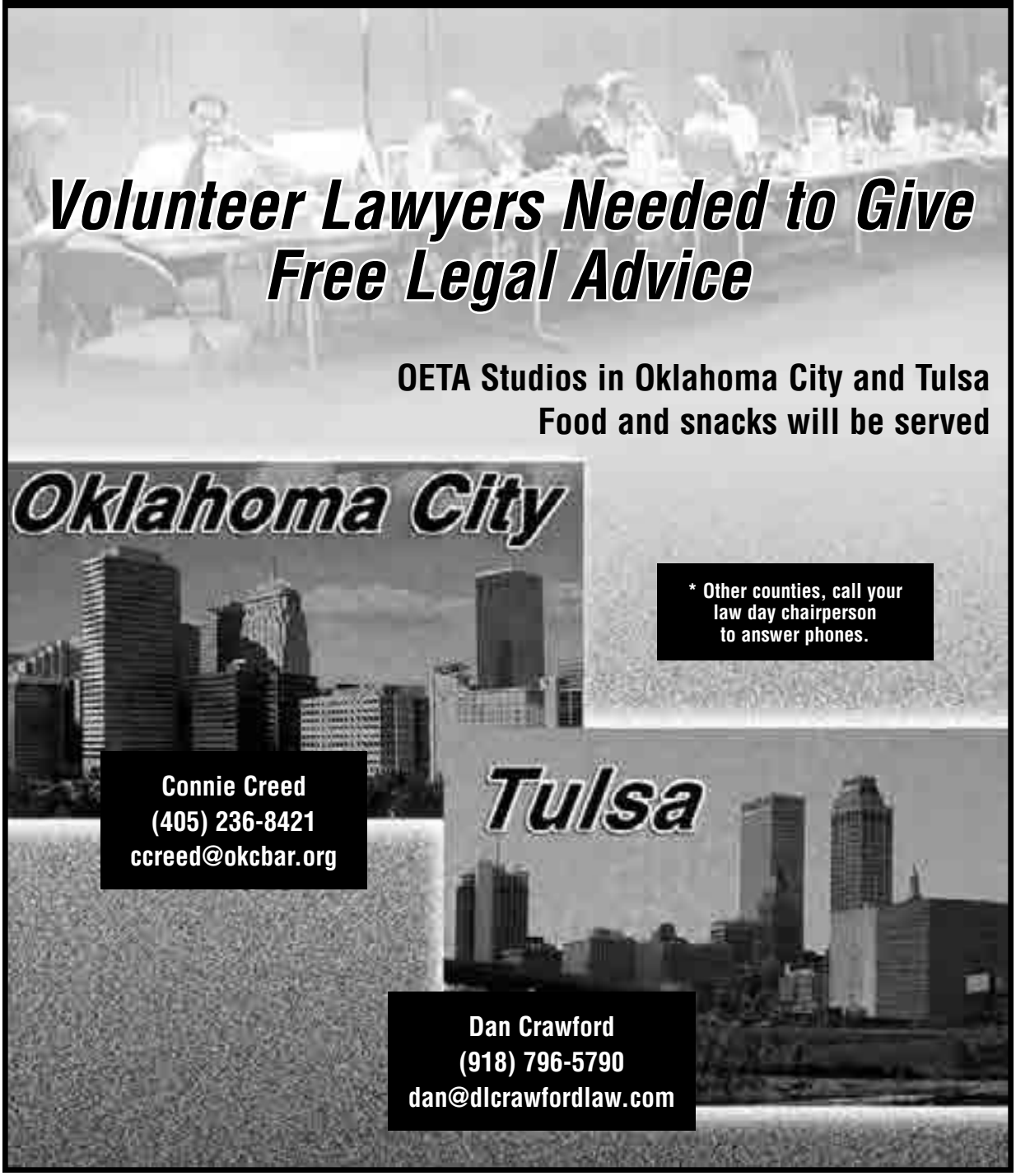
Workers' Compensation

Thursday, April 28 ◆ 9 a.m. to 9 p.m.

ASK A LAWYER



LAW DAY 2011

CONTEST WINNERS

The Legacy of John Adams: Defending the Rights of the Accused

More than 1,500 students from across the state participated in the 2011 Law Day contests. This year's theme, "The Legacy of John Adams: Defending the Rights of the Accused," focused on the founding father who was a resistance leader and patriot, advocate and diplomat, constitutional theorist and political activist. Students learned how John Adams became our nation's first lawyer-president in 1797. They also studied how just five years before the American Revolutionary War began, he represented the British officer and soldiers accused of murder in the Boston Massacre.

Art contests were offered to the younger students. The coloring contest for pre-kindergarteners, kindergarteners and transitional first graders was 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 graders could submit either a collage or creative writing, while sixth through eighth graders could choose between creative writing and visual arts.

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 pencil drawing, creative writing and original painting.

Law Day's YouTube contest was open to anyone and many entries were received during the contest's third year. 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.

YouTube

Video Contest Winner

McKynzie Clayton

"John Adams Rap"

5th Grade, Freedom Elementary School, Sapulpa
Teacher: Caren Forbus

To see McKynzie's video, to to www.okbar.org/lawday

Grand Prize Winner

Eugene Ha

"Legacy of John Adams in D Major for Violin and Piano"

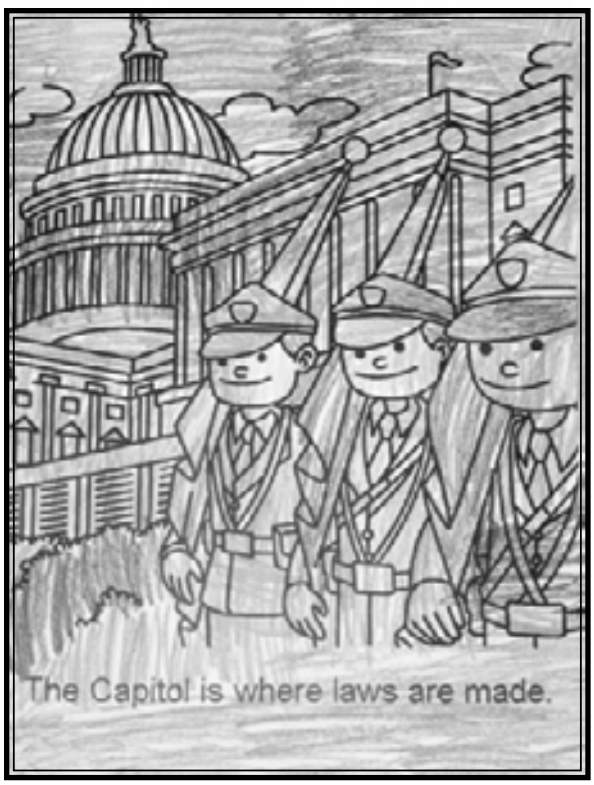
10th Grade, Norman High School, Norman
Teacher:
Angela Crocker

To hear Eugene's original music composition, go to www.okbar.org/lawday

Coloring Contest Winners ✦ Pre-Kindergarten

1st Place: Molly Parker

Christian Heritage Academy,
Edmond,
Teacher:
Dawn Conrad



2nd Place: Braylee Lawson

Temple Elementary,
Temple
Teacher:
Terri Hooper

Coloring Contest Winners ✦ Kindergarten

1st Place:
Colton Bowen

Seiling Public School,
Seiling
Teacher:
Jan Smart

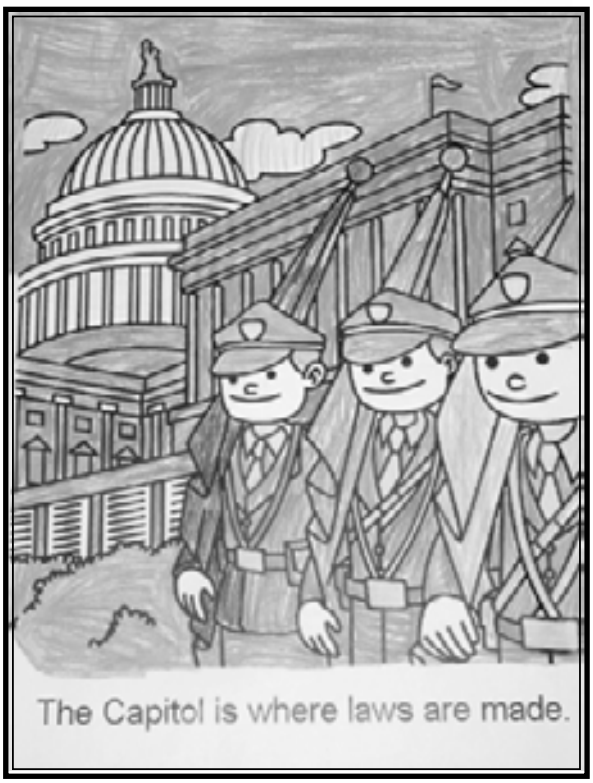
2nd Place:
Cory Dodge

Graham Elementary
Weleetka
Teacher:
Barbara Neal

Coloring Contest Winners ✦ Transitional First

1st Place:
Teagen Koontz

Pleasant Vale Elementary,
Enid
Teacher:
Mary Lassiter



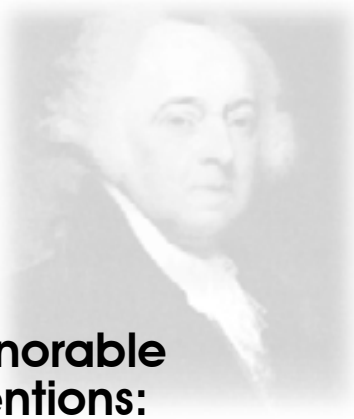
2nd Place:
Sophia Dela Torre

Pleasant Vale Elementary,
Enid
Teacher:
Mary Lassiter

Drawing Contest Winners ✦ First

1st Place: Shace Duncan

Maryetta School,
Stilwell
Teacher:
Samilou Smith



2nd Place: Austin Cox

Maryetta School, Stilwell
Teacher: Samilou Smith

Honorable Mentions:

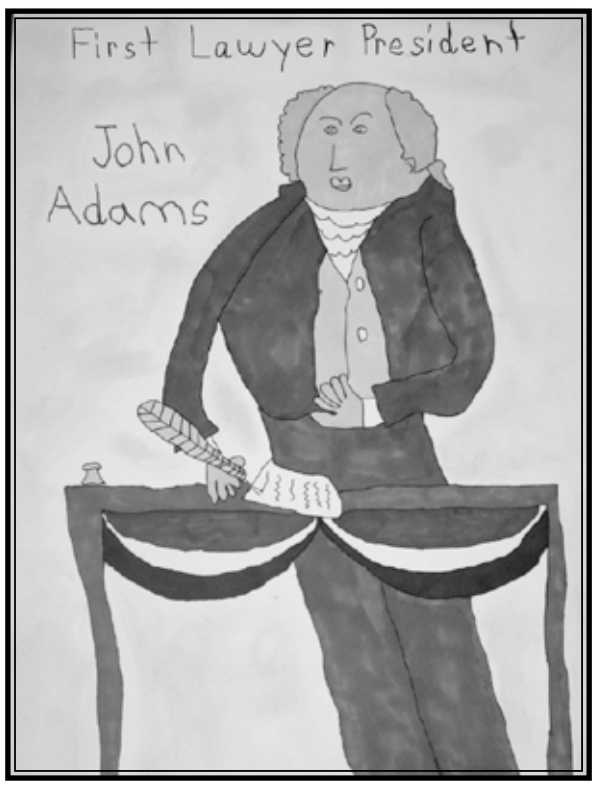
Makenzie McIntosh,
Eufaula Elementary School,
Eufaula

Alex Parish,
Eufaula Elementary
School, Eufaula

Drawing Contest Winners ✦ Second

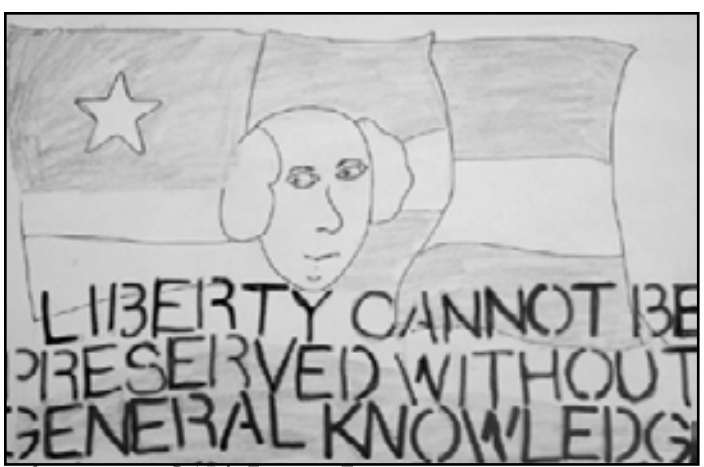
1st Place: Karlie Stanley

Maryetta School,
Stilwell
Teacher:
Samilou Smith



2nd Place: Zarah Stromski

Covenant Community School, Stillwater
Teacher: Tabatha Watkins



Honorable Mention:

Brayden Harrel, Horace Mann,
Duncan

Collage Contest Winners ✦ Third

1st Place: Sarah Hamilton

Perry Lower Elementary, Perry
Teacher: Paula Gottschalk

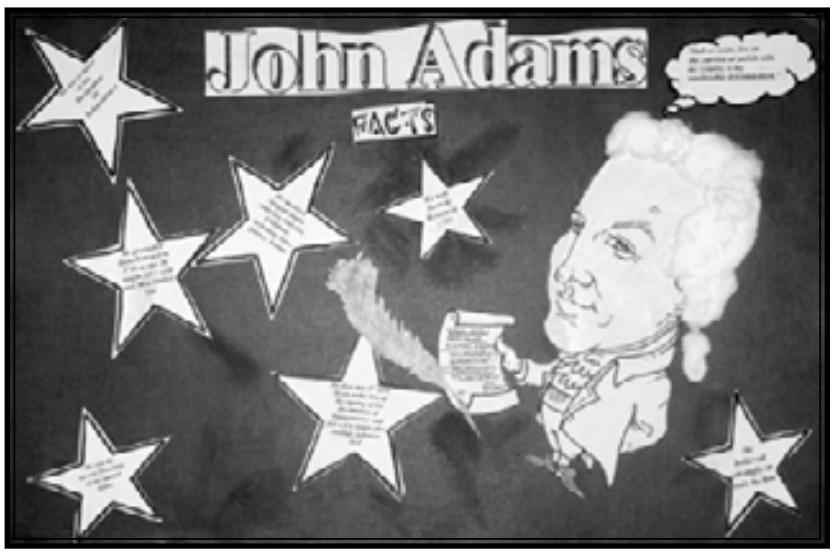
2nd Place: Ty Scherman

Perry Lower Elementary, Perry
Teacher: Paula Gottschalk

Collage Contest Winners ✦ Fourth

1st Place:
Amethyst Chitwood

Covenant Community School,
Stillwater
Teacher:
Elizabeth Albright



2nd Place:
Mackenzie Martin

Lincoln Elementary School,
El Reno
Teacher:
Beth Bley

Collage Contest Winners ✦ Fifth

1st Place: Sarah Wood

Fisher Elementary,
Oklahoma City
Teacher:
Teresa Potter

2nd Place: Matti Allen

Maysville Elementary, Maysville
Teacher: Janet Little

Creative Writing Contest Winners ✦ Fifth

1st Place: Emma Bonds

Fisher Elementary School,
Oklahoma City
Teacher:
Teresa Potter

John Adams: A Great American President

John Adams was the second president of the United Stated and was one of its most influential. Adams was born on Oct. 31, 1735 in Braintree, Mass., in what is today the town of Quincy. He was the great-great-grandson of John and Priscilla Alden, Pilgrims who landed at Plymouth Rock in 1620. A Harvard-educated lawyer, he became identified early on with the patriot cause. Adams was involved in politics even before the Declaration of Independence was drafted. He was a member of the first and second Continental Congresses. He was involved with the drafting of the Constitution and played a very important role in the formation of the United States. He was married to Abigail Smith Adams and had six children, Abigail Amelia, John Quincy, Susanna Adams, Charles Adams, Thomas Boyston, and Elizabeth Adams. Abby, as she was known, was a lively and intelligent lady, and one of the most distinguished First Ladies ever. She was a writer of countless letters which are a treasure of information for the times, and was the only wife of a President and mother of another (John Quincy) for years, until the election of George W. Bush in 2000.

Before becoming president, Adams was commissioner to France in 1778 and in 1782 and 1783; he helped negotiate the Treaty of Paris which ended the American War of Independence. He was also the American minister to Great Britain from 1785 to 1788. International relations were very important and also very difficult to maintain at the time, so it took a great deal of skill as a negotiator to do well at this job. He was known for the fierceness in which he attacked anything he strongly disapproved of. This trait became apparent when the British Parliament imposed the Stamp Act on the colonies in 1765. Along with Samuel Adams, a second cousin, he stirred up a mob action against the British. Adams introduced successful anti-tax resolutions and wrote articles of protest in the Boston Gazette. After moving his law practice to Boston in 1766, Adams demonstrated his moral courage in his most famous case, defending the British captain and soldiers who had fired into a mob in the Boston Massacre. While Adams believed that this case might cost him popularity, he still believed that the crime lay with British authorities rather than the troops who were simply carrying out their orders. Although Boston patriots denounced him for defending Englishmen, he won the case and also wide respect for his sense of justice. It was he that proposed George Washington as Commander-in-Chief of the Continental Army. He was one of only two people who signed the Declaration that became president, the other was Thomas Jefferson. It was also Adams, and others, who wrote the Massachusetts State Constitution, which James Madison used as a model in writing the Constitution of the United States.

After the Revolutionary War, was asked by George Washington to become his vice president. Thus, it would be 12 years before he would return to his home in Quincy, serving eight years with Washington, and another four as president. Adams was the vice president to George Washington and was the first vice president to be elected as president. This was particularly important because it followed George Washington.

To continue reading Emma's essay, go to www.lawday.org/lawday.

2nd Place: Jake Martell

Fisher Elementary School, Oklahoma City
Teacher: Teresa Potter

To read Jake's essay, go to www.lawday.org/lawday.

Honorable Mention:

Kaitlyn Mitchell,
Freedom Elementary, Sapulpa

Creative Writing Contest Winners ✦ Sixth

1st Place: Ryal Reddick

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

Thank you, John

John Adams, John Adams, you protect the rights of the free.
John Adams, John Adams, you defended me.
I was protecting myself with that Boston mob bearing down;
I would rather my men not shoot, but there was more than half the town.
With Private Hugh surrounded, we marched toward the crowd.
With myself at the lead, through the mob we plowed.
I heard cursing and yelling, as our situation grew dire
I would like to say that I gave no order to fire.
When you agreed to defend me, I leapt as my hopelessness deteriorated
When the trial date was set, I looked forward to knowing I would be liberated
I entered the courtroom and sat in my chair,
Watching as you took to the stand despite many glares.
You convinced the jury of my innocence beyond a reasonable doubt,
defending a hated redcoat while being fully devout.
I was free, free because you helped me:
You were my savior, The Duke of Braintree.
You took the stand again and again, giving a gallant defense in each instance.
By the time you were finished, six of eight were freed thanks to your existence.
Any other time, we would have been found guilty.
Any other man would have not tried because it was too risky.
But it was you, defending the rights of the fairly or unfairly accused.
And although you were ridiculed, you were just amused.
They called you a loyalist, but you were one of few true patriots,
As they saw your true colors during the many revolution riots.
I am not surprised that you became President,
For you are a great leader and an outstanding American resident.
Thank you, John

2nd Place: Melissa Prado

ASTEC Charter Middle School, Oklahoma City
Teacher: Kevin Lynch

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

Creative Writing Contest Winners ✦ Seventh

"The Legacy of John Adams: Defending the Rights of the Accused"

1st Place: Haley Nicole Riley

Duncan Middle School, Duncan
Teacher: Paula Belcher

On Oct. 30, 1735, a magnificent patriot was born. This patriot was named John Adams. John Adams played a significant role in the Revolutionary War. The following paper will discuss John Adam's early years, his fight for American freedom and his Presidency.

John Adams was born on Oct 30 1735 in the village of Braintree, Mass. He was the first born child to Susanna and John Adams. John's father was a Puritan minister. John was a bright child who loved to read, make kites, fly kites and hunt for bird eggs. He was also restless and was known to frequently skip school. After skipping school one day, his father decided to teach him a lesson about the importance of education. His father made him work hard on the farm for an entire day. After that experience John Adams decided that a farmer's life was not for him and decided to focus more on his education.

At the age of 15, John Adams was accepted into Harvard and he graduated in 1755 at the age of 19. His father wanted him to train for the ministry after college. John did not want to be a minister and instead took a job as a teacher. One day he went to the court house that was located across from the school where he taught. He listened to the lawyers present their cases. It was then at age 21 that John Adams decided he wanted to study law.

In 1761, his father died of influenza. He took over his father's farm and practiced country law. Then he met Abigail Smith, the daughter of a minister. Abigail was a bright and educated woman. Abigail was influential in John's life. She gave John confidence and challenged him intellectually. They were married on Oct. 25, 1764. They had a total of five children, three boys and two girls.

England began taxing goods such as tea and stamps in an effort to raise money for the war they were fighting against the French. The demanding of more taxes angered John Adams and many of the other colonists. John believed in fairness for all and this was definitely not fair to the colonists! He was very vocal about his belief that the colonies should separate from England and create their own government. John wrote newspaper articles and gave many speeches on how a new government could be run.

In 1770 the Boston Massacre occurred. It was a defining moment of the American Revolution. English soldiers shot and killed colonists. John believed the soldiers should get a fair trial so he served as their lawyer and defended them in court. Because the colonists admired his fairness, he was picked to serve in the Massachusetts House of Representatives.

John was one of the leaders of the colonies that were asked to meet in Philadelphia for what was called the First Continental Congress. In 1776, the Congress decided to break free from England. John Adams and Thomas Jefferson were asked to write a paper that declared that the colonies were free. Even though Thomas Jefferson wrote most of the paper, now known as the Declaration of Independence, John was the man that defended the paper before congress. Upon the signatures of the Declaration of Independence on July, 4 1776, the country of the United States was born.

To continue reading Haley's essay, go to www.okbar.org/lawday.

2nd Place: Bailey Aaron Teakell

Duncan Middle School, Duncan
Teacher: Paula Belcher

To read Bailey's essay, go to www.lawday.org/lawday.

Honorable Mention:

Alexis McAtee,
Canute Public School, Canute

Creative Writing Contest Winners ✦ Eighth

1st Place:
Mary Ellen Thomas

Monte Cassino Middle School, Tulsa
Teacher: Catherine Zedalis

Journal of Abigail Amelia Adams, 1776-1784

July 14, 1776

Today was my birthday of eleven years, and my father gave me this precious journal to keep and record my days. Writing has always been a favored pastime of mine, and my father, being quite accomplished in wealth and stature, had this beautiful piece printed as a birthday gift for me.

Pardon, I have forgotten to introduce myself. My name is Abigail Adams Smith, first daughter of John Adams and my dear mother Abigail Adams. You may call me 'Nabby' as that is what my family calls me instead. Regretfully I am an only daughter, and my three brothers, John Charles, and Thomas, sometimes provide quite a distraction. My mother tells me I am mature for my age and I do well to offer any help I can around the estate. Mother is a strong woman, but she seems rather listless on occasion, and it seems safe to attribute it to the loss of Susanna, my baby sister that passed a short few years ago at just over a year's age. She has been at an upturn as of late though, as we have all had just cause for celebration. Just ten days ago, my own father assisted in the printing of our nation's declaration for independence. The town is still ringing with the prospect, but there are those who are certain as I the document will not settle the matters of tension between us and England so easily. I have known that my father's Constitutional Congress has amassed a volunteer army to enforce protection of the colonies, but I do not know much more, as do the rest of us townsfolk.

July 21, 1776

Today commenced another day of hard work at our Massachusetts home. Occasionally, our family travels between housing in Braintree and Boston, depending on my father's political status. It often seems that, though we are his closest family, we know little more of his work than a simple merchant frequenting the town. It is rather discomforting and I find it tiresome guessing out whatever may be occurring behind their closed doors. Father takes to his studies and often is negotiating in public affairs, conversing with his fellow congressmen-the young Thomas Jefferson being one he holds in high regard-or preparing an eloquent speech to debate certain issues that he often disagrees with. Most people find John to be an inflammatory speaker at times, as he tends to side apart in many large debates that find the majority of politicians leaning one way or another.

I, myself, have never been all that fond of politics, but I am nonetheless determined to stand by my father's side. I do admire him for being able to speak out against many men's willingness to lean together, only for means of conformity, even when the common good's interest doesn't support their decisions.

August 2, 1776

Today marked the first day that the delegates gathered to sign their document of our separation from England. Father was required to travel frequently and he had left several days previous to reach the meeting place in time to attend, and wrote his own name along with the other delegates of the Massachusetts state.

Father is entirely devoted to his studying and he tells me that he reads and recites phrases of the young Declaration of Independence. He isn't one to overlook curious details; this much is certain, as I know fully well that each progressive meeting of his committee led him to spend long hours even into the waking dawn, contemplating the meeting's minutes and writing down his ideas to further investigate perspectives of the concerned issues. I know this and that he often recorded these things, for one late night I went searching for him to inquire over a certain family matter. Entering the study, as this was where one could expect him to be at such a late hour, I found his desk was left as if he had just departed. Papers were strewn out over its surface and I meant to file them away properly, but I glanced over a

continued on next page

journaling he had recorded of a meeting within the first Congress' years, and he therein noted a statement of a certain Major Hawley.

"We must fight if we cannot otherwise rid ourselves of British taxation, all revenues, and constitution or form of government enacted for us by the British Parliament. It is evil against right – utterly intolerable to every man who has any idea or feeling of right or liberty. Fight we must finally unless Britain retreats"

He then inscribed a note of how a fellow outspoken politician by the name of Patrick Henry, commented, "By God, I am of that man's mind," and so my father noted how he believed this Henry fellow had proven of late that he could become a successful contributor to the congress.

I felt ashamed at first thought for reading through my father's notes, but I left his papers there on his desk more out of distaste. The discussion of political issues in itself either bores me or I refuse to immerse myself due to such inflammatory topics that are always put to debate.

To continue reading Mary Ellen's essay, go to www.okbar.org/lawday.

2nd Place: Finnian J. Bender

St. Elizabeth Ann Seton Catholic School, Edmond
Teacher: Barbara Brearton

To read Finnian's essay, go to www.lawday.org/lawday.

Honorable Mentions:

Mary Anderson, St. Elizabeth Ann Seton School, Edmond
Haley Cook, Durant Middle School, Durant
Rachel Katz, Monte Cassino Middle School, Tulsa
Garrett Pierce, Christ the King School, Oklahoma City

Visual Arts Contest Winners ✦ Sixth

1st Place: Sidni Blalock

Duncan Middle School, Duncan
Teacher: Julie Leippe

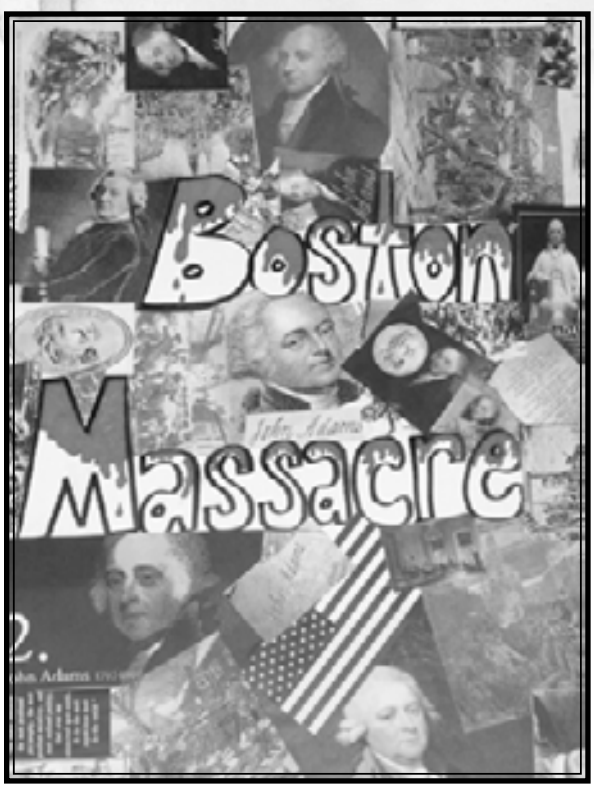
Honorable Mention:

Lily Everett, Covenant Community School, Stillwater

Visual Arts Contest Winners ✦ Seventh

Honorable Mention:
Justin Duggan, Panola School, Panola

Visual Arts Contest Winners ✦ Eighth

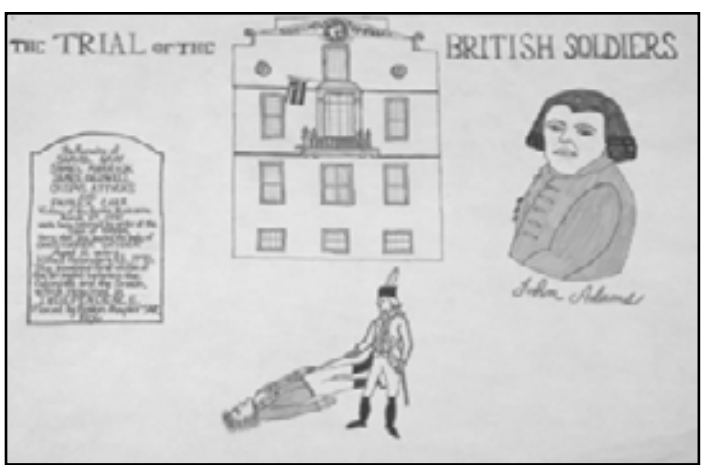


1st Place:
Grayson Irvin

Christ the King, Oklahoma City
Teacher: Robert Crump

2nd Place:
Taylor Franks

Christ the King, Oklahoma City
Teacher: Robert Crump



Honorable Mention:
Abby Yeazel, Roland Public School, Roland

Creative Free for All Contest Winners ✦ Ninth

The Day the Court was Distraught

Anger! Rage! How could this be set upon us!
Father, I and the rest of the courtroom yelled 'unjust'!
As those words flowed from his tongue, 'Not Guilty,'
All of us wanted to kill he,
He, that man dare support those murderers?
He might as well support thieves and burglars!
But afterward, after pondering,
I strangely started wondering,
What if he is in the right?
Looking from a different sight,
I realized, who we are,
To fight for what we call free,
And not give it to these other men,
Causing Henry to tax us again.

1st Place:
Colin Greene

Lawton High School, Lawton
Teacher: Andi Janoe

2nd Place:
Ciera Cherry

Roland Public School, Roland
Teacher: Tiffany Rainwater

Honorable Mentions:

Alyssa Catlin, Lawton High School, Lawton
Alex Dobbs, Roland Public School, Roland
Aimee Fletcher, Lawton High School, Lawton
Thomas Hightower, Lawton High School, Lawton
Dalton Looper, Bokoshe School, Bokoshe
Megan MacKay, Evangelistic Temple School, Tulsa
Camila Moreira, Lawton High School, Lawton
Elizabeth Muller, Jenks Freshman Academy, Tulsa
Matthew Myers, Lawton High School, Lawton
Katelyn Robinson, Evangelistic Temple School, Tulsa
Darius Watkins, Lawton High School, Lawton
Jaelen Wikstrom, Lawton High School, Lawton

Creative Free for All Contest Winners ✦ Tenth

Prison Walls

I walked down the long, dark prison hall.
Watching the faces that lined the cold prison walls
Some hardened, dark, somber, and mean
Some simply scared and confused just like me.
I thought of my wife and children back in England, my home.
It is back to England my worried mind roams.
In lovely old England where I'm not called a killer
I got scared of the crowd and my finger squeezed the trigger.
I was afraid of the men coming at me with knives
It never occurred to me I would end someone's life.
And now in this cell I sit and I pray,
Pray to God that he will let me see another day.
If these American Prisoners or bitter cold don't stop my heart still
The hangman's noose in the courtyard most surely will.
Their law says I have the right to a trial, speedy, fair, and sure.
But who would defend a British man's side of the Boston Massacre?
This task an average American lawyer would not fathom.
Then he walked through the door, a man named John Adams.
He told us he would stand for us and defend us to the end
He said he'd do all he could to let me see my family again.
He stood with me through a trial that alone I would surely lose.
Because of him I managed to escape the hangman's noose.
He stood by me when so many others refused.
He saved my life and many others by defending the rights of the accused.

1st Place: Rachel Lowe

Lawton High School, Lawton
Teacher: Terry Freeman

2nd Place: Mason Soto

Lawton High School, Lawton
Teacher: Terry Freeman

To read Mason's essay, go to www.lawday.org/lawday.

Honorable Mentions:

Pryce Michener, Lawton High School, Lawton
Veronica Muniz, Lawton High School, Lawton
Ashlynn Pritchett, Lawton High School, Lawton
Logan Wells, Lawton High School, Lawton
Trey Wideman, Evangelistic Temple School, Tulsa

Creative Free for All Contest Winners ✦ Eleventh

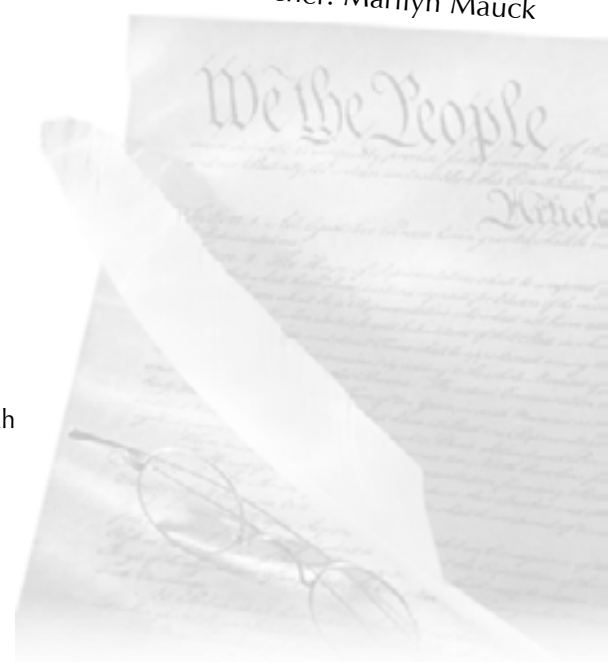
1st Place:
Hannah Weaver

William Bradford Christian School, Pryor
Teacher: Marilyn Mauck

2nd Place:
Patrick R. Bender

Edmond Memorial High School, Edmond
Teacher: Kevin McDonald

To read Patrick's essay, go to www.lawday.org/lawday.



Honorable Mentions:

Alyssa Adamson, Tahlequah High School, Tahlequah
Brandy Clemons, Roland Public School, Roland
Zack Cummings, Roland Public School, Roland
Sam Cuzzort, Lawton High School, Lawton
Courtney Neff, Barnsdall High School, Barnsdall
Chandria Person, Lawton High School, Lawton

Creative Free for All Contest Winners ✦ Twelfth

"Untitled"

John Adams, a man of courage
Who risked his career for
The rights of the nine accused,
To the officer who spelled out
Death in mechanical
Tones:
"Ready, aim, fire," to
Him who is acquitted of his
Crimes,
To the eight regulars whose
Musket balls did bury the
Graves of the five who met death
And watered the flames of
Liberty with their blood,
To six of them: they are
Acquitted, but to the others
They will forever bear the remembrance
Of their crime on the tips
Of their thumbs
John Adams, the man who risked
All he had and
The future of his prosperity
To protect the rights of
The accused.

1st Place:
Elliott Ensminger

Evangelistic Temple School, Tulsa
Teacher: Lorrie Quinnelly

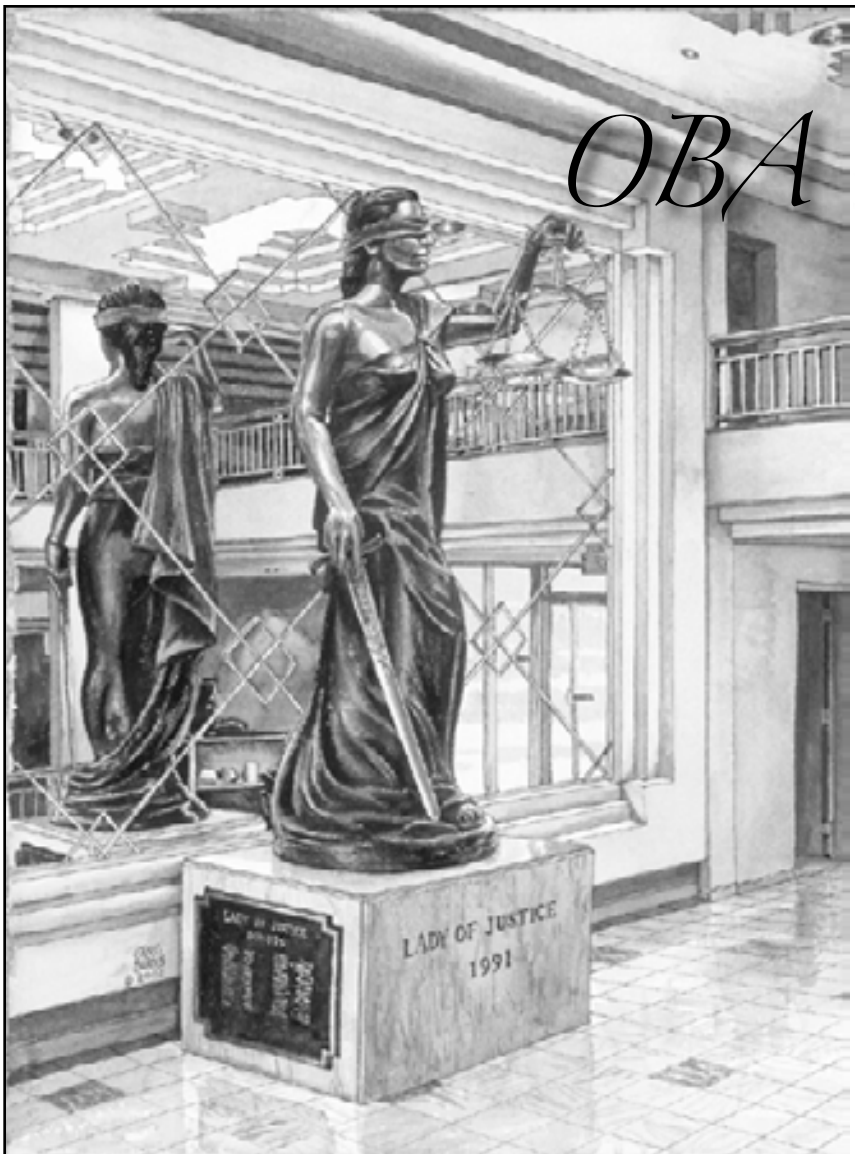
2nd Place:
Jessica Hutchins

Roland Public School, Roland
Teacher: Tiffany Rainwater

To read Jessica's essay, go to www.lawday.org/lawday.

Honorable Mentions:

Kendall Moore, Panola High School, Panola
Jessy Walton, Washington High School, Washington



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SAVE THE DATE

107th OBA Annual Meeting

Nov. 2-4, 2011

Hyatt Regency, Tulsa

LAW DAY
2011

County Bar Association Activities

★ Adair County Bar Association

The Adair County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7 - 8 p.m. on April 28.

★ Alfalfa County Bar Association

The Alfalfa County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7 - 9 p.m. on April 28.

★ Beaver County Bar Association

The Beaver County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7 – 8 p.m. on April 28.

★ 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 28. The Carter County Bar will also be speaking at the local high schools on the topic of "The Legacy of John Adams: Defending the Rights of the Accused." The Carter County Bar will present three $1,000 scholarships to outstanding high school seniors.

★ Cimarron County Bar Association

The Cimarron County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7 – 8 p.m. on April 28.

★ Cherokee County Bar Association

The Cherokee County Bar Association will participate in Law Day April 28 by having several of its members available from 10 a.m. until 2 p.m. on the Northeastern State University Tahlequah campus. Participating attorneys will be located in the lobby area of the University Center (U.C.) outside the bookstore to provide students, staff and citizens answers to their legal questions. Also from 11 a.m. until 1 p.m. CCBA members will be available at the Cherokee Nation complex to provide a second Tahlequah location for this free service. Finally, in conjunction with the televised "Ask a Lawyer" program, CCBA members will be available from 7 – 8 p.m. for phone-in legal questions.

★ Choctaw County Bar Association

The Choctaw 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 p.m. to 8 p.m. on April 28. The event will be publicized in newspapers throughout Choctaw County. The association will promote the Ask A Lawyer program to members of local civic groups in the county. In addition, the association will participate in the Tri-County Law Day Banquet (along with McCurtain and Pushmataha Counties) the evening of April 30.

★ Cleveland County Bar Association

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 7 - 8 p.m. on April 28. A Law Day reception is planned for April 29 from 5 – 7 p.m., the location has not yet been announced. OBA 50-year service pins will be presented. The association has also prepared Law Day T-shirts which will be on sale April 25 – May 6.

The CCBA will also be running newspaper articles in the *Norman Transcript* from April 25 – May 6. These articles will be written by Cleveland County judges and attorneys and will be relevant to this year's theme "The Legacy of John Adams: Defending the Rights of the Accused."

★ Comanche County Bar Association

The Comanche County Bar Association will hold its annual Law Day luncheon on May 4, featuring Oklahoma Court of Criminal Appeals Judge Charles Johnson 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. Special musical guests this year will be members of Lawton Pro Musica. The CCBA 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 28. On May 20, the CCBA will have its annual Law Day golf tournament at the Lawton Country Club followed by its annual Law Day barbecue.

★ Craig County Bar Association

The Craig County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 5:30 p.m. – 7:30 p.m. on April 28. The event will be publicized in the *Vinita Daily Journal*.

★ 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 28.

★ 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 28.

★ Johnston County Bar Association

The Johnston County Bar Association will coduct an essay contest for third graders on the topic "What the Constitution means to me."

★ 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 28.

★ Kingfisher County Bar Association

The Kingfisher County Bar Association will be commemorating Law Day with a luncheon on May 2 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 bar members 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 28.

★ Lincoln County Bar Association

The Lincoln County Bar Association will celebrate this year's Law Day by hosting the annual Law Day Picnic for local attorneys and courthouse staff on the evening of April 29. The association will also organize a mock trial for local fourth grade students. The trial will be conducted at the Lincoln County Courthouse and is open to the public.

★ 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 by phone from 7 – 8 p.m. on April 28.

★ Murray County Bar Association

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

answer legal questions by phone from 8 a.m. – 5 p.m. on April 28.

★ 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 28.

★ Oklahoma County Bar Association

• Law Day Luncheon – May 2, Skirvin Hotel Grand Ballroom

The Oklahoma County Bar Association is sponsoring the luncheon this year featuring Oklahoma Supreme Court Chief Justice Steven Taylor as speaker. *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 28, OETA

Volunteers will be handling phone calls from 8:45 a.m. to 9 p.m. Richard Vreeland will be chairing this subcommittee and volunteers may sign up by going to the OCBA website 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 10 high school students who will tour the Oklahoma County Courthouse and speak with various judges in the morning. 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.

★ Ottawa County Bar Association

The Ottawa 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 – 8 p.m. on April 28. Ottawa county attorneys will also participate in Lawyers in the Classroom activities at Wyandotte and Quapaw schools.

★ Payne County Bar Association

The Payne County Bar Association is sponsoring a county-wide contest for all children attending school in the county. The contest features several categories including coloring, drawing, collage and creative writing. Winners of the contest along with local OBA contest winners will be recognized at its annual Honor Docket before Judge Phillip Corley on May 5. Also at the Honor Docket, the recipient of the R.L. Hert Memorial Scholarship will be announced. The scholarship is awarded to one senior student in Payne County. Criteria for selection include scholastic achievement, community involvement and extracurricular activities.

PCBA is taking part in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by telephone on April 28. In addition to the statewide call in times, PCBA will hold a face to face Ask A Lawyer at the Stillwater Public Library all day April 28. Members of the bar and their staff will participate in a bowling tournament with the proceeds donated to charity. PCBA and several dignitaries will attend the annual Law Day Banquet on May 3 at Meditations in Stillwater.

★ Pittsburg County Bar Association

The Pittsburg 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 27. The association will hold its Law Day Banquet at Pete's Place in Krebs on April 28. The featured

speaker will be Oklahoma Supreme Court Chief Justice Steven Taylor. A golf tournament is planned for April 29 at McAlester Country Club. On April 30, "Race to the Courthouse Steps," a charity stair climb event, is planned at the Pittsburg County Courthouse.

★ Pontotoc County Bar Association

The Pontotoc County Bar Association is celebrating Law Day this year by sponsoring a blood drive with the Oklahoma Blood Institute on the morning of Wednesday, April 27. The blood drive will be at the newly remodeled Pontotoc County Courthouse and the public is invited to walk through and view the courthouse during the blood drive. A related blood drive will occur on Wednesday, April 20, on the campus of East Central University as part of the university's Law Day celebration. In addition, PCBA will be participating in the Ask A Lawyer program from 7 – 8 p.m. on April 28.

★ Stephens County Bar Association

The Stephens County Bar Association will participate in Law Day with a luncheon banquet during the early afternoon of May 6. A golf tournament will take place shortly after the banquet followed by a social hour at The Territory in Duncan.

★ Tulsa County Bar Association

• Community Law Day Fair - April 23, Community Care College

We are in a new and exciting location this year at Community Care College located at 4242 S. Sheridan. The fair will be held from 10 a.m. to 2 p.m. Organizations such as Big Brothers & Sisters of Oklahoma, Credit Counseling Centers of Oklahoma, Human Skills & Resources, League of Women Voters, Legal Aid Services of Oklahoma Inc., LIFE Senior Services, Social Security Administration, The Little Light House, Tulsa Casa, Inc, Tulsa City County Library, Tulsa County Election Board, TULSA SPCA and the University of Tulsa College of Law have, in the past, been a part of the Community Law Fair. For additional information contact Rachel Gusman at (918) 359-6600 or rachel@gravesmclain.com.

• Lawyers in the Library – April 26

Traditionally, this face-to-face service where people could meet with an attorney to discuss their legal questions was available only at the Tulsa County Courthouse Library. We are pleased to announce a partnership with some of the Tulsa City/County libraries. Those who have already expressed interest include the Brookside Library, Kendall Whittier Library and the Hardesty Library. For more information as to specific hours of operation, please contact Kimberly Moore-Waite at (918) 295-9433 or kimberly.moore-waite@laok.org.

• Ask A Lawyer – April 28, OETA Tulsa

Tulsa's participation in Ask A Lawyer takes place from 9 a.m. to 9 p.m. at OETA's new studios on the campus of OSU Tulsa. Many volunteer lawyers are needed to staff the all day event. To sign up for a two-hour hour shift or for additional information please contact Dan Crawford at (918) 796-5790 or dan@dlcrawfordlaw.com.

• Law Day Luncheon Banquet – April 29, Hyatt Hotel

We are very pleased that the Hyatt Hotel located at 100 E. Second St. is hosting this year's banquet. Seating begins at 11:30 a.m., the luncheon is scheduled for noon – 1:30 p.m. For more information about seating, purchasing tables or other questions, contact Kevin Cousins at the TCBA at (918) 584-5243, kevinc@tulsabar.com. The keynote speaker for the luncheon is Professor J. Rufus Fears, internationally acclaimed author, speaker and historian.

• Legal Civics in the Schools

Under the direction of Judge Daman Cantrell, this year's Legal Civics portion of Law Day/Week will be expanded. Multiple events of various types are being planned, including mock trials, visits to the courthouse, roundtable discussions of issues facing young people, Youth Court presentations as well as some surprise visits from "John Adams" himself (as portrayed by Judge Richard Woolery in full period costume). Schools already scheduled include Carnegie Elementary, Lakeside, Thoreau Demonstration Academy and Owasso. For more information as to exact dates, times and scope of presenta-

tion, please contact Dan Crawford at (918) 796-5790 or dan@dlcrawfordlaw.com.

★ 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 7 - 8 p.m. on April 28. The WCBA will also conduct a portrait unveiling and reception at the Washington County District Courthouse at 3 p.m. on April 29. This ceremony will focus on the history of the judiciary in Washington County and includes the unveiling of photographs of the courthouses, a chronological listing of the judges and portraits of the judges with a public reception to follow. Starting at approximately 12:30 p.m. on May 6, the WCBA will host its annual Law Day golf tournament and picnic at Hillcrest Country Club. On May 18, the WCBA and Building Bridges, a local poverty alleviation program, will be co-hosting a panel discussion regarding the legal system and its barriers for those in poverty. The WCBA has also contacted Bartlesville Public Schools and offered to have member attorneys speak to classrooms and students regarding the legal system and related topics.

★ 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 28.

Legal Aid Services of Oklahoma Inc.

FAMILY LAW ISSUES

A Seminar for Volunteer Attorneys
Tuesday, May 3, 2011
C*onference Center, OSU Tulsa, 700 North Greenwood, Room 150*
MCLE Credit of 7 Hours
FREE for Attorneys Actively Serving on a Pro Bono Panel

To register, go to: www.probono.net/ok

AGENDA

8:30 a.m.	Registration
9 - 9:50	*A Nuts and Bolts of a Dissolution Case 1: Pleadings, Domestic Violence and Court Proceedings by Julie Goree, Sara Cherry and Eric Hallett, Attorneys, Legal Aid Services of Oklahoma Inc. *B Attorney Fees and Costs by Brad Grundy, Attorney
9:50 - 10:05	BREAK
10:05 - 10:55	*A Nuts and Bolts of a Dissolution Case 2: Pleadings, Domestic Violence and Court Proceedings by Julie Goree, Sara Cherry and Eric Hallett, Attorneys, Legal Aid Services of Oklahoma Inc. **B How International Family Law Influences Domestic Practice by Marianne Blair, Professor, University of Tulsa College of Law
10:55 - 11:10	BREAK
11:10 - 12	*A Nuts and Bolts of a Dissolution Case 3 by Julie Goree, Sara Cherry and Eric Hallett, Attorneys, Legal Aid Services of Oklahoma Inc. **B Understanding the Hidden Dynamics of Domestic Violence by Matt Atkinson, Oklahoma Coalition Against Domestic Violence and Sexual Assault
12 - 1:15	LUNCH (On your Own)
1:15 - 2:05	So You Think You Want a Drug Test? By Legal Aid staff
2:05 - 2:55	Evidence for the Family Law Attorney by William LaSorsa, Attorney
2:55 - 3:15	BREAK
3:15 - 4:05	Everything You Want to Know About Guardianships by Catherine Welsh, Attorney
4:05 - 5	"What I Wish I'd Known Before I Went on the Bench" moderated by C. Michael Zacharias, presented by the Honorable Theresa Dreiling, Tulsa County District Court, the Honorable Doris Fransein, Juvenile Division, Tulsa County District Court and the Honorable Jane Wiseman, Oklahoma Court of Civil Appeals

*A - Basic Track **B - Advanced Track

LAW DAY 2011

THE SUPREME COURT
STATE OF OKLAHOMA

STEVEN W. TAYLOR
CHIEF JUSTICE

OKLAHOMA CITY, OK 73105
405-521-3644
steven.taylor@oscn.net

OKLAHOMA SUPREME COURT DIRECTIVE

OBSERVANCE OF LAW DAY
MAY 1, 2011

"The Legacy of John Adams: Defending the Rights of the Accused"

Each Court in each of the twenty-six judicial districts in Oklahoma is urged to hold Law Day activities. These activities may include courtroom ceremonies, courthouse tours and mock trials. The cooperation of the judges and court clerks is essential for Law Day special events.

This year is the 54th annual nationwide observance of Law Day. Law Day is sponsored by the Oklahoma Bar Association, each of the seventy-seven County Bar Associations and the American Bar Association. Law Day programs should be keyed to the 2011 theme: "The Legacy of John Adams: Defending the Rights of the Accused."

DONE THIS 8 DAY OF March, 2011.

SUPREME COURT OF OKLAHOMA

STEVEN W. TAYLOR
CHIEF JUSTICE

OBA President Deborah Reheard (left) and OBA Law Day Committee Chair Tina Izadi witness Chief Justice Steven Taylor 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 viable democracy requires understanding of the laws and history of our land; and*

Whereas, *the Law Day 2011 theme "The Legacy of John Adams: Defending the Rights of the Accused," encourages us to explore the legacy and impact of key individuals and events that established the United States as the Land of the Free.*

Now, therefore, I, Mary Fallin, *Governor of the State of Oklahoma, do hereby proclaim May 1, 2011 to*

"Law Day"

in the State of Oklahoma.

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 21st *day of* Feb *in the Year of our Lord two thousand* Eleven *and of the State of Oklahoma in the* One Hundred and Third *year.*

Mary Fallin

Post-Production Movement of Natural Gas in Oklahoma:

Is it Gathering? Transportation? Or Somewhere in the Mittelstaedt?

By Richard B. Noulles

INTRODUCTION

As most oil and gas attorneys know, after natural gas is produced from a well, if the gas is not sold at the well, the producer often moves the gas to a point away from the well – sometimes a few miles, sometimes hundreds of miles, sometimes through transmission lines only and sometimes to a plant where natural gas liquids are extracted and the residue gas may be sold at the tailgate of the plant or may be moved further downstream before being sold. In all these cases, whether the gas movement is characterized as "gathering" or "transportation" may have a significant impact on whether the cost of moving the gas can be charged to the royalty owners (*i.e.*, is deductible from the ultimate sale proceeds when calculating royalties).

For a producer's lawyer, this issue most often arises in one of two ways. First, the producer may contact the lawyer to tell him the producer's plans for moving the gas and ask whether the costs can be deducted in calculating royalties. However, a more likely scenario is that the producer will contact the lawyer to say he has just received a summons and petition in a class action lawsuit alleging fraud and breach of fiduciary duty, among other things, and seeking to recover 20, 30 or more years of alleged royalty underpayments, plus interest at 12 percent compounded annually.[1] Interestingly, the deductibility of the costs in these two cases may differ, even though both producers are moving the gas the same distance from their wells to the point of sale.

This article will discuss the Oklahoma case law dealing with the deductibility of the costs of gathering and transportation in calculating royalties, statutory provisions that may be applicable to this issue and the open issues that the lawyer for a producer or royalty owner may have to opine on, despite the absence of a clear answer in the case law and statutes, when advising the client.

DEVELOPMENT OF THE OKLAHOMA CASE LAW

When an attorney begins researching the deductibility issue, he will find relatively few cases relevant to this topic. The first case — and most favorable from the producer's point of view — is *Johnson v. Jernigan*.[2] In *Johnson*, the

producer was moving the gas off of the lease on a producer-operated line 10 miles to the point of sale and deducting two cents per Mcf in calculating royalties.[3] Importantly, as will be seen later, the parties agreed there was no market available for the gas at the well, so the gas had to be moved to be sold.[4] The royalty owners had a relatively simple and straightforward argument — the lease said royalties were to be one-eighth of the "gross proceeds at the prevailing market rate" for gas sold off the premises, so the two-cent fee should not be deducted from the gross proceeds in calculating the royalties.[5]

But the court ruled for the producer, holding that:

> "The lessee is obligated to develop the commodity he has found so that it will bring the highest possible market value. [Citation omitted.] But in performing this function he is not required to provide pipe line facilities beyond the lease premises…."
>
> "Gross proceeds" has reference to the value of the gas on the lease property without deducting any of the expenses involved in developing and marketing the dry gas to this point of delivery. When the lessee has made the gas available for market then his sole financial obligation ceases, and any further expenses beyond the lease property must be borne proportionately by the lessor and lessee.[6]

However, in addition to stating that expenses "beyond the lease premises" must be borne proportionately by the lessor and lessee, the court also used various other terms in discussing the type of gas movement that could or could not be charged to the royalty owners:

- First, in discussing what was meant by the lease provision calling for payment of royalties at "the prevailing market rate," the court said that, "Market rate means the rate at which the gas is commonly sold in the vicinity of the well."[7] Obviously, the court did not think 10 miles was "in the vicinity of the well."

- Second, the court also said it was the market rate "at the wellhead or in the field" that determines the sale price.[8] These two terms can have vastly different meanings, since a field can extend well beyond the wellhead (and well beyond the lease or drilling and spacing unit on which the well is located), and may extend beyond any particular well or lease for much more than the 10 miles involved in *Johnson*.

- Finally, the court said market rate did not mean the rate at the purchaser's location, since that may be "some distance away from the lease premises."[9] Clearly, in *Johnson* the court thought 10 miles qualified as "some distance away from the lease premises."

Although *Johnson* did not go so far as to adopt the bright-line approach of jurisdictions such as Texas and Louisiana, which hold that all expenses after the gas has been produced from the ground generally are deductible in calculating royalties,[10] producers certainly had reason to believe that Oklahoma was heading in that direction after *Johnson*, at least as to expenses incurred off the lease premises. However, when the next post-production cases came before the court, in 1992 and 1994, the composition of the court had changed significantly and the decisions were decidedly unfavorable to producers.

In *Wood v. TXO Production Corp.*,[11] the court answered a certified question from the United States District Court for the Eastern District of Oklahoma regarding the deductibility of the cost of compressing gas to enable it to enter the purchaser's pipeline. TXO had installed compressors on the lease to increase the gas pressure so it could enter the purchaser's pipeline. Although the compressors were located on the lease, TXO argued compressing the gas to enable it to enter the purchaser's pipeline was no different than moving the gas to a distant purchaser, which costs were deductible under *Johnson*. However, the court rejected TXO's argument in a 5-4 decision, saying that *Johnson* "said only that the lessor must bear its proportionate share of transportation costs where the point of sale was off the leased premises."[12] In reaching its decision, the court relied on Kansas and Arkansas cases holding that the implied duty to market gas required the producer to bear all the costs of putting the gas in marketable form.[13] The court held that compressing the gas on the lease so it could enter the purchaser's pipeline, which connected to the well on the lease, was part of making the gas marketable.[14]

Two years later, the court decided *TXO Production Corp. v. State ex rel. Commissioners of Land Office*.[15] In that case, the Commissioners asserted TXO was improperly deducting compression, dehydration and gathering costs in calculating royalties payable to the Commis-

sioners. The Commissioners' primary argument was that their lease said the commissioners were entitled to a royalty of either one-eighth of the gas in kind, to be delivered "without cost into pipelines" or, in lieu of that, "the market value thereof," and that the latter phrase meant the market value of the gas without deducting any costs incurred prior to the gas being delivered into the pipeline.[16]

The trial court ruled in favor of TXO, but the Supreme Court agreed with the Commissioners that, under the unique wording of the gas royalty clause, the market value royalty was to be calculated based on the value of the gas as delivered without cost into the pipeline.[17] However, the court did not stop there. Based on its discussion of the implied duty to market in *Wood*, the court said that compression, dehydration and gathering were all part of the lessee's implied duty to produce a marketable product.[18] In discussing gathering, the court stated that, "[T]he gathering process occurs prior to the product being placed into the purchaser's pipeline. As such, gathering is not a deductible expense under the teaching of *Wood*."[19] However, after saying that, the court specifically added that its decision "does not disturb our ruling in Johnson [citation omitted], which held a lessor is required to bear its proportionate share of transportation costs when the sale occurs off the lease premises."[20]

> "In *Johnson*, the gas clearly was being moved 'prior to the product being placed into the purchaser's pipeline,'..."

Despite the court's effort to harmonize the holding in *CLO* with *Johnson*, the broad definition of "gathering" in *CLO* is difficult to reconcile with *Johnson*. In *Johnson*, the gas clearly was being moved "prior to the product being placed into the purchaser's pipeline," which the court defined as non-deductible "gathering" in *CLO*. However, in *CLO*, the court also said *Johnson* is still good law and that under *Johnson* the lessor has to bear its proportionate share of the costs of moving the gas to a sale point off the lease. So if a producer is moving gas to a sales point off the lease prior to putting it into the purchaser's pipeline, is that deductible transportation under *Johnson* or non-deductible gathering under *CLO*? Although it appears either answer could be correct under the foregoing statements in *CLO* and *Johnson*, in the later case of *Mittelstaedt v. Sante Fe Minerals*,[21] the court pointed out that "in *CLO*, delivery to the purchaser's pipeline occurred at the leased premises."[22] Thus, a strong argument can be made that under *CLO* and *Mittlestaedt* "gathering" is still limited to gas movement on the leased premises. This is further supported by the statement in *Mittelstaedt* that the lessee has a duty to provide a marketable product available to market "at the wellhead or leased premises."[23]

In considering this question, it is important to bear in mind that the *Wood* and *CLO* decisions occurred about the same time the reference to a "purchaser's pipeline" — in the sense of a pipeline company that is purchasing the gas — was starting to become an anachronism. Between 1970 and 1992, the gas industry had seen gas shortages in the 1970s, the adoption of the Natural Gas Policy Act of 1978 and the gas bubble in the early 1980s, leading to a precipitous decline in the market price of gas throughout most of the 1980s and causing pipeline companies to incur substantial take-or-pay liabilities under their long-term purchase contracts. This resulted in the Federal Energy Regulatory Commission's issuing various orders having the purpose and effect of making pipeline companies pure transporters of gas, rather than purchasers from producers and sellers to end users.[24] The end result was that by the early to mid-1990s, much gas was no longer being sold directly to pipeline purchasers. Instead, it was often being moved dozens or even hundreds of miles downstream by producers — who paid the pipeline companies a fee for moving the gas — where it was then sold to the end user purchasers, who did not take title or delivery of the gas until it reached the purchaser's facility.[25]

Concurrently with this change, many pipeline companies were beginning to "spin off" the portions of their pipeline systems upstream of their large, high-pressure transmission lines and the spun-off companies began moving the gas from the wellhead to those high pressure lines. Thus, although the reference in *CLO* to the "purchaser's pipeline" may well have been intended to refer to traditional sales in which the gas purchaser was a pipeline company that owned the entire pipeline system into which the gas was being delivered (usually at or very near the well), most royalty owners' lawyers will argue for a much narrower definition of "purchaser's pipeline" by asserting it refers exclusively to the large, high-pressure transmission lines that were not spun off by the interstate pipeline companies (or to similar large, high-pressure lines built since then) — which now are often located many miles from the wells. Likewise, most royalty owners' lawyers will argue that all gas movement upstream of those large, high-pressure lines constitutes "gathering," not transportation.

From the producers' perspective, the arguments by the royalty owners' lawyers are wrong because they ignore the fact the "spun off" portions of the pipeline system constituted a part of the "purchaser's pipeline" prior to being spun off, when the gas was being sold directly to the pipeline purchaser, and that gas being moved on those lines prior to the spin-off therefore was being transported, not gathered, under *Wood's* definition of gathering. It is hard to see why a change in the structure of the pipeline industry, whereby pipeline companies went from being purchasers to transporters only, resulting in the pipeline companies spinning off portions of their pipelines to different entities, should affect the question of whether gas is being "gathered" or "transported." This is particularly so when the gas is being moved on the same pipeline that constituted a part of the "purchaser's pipeline" while the gas was being sold in a traditional sale to a pipeline purchaser, and the gas movement is beyond the leased premises — which clearly constituted "transportation" under *Johnson*. However, this author is not aware of any Oklahoma case law explaining what is meant by the "purchaser's pipeline" in the context of today's industry structure.

The next (and, to date, the last) case to deal with the deductibility of gas movement costs is *Mittelstaedt v. Santa Fe Minerals*.[26] In *Mittelstaedt*, the lessors challenged the lessee's deduction of transportation, blending, dehydration and compression costs. The gas was moved downstream from the wells — the opinion does not say how far, other than that it was off the lease — where Santa Fe paid third parties for blending, dehydration, compression and transportation. The gas was then moved further downstream to the point of sale.[27]

Santa Fe argued all the costs were incurred to enhance the quality of the gas and obtain a higher price for it from higher-priced markets.[28] The lessors argued they had a gross proceeds lease but were not getting gross proceeds. They also argued *Johnson* was no longer good law in view of *Wood* and *CLO*.[29]

The court began its analysis of the issues by stating the gross proceeds clause:

> …when considered by itself, prohibits a lessee from deducting a proportionate share of transportation, compression, dehydration and blending costs when such costs are associated with creating a marketable product. However, we conclude that the lessor must bear a proportionate share of such costs if the lessee can show 1) that the costs enhanced the value of an already marketable product, 2) that such costs are reasonable and 3) that actual royalty revenues increased in proportion with the costs assessed against the non-working interest.[30]

The court also specifically rejected the lessor's argument that Johnson was no longer good law. However, in doing so, the court narrowed the conditions under which Johnson was applicable, stating:

> In *Johnson* there was no market for the product at the leased premises. *Johnson* allows allocating transportation costs to lessors when the point of sale is away from the lease only when no market for the product is available at the lease. When there is a market available at the wellhead, transportation costs to a point of sale at a distant market should not be allocated against the lessors' interest except in those circumstances that we will later explain.[31]

The "circumstances" explained later were the same three-part test discussed above — that the lessee show that the product was already marketable, that the costs were reasonable and that royalty revenues increased in proportion to the costs.[32]

Since *Mittelstaedt* holds that *Johnson* allows the deduction of transportation costs to a sale point off the leased premises "only when no market for the product is available at the lease," it is important to determine whether a market is available at the lease.[33] In today's industry structure, it is very common for producers to move gas dozens, or even hundreds of miles before selling it. Of course, this may or may not mean that no market was available at the lease. Although end users purchasing gas may wish to avoid taking title at the lease and being responsible for moving the gas to their locations, gas marketing companies still may be willing to purchase the gas at the lease. If there truly is no market available at the lease, then, since *Johnson* remains good law, the producer should have a good argument that costs incurred to move the gas off the lease to the point of sale constitute deductible transportation costs under *Johnson*. On the other hand, if the producer is simply making an economic decision that it can obtain a better net price by moving the gas to the purchaser's location and selling it there, as opposed to selling in the market available at the lease, the producer needs to be prepared to show that the three-part *Mittelstaedt* test has been met in order to deduct the cost of moving the gas.[34] Moreover, even if the three-part test is met, it may be that only the portion of gas movement costs constituting "transportation" is deductible under *Mittelsteadt*, and that any portion constituting "gathering" remains non-deductible under *CLO*.[35]

In summary, although Oklahoma case law may make "gathering" a non-deductible expense in all cases, it clearly allows "transportation" costs to be deducted in many circumstances (depending upon whether there is a market available at the lease and whether the three-part *Mittelstaedt* test has been met). However, the case law has not clearly defined the difference between "gathering" and "transportation" so as to enable producers and royalty owners to know with certainty what gas movement costs constitute gathering versus transportation. As discussed below, more recent legislative enactments may provide assistance in answering this question.

STATUTORY PROVISIONS

Oklahoma has had a statute governing pipeline companies since 1913. The Production and Transportation Act of 1913, 52 O.S. §21, *et seq*., essentially provides that any company exercising the right to "carry or transport" natural gas by pipeline shall be a "common purchaser" of all gas in the vicinity of its pipeline, and shall purchase all such gas without discrimination, except "where the nature and extent of their business is such that the public needs no use in the same."[36] In 1978, the Legislature amended this act to prohibit persons "gathering natural gas" from charging a discriminatory fee.[37] However, the amendment did not define "gathering" or otherwise distinguish it from "carry[ing] or transport[ing]" natural gas under the existing provisions of the act.

In 1999, the Legislature again amended the act and, for the first time, included a definition of a "gatherer." Unfortunately, the definition was no help in distinguishing gathering from transportation, since it defined a gatherer as:

> [A]ny person gathering natural gas for hire, compensation or otherwise, or gathering natural gas, in whole or in part, for such person's own account, whether in connection with the purchase and resale of natural gas, or in connection with the processing of natural gas or otherwise.[38]

By defining a "gatherer" as a person "gathering" natural gas, the Legislature used a wholly circular definition that essentially defined nothing. Therefore, this act was no help in distinguishing gathering from transportation.

In 2004, the Legislature again amended the definitions under the Production and Transportation Act. This time, the definition drew a much clearer line. It defined "gathering" as:

> [T]he transportation of natural gas through a pipeline for hire, compensation or otherwise, or transporting natural gas through a pipeline, in whole or in part, for such person's own account, whether in connection with the purchase and resale of natural gas, or in connection with the processing of natural gas or otherwise, performed by a person other than a local distribution company, intrastate transmission pipeline or interstate pipeline. Gathering includes those activities or processes performed between the delivery points and the redelivery points, which shall include and be limited to only transportation, measurement, conditioning, compressing, pressure regulation, recompressing, cleaning and treating of such gas and the fuel or gas loss associated with such foregoing activities. The terms "conditioning, cleaning and treating" as used herein shall include the

> processes of separation, dehydration, removal of all contaminants and inerts and filtering. Gathering specifically shall not include processing or the extraction of natural gas liquids and products.[39]

Thus, under the act's current definition, if gas is being moved by an intrastate pipeline, interstate pipeline or local distribution company, it is not being gathered. If the gas is not being moved by one of those entities, it is being gathered.

How do you determine whether the entity moving gas is a local distribution company, interstate pipeline or intrastate pipeline? Perhaps surprisingly, this is not too difficult. Although the author has not been able to locate a definition of "local distribution company" in the Oklahoma statutes, it is defined in several places in the U.S. Code, and essentially means a company that distributes gas at retail to end users for ultimate consumption.[40] Similarly, an "interstate pipeline company" is defined in the U.S. Code as an entity that transports natural gas in interstate commerce, other than an entity transporting gas that is received and consumed wholly within one state.[41] Interstate gas companies are regulated by the Federal Energy Regulatory Commission and are required to obtain a certificate of public convenience and necessity from the commission.[42] Thus, if there is any uncertainty as to whether a company is an interstate pipeline company, the answer should be easily obtained by inquiry to the company or the commission.

As to intrastate pipeline companies, in *EOG Resources Marketing v. Okla. State Bd. of Equalization*,[43] the court held that the distinguishing factor between an intrastate pipeline company and a gas gathering company is that an intrastate pipeline company may exercise the power of eminent domain while a gas gathering company cannot:

> Intrastate pipeline companies and intrastate transmission pipeline companies may exercise the power of eminent domain under the Federal Natural Gas Act and Oklahoma's Production and Transportation Act. However, gas gathering companies may not exercise the power of eminent domain under either the Natural Gas Act or the Production and Transportation Act.[44]

Whether a company has the power of eminent domain can be determined by contacting the company itself or checking the Corporation Commission's website to determine if the company has filed the necessary plats and acceptance of the provisions of the act, as required under 52 O.S. §26 in order to have the power of eminent domain.[45]

However, at least two significant questions regarding the definition of gathering under the Production and Transportation Act remain unanswered. First, the introduction to the definitions under the act specifically state the definitions are, "For the purposes of this act."[46] Thus, it is unclear whether the definition applies in determining whether a particular gas movement constitutes gathering versus transportation for purposes of charging those costs to lessors for royalty purposes, since the act does not purport to apply to such a determination.

Second, if the statutory definition does apply to royalty calculations, it is also uncertain whether it applies retroactively to gas movement prior to enactment of the definition.[47] Obviously, this question could be very important in an action seeking to recover allegedly underpaid royalties for periods prior to enactment of the statutory definition.

In summary, the statutory definition provides a clear distinction between "gathering" and "transportation" if that definition is applicable to royalty disputes, although it would still be an open question as to whether the definition applied to gas movement prior to enactment of the definition.

Practical Suggestions for the Attorney Contacted by a Producer or Royalty Owner

For the attorney who is contacted by a producer or royalty owner about the deductibility of gas movement costs incurred prior to the sale of the gas, the author suggests that the following questions be investigated:

- Does the applicable lease (or leases) expressly allow deductions for gathering costs? If so, the express lease provision should govern the deductibility issue, as stated in *Wood*.[48]
- Is/was there a market for the gas at the well? If not, the producer should have a good argument under *Johnson* and *Mittelstaedt* that any costs of moving the gas off the lease constitute deductible transportation costs under *Johnson*. On the other hand, if there is a market at the lease, but the producer chooses to move the gas to a point off the lease before selling it, the producer will have

continued on next page

the burden of meeting the three-part *Mittelstaedt* test to deduct any "transportation" costs, although any "gathering" costs may not be deductible.

- What type of entity is moving the gas? If a local distribution company, interstate pipeline company or intrastate pipeline company that has the power of eminent domain — the gas movement is arguably transportation under the Production and Transportation Act definition — if that definition applies to the calculation of royalties and, for pre-2004 gas movement, if it applies retroactively.
- How far is the gas being moved from the lease/drilling and spacing unit prior to being sold, and what size and pressure are the lines moving the gas? If the Production and Transportation Act definition is not applicable, the further the gas is moved, and the larger and more high pressure the lines carrying the gas are, the more it has the "feel" of transportation moving the gas "some distance away from the lease premises," not gathering "in the vicinity of the well."[49] Conversely, smaller, lower-pressure lines that move the gas less distance from the lease or drilling and spacing unit may be more likely to be seen as gathering, not transportation.[50]
- Finally, a very important consideration — but one beyond the scope of this article — is whether the gas is being moved to a producer owned processing plant for the extraction of liquids prior to any arm's-length sale. If so, the "higher of" rule under *Howell v. Texaco*[51] may trump any ability to otherwise deduct transportation costs. In *Howell*, the court held that where gas was not sold in an arm's-length transaction at the well, but was moved to a producer owned processing plant for the extraction of liquids prior to any arm's-length sale by the producer, the royalty owner was entitled to be paid royalties based on the higher of the prevailing market price at the well (as established by other arm's-length sales at the well or comparable sales in the vicinity) or a "work-back" value based on the proceeds received by the producer from its first downstream, arm's-length sale (of the extracted liquids, residue gas and any scrubber oil and drip condensate), less deduction of allowable costs and expenses under *Mittelstaedt*.[52] Thus, where *Howell* is applicable, if the prevailing market price at the well is higher than the work-back value after the deduction of allowable costs under *Mittelstaedt*, the royalty owners are entitled to be paid royalties based on the prevailing market price at the well, even though the gas movement costs would otherwise constitute deductible transportation costs.

CONCLUSION

Oklahoma law appears to create an important distinction between "gathering" costs and "transportation" costs in calculating royalties. The author has been involved in litigation in which tens of millions of dollars of royalty claims turned on whether the gas movement at issue constituted "gathering" or "transportation." Unfortunately, there is no clear guidance under Oklahoma law for royalty owners, producers or their attorneys to know with certainty what constitutes "gathering" versus "transportation" in calculating royalties. Hopefully, some or all of these unanswered questions will be resolved when the next case involving the deductibility of gas movement costs reaches the appellate courts. The absence of that guidance imposes unnecessary and entirely avoidable costs on litigants and the district courts.[53]

1. *See* 52 O.S. §590.10.D.1.
2. 1970 OK 180, 475 P.2d 396.
3. *Id*. at ¶ 2.
4. *Id*. at ¶ 5.
5. *Id*. at ¶¶ 4, 13.
6. *Id*. at ¶¶ 14, 15.
7. *Id*. at ¶ 5.
8. *Id*.
9. *Id*.
10. *See, e.g., Heritage Resources Inc. v. NationsBank*, 939 S.W.2d 118, 122 (Tex. 1997) (Although it is not subject to the costs of production, royalty is usually subject to post-production costs…); *Merrit v. Southwestern Elec. Power Co.*, 499 So. 2d 210, 213 (La. Ct. App. 1986) (discussing Louisiana cases holding that "royalty is free of all costs up to th[e] point of production, while subsequently incurred costs are to be borne on a pro rata basis between operating and non-operating interests"). One potential benefit of using the point of production as the bright-line demarcation point for when royalty owners become responsible for their proportionate share of costs is that such a bright-line test results in less confusion (and thereby less litigation costs) for royalty owners and producers alike. *See Wood v. TXO Production Corp*., 1992 OK 100, 854 P.2d 880, 887 n. 29 (Opala, J. dissenting).
11. 1992 OK 100, 854 P.2d 880.
12. *Id*. at 3. Interestingly, the only two justices who had been on the court when *Johnson* was decided — Justices Lavender and Hodges — dissented in *Wood*, as did Justices Opala and Watt.
13. *Id*. at ¶¶ 7, 8.
14. *Id*. at ¶ 11. The court did say that if the lessee wanted royalty owners to share in that expense, it could be spelled out in the lease. *Id*.
15. 1994 OK 131, 903 P.2d 259. This case is referred to herein as "*CLO*."
16. *Id*. at ¶ 7. Although the "without cost into pipelines" language is not uncommon in an oil royalty clause, it is unusual, in this author's experience, to see that language in a gas royalty clause.
17. *Id*. at ¶ 8.
18. *Id*. at ¶¶ 9-12. Although the court pointed out in *CLO* that the compression costs in Wood occurred on the lease premises, nothing in *CLO* indicates whether the expenses there were incurred on the lease or off the lease.
19. *Id*. at ¶ 15.
20. *Id*. at note 2.
21. 1998 OK 7, 954 P.2d 1203 (discussed in detail in the text accompanying notes 26-35, *infra*).
22. *Id*. at ¶ 8, 954 P.2d at 1206.
23. *Id*. at ¶ 20, 954 P.2d at 1208.
24. *See generally Koch Hydrocarbon Co. v. MDU Resources Group Inc.*, 988 F.2d 1529, 1533 (8th Cir. 1993) (discussing historical circumstances leading to enactment of the NGPA and the resulting gas bubble); *Assoc. Gas Distributors v. F.E.R.C.*, 824 F.2d 981, 993-96 (D.C. Cir. 1987) (discussing FERC's efforts to accomplish a "complete restructuring of the

natural gas industry" through Order 436's unbundling of pipelines' transportation and merchant roles); *Transwestern Pipeline Co. v. F.E.R.C.*, 897 F.2d 570, 573 (FERC's "basic stratagem" has been to "unbundle the sale of gas from its transportation, enabling local distribution companies and end-users to buy gas in the field and to use interstate pipelines simply for transportation"); *American Gas Ass'n v. F.E.R.C.*, 912 F.2d 1496, 1503 (D.C. Cir. 1990) (discussing various FERC orders and court rulings relating to FERC's restructuring of the natural gas industry by converting pipelines to open access transporters of gas).

25. Of course, some volumes of gas continued to be sold at the wellhead, in keeping with the traditional practice.

26. 1998 OK 7, 954 P.2d 1203.

27. *Id*. at ¶ 3.

28. *Id*.

29. *Id*. at ¶¶ 1, 13.

30. *Id*. at ¶ 2. After reaching this decision, the court also eliminated any distinction between compression costs incurred on the lease versus those incurred off the lease, stating, "We decline to turn compression costs into costs paid by the royalty interests merely by moving the location of the compression off the lease…We conclude that off-lease compression costs may be allocated to the royalty interests if such costs are reasonable, when actual royalty revenues increase in proportion to the cost assessed against the non-working interest, and when the compression is associated with enhancing an already marketable product off the lease." *Id*. at ¶ 29.

31.*Id*. at ¶ 13.

32. *Id*. at ¶ 30.

33. Although the court consistently has referred to "the lease" as setting forth the applicable demarcation line in these cases, for the past 60 years wells in Oklahoma have been drilled within a drilling and spacing unit established by the Oklahoma Corporation Commission under 52 O.S. §87.1, and there often are multiple leases, covering a variety of different acreage locations, on the acreage within a drilling and spacing unit. The leases can range from a few acres or less, all within a single drilling and spacing unit, to thousands of acres, with much of the lease extending well beyond the boundary of any single drilling and spacing unit. Thus, use of the well itself, or the drilling and spacing unit on which the well is located, as the applicable demarcation line, instead of the lease, could avoid potential inconsistent results that might otherwise occur from using one or more individual leases as the demarcation line.

34. Since it is the lessee's burden under *Mittelstaedt* to show that the three-part test has been met, a producer relying on it should maintain records, or be prepared to present other evidence, showing that the producer's gas was marketable at the lease, that any costs incurred for compression, blending, dehydration and transportation were reasonable, and that the price ultimately obtained at the downstream sale point exceeded the sum of the amount that could have been obtained from a sale at the lease plus the costs incurred to obtain the enhanced price.

35. It is arguable that the holding in *CLO* should be limited to leases containing the "without cost into pipelines" language in the gas royalty clause, and that the broader discussion of gathering as a non-deductible cost of making the gas marketable was *dictum*.

36. 52 O.S. §23. Presumably, this exception was intended to apply where a producer was merely moving gas from its own wells, not from any third-party wells.

37. *See* 52 O.S. §24.3, superceded effective June 4, 1999.

38. *See* 52 O.S. §24.4(1), superceded effective April 4, 2004.

39. 52 O.S. §24.4(1).

40. *See, e.g.*, 15 U.S.C. §717X(c)(2), 15 U.S.C. §1301(17) and 43 U.S.C. §1862(c)(1).

41. *See* 15 U.S.C. §3301(15) and 15 U.S.C. §§717(b) and (c). Although it is not certain the federal definitions of "interstate pipeline company" and "local distribution company" are applicable, the author believes they comport with industry understanding and therefore would likely be applied in construing the act.

42. *See* 15 U.S.C. §§717 and 717(f)(c); 42 U.S.C. §7172.

43. 2008 OK 95, 196 P.3d 511. The issue in EOG was whether EOG was a public service company for ad valorem tax purposes. *EOG* did not involve the deductibility of gathering or transportation costs for royalty purposes.

44. *Id*. at ¶ 37. (The court may have intended to refer to interstate pipeline companies at the outset of the quoted language, rather than referring to intrastate pipeline companies twice, particularly in view of the reference to both the Federal Natural Gas Act and Oklahoma's Production and Transportation Act.)

45. In order to search the website for this information, the necessary Case Processing Web Application Software must be downloaded from the website. Once that is done, search under Cause Types for "Acceptance Provisions" under "Transportation (Code TD)" causes.

46. 52 O.S. §24.4.

47. For the rules applicable in determining whether a statutory provision can be applied retroactively, *see generally Welch v. Union Mut. Ins. Co.*, 1989 OK 117, 776 P.2d 847; *Polymer Fabricating Inc. v. Employers Workers Compensation Ass'n*, 1998 OK 113, 980 P.2d 109; *Texas County Irrigation & Water Resources Ass'n v. Okla. Water Resources Bd.*, 1990 OK 121, 803 P.2d 1119, and *Magnolia Pipeline Co. v. Okla. Tax Comm'n*, 1946 OK 113, 167 P.2d 884.

48. *See* note 14, *supra*.

49. *See* the discussion in *Johnson* regarding these terms, at the text accompanying notes 7-10, *supra*.

50. Another factor that may bear on this analysis is what term is used in the gas movement contract. Many companies have the word "gathering" in their name or call their gas movement contracts "gathering contracts," even though the gas movement might otherwise be characterized as transportation under Oklahoma law. Although attorneys for royalty owners will argue that is evidence of the producer's recognition that the gas movement constitutes gathering, not transportation, it is the author's understanding that the word "gathering" has been used in many company names and contracts to avoid their being subject to FERC regulation, since 15 U.S.C. §717(b) specifically excepts the "gathering of natural gas" from federal regulation. Thus, the use of the term "gathering" in a company name or contract likely is intended to signify the company is not engaging in the interstate transportation of gas subject to FERC regulation, as opposed to signifying it is engaged in "gathering" versus "transportation" under Oklahoma law.

51. 2004 OK 92, 112 P.3d 1154.

52. *Id*. at ¶¶ 19-23.

53. As indicated in note 10, *supra*, states such as Louisiana and Texas have avoided the confusion and litigation inherent in the question of when gas becomes a "marketable product," and whether the post-production movement of gas constitutes non-deductible "gathering" or deductible "transportation" for royalty purposes, by establishing a bright-line rule that, in the absence of a lease provision to the contrary, the producer is responsible for all costs incurred prior to production, but the royalty owners share in any non-production costs incurred thereafter. Although the author would favor the adoption of such a rule in Oklahoma, whether that should be done is beyond the scope of this article.

ABOUT THE AUTHOR

Richard B. Noulles is a shareholder in the Tulsa office of GableGotwals. He is a 1970 graduate of Rice University and a 1975 graduate of the University of Tulsa College of Law. His primary area of practice is litigation in federal and state courts, with an emphasis in oil and gas litigation. He has represented a number of producers in several royalty class actions throughout Oklahoma.

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The Patient Protection and Affordable Care Act

Practical Implications for Business Owners

By Norman S. Newmark

In perhaps the most sweeping healthcare legislation ever enacted in this country, Congress passed and President Obama signed the Patient Protection and Affordable Care Act into law on March 23, 2010 (as amended by the Health Care and Education Reconciliation Act of 2010, "PPACA"). The PPACA was subsequently amended by the Health Care and Education Reconciliation Act of 2010. The new law contains many tax and other requirements for business (PL 111-148, 124 Stat. 119, as amended).

Much of the new law has yet to be written in the form of regulations, and parts (or even the whole) may be overturned or reworked by subsequent legislation in the new Congress or by court challenges. However, the following summary is intended to provide general guidance pending further legislative, regulatory and judicial action, and will hopefully be useful in advising clients to take appropriate measures in anticipation of increased regulation.

TAX SUMMARY/PRACTICAL IMPLICATIONS FOR EMPLOYERS

Free Choice Vouchers: For specific lower-income employees who choose not to participate in an employer plan, the employer must offer a "free choice" voucher good towards the purchase of coverage through a state sponsored "American Health Benefit Exchange and Small Business Health Options Program" (SHOP) as required of each state under the new law. The voucher is equal to the premium that the employer would have paid each month for each such employee, as calculated under law.[1] Any voucher exceeding the cost of coverage through the SHOP must be refunded to the employee, albeit the refund will be taxable to the employee.[2] Vouchers are tax deductible by the employer[3] but not taxable to the employee to the extent used to purchase health insurance from a SHOP.

Effective Date: No effective date provided, hence it is effective the date of enactment (March 23, 2010). However, the provisions for deduction and exclusion from income are effective for vouchers provided after Dec. 31, 2013, and the states must create SHOP exchanges no later than Jan. 1, 2014.

Practical Implications: A potential accounting problem for large employers. Employers should check with their CPAs, payroll departments/providers and computer professionals to put in sufficient computer systems/software to handle the required voucher systems. Query the tax deductibility of the vouchers and their practical usefulness to eligible employees before all SHOP exchanges are created by 2014.

New Dependent Rules, etc.: Under the new law, children of employees up to age 26 are still

considered dependents so that coverage and benefits are not taxable to the employee (and are deductible by the employer).[4] Moreover, under the non-tax provisions of the new law, there are enhanced benefit requirements such as coverage for children until age 26, preventative care, elimination of lifetime limits, pre-existing conditions and "no rescission" provisions.[5]

Effective Date: For tax deduction provisions, none provided, hence the effective date is March 23, 2010, the date of enactment. For group health provisions, plan years after Sept. 23, 2010.

Practical Implications: For the employer, there will be additional premium outlays for the enhanced benefit requirements. Consider whether the additional costs will require reduced or minimal coverage for employees or increased cost sharing.

Small Employer Health Insurance Credit: An "eligible small employer" is one that has 25 or fewer employees and an average annual compensation of $50,000 or less. Such employers are allowed tax credits of up to 35 percent for premiums paid for employees subject to reductions for the number of employees in excess of 10 and for salaries in excess of $25,000.[6]

Effective Date: Tax years 2010 through 2013, with an additional two-year extension (i.e. 2014 and 2015) but only for employers offering insurance through a state SHOP exchange.

Practical Implications: Not much practical help for many employers but certainly something for a given small business.

Simple Cafeteria Plans: Under the new law certain small businesses can participate in a salary-deferral or cafeteria plan *without* also qualifying under the usual non-discrimination provisions designed to prevent favoritism for highly compensated or owner/employees.[7] However, the employer must make a minimum contribution and the plan must have certain minimum eligibility and participation requirements.[8] Eligible small businesses are those which employ 100 or fewer employees.[9] A special provision allows an employer which has a simple plan but which no longer qualifies as an eligible employer to continue to offer the simple plan, so as not to discourage hiring.[10]

Effective Date: Tax years after Dec. 31, 2010.

Practical Implications: An effective incentive for small employers to provide cafeteria benefits, albeit subject to future restrictions on contributions.

Limits on Flexible Spending Arrangements, Archer Medical Savings and Health Savings Accounts: First, over-the-counter medicines will no longer qualify for reimbursement from cafeteria plans (flexible spending arrangements), Archer savings and health savings accounts.[11] Second, the dollar amount allowed for a cafeteria plan is lowered to $2,500 per year per employee, adjusted for inflation (consumer price index, not medical inflation).[12]

Effective Dates: The over-the-counter medicine rule applies for tax years after Dec. 31, 2010. The $2,500 limit for cafeteria plans applies for tax years after Dec. 31, 2012, though the inflation adjustment starts for tax years after Dec. 31, 2013.

Practical Implications: For the employer, not much except perhaps grumpy employees and additional FICA taxes on the portions of the salaries no longer deferred into the cafeteria plan. Employers should be careful to communicate the new limits to employees as described by their health account providers.

W-2 Reporting: Employers will now be required to report the total cost of employer provided health coverage. However, this does not include employee contributions to flexible spending arrangements or employer contributions to medical or health savings accounts. Nor does it include long-term care, disability or indemnity (fixed dollar reimbursement) coverage. Moreover, no breakdown of the kinds of coverage is required (e.g. health, dental, vision, etc. covered under one policy). Costs are determined under similar rules as provided for COBRA continuing coverage but do not include salary reductions for cafeteria plans.[13]

Effective Date: Tax years after Dec. 31, 2010, though the IRS has extended the deadline to tax years after Dec. 31, 2011.[14]

Practical Implications: Because of potential penalties, employers will need to be doubly mindful of the accuracy of reporting and perhaps hire specialist bookkeepers, payroll companies or accounting firms for such purpose.

Enhanced 1099 Reporting: This is not a health care rule as such but was passed as part of the new law. Under prior regulations, a com-

pany making payments to a corporation in the ordinary course of business did not need to file a 1099 form with the IRS. Under the new law, payments in excess of $600 per annum must be reported on an IRS 1099 form, including payments for services and for property.[15] However, as of press, the House and Senate have passed a repeal bill, HR4, *Comprehensive 1099 Taxpayer Protection and Repayment of Exchange Subsidy Overpayments Act of 2011*, expected to be signed by President Obama. It repeals Internal Revenue Code sections 6041(h), (i), and (j), and parts of (a), and offsets the revenue loss by reducing or removing certain caps on individual recapture penalties otherwise applicable for individuals receiving premium assistance. In the meantime, the IRS has issued proposed regulations and requests for public comments on transactions that warrant exceptions, where, for example, payments are made by means of a credit or debit card and are already reported by the issuing bank.[16]

Effective Date: Payments made after Dec. 31, 2011.

Practical Implications: Assuming this provision or a similar version remains in the Code, another accounting problem for business, which must not only keep track of its taxable income but report transactions made to other businesses, starting with relatively small amounts. Businesses will need to obtain the taxpayer identification numbers of even small vendors. The credit card exception under the regulations may prove most useful. Query whether there will be tax problems associated with incorrect or inconsistent reporting and the relative burdens associated with fighting small discrepancies. Once again, record keeping will be of the utmost importance.

Additional Medicare Tax Withholding: For employees who earn wages in excess of $200,000 (single) or $250,000 (married/joint), or $125,000 (married filing separate), or for self-employed persons who earn in excess of such amounts, an additional 0.9 percent Medicare tax is imposed on such excess. An *employer* will have an obligation to withhold the additional Medicare tax only if a given employee earns more than $200,000 from such employer; otherwise any additional tax becomes the personal obligation of the employee. However, if the employer fails to make proper withholdings (i.e. for an employee earning over $200,000), then the employer will be subject to penalties even if the employee pays the 0.9 percent Medicare tax due.[17]

Effective Date: Tax years and remuneration received after Dec. 31, 2012.

Practical Implications: A little more paperwork for high-compensation employees, not much else. But a careful review of withholdings is warranted to avoid penalties.

Retiree Drug Subsidy: Under the new law, any subsidy received by an employer from the federal government to offset retiree drug benefits will reduce the amount of deduction for the benefits otherwise paid by the employer. Under current law employers may disregard such subsidies and deduct the full cost of retiree drug coverage under certain restrictions provided by law.[18]

Effective Date: Tax years after Dec. 31, 2012.

Practical Implications: Lower deductions mean higher taxes and lower earnings for employers providing retiree drug benefits.

Employer Penalty Tax: For employers with 50 or more full-time employees (large employers) which do not provide "minimum essential coverage" under a sponsored health plan (as defined by law), there is a penalty imposed roughly equal to $2,000 for each uncovered employee per annum (called an "assessable payment"). When computing the penalty, there is a reduction in the number of employees by 30, so that an employer of 100 persons without coverage pays the penalty on 70 employees, or $140,000 per year. The penalty can also apply if certain employees are entitled to premium assistance credits or cost-sharing subsidies through mandated state plans, even if the employer offers minimum essential coverage. There is a cap of the overall assessable payment if, say, some employees are covered and some are not, but are receiving subsidies. Employers are also required to report to the IRS whether they offer minimum coverage; penalties are provided for failure to correctly report.[19]

Effective Date: Months after Dec. 31, 2013.

Practical Implications: Large employers who already pay for coverage need to review plan coverage and costs with their agents. Note that there are "grandfathered" plan provisions which do not require termination of coverage existing on the date of enactment and some large employers have sought exemptions from

the new law. Those employers who have not provided coverage must weigh the potential penalty cost versus the costs of new coverage. Regardless, large employers must work with their accountants, payroll specialists and insurance agents for proper reporting.

Minimum Coverage Report: Large employers (50 or more full-time employees) and other employers which offer "minimum essential coverage" as described in the law are required to report whether they offer such coverage, and, if so, various information about their plans such as premiums, employer share of costs, and waiting periods before coverage starts.[20] In addition, for each month, information on full-time employees employed during such month must be provided (name, address, social security number, etc.) plus the employer must furnish a statement to each employee containing the information reported to the IRS about such employee's coverage.[21] Penalties are provided for inaccurate returns or failure to file including failure to furnish employee statements by the due date (Jan. 31 of each year).[22]

Effective Date: Tax periods after Dec. 31, 2013.

Practical Implications: A potential accounting dilemma for large employers. Employers should check with their CPAs, payroll departments/providers and computer professionals to put in sufficient computer systems/software to handle the required reporting.

"Cadillac Plan" Excise Tax: A so-called "Cadillac plan" tax is imposed on insurance companies to the extent that the aggregate value of coverage for employees exceeds various threshold premium amounts. The tax is equal to 40 percent of such excess.[23] The premium limits for each employee are generally $10,200 for self-only coverage and $27,500 for other than self-only coverage (family), adjusted for inflation according to a formula.[24] Various adjustments are also made to offset age/gender, retiree and high risk professions variables.[25]

The excise tax is paid by the *insurance company* if the policy is a group health plan (presumably passed onto the employer in the form of higher premiums), or the employer if the plan consists of a health savings account or medical savings account, or the *administrator/plan sponsor* if the plan sponsor (employer) or administrator administers the benefits, e.g. a self-insured group plan or flexible spending account.[26] Regardless of who pays, the employer generally must make the calculation of the excess benefit and the share of each health provider (e.g. group insurance plan) and report the taxable amount to the IRS.[27] There is a penalty if the coverage is under-reported equal to the amount of excise tax which would have been payable had the correct amount been reported, plus interest.[28]

Most group health insurance coverage and coverage otherwise excludable from the employees' incomes is aggregated to determine the excise tax, including reimbursements from a flexible spending account, dental and vision insurance, etc. However, separate dental/vision coverage, fixed indemnity payment coverage, disability and long-term care coverage, and various other insurance policies like workers' compensation and auto insurance medical are excluded.[29]

Effective Date: Tax years after Dec. 31, 2017.

Practical Implications: Costs of coverage for good insurance will increase, perhaps dramatically. Employers will also need to be doubly mindful of the accuracy of reporting, and perhaps hire specialist bookkeepers, payroll companies or accounting firms for that purpose. Finally, to avoid aggregation rules employers should consider separate policies for dental/vision, hospital or disease indemnity, disability and long-term care coverage for employees.

TAX SUMMARY/PRACTICAL IMPLICATIONS FOR BUSINESS OWNERS

Increased Medicare Tax: As an employee or self-employed individual (including partner) wages or self-employment income is subject to an additional 0.9 percent Medicare tax to the extent it exceeds $200,000 for a single person, $250,000 for a married couple filing jointly, and $125,000 for a married person filing separately.[30] The tax is computed on the joint wage/self-employment income of married couples who file jointly. For example, if the wife earns $180,000 and the husband $100,000, there will be an additional 0.9 percent Medicare tax on $30,000 ($280,000 joint salary less $250,000 threshold).[31] The deduction for self-employment tax does not apply to the additional Medicare tax.[32]

Effective Date: Tax years after Dec. 31, 2012.

Practical Implications: Evidently the marriage penalty is alive and well. In any case, business owners should consider S-corporation status to avoid or reduce additional Medicare tax, but should be wary of taking a salary

too low for tax purposes. In addition, Congress has toyed with the idea of making S-corporation income subject to employment taxes, though this has stalled as of this date.

Medicare Tax on Unearned Income: In addition to the 0.9 percent Medicare tax on wages/self-employment income, the usual Medicare tax of 3.8 percent now applies to net investment income above certain thresholds.[33] "Net investment income" is roughly defined as income from sources other than any trade or business in which a taxpayer materially participates (e.g. dividends, interest, etc. from investments in publicly traded stock or bonds, but *not* pension/IRA distributions).[34] The Medicare tax can apply to earnings from a closely held business if the owner does not materially participate in the business (as defined by law).[35] It can also apply to capital gains, but does not apply to non-taxable income (e.g. tax-exempt bonds).[36] Special rules apply if the owner participates with respect to some, but not all, activities of the business and it is an S-corporation or partnership.[37]

The threshold for the Medicare tax is $200,000 adjusted gross income for single persons, $250,000 for married filing jointly and $125,000 for married filing separately.[38] The tax is computed on the lesser of net investment income or the excess of modified adjusted gross income in excess of the applicable threshold.[39] Note that IRA/pension distributions count towards the threshold amount even though such distributions are not considered "net investment income" for purposes of the Medicare tax.[40]

Effective Date: Tax years after Dec. 31, 2012.

Practical Implications: Business owners should consider reducing the potential to exceed the adjusted gross income threshold by converting regular IRAs into Roth IRAs before 2013. In that way, Roth distributions will not be added to the threshold base and generate Medicare taxes on net investment income. Also if possible, business owners should consider replacing investment income with distributions from insurance, individual retirement annuities, tax-exempt bonds, etc. Finally, business owners should consider whether to elect S-corporation status and whether to materially participate in the business to avoid Medicare taxation.

CONCLUSION

Counsel should advise business clients to be prepared for greatly enhanced reporting and administrative requirements, not to mention additional taxes and higher premium costs. These burdens will likely be modified through subsequent legislation or regulation as political activity ensues, or by court decisions, but much of the new law will likely remain intact.

Author's Acknowledgement: The author wants to give special thanks to Wolters Kluwer/CCH for its timely and informative publication of statutes, committee reports, summaries and other matters related to the PPACA, the Small Business Jobs Act of 2010 and other legislative events, without which this article would have been very poor indeed.

1. Section 10108, PPACA.
2. Section 10108(d), PPACA; Section 139D, Internal Revenue Code of 1986, as amended by the PPACA ("IRC").
3. Section 162(a), IRC.
4. Sections 105(b) and 162(l), IRC.
5. Section 9815, IRC, incorporating provisions of Part A, Title XXVII, of the Public Health Service Act as amended by the PPACA.
6. Section 45R, IRC. Note that deductions for premiums are limited by the credit, Section 280C(h), IRC.
7. Section 125(j)(1), IRC. Note that after Dec. 31, 2013, a cafeteria plan may not include SHOP exchange coverage, Section 125(f)(3)(A), IRC.
8. Sections 125(j)(3) and (4), IRC.
9. Section 125(j)(5), IRC.
10. Section 125(j)(5)(C), IRC.
11. Section 106(f), IRC.
12. Section 125(i), IRC.
13. Section 6051(a)(14), IRC and Section 4980I, IRC. Separate dental and vision policies are not covered by the reporting requirements but are covered if coverage is provided under the same plan as health insurance.
14. Notice 2010-69, 2010-44 IRB 567. The IRS has issued temporary guidance for reporting in Notice 2011-28, IRB 2011-16, and has extended the deadline for W-2 reporting for small employers (those filing fewer than 250 W-2 forms) until the 2013 tax year, i.e. beginning in January, 2014, at the earliest, until further notice.
15. Section 6041, IRC. As a side issue, Congress also codified the "economic substance" doctrine in new Section 7701(o), IRC, also not a healthcare issue. In the Small Business Jobs Act of 2010 (PL 111-240), Congress amended Section 6041(h), IRC, so as to require persons receiving rental income from real estate, i.e., landlords, to report 1099 transactions, effective for payments made after December 31, 2010. (Previously, renting property was not considered a trade or business and hence exempt from reporting requirements.) Section 6041(h) is likewise repealed in HR4. Moreover, penalties for the failure to file a 1099 with the IRS increased from $50 for each failure (to a maximum of $250,000 per year) to $100 for each such failure (and a maximum of $1,500,000), beginning with information returns required to be filed after January 1, 2011, Section 6721(a), IRC. Aggregate annual penalties for the failure to send a payee a 1099 also increased to a maximum of $1,500,000, effective for 1099 forms after January 1, 2011, Section 6722, IRC.
16. Notice 2010-51, IRB-2010-29.
17. Section 3102(f), IRC.
18. Section 139A, IRC.
19. Section 4980H, IRC; Section 6056(a), IRC. The penalty is $3,000 for employers who offer coverage, but that penalty is waived if the employer offers "free choice vouchers", Section 4980H(b), IRC.
20. Section 6056, IRC.
21. Section 6056(c), IRC.
22. Sections 6724(d)(1)(B)(xxv), 6724(d)(2)(HH), 6721 and 6722, IRC.
23. Section 4980I, IRC.
24. Section 4980I(b)(3)(C)(i) and (ii), IRC.
25. Sections 4980I(b)(3)(C)(iii) and 4980I(f)(2) and (3), IRC.
26. Section 4980I(c), IRC.
27. Section 4980I(c) (4) and (d), IRC.
28. Section 4980I(e)(1)(B), IRC.
29. Section 4980I(d)(1) and (2), IRC. Note the inclusion of employee paid portions, Section 4980I(d)(1)(C), IRC
30. Section 3101(b)(2), IRC; Section 1401(b)(2), IRC.

31. Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010" as amended, in combination with the "Patient Protection and Affordable Care Act"* (JCX-18-10), March 21, 2010.
32. Section 164(f), IRC.
33. Section 1411(a), IRC.
34. Section 1411(c), IRC.
35. Section 1411(c)(2), IRC.
36. Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010" as amended, in combination with the "Patient Protection and Affordable Care Act"* (JCX-18-10), March 21, 2010.
37. Section 1411(c)(4), IRC; Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010" as amended, in combination with the "Patient Protection and Affordable Care Act"* (JCX-18-10), March 21, 2010.
38. Section 1411(b), IRC.
39. Section 1411(a), IRC.
40. Sections 1411(a)(1)(B)(i) and 1411(d), IRC.

ABOUT THE AUTHOR

Norman S. Newmark is an attorney with Guilfoil, Petzall & Shoemake LLC in St. Louis, Mo. He focuses his practice on sophisticated corporate, tax and estate planning matters and has extensive experience in probate and tax controversy matters. He earned his J.D. from Washington University, his LL.M (in taxation) from Washington University and his B.A. from Boston University. He is licensed to practice in Oklahoma and Missouri and is admitted to the U.S. Tax Court.

A General Contractor's Ability to Receive 'Overhead and Profit' Payments under a Homeowner's Structural Loss Policy

By Laura C. Hill

Recently, homeowners and general contractors have faced uncertainty as to whether an insured can receive payment for a general contractor's overhead and profit (GCO&P)[1] charges as a reimbursable expense under Oklahoma law. Research reveals that Oklahoma law is unsettled on the issue of whether an insurance company's denial of GCO&P charges under certain circumstances constitutes a breach of contract or an act of bad faith on the part of the insurer. Nor has the Oklahoma Supreme Court expressed an opinion on whether the so-called "three trade rule" is an industry standard that justifies use of a general contractor and payment of GCO&P given that more recent class action lawsuits have settled before these issues reached a jury.

Accordingly, this article discusses factors relevant to this determination and analyzes general trends in the law, particularly in the aftermath of *Burgess v. Farmers Ins. Co. Inc*.[2] It is important to remember that any potential claim or action against an insurer who refuses to pay GCO&P can only be asserted by the policyholder — not the general contractor — because the insured has the legal right, or standing, to bring such a claim. Moreover, the likelihood of success for any potential claim requires a highly fact-specific and individualized analysis, including an examination of the nature and extent of the damage, and the specific language, terms and definitions contained in the individual insurance policy at issue.

RECENT OKLAHOMA LITIGATION – *BURGESS V. FARMERS*

In *Burgess*, homeowners Bill and Betty Burgess and Gary Sadeghy initiated and sought class certification of their action against Farmers Insurance Company (Farmers) after suffering covered losses in 2000 and filing claims for their losses with Farmers. Plaintiffs alleged that Farmers had systematically failed to pay its insureds amounts due for GCO&P and intentionally withheld information of their entitlement to such payment at the time of the actual cash value (ACV) settlement for Structural Losses.[3] The plaintiffs sought compensatory and punitive damages for their claims for breach of contract, bad faith, fraud and deceit on behalf of

a class of plaintiffs similarly situated. The insurance policy at issue contemplated two types of claim settlements: 1) ACV, and 2) replacement cost. The policy expressly permitted, at the option of the insured, a claim for ACV with no requirement that the insured actually repair the property. The insurance policy was silent on the payment of GCO&P, but the parties agreed that, under certain circumstances, GCO&P payments could be made at the time of an ACV settlement.[4] Yet, the parties were unable to agree upon which particular circumstances would require payment of GCO&P.

The main issues in the case involved the circumstances giving rise to the insureds' entitlement to GCO&P, timing of the payment and the nature and extent of Farmers' duty to disclose to its insureds during the claim settlement process their right to GCO&P payments and/or the reasons for not paying in any particular instance. The insureds also maintained that an industry standard "three trade rule" exists such that once a determination that three trades are implicated in the repair of the property, then it is presumed that a general contractor is necessary to coordinate, supervise and oversee the repair. Furthermore, the general contractor's reimbursement for this coordination and supervision is typically made through a 20 percent O&P payment included in the calculation of the claim settlement.[5] Farmers denied the existence of any rigid "three trade rule," arguing instead that "common sense" is used in case-by-case determinations of whether a general contractor is required and whether to include the GCO&P at the time of the ACV settlement of the claim.[6]

Because the trial court (and later the appellate courts) were first required to determine whether it was appropriate to allow the case to proceed as a class action, the class certification factors were the focus of the various courts' discussions in the *Burgess* case. Consequently, the trial court and appellate courts never reached the substantive issues regarding entitlement to, notification of, and/or timing of any GCO&P payments. Similarly, the courts never thoroughly examined or decided whether the "three trade rule" is tantamount to an industry standard. The trial court analyzed various factors for determining whether a class of plaintiffs should be certified and entered an order granting class certification. The Oklahoma Court of Civil Appeals subsequently reversed the class certification on the ground that individual issues of the homeowners predominated over questions common to the class of plaintiffs. Ultimately, however, the Oklahoma Supreme Court determined that the case could appropriately proceed as a class action.[7]

Before a judge or jury could determine under what circumstances a general contractor is entitled to O&P or whether the "three trade rule" is in fact an industry standard, plaintiffs and Farmers settled the lawsuit. Upon settlement of the case, the individual class plaintiffs were to receive 20 percent GCO&P payment plus 8 percent interest, less any amounts previously paid toward GCO&P. The class counsel asked the court to approve $27.5 million to cover the cost of attorneys' fees and expenses and $20,000 for the class representatives.[8]

GENERAL TRENDS IN GCO&P REIMBURSEMENT AND CASE LAW

Because *Burgess* and other Oklahoma cases have not fully resolved the issue of whether GCO&P is a reimbursable expense in ACV settlements involving three or more trades for the repair or replacement of damaged property, it is instructive to examine general trends that indicate how such claims have been or will be handled in other states. It appears that two predominant views exist with regard to the payment of GCO&P, which are conveniently classified as the majority view and the minority view.[9]

The Majority View

Under the majority view, payment of GCO&P is required if the use of a general contractor is "reasonably likely."[10] A handful of cases in states such as Arizona, Florida, Louisiana, Michigan, Mississippi, New York, Pennsylvania and Texas support this view,[11] and some adjusters claim this is an "industry standard."[12] Significantly, both the Texas[13] and Colorado[14] state insurance departments have issued bulletins supporting this practice and recognizing the need to include these O&P expenses where the policyholder is reasonably likely to incur such costs in replacing or repairing damaged property.[15] It should be noted that while a court may prohibit an insurer's deduction of GCO&P payments where the use of a general contractor is reasonably likely, many courts still allow the insurer to deduct for depreciation. *See, e.g., Goff v. State Farm Florida Ins. Co.*, 999 So.2d 684 (Fl. Ct. App. 2008) (holding that ACV included O&P where use of general contractor was "reasonably likely," but that the fair market value

accounts for a property's depreciated condition, thus entitling State Farm to withhold a portion of O&P as depreciation).

The Minority View

The contrasting view set forth in some older cases from Kentucky, Washington and Kansas is that payment of GCO&P is not required unless expenses are *actually incurred*.[16] This view is based on the notion that overhead and profit are "non-damage" factors with no relationship to the value of the damage.[17] Notice, however, that even under the minority view, GCO&P may still be a reimbursable expense if the services of a general contractor are actually employed to coordinate or supervise the repair or replacement. To that end, the homeowner's ability to produce receipts documenting any expenses incurred may also be required.

RELEVANT FACTORS CONSIDERED BY VARIOUS COURTS

Given the lack of clear and consistent guidance on whether GCO&P must be paid by an insurer and under what circumstances, it is helpful to review a compilation of some of the potentially significant factors that courts consider in making this determination. The following inventory is in no way exhaustive, nor is it ranked in order of priority or a representation that Oklahoma courts will consider any or all of these factors in determining whether GCO&P payments are required. Rather, the list of factors below merely reflects those gleaned from reviewing various cases and secondary sources.

Is the individual bringing the claim the policyholder?

As previously discussed, the individual making the claim must be the insured policyholder in a contractual relationship with the insurer in order to have legal standing to bring the claim. It is by virtue of this relationship that the insured could potentially assert a claim for bad faith or breach of contract should the insurer deny payment for GCO&P or if the insurer fails to provide required information on the entitlement to (or denial of) payment at the settlement.

Did the individual sustain a "Covered Structural Loss" as defined by the insurance policy?

Recall that a "Structural Loss" in the *Burgess* case was defined as damage to a building or other structure located in the state of Oklahoma while covered under a homeowner's policy. It is important that the policyholder carefully review all specifically defined terms and exclusions under his or her policy. For example, certain remediation services are not covered by some insurance policies.

Did the insured file a claim with the insurer in a timely fashion?

As with any claim, the insured must notify his or her insurer and file a claim in a timely manner. The specific policy may set a deadline and procedures for filing such claims.

Does the repair or replacement work implicate three or more trades?

The "three trade rule" appears to be an industry custom or standard, at least according to some state cases and various secondary sources. However, the Oklahoma Supreme Court did not decide this issue in the *Burgess* class action.[18] Additionally, whether the trades must rely on each other is not immediately apparent from the case law.

Is the policy an ACV or repair policy?

Some insurance companies' decisions to pay GCO&P could depend on whether the policy/claim is for ACV or repair value. Moreover, *how* ACV is defined in the policy may be relevant to the payment of GCO&P. In fact, in 2001, the Oklahoma Insurance Commission issued a bulletin statement that allowed the practice of defining ACV in insurance policies so long as it is consistent with public policy.[19] Up to that point, it was apparently impermissible to define ACV in property and casualty insurance policies. Furthermore, in terms of ACV definitions, some courts apply the "market value" rule, which examines the market value of the property before and after the loss.[20] Conversely, other courts employ a "broad evidence" rule and consider every circumstance and fact that logically tends to establish a correct estimate. Still other courts have rejected the first two approaches and instead apply a "replacement cost less depreciation" rule. Under this rule, depreciation is deducted from the estimated cost to repair or replace the property to determine the ACV.[22]

Do the specific terms of the policy provide for GCO&P?

Obviously, the express terms of the insurance contract govern the types of expenses that are reimbursable and set forth any exclusions. Thus, it is important to obtain a copy of the individual insurance policy and become famil-

iar with the types of expenses that may be covered or excluded. Specifically, is GCO&P contemplated by the policy, or is it excluded? Is the contract silent on this issue? Under general contract law, any ambiguity in the interpretation of a contract is strictly construed against the drafter of the document (*i.e.*, against the insurance company) and in favor of the policyholder. The Oklahoma Insurance Commission urges a review of individual insurance contracts for specific coverage and exclusions.[23] Unfortunately, unlike the Texas and Colorado departments of insurance, the Oklahoma Insurance De-partment does not appear to have issued guidance in the form of bulletins regarding the propriety of an insurance company paying or deducting GCO&P.

Is the use of a general contractor "reasonably likely" or were general contractor expenses actually incurred?

Depending on whether a court adheres to the majority view that the use of a general contractor need only be "reasonably likely," or to the minority view requiring the insured to actually incur expenses (and possibly provide documentation of those expenses), the governing standard will be a central factor in determining whether GCO&P will be paid.[24]

What is the nature and extent of the damage and the number of trades?

The nature and extent of the damage and the number of trades involved are key factors in determining whether the use of a general contractor is "reasonably likely." These factors are obviously more relevant in a jurisdiction adhering to the majority view. It appears that the industry custom (at least as argued in *Burgess* and other jurisdictions) is the "three (or more) trade rule." Similarly, some courts will consider the degree to which coordination and supervision of the trades is required.[25]

Did an appraisal occur?

It is unclear whether an appraisal must be undertaken or if it is even relevant to this issue. However, vague references in secondary sources indicate that whether an appraisal has occurred could be a factor in determining payment for GCO&P charges.

Which state's law applies?

Finally, the state law governing interpretation of an insurance policy affects whether a general contractor is entitled to O&P payments. Again, Oklahoma law has not yet resolved this issue, but Oklahoma courts have been willing to at least certify a class of plaintiffs alleging systematic underpayment from an insurer's refusal to pay GCO&P or to notify them of the denial of this benefit. Some jurisdictions may require only that the use of a general contractor be "reasonably likely," while others may require actual repairs to occur and even documentation of those expenses before a GCO&P payment is made.

CONCLUSION

Based on the lack of clear guidance under Oklahoma law or from the Oklahoma Insurance Department, no uniform recommendation exists at this time for a homeowner who employs a general contractor to oversee repairs, but whose insurance company refuses to pay for GCO&P charges. The *Burgess* class action lawsuit demonstrated the willingness of a group of plaintiffs to contest the denial of this benefit and the lack of information regarding the same, and the Oklahoma Supreme Court allowed the case to proceed as a class action. Unfortunately, the court did not decide any of the substantive issues in the case regarding whether GCO&P must be paid, or if the "three trade rule" is a rigid or discretionary industry standard. Both the *Burgess* and *Cormier* cases settled out of court before these issues ever reached a jury.

The best course of action is for a general contractor to develop a good relationship with the customer and work with that customer to communicate with the insurer and to understand the nature of coverage under the individual insurance policy prior to undertaking any permanent repairs. Specifically, it is important to carefully review the policy to determine what constitutes a reimbursable expense, how ACV is defined, whether GCO&P is expressly provided for or if the policy is silent on this expense, and what other exclusions may apply.

The overall trend is toward payment of GCO&P where the use of a general contractor is "reasonably likely," or at least where expenses for the general contractor and repairs are actually incurred by the policyholder. However, in the wake of recently-settled or ongoing class actions that have not squarely decided these issues, it is difficult to state a definitive rule for Oklahoma. For these reasons, upfront knowledge and an understanding of the specific policy and the insurance company's position will be essential to a general contractor before undertaking repairs and to a policyholder when submitting claims. Because the policies are highly individualized, a broad statement of the law or prediction of outcomes is not possible at this time. Until an individual case or class action survives to the appellate phase in Oklahoma, or until the insurance commissioner issues more guidance on this topic, it may be some time until Oklahoma law is settled with regard to the payment of GCO&P in settlements for structural losses under a homeowner's insurance policy.

1. GCO&P is the amount customarily charged by a general contractor for, among other things, supervising, scheduling, and/or warranting work and/or materials supplied by one or more subcontractors in the course of repairing damage to a building or structure. Industry custom and practice reflect that, when a general contractor's overhead and profit is paid, it is generally 20 percent of the amount of the actual cash value (broken down as 10 percent attributable to overhead and 10 percent attributable to profit). *See Burgess v. Farmers Ins. Co. Inc.*, 151 P.3d 92, 96 n.8 (Okla. 2006).

2. 151 P.3d 92 (Okla. 2006).

3. A "Structural Loss" is defined as damage to a building or other structure located in the state of Oklahoma while covered under a homeowner's policy issued by Farmers. *See* "Burgess Settlement" website, at www.burgess-class.com/ (accessed Jan. 24, 2011).

4. *Id*. at 95.

5. *Id*. at 93-94.

6. *Id*. at 94.

7. The "class" certified by the trial court was defined as follows:

> All Oklahoma citizens who were or are Farmers homeowners' policyholders who:
>
> (1) suffered a covered loss to their home from June 14, 1994, to the present [cut-off later designated as June 12, 2009];
>
> (2) whose loss was adjusted on an actual cash value (ACV) basis;
>
> (3) whose claim files indicate the anticipated involvement of three trades or more in the repair of the property at the time of the ACV adjustment; and
>
> (4) whose ACV adjustment did not include a 20 percent payment for O&P.

Id. at 94. *See also* "Burgess Settlement" website, at www.burgess-class.com/ (accessed Jan. 24, 2011).

8. For additional information on the *Burgess* class action settlement, *see* "Burgess Settlement" website, at www.burgess-class.com/ (accessed Jan. 24, 2011).

9. *See* "Adjusting Today" website, at www.adjustersinternational.com/AdjustingToday/pdfinfo.cfm?pdfID=43 (accessed Jan. 24, 2011).

10. *See, e.g., Lindquist v. Farmers Ins. Co. of Ariz.*, 2008 WL 343299 (D. Ariz. Feb. 6, 2008) (unpublished) (The District Court held that Farmers' refusal to pay GCO&P and taxes was in compliance with its policy of not paying these amounts *unless and until* the costs were actually incurred by the insured, but was in contravention of the terms of its insurance policy requiring the payment of ACV, which included O&P and taxes for repairs involving three or more trades. The court also noted that the policy technically stated that the repairs must "likely require" the services of a general contractor, as compared to being "reasonably likely," which had been used throughout the defendant's briefs.); *Mills v. Foremost Ins. Co.*, 511 F.3d 1300 (11th Cir. 2008) (applying Florida law, the Circuit Court noted that the weight of authority of similar policies has determined that an ACV payment includes GCO&P charges where the policyholder is *reasonably likely* to need a general contractor in repairing or replacing damaged property, and citing cases in Arizona, Michigan, Pennsylvania and Texas).

11. It appears that fewer than 25 cases nationwide use the phrase "reasonably likely" when discussing whether damages are of the nature to require the services of a general contractor. Pennsylvania, Louisiana, Arizona and Florida account for the majority of opinions issued on this topic.

12. *See supra* n.10.

13. *See, e.g.*, Tex. Dep't Ins. Bulletins B-0045-98 (June 12, 1998) and B-0068-08 (Sept. 29, 2008) (noting that the deduction of prospective contractors' overhead and profit and sales tax in determining the actual cash value under a replacement cost policy is: 1) improper; 2) not a reasonable interpretation of the policy language; and 3) unfair to insureds).

14. *See* Colo. Div. Ins. Bulletin B-5.1 (May 8, 2007) (original Bulletin 12-98 issued Dec. 21, 1998).

15. *See supra* n.10.

16. *See, e.g., Snellen v. State Farm Fire & Cas. Co.*, 675 F. Supp. 1064 (W.D. Ky. 1987); *Hess v. North Pacific Ins. Co.*, 859 P.2d 586 (Wash. 1993); *Burchett v. Kan. Mut. Ins. Co.*, 48 P.3d 1290 (Kan. Ct. App. 2002).

17. *Id*.

18. *See also Cormier v. State Farm Gen. Ins. Co.*, Case No. CJ-2002-930 (Comanche County, Okla.). The *Cormier* class includes individuals who had homeowners' policies with State Farm and sustained a covered loss between April 1, 1998, and April 30, 2010, and who believe that the use of a general contractor was required based on the complexity of repairs or the fact that three or more trades were involved. The class members are expected to receive payments of 20 percent for GCO&P, excluding amounts previously paid and those for emergency remediation services. Attorneys' fees, costs and expenses are $27.5 million, and the Class Representatives will receive $5,000. The *Cormier* class action lawsuit against State Farm has been settled out of court, and the settlement was approved by the district court in the Final Approval Hearing on Oct. 14, 2010. For additional information, *see* "Cormier Settlement" website, at www.cormieroksettlement.com (accessed Jan. 24, 2011).

19. *See* Okla. Ins. Dept., Comm'n Bulletin No. PC 2001-06.

20. *See supra* n.10.

21. *Id*.

22. *Id*.

23. *See* Okla. Ins. Dept. website, at www.ok.gov/oid/Weather-Related_Losses.html (accessed Jan. 24, 2011).

24. *See, e.g., Nguyen v. St. Paul Travelers Ins. Co.*, 2008 WL 4691685 (E.D. La. Oct. 22, 2008) (unpublished) (included testimony from a State Farm expert that State Farm includes GCO&P in its ACV or "upfront" replacement cost payment if the claim representative determines that the services of a general contractor are *reasonably likely* to be required to effect the repairs, indicating that State Farm uses the "reasonably likely" standard, but at the same time attempts to retain the judgment/discretion of its claim representatives in the decision); *Goff*, 999 So.2d 684 (Fl. Ct. App. 2008) (court held that ACV included O&P where use of general contractor was "reasonably likely," but that fair market value accounts for a property's depreciated condition, so State Farm was entitled to withhold a portion of O&P as depreciation).

25. *See supra* n.10.

ABOUT THE AUTHOR

Laura Hill is an associate attorney in the Tulsa office of GableGotwals. She graduated with highest honors and as the class valedictorian from the University of Tulsa College of Law in 2002, where she was notes and comments editor for the *Tulsa Law Review* and named to the Order of the Curule Chair. Her practice areas include environmental litigation and regulatory compliance, energy and natural resources law, oil and gas litigation and complex commercial litigation.

OBA Nominating Petitions

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

JAMES T. STUART, SHAWNEE

Nominating petitions have been filed nominating James T. Stuart for election of President-Elect of the Oklahoma Bar Association Board of Governors for a one-year term beginning January 1, 2012. Fifty of the names thereon are set forth below:

Jon K. Parsley, William R. Grimm, William G. Paul, Melissa DeLacerda, Harry A. Woods Jr., William J. Baker, Stephen D. Beam, John A. Gaberino Jr., Gary C. Clark, David K. Petty, M. Joe Crosthwait Jr., Paul M. Vassar, R. Forney Sandlin, Cathy M. Christensen, Mack K. Martin, Linda S. Thomas, Dietmar K. Caudle, W. Mark Hixson, Charles W. Chesnut, Peggy Stockwell, Alan Souter, Richard Rose, Steve Dobbs, Susan Shields, Renée DeMoss, Gerald Dennis, Terry W. West, Bradley L. West, Brad Henry, Joseph Vorndran, William H. Sullivan, Kimberly K. Hays, Milton C. Craig, Dwight Smith, Brian W. Pierson, Matthew Brian Thompson, Nancy Thompson, Richard Nix, Jared Giddens, Mart Tisdal, James R. Waldo, Brooke S. Murphy, Judy Hamilton Morse, Charles M. Laster, Timothy D. Kline, Matt Griffith, Mary Marks Jenkins, G. David Bryant, Jake Jones and Charles D. Mayhue.

A total of 407 signatures appear on the petitions.

Nominating Resolutions have been received from the following counties:

Comanche and Pottawatomie

NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill the following judicial office:

Associate District Judge
Twentieth Judicial District
Johnston County, Oklahoma

This vacancy is created by the retirement of the Honorable Robert M. Highsmith effective May 1, 2011.

To be appointed an Associate District Judge, an individual must be a registered voter of the applicable judicial district at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, the appointee must have had a minimum of two years experience as a licensed practicing attorney, or as a judge of a court of record, or combination thereof, within the State of Oklahoma.

Application forms can be obtained online at www.oscn.net by following the link to the Oklahoma Judicial Nominating Commission or by contacting Tammy Reaves, Administrative Office of the Courts, 1915 North Stiles, Suite 305, Oklahoma City, Oklahoma 73105, (405) 521- 2450, and should be submitted to the Chairman of the Commission at the same address **no later than 5 p.m., Friday, May 13, 2011. If applications are mailed, they must be postmarked by midnight, May 13, 2011.**

Allen M. Smallwood, Chairman
Oklahoma Judicial Nominating Commission

You are not alone.

Men Helping Men .....

Oklahoma City • May 5, 2011

Time - 5:30-7 p.m.

Location
The Oil Center – West Building
1st Floor Conference Room – 2601 NW Expressway
Oklahoma City, OK 73112

• • • • • • • • • • • • • •

Tulsa • April 28, 2011

Time - 5:30-7 p.m.

Location
The Center for Therapeutic Interventions
4845 South Sheridan, Suite 510
Tulsa, OK 73145

Women Helping Women.....

Oklahoma City • May 12, 2011

Time - 5:30-7 p.m.

Location
The Oil Center – West Building
10th Floor – 2601 NW Expressway, Suite 1000W
Oklahoma City, OK 73112

• • • • • • • • • • • • • •

Tulsa • May 5, 2011

Time - 5:30 - 7 p.m.

Location
The Center for Therapeutic Interventions
4845 South Sheridan, Suite 510
Tulsa, OK 74145

Food and drink will be provided! Meetings are free and open to OBA members. Reservations are preferred (we want to have enough space and food for all.) For further information and to reserve your spot, please e-mail stephaniealton@cabainc.com.

LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM

Deadline Creates Activity

By Duchess Bartmess

The deadline set by each house of the Legislature to move bills and joint resolutions out of the house of origin has passed. As a result, of the 2,233 bills and joint resolutions introduced, 1,466 are considered dormant, 19 have failed and 748 are still moving through the process.

A bill or joint resolution is considered dormant if it did not receive approval to proceed to the next legislative step required by one of the deadlines established by the House or Senate. However, it is not considered dead to the same degree as a measure that was defeated by a vote in committee or on the floor of either house.

If a dormant bill is not acted on further in the first session of a legislature, it is carried over to the second session of that legislature. It then can be revived to the extent that it becomes subject to the deadlines set for the second session. This means if it meets the deadlines set for bills and joint resolutions in the second session, it can be moved through the process during that session. In effect, a dormant measure is revived as if just introduced in the second session.

Several bills have been sent to the governor for approval or veto. As of the writing of this article, 37 measures have been approved by the governor, and 24 have been sent to the governor for action. No bills have thus far been vetoed.

SIGNIFICANT BILLS AND JOINT RESOLUTIONS SIGNED BY THE GOVERNOR

HB 1008: Tax credits; modifying reference to taxable years and time period credits claimed

HB 1194: Children; modifying certain health record requirements

HB 1249: Retrieval of animals on another's land

HB 1377: Mental health; Mental Illness Service Program

HB 1380: Schools; modifying teacher due process rights

HB 2017: Medical Loan Repayment Plan, participation numbers and amounts

HB 2139: State Superintendent, expanding authority; State Board, modifying powers and duties

HB 1197: Children of Incarcerated Parents Task Force

HB 1359: Establishing Foster Care System Improvement Task Force

HB 2128: Damages; limitations on damages; recovery cap on certain noneconomic damages

SB 130: County Budget Act, financial and performance audits, establishment of county records

SB 160: Motor vehicle racing – creating the Municipal Motor Vehicle Racing Act

SB 277: Pre lien notice – modifying procedures for pre lien notices

SB 282: Sex Offenders Registration Act – document filings

SB 287: Banking procedures – clarifying when certain claim accrues

SB 443: Motor vehicles driver license examination, bicycle and motorcycle safety

SB 576: Child support arrearage – authorizing DHS to release list

SB 856: Firearm transaction with licensed dealers or private sellers, unlawful conduct

SB 862: Joint tort-feasor liability – civil action based on fault

SB 865: Jury instructions – damage awards to reflect accurate tax ramifications

SB 940: Civil procedure – service of process

SIGNIFICANT BILLS AND JOINT RESOLUTIONS SENT TO THE GOVERNOR

The governor has five days from date sent to approve, excluding Sunday, by signing or vetoing for action. [Oklahoma Constitution, Article VI, Section 11]

SB 117: County commissioner candidacy residency requirement

BILLS AND JOINT RESOLUTIONS OF GENERAL INTEREST THAT ARE DEEMED TO HAVE FAILED

HB 1316: Motor vehicles; using electronic communication devices while driving

HB 2001: Residential Landlord Tenant Act; modifying deduction from rent for repairs

HJR 1019: Constitutional amendment; allowing school districts to make additional tax levy

SB 89: Oklahoma Public Events Network development

SB 257: Sex offenders – zones of safety

SB 359: County legal notices – authorizing proceedings to be posted on county website

SB 509: School transportation equipment – school districts to sell advertising on school buses

SB 653: Paternity of child – birth costs and child support

SB 962: Insurance – allowing insurance producers to receive certain fee

OBA Bills at a Glance

Status of OBA bills as endorsed by the House of Delegates:

SB 940 allows for service of a judgment by means other than mail. Signed by the governor.

SB 941 relates to attorney work product and expert witnesses. On House agenda for vote.

SB 942 relates to when a party can dismiss without leave of court. Laid over by House Judiciary Committee for next session.

SB 943 relates to appeals from administrative proceedings and clarifies which parties are necessary to be named on appeal. Passed out of House with amendments and moved back to the Senate for acceptance of House amendments or Conference Committee, if House amendments are rejected.

Current as of April 12, 2011

Bills and joint resolutions awaiting action by either house are commonly referred to as "being on the calendar," meaning the bill or joint resolution has been voted out of committee and is eligible to be called up for a vote by the full House or Senate. The following bills and joint resolutions are on either the Senate or House calendar. Again, at the time of the writing of this article, there are 293 bills and joint resolutions on the House calendar, and 154 bills and joint resolutions on the Senate calendar. Every member of the bar is again urged to try to look at the legislation still on the calendars of the two houses. In the remaining two months of the 2011 legislative session, there are a number of significant measures that are worthy of review by the general practitioner.

EDUCATION BILLS PENDING

Although it would be space prohibitive to address the almost 450 measures on the Senate and House calendars, measures still pending in the general subject area of education will be noted here. The scope of the issues being addressed in the 36 measures noted here are of such significance to the general practitioner and their clients, the citizens of Oklahoma, that they are worth referencing for review by the individual practitioner.

SB 435: Education Board – modifying appointments to the board

SB 445: Education – charter schools to accept emergency transfer

SB 718: Education Board – transferring powers and duties to Superintendent of Public Instruction

HB 1269: Schools; reading instruction in certain grades to include certain elements of instruction

HB 1373: Schools; fines for neglecting or refusing to compel a child to attend school

HB 1418: Schools; requiring criminal history record checks for school employees

HB 1421: Higher Learning Access Program; adding requirement to retain eligibility

HB 1456: Schools; requiring annual achievement report that identifies schools by grades

HB 1461: School Bullying Prevention Act; modifying

HB 1465: Schools; changing school attendance age date; screening

HB 1550: Schools; retention of certain third-grade students; reading

HB 1680: Schools; high school transcripts

SB 256: Schools – charter schools eligible for government lease rates

SB 1: Teacher Due Process Act of 1990

SB 12: School employment – criminal history record checks – exempting certain employees

SB 141: School funding – weighted calculation for pupils enrolled in online courses

SB 252: Schools – reimburse cost of criminal history checks – transfer completed checks

SB 256: Schools – charter schools eligible for government lease rates

SB 264: Schools – criteria for reviewing recommendations regarding assessments

SB 275: School funding – allowing interlocal cooperatives to receive federal grant money

SB 278: State Textbook Committee – technology-based materials

SB 279: School bonds – allowing bonds to be issued for the purchase of certain equipment

SB 280: Online education, removing telephonic communication between teacher and parents requirement

SB 346: School assessment – providing criteria for retention – prohibiting social promotion

SB 610: Higher education – modify types of income to determine need under OHLAP

SB 664: School administration – percentages in foundation aid

HB 1270: Schools; Health Education for Middle Schools Act

HB 1332: Bill of Rights Education Act

HB 1457: Teacher Due Process Act of 1990; modifying

HB 1746: Schools; expenditure of certain amount on direct instructional expenses

HB 1851: Schools; changing date by which full-day kindergarten is required to be offered

HB 1855: Schools; deleting charter school restriction on levying taxes and issuing bonds

HB 1856: Charter School Sponsoring Commission; creating; adding as a charter school sponsor

HB 1930: Public records; clarifying education records and material language; limiting release

HB 1987: Schools; allowing reading proficiency tests from other states

HB 1994: Diabetic Eye Disease Detection Initiative Act

HB 1997: Analyzing Students with Learning Disorders Task Force

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

Bar Members Celebrate Membership Anniversaries

The Oklahoma Bar Association applauds these members who in 2011 reach significant milestone anniversaries.

70 Years

JEFFERSON COUNTY
James Harley Ivy
Waurika

OKLAHOMA COUNTY
Patricia Hodges Kerr
Oklahoma City

TULSA COUNTY
Richard H. Wills Jr.
Tulsa

OUT OF STATE
Guy R. Nichols
St. Petersburg, Fla.

Ramona Regina Russell
New Braunfels, Texas

Josephine Spivey
Yountville, Calif.

60 Years

ADAIR COUNTY
Lloyd Elmo Cole Jr.
Stilwell

CANADIAN COUNTY
Harold M. Durall
Piedmont

GARFIELD COUNTY
Robert Lee Gregory
Enid

LEFLORE COUNTY
Elton Edward Thompson
Poteau

OKLAHOMA COUNTY
William F. Buell
Edmond

Frank Edwin Dennis
Oklahoma City

John Travis Edwards
Oklahoma City

Roger S. Folsom
Oklahoma City

Sidney M. Groom Jr.
Edmond

Alfred O. Holl
Oklahoma City

Bruce H. Johnson
Oklahoma City

Carl Edmond Moslander
Oklahoma City

Charles L. Pugsley
Oklahoma City

Warren O. Romberger
Oklahoma City

John H. Sparkman
Harrah

STEPHENS COUNTY
Patrick D. Sullivan
Duncan

TULSA COUNTY
Owen D. Austin
Tulsa

Lawrence W. Berkenbile Jr.
Tulsa

James R. Eagleton
Tulsa

James O. Ellison
Tulsa

Virgil M. Harry Jr.
Tulsa

Harvey B. Hunt Jr.
Tulsa

William B. Jones
Tulsa

Edward O. Monnet
Tulsa

Gordon Leslie Patten
Tulsa

James R. Ryan
Tulsa

OUT OF STATE
Charles E. Campbell
Boerne, Texas

Wesley Chalfant
Midland, Texas

Gerald B. Eckley
Kingwood, Texas

Frank Aubrey Ladd
Amarillo, Texas

ALFALFA COUNTY
David Paul Cullen
Cherokee

CLEVELAND COUNTY
Deanna Burger
Norman

Harold Lee Heiple
Norman

Jimmy A. Moseley
Norman

J. Dwain Schmidt
Norman

CREEK COUNTY
Lester Dale Henderson
Sapulpa

John P. Scott
Oilton

GARFIELD COUNTY
Owen D. Wilson
Enid

LOGAN COUNTY
Thomas R. Williams
Guthrie

MCCLAIN COUNTY
David K. Simpson
Byars

MURRAY COUNTY
Edward Lee Morton
Sulphur

MUSKOGEE COUNTY
Harold K. Haxton
Muskogee

OKLAHOMA COUNTY
William Rogers Abbott II
Oklahoma City

Robert S. Baker
Arcadia

James Dan Batchelor
Oklahoma City

Walter Murray Bower
Oklahoma City

Peter B. Bradford
Oklahoma City

Joel L. Carson
Oklahoma City

Richard H. Champlin
Oklahoma City

Roy William Chandler
Oklahoma City

Charles L. Fagin
Oklahoma City

James G. Grennan
Oklahoma City

James Leighton Gullett
Oklahoma City

Jerome Louis Hemry
Oklahoma City

Robert Harold Macy
Newalla

John McKee
Oklahoma City

Harry Merson
Oklahoma City

Milton Scott Nickson Jr.
Edmond

John Arthur Philbin
Oklahoma City

James Donald Porter
Oklahoma City

Jack Querry
Oklahoma City

Henry Peter Rheinberger
Oklahoma City

J. Dennis Ryan
Oklahoma City

Jerry L. Salyer
Edmond

Lewis Eldean Stringer
Oklahoma City

Judge Ralph G. Thompson
Oklahoma City

Thomas Martin Wakely
Oklahoma City

Chas Vernon Williams Jr.
Oklahoma City

PAYNE COUNTY
Sam Withiam
Cushing

POTTAWATOMIE COUNTY
Sidney Ross Clarke III
Shawnee

Bill C. Harris
Shawnee

STEPHENS COUNTY
Henry C. Bonney
Duncan

TULSA COUNTY
Richard Volker Armstrong
Tulsa

Charles E. Brown
Owasso

Daniel Stephen Buford
Tulsa

Thomas H. Gudgel Jr.
Tulsa

Carlton Robert Jones
Tulsa

Silas Franklin Jones
Tulsa

James Lewis Kincaid
Tulsa

Paul Vincent McGivern Jr.
Tulsa

Jack L. McNulty Jr.
Tulsa

William Walter Means
Tulsa

Mitchell D. O'Donnell
Tulsa

Ray H. Painter Jr.
Tulsa

Eugene R. Rembisz
Tulsa

Joe A. Williams
Sand Springs

WASHINGTON COUNTY
James Edward Conatser
Bartlesville

Jack E. Phillips
Bartlesville

OUT OF STATE
F. Leroy Ball Jr.
Terrytown, La.

Richard A. Coulter
Spring, Texas

Harry A. Ells Jr.
Englewood, Colo.

Bruce Flanagan
Anacortes, Wash.

Gerald L. Floyd
Laguna Niguel, Calif.

Albert Donald Gittrich
Union, N.J.

Robert Richard Hamilton
Huntsville, Ala.

Frederick J. Hansen
Wichita, Kan.

Charles E. Holmes
Denver, Colo.

John Robert Hughey
Bay City, Texas

Charles Donald Hull
Middleburg Heights, Ohio

James L. LeGrande
Fort Myers, Fla.

Donald W. Maas
Houston, Texas

Edward Finch Parry
Cloudcroft, N.M.

Patrick J. Schlesinger
Solana Beach, Calif.

Michael B. Silva
Houston, Texas

John Joseph White
Burkburnett, Texas

James W. Williams
Lubbock, Texas

Volunteers Make High School Mock Trial Program a Success

Every year Mock Trial Committee members face the task to create a new fictional case that will interest high school students. This year's case focused on First Amendment rights during student council elections. Thirty-six teams from across the state began competing in January.

"This year's mock trial competition was as exciting as it was challenging. It is always a real pleasure to see young minds grasp difficult concepts, which they did brilliantly," said Mock Trial Committee Chair Nicole Longwell. "The students were asked to grapple with the difficult, yet relevant, concepts of religious liberty and free speech in school. It is our hope that the mock trial participants learned not only about our justice system this year, but their rights as American citizens.

Mock Trial Committee members staffing the final round were (from left, front row) Coordinator Judy Spencer, Joe Carson, Marsha Rogers, Retired Judge Edward Cunningham, (from left, back row) Nicole Longwell, Christine Cave and Erin Moore.

Claiming the championship trophy for the fourth consecutive year was Del City's Christian Heritage Academy, who defeated Clinton High School's Gold Team. Other top finishers were in third place, Ada High School (Maroon Team); fourth, Ada High School (White Team); fifth, Okarche High School; sixth, Jenks High School (Athena Team); seventh, Owasso High School (Red Team); and eighth, Owasso High School (Rams Team). Christian Heritage Academy is currently preparing for a new case as it advances to national competition that will take place in Phoenix May 5-7.

Finals teams attorney coaches were Jennifer Miller for Christian Heritage Academy and Julie Strong and Judge Jill Weedon for Clinton.

The program, now in its 31st year, is sponsored by the OBA Young Lawyers Division and the Oklahoma Bar Foundation.

"The OBA/YLD Mock Trial Committee would like to thank all of the volunteers who participated in this year's program," Ms. Longwell said. Without their dedication to this program, it simply would not exist. We are truly fortunate to have some of the best legal minds in our state aiding in educating this program's participants."

Serving with Chairperson Longwell on the committee are Executive Vice Chairperson Jennifer Bruner, Immediate Past Chairperson Erin Moore, Vice Chairperson/ Tulsa Trial Sites Marsha Rogers, Vice Chairperson/ Oklahoma City Trial Sites Christian Szlichta, Vice Chairperson of Case Development Jennifer Bruner, Rachel McCombs, Joe Carson, Christine Cave, Chanteau Orr, Scott Inman, Antonio Jeffrey, Jacob Rowe, Amanda Thrash, Leslie Porter and Karolina Roberts. The committee is assisted by

coordinator Judy Spencer, a former mock trial teacher coach.

"Because of the dedication of our participants, educators, attorney coaches, volunteers and committee members, Oklahoma is sending a highly competitive team, Christian Heritage Academy, to compete in the national competition," Ms. Longwell said.

Kudos to the following individuals who donated their time to make this program possible.

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

ATTORNEY COACHES

Blayne T. Allsup
Clifton Baker
Jennifer Barrett
Cheryl Blake
Judge James Bland
Chris Box
Gary Briggs
Scott Brockman
Dawn Brockman
Kevin Buchanan
Mary Bundren
Judge Daman Cantrell
Judge Martha Rupp Carter
Kristen Caruso
Mary Ann Coleman
Travis Crocker
Erin Dailey
Tim Daniel
Jason Dennis
Brian Drummond
Christine Ford
Dennis Gay
Stephen P. Gray
Forrest Hess
Judge Dennis Hladik
Deidre Hodge
Terry Holtz
Michael Horn
Rebecca Hunter
Marie Johnson
Chris Jones
Steven Kuperman
Greg Laird
Pat Layden
Mike Lee
Jim Lemon
Julie Lombardi
Tim Maxey
Jennifer Miller
Tim Mills
Jeff Mixon
Sarah Powers
R. Dean Rinehart
Matt Roberts
Paul Schulte
Russell Singleton
Kimberly Slinkard
Don L. Smitherman
Frank Stout
Julie Strong
Charles Sullivan
Kyle Sweet
Melissa Taylor
Rex Thompson
James Thornley
Jim Tillison
Ginger Williamson
Christy Wright

TRIAL SITE COORDINATORS

Jennifer Bruner**
Deresa Gray Clark**
Lisa Cosentino**
Robert Duran, Jr.
Mark Osby
Jennifer Johnson
Kristin Jarman
Jeff Keel**
Patrick Layden
Nicole Longwell
Anne Mize
Jacob Rowe
Joe Carson
Amanda Thrash
Leah Terrill-Nessmith**
Chris Szlichta
Dan Sprouse
Marsha Rogers****

PRESIDING JUDGES

Ruth Addison
Russell Anderson
Wayne Bailey
Judge Mark Barcus
Judge James Bland
Darrell Bolton
Peter Bradford
Sam Bratton
Megan Brocking
Jennifer Bruner
David Bryan
Judge Kenneth Buettner
Kevin Butler
Judge Martha Rupp Carter
Jason Christopher
Bruce Coker
Sharon Cole
Eldridge Cooper
Retired Judge Edward Cunningham***
Judge Kenneth Dickerson*****
Bill Dodson
Judge Theresa Dreiling
Blake Dutcher*
April Eberle
Steven Edgar
Judge Shon Erwin******
Amber Fite
Bart Fite
Judge Mary Fitzgerald
Marna Franklin
Judge Carl Funderburk
Judge Doug Gabbard
Debra Gee
Bret Glenn
Anthony Gorospe**
Eric Grantham
David Guten
Cheryl Hamby
Judge Brian Henderson
Bill Hiddle
Mark Hixson
Ron Howland
Dana Jim**
Jeff Keel
Jennifer Kern
John Koernel
Steven Kuberman
Tara Lemmon
Marvin Lizama
Blake Lynch
Retired Judge Patricia MacGuigan
Judge John Maley
Jim Marshall

Ron Mason*
Kieran Maye Jr.*
Park Medearis
Regina Meyer
Marianne Miller
Mike Miller
James B. Miller
Judge C. E. Miller
Anne Mize
Bryan Morris
Kevin Morrison
Judge Linda Morrissey
Thomas Mortenson
Brenda Nipp
Phillip Olson
Kirk Olson
Jim Palinkas
Judge Cynthia Pickering
Ellen Quinton
Steven Ramm
Keith Readnour
Ryan Reeves
Rob Ridenour
Rob Rochelle
Pete Silva
Maribeth Snapp*
Suzanne Woodrow Snell
Chris Szlichta
Andrew Tevington
Amanda Thrash**
Judge Norman Thygesen
Roy Tucker
David Van Meter
Deanna Wales
Matt Wheatley
Randall Wiley
Betty Outhier Williams
Chris Wilson
Sloan Wood

SCORING PANELISTS

Stacy Acord
Nicole Acquino*
Ken Adair*
Kim Adams
Bob Adcox
Jaye Baker
Nikki Baker-Dotson
Gabe Bass
Mindy Beere*
Retired Judge Lois L. Belden
Terry Bigby
Tammy Boling
Hunter Boling
Lacy Boyles*
John Brasher
Sam Bratton
Georgina Brown
David Bryar
Mary Bundren
Shanna Burgin
Linda Burkett-Ohern
Cynthia Burlison
George Burnett
Kevin Butler
Ann Butler
Dietmar Caudle**
Eric Cavett
Shannon Cazonni
Martha Cherbini
Dana Crawford
Paul Crocker
Ross Crutchfield
Joan Curran
Chace Daley
Eric Davis
Mike Decker
Kevin Dellinger*
Jared DeSilvey**
Jessica Dickerson
Ken Sue Doerfel
Ken Dominic
Catherine Doud
Brian Downing
Melinda Dunlap
Rob Duran
Blake Dutcher*
David Dykeman
April Eberle
Vaughn Elkins
Ron Elrod
Kyle Endicott
Terri Engles
Roger Everett
A.J. Ferate
Jennifer Flexner
Luis Flores
David Francy
Michelle Freeman
Trever Furlong
Robert Garcia
Charles Gass*
Robert Gates
Debra Gee
Richard Gibbon
Tom Gibson**
Michael H. Githens
Matt Gore
Anthony Gorospe
Jones Gother
Eric Granthen
Brett Gray*
Mark Graziano
Elaine Green*
Deborah Hackler*
Matt Hall
Cheryl Hamby*
David Hamons
Ashton Handley
Yvette Hart
Bill Haselwood
Atkins Haskins
Todd Hembree
Whitney Herzog
Bill Hickman

Oklahoma City attorney Jennifer Miller (back center) listens as her Christian Heritage Academy team receives an inspirational speech from committee member Nicole Longwell before they head to the National Mock Trial Competition in May.

Marsha Rogers****
Robin Rollins
Ted Rossier*
Jacob Rowe
Kurt Schneiter
Mark Schwebke*****
Judge Houston Shirley
Ken Short
Judge Steven Shreder
Christa Alderman
Christopher Arledge
Elaine Arnold**
Lara Arnold**
Tom Askew
Brian Aspan
Molly Aspan
Micah Ayache
Wayne Bailey
Tamera Childers*
Jason Christopher
Gwendolyn Clegg
Steve Coleman
Wes Combs
Kris Cook
Dan Couch
Michael Coulson
John Cramer**

Vicky Hildebrand
Sara Hill
Mark Hixson
Chandra Holmes-Ray
Emmy Huffnagel
Tommy Humphries
Valerie Hunt
Kristine Huntsman
Tiffany Huss
David Hyman
Drew Ihrig
Greg Jackson
Julie Jansen
Keith Jennings
Dana Jim
Rick Johnson
Jennifer Johnson
Lauren Wilson Johnston
Vicki Jordan
Joe Jordan*
Kyle Killam*
Jennifer Kirkpatrick
Stephen Kistler
John Koemel
Mike Kulling
Kathy Kunc
Vickie Leyja
Liessa Lieppman
Tina Liesman
Meredith Lindaman
Niki Lindsey*
Lori Loman
Nicole Longwell
Brian Loughrin
James Lowell
Gregg Luther
Debbie Maddox
Carin Marcussen**
Ron Mason
Stephen Mathis
China Matlock
Ash Mayfield
Gaylene McCallum
Scott McCann
Jim McClure
Jim McGough
Jeff McGrew
Shawn McKelvy
Park Medearis
Jaye Mendros
Brandon Meyer
Jon Miller
George Miller
Ryne Miller
Marianne Miller
Tim Mills
Craig Mirkes
Anne Mize**
Anthony Moore
Erin Moore**
Bryan Morris
Nason Morton
Sal Munoz
Shannon Muret
Becki Murphy
James Myles
Chrissi Nimmo*
Judge Norris
Brittany Novotny
Mike Novotny
Elizabeth O'Dell
Katie Ogden**
Jeremy Oliver
Kirk Olson**
William Orendorff
Susan Osborn
Mark Osby
Jim Palinkas*
Wayne Patterson
Clint Patterson
Matt Patterson*
Mark Peregrin
John Pereira
Melissa Peros*
Ben Perrine
Ben Perrine
Clay Pettis
Jim Cole Pettis
Lance Phillips
Jeremy Pittman
Sonja Porter**
Mike Porter**
Doug Price
Ellen Quinton
Scott Ray
Ryan Reeves
Ryan Renrie
Chris Reser
Kenneth Rhoads
Nathan Richter**
Todd Riddles
Ryan Roberts
Karolina Roberts*
Whitney Robison
Robin Rochelle*
Joe Rogers
Jacob Rowe***
Lara Russell
Dennis Sagely
Linda L. Samuel-Jaha
Casey Saunders*
John Sawney
John Schneider
Carol Seacat
Mike Segler
Micah Sexton
Jeff Shaw
Jen Shaw
Cystal Shidler
Judge Houston Shirley
Zach Shreiner
James Simms
Bill Simpson
Kim Slinkard*
Sara Smith
Dewayne Smoot
Paul Sobieski
Joel Stafford*
Cliff Stark
Taylor Stein
Kim Stevens
Sheila Stinson
Joshua Stockton
Corey Stone
Justin Stout
Kristan Strubhar
Jim Stuart
Brian Swenson
Michael Taubman
Cesar Tavares
Emmit Tayloe
Katie Templeton
Andrew Tevington
Laura Thomas
Mat Thomas
Karen Thomas
Carolyn S. Thompson**
Amanda Thrash*
Ed Tillery
Shelley T. Tipps
Jill Tontz
Roy Tucker
Scott Tully
Le'Shawn Turner
Breanna Vollmers
Matt VonTonglen
Joe Vorndran
Sherry Walkabout
Jill Walker-Ambdovis
Dara Wanza
Leah Ward
Kyle Waters
Brandon Watson
Ashley Webb
Jillian Welch
Randall Wiley
Tressa Williams*
Betty Outhier Williams
David Williams
Tanya Wilson
Greg Wilson
Meredith Wolfe
Sloan Wood
Chuck Woodstock
George Wright
Ryan Wyrick

*served twice
**served three times
***served four times
****served five times
*****served six times
******served seven times

Pondering the Future of Law Practice

By Jim Calloway, Director, OBA Management Assistance Program

I have been thinking a lot lately about the future of the legal profession. Partly, this is because I have spoken to four different classes of law students since the beginning of the year and partly because of a program that I have planned to address that topic. (I'll cover more on that later.) Our *Digital Edge: Lawyers and Technology* podcast for March 2011 was on "Contemplating Future of Law Practice" and you can listen to it at http://tinyurl.com/3wn88k4.

One lawyer, Fred Ury, was quoted in the No. 29, 2010, edition of the *Connecticut Law Tribune* as saying that there will be 10 – 40 percent fewer lawyers over the next decade. He bases this assumption on the impact of technology on certain legal services. Given the huge unmet need for legal services in our society, I find that hard to believe.

But as someone who observes the legal profession, I see business challenges ahead. Statistics show that the legal sector is lagging behind others in the recovery. That should be a sobering trend for lawyers.

There are other trends, both positive and negative.

The recession has resulted in a lot of downward pressure on legal fees. See the Association of Corporate Value Challenge as Exhibit A of that trend at www.acc.com/valuechallenge. There is a lot of information there advising corporate counsel on how to reduce outside counsel's legal fees. But this is not anti-lawyer, by any means. One of the points that is stressed is that law firms need to operate more efficiently.

> "If you do not believe the role of technology in law firms will continue to expand, maybe you should go watch the online videos of IBM's Watson defeating the top Jeopardy champions."

Mobile technology continues to evolve and impact our society. It seems pretty clear at this point that clients want to interact with their lawyers in the future more by mobile devices and lawyers want to be able to interact completely with the home-based law firm by mobile devices. The iPad is a shining example of this. A recent seminar given to the OBA Law Office Management and Technology Section by Oklahoma City lawyer Wayne Allison on the way he uses iPads in the courtroom during trials was interesting and eye opening. I think we will see a lot more iPads and similar devices in use in courtrooms very soon.

If you do not believe the role of technology in law firms will continue to expand, maybe you should go watch the online videos of IBM's Watson defeating the top Jeopardy champions. A March 4, 2011, *New York Times* headline read, 'Armies of Expensive Lawyers, Replaced by Cheaper Software' at http://tinyurl.com/4kxrfvj. The article focused on advances in artificial intelligence e-discovery software used to analyze documents, pointing to a possible replacement of contract attorneys currently doing document review in cases with large amounts of documents. From everything that I have read, document review is painfully dull, relatively low-paid legal work

and not a long-term career path for these lawyers in any event.

The End of Lawyers? Rethinking the Nature of Legal Services by Richard Susskind is recommended reading. I was fortunate to hear him discuss his ideas at a past ABA TECHSHOW, and his analogy of the bespoke (which means custom-made) model of production of legal services evolving through standardized systematized package does make sense to me. While the practice of law is much more than filling out forms or using boilerplate documents, we would all have to admit there are some aspects of the production of legal documents that can be made more routine and standardized. A more recent title that I have not yet read is *The Vanishing American Lawyer* by Thomas D. Morgan, George Washington University Law School professor.

In the 1967 movie, *The Graduate*, a young man played by Dustin Hoffman is given advice by a individual in the form of one word for his future, "Plastics." If I was to try to encapsulate the most important trends of the future of law practice, I would probably use two phrases, "Great client service" and "Document assembly."

The first phrase probably resonates with all readers, while the second may be a surprise.

I do think that most lawyers provide such valuable services to their clients that any concern they will become irrelevant is hyperbole. Every city or town in Oklahoma has law offices where people come in daily for help with legal problems. Despite much negative rhetoric directed at our profession, the simple fact is that lawyers are problem solvers who spend their days helping people.

But, as with any human endeavor, there is always room for improvement.

SUPERCHARGE YOUR LAW PRACTICE

So, I have put together an OBA CLE program called Supercharge Your Law Practice. I am very excited about this program and hope that many of you will attend either the live presentation in Oklahoma City at the bar center May 18, 2011, or in Tulsa on May 19. There will be a live webcast on May 18, 2011, so any lawyer anywhere can watch it.

Guthrie attorney Tim Green is going to provide us a lot of insights on the way he manages his solo practice using only the tools provided by Microsoft office and a few other inexpensive software products. Tim has some insights into the ways we should personally manage ourselves in a law practice that I think all of you will find very interesting. For those that want to study further, he will recommend some books.

In the afternoon we will talk about document assembly and document assembly tools as well as how case management software can assist you in managing your information and assembling documents. Donna Brown of the 34-45 Consulting Group LLC will join me. She will demonstrate how you can improve your organization and document production with practice management software. I will show some interesting new tools that I think will aid in this task as well.

Finally we will have Jeffrey Taylor of Absolute Legal Services LLC talk to us about how he uses mobile technology and social media. He's been given quite an assignment as either of these topics could easily go on for half a day. I get a surprising number of calls from lawyers now about social media. But you don't have to spend hours on Facebook, Twitter and the rest to get value from these popular new services.

I hope that you will take advantage of this seminar, if you have an interest. But more importantly, I hope that you will take advantage of the resources available to you on the Internet that discuss these trends. I try to direct readers to my blog Jim Calloway's Law Practice Tips (http://jimcalloway.typepad.com/) for some resources. You can subscribe to my blog posts either by RSS or by email on the blog. A good example of the content you can find online was a blog post "Little Big Firm" at http://tinyurl.com/44rhof7, where New Orleans lawyer Ernie Svenson outlined how he designed his solo practice with no staff where his clients receive the same type of service as when he was with the large firm. It is a great, short read.

If you study and read a little bit and then take some time to plot your course for the future in law practice, you will no doubt be rewarded. By definition, the future is uncertain; but there are a lot of interesting times ahead, and there are methods we may be able to use to better serve our clients that we should all be considering.

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

TEN TRENDS REDEFINING THE PRACTICE OF LAW
JIM CALLOWAY
9

BREAK
9:50

DO-IT-YOURSELF PRACTICE MANAGEMENT TOOLS AND TECHNIQUES
JIM GREEN
10

SUPER CHARGE YOUR LAW PRACTICE

PROGRAM PLANNER/MODERATOR
JIM CALLOWAY
DIRECTOR, MANAGEMENT ASSISTANCE PROGRAM
OKLAHOMA BAR ASSOCIATION, OKLAHOMA CITY

REGISTER AT
WWW.OKBAR.ORG/CLE

OKC:
OKLAHOMA BAR CENTER
1901 N. LINCOLN BLVD.
18
MAY

TULSA:
RENAISSANCE HOTEL
6808 S. 107TH E. AVE.
19
MAY

NETWORKING LUNCH
INCLUDED IN REGISTRATION
11:40

PAPERLESS LAW PRACTICE IN THE REAL WORLD
JIM CALLOWAY,
DONNA BROWN,
XS-ID CONSULTING, OKLAHOMA CITY
12:10 p.m.

DOCUMENT ASSEMBLY TOOLS AND TECHNIQUES THAT REALLY WORK
JIM CALLOWAY
DONNA BROWN
1

BREAK
1:50

$150 $175
EARLY BIRD
STANDARD
OK. CREDIT
TX. CREDIT

REGISTER ONLINE FOR A $10 DISCOUNT

THE OKC PROGRAM WILL BE WEBCAST

SMART TECHNOLOGY: FROM SMART PHONES TO SMART USE OF SOCIAL MEDIA
JEFFREY TAYLOR
ABSOLUTE LEGAL SERVICES
OKLAHOMA CITY
2

ADJOURN
2:50

THIS YEAR YOU CAN RECEIVE YOUR MATERIALS ELECTRONICALLY OR THE OLD FASHION WAY IF YOU LIKE. JUST MARK YOUR CHOICE WHEN YOU REGISTER.

The Attorney's Speech

By Travis Pickens

Lawyer: Hey, how are you doing?

Client: Great, but I've been trying to get through to you for a week.

Lawyer: Gosh, sorry, I've been in court and in meetings the past several days.

Client: I left several messages requesting information and an update and your paralegal didn't really know what was going on.

Lawyer: Well, he's really good at doing research, drafting pleadings, that kind of thing. That's why I keep him on. He's not much with clients.

Client: I need some information. My niece called me and said she had seen on OSCN that the court had entered an order nearly two weeks ago.

Lawyer: Well, yes, the court did rule. I've just been so busy I didn't have a chance to call you or email it to you.

Client: Oh really? So the court *has* already ruled? Great, what happened?

Lawyer: Well, we got what we wanted.

Client: Yes! Victory, Sweet justice! Finally… the court granted our motion!?

Lawyer: No, not exactly, but we got what we wanted.

Client: So the bastards have been found liable? And we'll have that hearing on damages and punitive damages you've always talked about, right?

Lawyer: That procedure really won't be necessary, yet. The court did not grant our motion, but did not fully grant the other side's motion on summary judgment either.

Client: Huh? The court did not grant our motion?

Lawyer: No, the court found there were material facts still in issue.

Client: Well, so how is it true that "we got what we wanted?"

Lawyer: We've educated the judge on our position so when we go to trial, she'll be in a position to rule in our favor once we put on our evidence.

Client: Oh….. I would really rather win now.

Lawyer: Well, uh, yes, that would save some of your time and money, absolutely.

Client: Well…. I guess the lying trolls did not get what they wanted either.

Lawyer: True, the court did not rule in their favor, completely.

Client: "Completely?" What does that mean?

Lawyer: It means the court ruled in their favor on some of their defenses.

Client: Which ones?

Lawyer: The defenses to damage to property… and the contract claim….

Client: #@%*&!, that's everything but our claim for unjust enrichment, and it does not give us all our damages.

Lawyer: Yes, but it's good as gold.

Client: Well, you know what? I don't have any "gold" myself to keep going. I've done everything I can do just to keep up with your bills. Thank God the other side has spent every bit as much as we have on this, probably more.

Lawyer: Well…uh…uh… that…that's something else we need to…er, discuss...some claims entitle the prevailing party to their…uh…attorneys fees….

The multiple communication problems represented within this, for some, somewhat vaguely familiar dialogue should be self evident. The more interesting question is why, as lawyers, we sometimes allow ourselves to fall into this communication trap that is above all others the easiest to cure. This is especially so since statistics from the Office of General Counsel confirm that

bad communication leads to a large number of grievances. ORPC 1.4 sets out our responsibilities. You must:

- Be prompt in your communications; delay is rarely justified. The lawyer's discomfort or inconvenience is not an excuse. Delayed communications could, for example, be justified when advising a client of a troubling psychiatric diagnosis.
- Often, obtain the client's "informed consent," which is a defined term in ORPC 1.0 (e). Multiple rules require the informed consent of the client prior to taking action of any consequence. Generally, "informed consent" means the client has agreed to a course of action following an explanation of the associated alternatives and risks.
- Sometimes, obtain the client's agreement or informed consent "confirmed in writing." The phrase "confirmed in writing" is defined in ORPC 1.0 (b). A few rules require this (e.g. division of fees and waiving conflicts). Generally, "confirmed in writing" includes a document signed by the client (emails are acceptable), and confirming letters written by the attorney following a conversation.
- Reasonably consult with the client regarding the means of accomplishing objectives, unless for example, during trial, immediate action is necessary.
- Reasonably inform the client of the status of the matter.
- Promptly give the client information requested and if unable to do so inform the client as to when the information will be provided.
- Consult with the client regarding relevant limitations imposed by the Rules of Professional Conduct.
- Explain matters as reasonably necessary so that the client can make informed decisions.
- Act upon the instructions given by the client, and if given previously, you may do so without further consultation unless there has been a change in circumstances.
- Promptly communicate settlement offers or plea proposals to the client unless there are prior instructions or authority upon which you may rely.
- Go over all important provisions of any settlement agreement.
- Explain general strategy and prospects for success.
- Explain tactics to the client that will significantly affect costs or relationships.

Make Every Day Law Day

By John Munkacsy Jr.

Law Day 2011 approaches, but in the realm of your Oklahoma Bar Foundation "Law Day" exists perpetually, as the good work made possible by foundation grants continuously takes root, grows and spreads throughout Oklahoma. One of the purposes of the Oklahoma Bar Foundation is to advance public awareness of the law through education. Law Day, after all, is at its core all about educating the public about the role lawyers have in the administration of justice.

When I last reported to you I spoke about the role OBF through its grants to Legal Aid Services has in tort and civil litigation. This time I want to report just a few ways OBF supports charitable organizations which are involved in the education of our citizens about the administration of justice. Let's start with the OBA YLD High School Mock Trial program. The foundation is a longtime supporter of the Mock Trial program. In 2010, OBF provided funding of $45,000 for this excellent program. Some of you also donate your time to help make this program successful and a realistic courtroom experience for our student participants.

Another instance of OBF's role in this process involves the Senior Law Resource Center. Please check out its website at www.senior-law.org to note the benefits provided to our elder citizens. Your foundation provides support to an intern program with the center, in which two law students participate. They handle intake of questions, issues or problems presented by clientele and meet with staff attorneys to formulate the appropriate response or service. Additionally, these law students assist staff attorneys in cases involving elder abuse, guardianships and similar matters. These students are selected, in part, because of a demonstrated interest in elder law or public service law.

> "The Teen Court program ensures teens are held accountable for their actions..."

Our younger citizens are included as well. The YMCA Youth & Government program involves young people in realistic projects such as writing legislation as part of a "Youth Legislature" and presenting cases in a mock trial setting in a "Youth Court System." Teen Court Inc. of Comanche County is an early intervention program for first-time youth offenders in Lawton. Every year, approximately 150 teens stand in front of a jury of their peers as their cases are heard and sentences rendered in a courtroom setting. The Teen Court program ensures teens are held accountable for their actions, while at the same time the program helps them develop positive attitudes and self-esteem, and educates them on the judicial process.

I'll finish with the University of Tulsa College of Law Boesche Legal Clinic's Immigrant Rights Project. In 2010, 18 law students and 48 clients were served by this project. The students are able to represent clients in immigration matters, including appearing before formal Immigration Courts. OBF funding pays for interpretation services and student travel to visit clients and to appear at the Immigration Court hearings.

I have given you only some of the ways your foundation helps to make every day "Law Day" through grants made possible by funds received through the IOLTA program and through your participa-

tion as "Fellows." Your support as a Fellow is vital and very much appreciated. All donees are required to give credit to OBF in their literature and programs. They file quarterly progress reports with the foundation to account for the use of OBF funding. OBF Trustees make site visits to grant recipients and routinely remark on how impressed they are with grantee programs. The programs I report about to you are professionally conducted and thorough in their respective missions. **Make every day Law Day by becoming an OBF Fellow today!**

John D. Muncaksy Jr. is the president of the Oklahoma Bar Foundation. He can be reached at johnmunk@sbcglobal.net.

OKLAHOMA BAR FOUNDATION MEMORIAL GIFTS IN LIEU OF FLOWERS

Often, for various reasons, individuals, county bar associations and other groups may wish to make contributions "in memory of" or "in honor of" a judge, a fellow lawyer, a special person or to mark an event. A gift to the Memorial Fund of the Oklahoma Bar Foundation is a fitting way to express your feelings. Such contributions will be acknowledged by the OBF to the family or to the person being honored.

Your memorial contributions will help support the ongoing work of the OBF. OBF provides an opportunity for continuance in shaping the future of an educated and participating citizenry. Thank you.

---**In Memory of a Special Person**

Memorialized Person:_____

City/State of Residence: _____ ☐ Attorney ☐ Non-attorney

Gift Made By:_____

Your Name:_____

Your Address:_____

City/State/Zip:_____

Send Notice To:_____

Address:_____

City/State/Zip:_____

---**In Remembrance of a Special Occasion or Event**

Honored Person:_____

City/State of Residence: _____ ☐ Attorney ☐ Non-attorney

Check Appropriate Box: ☐Happy Birthday ☐Honorarium ☐Get Well Wish ☐Appropriate Seasonal Greeting ☐Anniversary ☐Other_____

Please make checks payable and mail to: Oklahoma Bar Foundation ● P O Box 53036 ● Oklahoma City, OK 73152-3036

Charitable contributions to the OBF are tax deductible to the extent allowed by law

FELLOW ENROLLMENT FORM ☐ Attorney ☐ Non-Attorney

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

Firm or other affiliation: _____

Mailing & delivery address: _____

City/State/Zip: _____

Phone: _____ E-Mail Address: _____

The Oklahoma Bar Foundation was able to assist 23 different programs or projects during 2010 and 25 in 2009 through the generosity of Oklahoma lawyers – providing free legal assistance for the poor and elderly; safe haven for the abused; protection and legal assistance to children; law-related education programs; other activities that improve the quality of justice for all Oklahomans. The Oklahoma Bar legend of help continues with **YOU**.

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

___ $100 enclosed & bill annually

___ Total amount enclosed, $1,000

___ *New Lawyer 1st Year*, $25 enclosed & bill annually as stated

___ *New Lawyer within 3 Years,* $50 enclosed & bill annually as stated

___ I want to be recognized at the higher level of ***Sustaining Fellow*** & will continue my annual gift of *at least $100 – (initial pledge should be complete)*

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

LAWYERS TRANSFORMING LIVES

Through education, citizenship and justice for all.

The Oklahoma Bar legend of help continues with YOU!

- To become a Fellow, the pledge is $1,000 payable within a 10-year period at $100 each year; however, some may choose to pay the full amount or in greater increments over a shorter period of time.
- The OBF offers lesser payments for *newer* Oklahoma Bar Association members:
  - — ***First Year Lawyers*****:** lawyers who pledge to become OBF Fellows on or before Jan. 2, of the year immediately following their admission may pay only $25 per year for two years, then only $50 for three years, and then at least $100 each year thereafter until the $1,000 pledge is fulfilled.
  - — ***Within Three Years*****:** lawyers admitted three years or less at the time of their OBF Fellow pledge may pay only $50 per year for four years and then at least $100 each year thereafter until the $1,000 pledge is fulfilled.
- **Sustaining Fellows** are those who have completed the initial $1,000 pledge and continue their $100 annual contribution to help sustain grant programs.
- **Benefactor Fellows** is the highest leadership giving level and are those who have completed the initial $1,000 pledge and pledge to pay at least $300 annually to help fund important grant programs. Benefactors lead by example.

Your Signature & Date: _____ OBA Bar# _____

PLEASE KINDLY MAKE CHECKS PAYABLE TO: Oklahoma Bar Foundation • P.O. Box 53036 • Oklahoma City, OK 73152-3036 • (405) 416-7070

Many thanks for your support & generosity!

Navy Pilot Inspires Lawyers for Heroes Program

By Lori Rasmussen

Fighter pilot Mike Whetstone was deployed in one of the most dangerous parts of the world in autumn 2003. Assigned to the U.S.S. Enterprise sailing in the Persian Gulf, he was providing air support to ground troops during Operation Iraqi Freedom. That's when he received some unwelcome news from back home. He was summoned to appear before a judge in McIntosh County, the result of an ongoing divorce dispute that had its roots in Capt. Whetstone's long military deployments during the war.

"Here I am 5,000 miles away from home, and I've got a court case pending," Capt. Whetstone said. "I've got no representation, I'm wondering what's going to happen to me, what am I going to come home to. I'm worrying about the case, but over there, you've got to be able to focus 100 percent on the task at hand or it could cost someone their life."

Facing a default judgment against him if he failed to show up for the scheduled hearing, Capt. Whetstone placed a long distance phone call to a Eufaula attorney he didn't know, hoping maybe the lawyer could buy him some time while the case was resolved. He didn't expect that attorney Deborah Reheard, now OBA president, would walk to the courthouse and have the case suspended within an hour of that initial conversation.

Ask A Lawyer

Featuring
Capt. Mike Whetstone
and
OBA President
Deborah Reheard

Airs Thursday, April 28

7 p.m. • OETA

Capt. Whetstone said, "I was extremely relieved and so appreciative of what she did. She downplays the work she did for me, but what maybe seems like a little task to her makes the difference between somebody being able to execute their mission or not. It really comes down to that. That little thing made the difference."

Capt. Mike Whetstone, U.S. Navy (Ret.), talks about his experiences during his recent visit to Oklahoma.

President Reheard agrees, pointing out, "It was extremely important that he be able to complete his mission. That's where his mind needed to be, and not worrying that something was going to happen to him back home."

President Reheard says it was Capt. Whetstone's case that got her thinking about the challenges military service members face as they go about the business of defending the nation. Over the next few years, she began to see more and more active duty and retired military members in her office needing help with similar legal problems. Although Capt. Whetstone insisted on paying for the legal work she performed for him, she notes that not all

service members are able to pay for the services they need. As her term as OBA president approached, Ms. Reheard decided it was time to act. That's how the Oklahoma Lawyers for America's Heroes program got started.

"I sent out a call to arms to attorneys and asked them to please sign up to provide legal services at no cost to our qualified service members and veterans, Ms. Reheard said. "The response was overwhelming. Attorneys from across the state practicing in all areas immediately signed up."

VOLUNTEERS STILL NEEDED

Oklahoma lawyers are still needed to volunteer pro bono legal services, especially those with experience in family law, estate planning, consumer and credit issues, and disability and benefits issues. Go to www. okbar.org/heroes to sign up. You'll also find resource materials to prepare you for your volunteer service.

Now retired from the Navy, Capt. Whetstone lives in Virginia Beach, Va., but recently visited Oklahoma as a guest of the OBA Law Day Committee to share his story as part of the annual Ask A Lawyer TV show, to air April 28 at 7 p.m. on OETA. The interview will appear as part of a segment focusing on the Oklahoma Lawyers for America's Heroes program.

Ms. Rasmussen is an OBA communications specialist.

Gideon's Promise

By Gary A. Taylor

The right of an indigent criminal defendant to have an attorney appointed has become part of the popular lexicon as one of the "Miranda"[1] rights read to an arrestee on ubiquitous television police dramas. But it was not always so. *Gideon v. Wainwright*[2] established a federal constitutional right, applicable to the states through the 14th Amendment, to appointed counsel when someone faced denial of their personal liberty by official action of the state. So accepted is this principle that one seldom hears anything about the time before *Gideon* was decided (which was within the lifetime of many current practitioners). And yes, Virginia, poor people went to jail in America without having a lawyer.[3] Today, this right to counsel is so firmly entrenched that it is viewed as necessary for the fundamental fairness of our criminal justice systems, both federal and state. But there are other forums where interests of a litigant may rise to a level of importance that having counsel may be the only way to ensure fairness in the outcome.

There is a national discussion taking place that asks us to consider whether certain important interests of a "civil" litigant (the label being not as important as the substance) — together with the complexity of the legal proceedings call for a similar approach. Sometimes called the "Civil Gideon" movement, it has found favor in a number of states. Recently for example, Wisconsin lawyers and other citizens petitioned the Wisconsin Supreme Court to adopt rules allowing state court judges to appoint counsel for indigent parties where the issues at stake involved "basic human needs, including sustenance, shelter, safety, health and child custody."[4] California is launching a number of pilot projects to gauge the cost-savings and effectiveness of this approach. And these states are not alone. Perhaps one day, as a result of these efforts, the right to counsel in civil matters affecting vital interests will be commonplace, and as much a part of the legal landscape as *Gideon*.

> "The need for an attorney to ensure fairness in civil proceedings touching on fundamental interests is manifest."

It might be surprising to some that Oklahoma has statutorily mandated or permitted appointment of counsel for those without funds in non-criminal matters in 36 different circumstances. Included are juvenile delinquency and deprived child/termination of parental rights proceedings; contested adoptions; guardianships in which one's personal liberty and property may be constrained, and a number of others, some far more arcane. Factors common to these include protection of fundamental relationships, of one's individual liberty interests, and protection for those whose ability to meaningfully participate may be questioned due to minority, advanced age, disability or the like. Oklahoma's Legislature thus has a notable history of protecting the rights of the vulnerable through appointment of counsel. Unfortunately, these protections have sometimes been diluted, when barriers to implementation are erected in the name of protecting the public fisc. But that discussion must be left for another day.

The need for an attorney to ensure fairness in civil proceedings touching on fundamental interests is manifest.

Even well-educated citizens often have neither an adequate knowledge base nor litigation skills sufficient to protect their interests under law. Indigent litigants have additional disadvantages: they are often lacking formal education; many have health and disability concerns; many cannot speak English; they are out of their element and insecure among the suits. And if there is an attorney on the other side, there is further reason to question the essential justice of the proceedings and outcome. Moreover, *pro se* litigants overwhelm many courts, clogging dockets, burdening the time of opposing lawyers, and impeding others' cases from being heard. This comes with a price, and one must consider which is greater: this cost, or that of an efficient system of court appointments in certain cases for those unable to hire counsel.

What many call the "justice gap" has been partially filled by the creation of federally-funded civil legal aid programs, special charitable projects (often faith-based, typically small), and the pro bono efforts of volunteer attorneys. But the need is great, and the resources remain inadequate. The bar association should, nonetheless, be proud of its response to the legal issues facing low-income Oklahomans. The OBA has a long history of supporting legal aid programs and encouraging various pro bono projects. In the last two years, we have had a nationally-known expert train pro bono volunteers in mortgage foreclosure defense, responding to a need national in scope, and affecting many Oklahomans of modest means; we also witnessed the development of Oklahoma Lawyers for America's Heroes, and a phalanx of attorneys volunteering to help address the legal problems faced by citizen soldiers and their families.

This year's national Law Day theme celebrates the legacy of John Adams, our first lawyer-president. Mr. Adams no doubt would be heartened by this discussion of the right to counsel, he who defended British soldiers charged with murder in the "Boston Massacre," risking opprobrium and his political career. He understood that lawyers were the linchpin of the justice system, and how fairly that system treats the poor, or the outcast, or the unpopular is a benchmark of its success. Law Day 2011 affords an opportunity to celebrate the efforts of lawyers across the state working for justice. We thank you.

Mr. Taylor is executive director of Legal Aid Services of Oklahoma Inc.

1. *Miranda v. Arizona*, 384 U.S. 436 (1966).
2. 372 U.S. 335 (1963).
3. Mr. Gideon was originally sentenced to five years' imprisonment.
4. *In the Matter of Rule Petition* 10-8 (Supreme Court of Wisconsin, subm. Sept. 30, 2010).

Oklahoma Bar Journal Editorial Calendar

2011

- May:
  Criminal Law
  Editor: Dietmar K. Caudle
  d.caudle@sbcglobal.net
  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:
  Military Law
  Editor: Dietmar Caudle
  d.caudle@sbcglobal.net
  Deadline: Aug. 1, 2011
- December:
  Ethics & Professional Responsibility
  Editor: Melissa DeLacerda
  melissde@aol.com
  Deadline: Aug. 1, 2011

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

Statewide Service is Focus in April

By Roy D. Tucker, YLD Chairperson

April will be a statewide service month for the YLD, with our year-long "Serving Our Seniors" project kicking off April 23 at the Muskogee Public Library. Muskogee Mayor John Tyler Hammons has proclaimed the month of April as "Citywide Serving our Seniors Month," and we anticipate a wonderful turnout of senior citizens in the area taking advantage of pro bono legal services related to estate planning.

Seniors Committee Co-Chairs Byron Will and Amber Peckio Garrett presented a one-hour long training seminar on testamentary and living will preparation as well as accompanying ethical considerations to an eager group of YLD directors and volunteers in March. Approximately 15 directors and seven volunteers were in attendance, with the session video recorded for posting on the YLD webpage. Many future S.O.S. events are planned. Those interested in volunteering should contact amber@garrettlawcenter.com or bryon@bjwilllaw.com.

On April 30, the YLD will be working to improve homeless shelters in Oklahoma City, Tulsa, Lawton, Enid, Shawnee and Muskogee. At shelters in these areas, directors and volunteers will be painting, doing light maintenance and landscaping. These "done in a day" projects began last year improving public libraries through the momentum of Immediate Past-Chair Molly Aspan. Enthusiasm has not slowed. Anyone wanting to get a little dirty, do some good work, and at the same time make new friends is invited to contact the chairs for the respective events. They are:

Seniors Committee Co-Chairs Byron Will and Amber Peckio Garrett present an S.O.S training session at the Oklahoma Bar Center in March.

> "Anyone wanting to get a little dirty, do some good work, and at the same time make new friends is invited to contact the chairs..."

Oklahoma City:
Collin Walke
Sweet Law Firm
(405) 837-2982
collin@sweetlawfirm.com

Tulsa:
Tim Rogers
Barrow & Grimm
(918) 584-1600
trogers@barrowgrimm.com

Lawton:
Eric Davis
Legal Aid Services of Oklahoma
(405) 361-1984
charles.eric.davis@gmail.com

Muskogee:
Roy Tucker
City of Muskogee
(918) 684-6276
rtucker@muskogeeonline.org

Enid:
Robert Faulk
Faulk Law Firm
(580) 249-9100
robert@faulklawfirm.com

Shawnee:
Joe Vorndran
Stuart, Clover, Duran,
Thomas, Vorndran
(405) 275-0700
joe@scdtlaw.com

ALL INVITED TO NEW LAWYER EVENTS

Finally, we invite you to stop by for cookies and punch provided by the YLD and the OBF at the swearing-in ceremony for new admittees held at the State Capitol on April 21. Additionally, join us in welcoming these new lawyers at our YLD networking events to be held May 3 from 5:30 – 7:30 p.m. at Leon's, 3301 S. Peoria, Tulsa; and McNellie's, 1100 Classen Dr., Oklahoma City.

YLD volunteers expand their knowledge of estate planning issues and other topics related to senior law at the S.O.S training session.

Calendar

April

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

20 **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 Women in Law Committee Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Deborah Bruce (405) 528-8625

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

OBA Bench & Bar Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Barbara Swinton (405) 713-7109

OBA Bar Association Technology Committee Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Gary Clark (405) 744-1601

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

Oklahoma Uniform Jury Instructions Meeting; 10 a.m.; Court of Criminal Appeals Courtroom, State Capitol; Contact: Chuck Adams (918) 631-2437

OBA Communications Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Doerner Saunders, Tulsa; Contact: Mark Hanebutt (405) 948-7725

23 **OBA Young Lawyers Division Committee Meeting;** Muskogee, Oklahoma; Contact: Roy Tucker (918) 684-6276

25 **OBA Alternative Dispute Resolution Section Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: D. Michael O'Neil Jr. (405) 239-2121

26 **OBA Rules of Professional Conduct Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Paul Middleton (405) 235-7600

27 **OBA Management Assistance Program Opening Your Law Practice;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jim Calloway (405) 416-7051

OBA Technology Task Force Meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: John Morris Williams (405) 416-7000

OBA Professionalism Committee Meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Patricia Podolec (405) 760-3358

28 **OBA Ask A Lawyer;** OETA Studios, Oklahoma City and Tulsa; Free legal advice 9 a.m. - 9 p.m.; TV show 7- 8 p.m. Contact: Tina Izadi (405) 522-3871

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

OBA Justice Commission Meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson (405) 235-5563

OBA Men Helping Men Support Group; 5:30 p.m.; The Center for Therapeutic Interventions; Tulsa; RSVP to: Stephanie Alton (405) 840-3033

May

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

5 **Oklahoma Bar Foundation Grants and Awards Committee Meeting;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070

OBA Men Helping Men Support Group; 5:30 p.m.; The Oil Center – West Building, 1st Floor Conference Room; Oklahoma City; RSVP to: Stephanie Alton (405) 840-3033

OBA Women Helping Women Support Group; 5:30 p.m.; The Center for Therapeutic Interventions; Tulsa; RSVP to: Stephanie Alton (405) 840-3033

6 **OBA Law Day Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Tina Izadi (405) 522-3871

10 **OBA Law-related Education Task Force Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Reta Strubhar (405) 354-8890

11 **OBA Government and Administrative Law Practice Section Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Bryan Neal (405) 522-0118

12 **OBA Appellate Practice Section Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Rick Goralewicz (405) 521-1302

OBA Women Helping Women Support Group; 5:30 p.m.; The Oil Center – West Building, 10th Floor; Oklahoma City; RSVP to: Stephanie Alton (405) 840-3033

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

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

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

18 **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 Women in Law Committee Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Deborah Bruce (405) 528-8625

19 **OBA Bench & Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Barbara Swinton (405) 713-7109

OBA Bar Association Technology Committee Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Gary Clark (405) 744-1601

20 **OBA Access to Justice Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jim Stuart (405) 275-0843

21 **OBA Young Lawyers Division Committee Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Roy Tucker (918) 684-6276

23 **OBA Alternative Dispute Resolution Section Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: D. Michael O'Neil Jr. (405) 239-2121

24 **OBA Professionalism Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Patricia Podolec (405) 760-3358

26 **OBA Men Helping Men Support Group;** 5:30 p.m.; The Center for Therapeutic Interventions; Tulsa; RSVP to: Stephanie Alton (405) 840-3033

OBA Justice Commission Meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson (405) 235-5563

30 **OBA Closed** – Memorial Day Observed

June

2 **OBA Men Helping Men Support Group;** 5:30 p.m.; The Oil Center – West Building, 1st Floor Conference Room; Oklahoma City; RSVP to: Stephanie Alton (405) 840-3033

OBA Women Helping Women Support Group; 5:30 p.m.; The Center for Therapeutic Interventions; Tulsa; RSVP to: Stephanie Alton (405) 840-3033

Federal Court Celebrates Women's History Month

Honorees gather at the U.S. Courthouse in Oklahoma City as the legal contributions of Oklahoma women are recognized.

"Our History is Our Strength: Celebrating the Contributions of Women to the Rule of Law" was the theme as the historic achievements and contributions of Oklahoma women were recognized in March at the U.S. Courthouse in Oklahoma City. Gov. Mary Fallin, the first woman to head the state's executive branch, was the special honoree, and it was her historic victory that fueled the interest in the court's observance, which included recognition of the first Oklahoma women judges and selected leaders. Certificates to the honorees were presented by Judge Arlene Johnson of the Oklahoma Court of Criminal Appeals. The judges of the Western District of Oklahoma sat en banc and made remarks.

Federal judges and court unit executives honored were Judge Stephanie Seymour, Judge Robin Cauthron, Judge Vicki Miles-LaGrange, Judge Claire Eagan, Judge Dana Rasure, Judge Sarah Hall, Judge Kimberly West, Vera Howard (honored posthumously), Sue Ashley (honored posthumously), Dottie Evans, Omega Lane (honored posthumously), Susan Otto and Vanessa Thurman.

Oklahoma judges and government leaders honored were Gov. Mary Fallin, Justice Alma Wilson (honored posthumously), retired Judge Patricia MacGuigan, retired Judge Reta Strubhar and former Attorney General Susan Brimer Loving.

Special recognition was given to U.S Magistrate Judge Bana Roberts, U.S. Magistrate Judge Valerie Couch, Oklahoma Supreme Court Justice Yvonne Kauger, Oklahoma Supreme Court Justice Noma Gurich, Oklahoma Court of Civil Appeals Judge Carol Hansen, Oklahoma Court of Civil Appeals Judge Jane Wiseman, Oklahoma Court of Criminal Appeals Judge Arlene Johnson, Oklahoma Court of Criminal Appeals Judge Clancy C. Smith, OBA President Deborah Reheard, Oklahoma County Court Clerk Patricia Presley, former Oklahoma City Mayor Patience Latting and former Lt. Gov. Jari Askins.

OBA Member Resignations

The following member has resigned as a member of the association and notice is hereby given of such resignation:

Sidney Wade Jones
OBA No. 17656
2180 E. Charter Oak Road
Guthrie, OK 73044-8828

Justice Gurich Sworn In

Oklahoma Supreme Court Justice Yvonne Kauger (left) administers the oath of office to Justice Noma Gurich of Oklahoma City on March 31. Justice Gurich succeeds Justice Marian Opala, who died last year, in representing Supreme Court Judicial District Three.

(Photo credit: Legislative Service Bureau Photo Dept.)

OBA Member Reinstatements

The following member of the OBA suspended for noncompliance with the Rules for Mandatory Continuing Legal Education has complied with the requirements for reinstatement, and notice is hereby given of such reinstatement:

Jack Michael Kozak
OBA No. 21438
1002 Timbercreek Drive
Allen, TX 75002

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

Shelley Beth Thomas
OBA No. 17351
2108 N. Vancouver Ave.
Tulsa, OK 74127

Burrage Appointed to JNC

The OBA Board of Governors recently appointed attorney Heather Burrage of Durant to the Judicial Nominating Commission replacing Dan Little, who resigned. Ms. Burrage is only the second woman to serve as a lawyer member of the JNC since its creation in 1967. She practices with the Burrage Law Firm, concentrating her practice in the areas of general litigation and trial practice. She is admitted to serve in all federal courts in Oklahoma and is a member of the Bryan County Bar Association. She is a graduate of Southeastern Oklahoma State University and the OU College of Law.

Lawyers Support Public TV

President Deborah Reheard presents a check to on- air personality and OBA member Kim Brasher during the OETA Festival March 16.

More than $5,900 in private donations was raised March 16 as part of the OBA's annual effort to support the state's PBS station during the annual OETA Festival. The donation sustained the OBA's top "Underwriting Producers" level that is recognized in the station's monthly programming guide.

This year's volunteers were Melinda Alizadeh-Fard, Bill Baze, Joseph Carson, Robert Clark Jr., Mary Jane Coffman, Brandi Duden, Samuel Glover, Gina Hendryx, W. Mark Hixson, Greg James, Judge Richard Kirby, Mark Koss, Ernest Nalagan, Ed Oliver, John C. Platt Jr., Charles Richard Rouse, Linda Ruschenberg, Stephen W. Sasser, B. Michael Shanbour, Ricki Sonders, Sharon Sughru, Margaret Ellen Travis, Mary Ann Travis and Ricki Walterscheid.

Kudos

Ed Abel was recently inducted as a fellow of the American College of Trial Lawyers at the organization's annual meeting in San Antonio. Fellowship is extended by invitation only to experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards.

The Oklahoma Department of Labor announces its recent selection of new Administrative Law Judges (ALJs) to preside over administrative hearings adjudicating wage and benefits disputes, mandatory workers' compensation coverage and potential child labor concerns. **Adam W. Childers, Courtney K. Warmington** and **J. Jeremy Tubb** of Crowe & Dunlevy will serve along with **Paul A. Ross** and **Peter T. Van Dyke** of McAfee & Taft as ALJs in Oklahoma City. **Kathy R. Neal** of McAfee & Taft, **David E. Strecker** of Strecker & Associates and **Keith A. Wilkes** of Newton, O'Connor, Turner & Ketchum will serve as ALJs in Tulsa.

The law firm of Pignato, Cooper, Kolker & Roberson PC has been selected by Berkshire Hathaway Inc. as a "2011 Go-To Law Firm for the Top 500 Companies" in the area of litigation. The honor was given to a small, select group of firms nationwide that deliver exceptional work for the nation's top companies.

Roy John Martin, general counsel of the Oklahoma Department of Consumer Credit, has been elected to serve on the Lawyers Committee of the State Regulatory Registry. The State Regulatory Registry was established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators to oversee operations of the Nationwide Mortgage Licensing System.

On The Move

Major Patricia "Trish" Morris, U.S. Army Reserve, Judge Advocate General's Corps, recently returned from her second combat deployment in Afghanistan, and she was recently presented with a Bronze Star for her service during her deployment. Ms. Morris has returned from active duty to her civilian assignment as an associate deputy general counsel (Installations, Environment and Civil Works) for the Army General Counsel's Office at the Pentagon in Washington D.C.

Gary M. McDonald, James P. McCann, Steven K. Metcalf, William H. Spitler and **Chad J. Kutmas** announce they are partners in the newly formed law firm McDonald, McCann & Metcalf LLP. **Mary E. Kindelt** has joined the firm as an associate. The firm's practice includes all matters concerning general business transactions and general litigation. The firm is located at First Place Tower, 15 E. Fifth St., Suite 1800, Tulsa; (918) 430-3700; www.mmmsk.com.

Susan Muscari announces the Muscari Estate Planning Law Center PLLC has relocated its offices. The new location is 4510 E. 31st St., Suite 200, Tulsa. The firm focuses its practice in all areas of estate planning including trusts, wills, living wills, power of attorney, guardianship, real estate transfers, business succession planning and probate litigation. More information and contact resources are available at www.muscarilaw.com.

Tery DeShong has joined the Tulsa City-County Health Department as general counsel. For the past 13 years, she worked for Oklahoma DHS Child Support Services as the eastern regional administrator, supervising 16 child support offices and managing the Tahlequah office. Ms. DeShong received her J.D. from TU in 1991.

Sofia Nagda has joined Fellers Snider law firm as an associate in the firm's Tulsa office. Ms. Nagda practices primarily in the area of civil litigation. She received her undergraduate degree from the University of Texas at Austin and graduated with honors from the OU College of Law.

Pasley and Farabough of Ardmore announces **Warren E. Mouledoux III** as its newest partner. The firm name will be changed to Pasley, Farabough and Mouledoux. Mr. Mouledoux's practice will focus on insurance defense, workers' compensation defense, general civil litigation and criminal law. He most recently served as an assistant district attorney in the felony division for Jefferson Parish, Louisiana. He is a graduate of the Loyola University School of Law in New Orleans.

McAfee & Taft announces it has expanded its Aviation Law Group with the addition of **Brian C. Beatty** and **Scott M. Smith.** Both will concentrate their practices on aviation matters relating to the financing, purchase, sale, leasing and registration of aircraft worldwide. Mr. Beatty holds an undergraduate degree in economics from the U.S. Military Academy at West Point and a law degree from OCU School of Law. Prior to entering private practice, he was a captain in the U.S. Army Field Artillery and served in combat during Operation Iraqi Freedom. Mr. Smith is a 2009 graduate from the Dickinson School of Law at Penn State University and holds a master of laws degree in taxation from Georgetown University Law Center.

Aero Law Group PLLC announces the appointment of **Paul Lambert** as the newest attorney to join the team. Lambert will be responsible for representing clients in sales, leasing, financing and the exchange of business and commercial aircraft as well as a variety of other aircraft support transactions. Mr. Lambert brings more than 20 years of experience as an attorney and 10 years of aviation law experience to the firm. He earned his B.A. degree, cum laude, in economics from Brigham Young University and his J.D. from Columbia University School of Law.

Andrews Davis announces **Matthew A. Caves** has joined the firm. Mr. Caves joins the firm as an associate with over 10 years of experience in the areas of environmental and administrative law. Mr. Caves received a bachelor's degree in wildlife and fisheries ecology from OSU and a J.D. from OU College of Law.

Crowe & Dunlevy and Day, Edwards, Propester & Christensen are combining resources. Attorneys from Day, Edwards, Propester & Christensen are joining Crowe & Dunlevy with a focus on the securities and litigation and banking and financial institutions practice groups. **Bruce Day** and **Tara LaClair** have been named Crowe & Dunlevy directors to the firm, serving as chair and vice chair of the securities and litigation practice group. **Michael Brown, Rodney Heggy, Amy Wellington** and **Jennifer Willey** will also serve as attorneys for that group. **Joe Edwards, Richard Propester** and **Joel Harmon** have been named directors of the firm and are joining the banking/financial institutions practice group. The new attorneys will be based in the Crowe & Dunlevy Oklahoma City office.

Holmes and Yates announces the addition of **Richard A. Johnson** to the firm, now forming Holmes, Yates, Taylor and Johnson. Prior to joining Holmes and Yates, Mr. Johnson spent three years practicing law in Ponca City and surrounding areas focusing his practice on divorce and child custody, criminal law, tax disputes and general civil litigation. He graduated from TU College of Law in 2007 and earned a B.S. in accounting from OSU.

Mee Mee Hoge & Epperson PLLP announces **Richard K. Goodwin** has joined the firm of counsel. Mr. Goodwin has been practicing law in Oklahoma City for over 38 years and centers his practice on energy-related matters involving all aspects of oil and gas activities, including contracts, title opinions and agreements. Mr. Goodwin maintains his office at 3233 E. Memorial Rd., Suite 102, Edmond, 73013.

Ronald J. Nelson has been appointed associate general counsel by Vantage Drilling Company and will relocate to Vantage's Singapore office.

Patricia L. Martin, a solo practitioner in Colorado Springs, Colo. for six years, is now a mediator with the Office of Dispute Resolution in El Paso County, Colorado. Ms. Martin will be mediating domestic relations and dependency and neglect cases as well as working as a court appointed child legal representative, guardian ad litem and counsel for incapacitated/protected persons. She is a 2001 graduate of TU College of Law. She may be contacted at patricia @patriciamartinlaw.com.

GableGotwals announces **Jeffrey A. Curran, Tricia**

L. Everest and **Nicole V. Gonzalez** as of counsel members of the firm. Mr. Curran has 23 years of legal experience in the areas of product liability, insurance defense and commercial litigation, as well as experience in intellectual property and entertainment law. He received his J.D. from OU in 1987. Ms. Everest has more than eight years of legal experience in private and public practice. Her practice areas include administrative law, governmental affairs and white collar crime. She received her J.D. from OU College of Law in 2003 and is a graduate of the OSBI Citizens Academy. Ms. Gonzalez has over 10 years of legal experience in high-tech and bio-tech sectors in the Silicon Valley. Her experience includes technology transactions, licensing, development and distribution arrangements, manufacturing and supply agreements, as well as patent prosecution. She received her J.D. at Santa Clara University in 2000.

McAfee & Taft has named shareholders **Charles Greenough, Rusty LaForge** and **Keith McFall** as new practice group leaders for the 2011 term. Mr. Greenough will lead the firm's business restructuring, workouts and bankruptcy practice. He is a corporate lawyer with extensive experience representing both lenders and borrowers in debtor/creditor and bankruptcy matters, as well as serving as a trustee and as a liquidating agent in complex bankruptcy estates. Mr. LaForge has been named the leader of the firm's banking and financial institutions practice group. He is a corporate lawyer whose practice is primarily concentrated on regulatory and transactional matters affecting banks, bank holding companies and other financial institutions. Mr. McFall is a transactional attorney and will lead the firm's corporate and commercial transactions practice. He also co-chairs the firm's Sports Industry Group.

Heroux & Helton PLLC announces the addition of **Pete D'Alessandro** and **Vijay Madduri** to the firm. Mr. D'Alessandro joins the firm as an associate and focuses his practice in the areas of oil and gas law, national and international business law, real estate law and technology law. He is a graduate of OU College of Law and the University of Houston Law Center. Mr. Madduri joins the firm as an associate and focuses his practice on all aspects of the law, including oil and gas law, business law, alternate dispute resolution and business immigration law. He is a graduate of OCU School of Law.

Barber & Bartz announces that **Kenneth E. Crump Jr., W. Todd Holman** and **Stefan A. Mecke** have recently been named as shareholders to the firm. Mr. Crump is a litigator whose trial practice is focused on contract disputes, employment issues, construction law issues, business torts and other commercial litigation. Mr. Holman is a tax lawyer whose practice includes federal and state taxation for individuals, corporations and partnerships, including tax minimization, structuring transactions and representation before taxing authorities. His practice also includes business organizations and transactions and estate planning. Mr. Mecke is a corporate lawyer whose practice concentrates on business transactions, corporate securities, business organizations, electric cooperative law and real estate transactions. He also provides legal services to start-up businesses and business owners.

Edmonds Cole Law Firm PC announces **Sheila R. Benson** and **Nevin R. Kirkland** are now partners in the firm. The firm will continue to be headquartered in Downtown Oklahoma City on Mickey Mantle Drive in Bricktown.

Crowe & Dunlevy recently announced **Randall Snapp** has been named chairman of the firm's labor and employment practice group. In his new role, Mr. Snapp will oversee the firm's 18 labor and employment law attorneys who focus in this area of law. His practice includes counseling and litigation involving a full range of employment issues. Mr. Snapp joined Crowe & Dunlevy's Tulsa office in 1993.

At The Podium

UCO professor **Marty Ludlum** recently spoke at the Southern Academy of Legal Studies in Business Conference in San Antonio. Mr. Ludlum spoke on the topic of Colorado's Medical Marijuana law.

Philippa Tibbs Ellis recently spoke at the Defense Research Institute's Product

Liability Conference in New Orleans. Her presentation was titled, "Considerations of Similar Accidents/Events in Product Safety." Ms. Ellis previously worked in Oklahoma City and now serves as lead product liability partner with Atlanta law firm Owen Gleaton Egan Jones & Sweeney LLP.

Roy John Martin recently spoke at the South Oklahoma City Chamber of Commerce. His presentation discussed how consumer credit regulation affects small businesses. Mr. Martin serves as general counsel of the Oklahoma Department of Consumer Credit.

Compiled by Ashley Schovanec.

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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E-mail: barbriefs@okbar.org

Articles for the May 14 issue must be received by April 29.

James "Jim" Edward Britton of Oklahoma City died March 23. He was born on June 9, 1946, in Roswell, N.M. He attended Northwest Classen High School and OSU before completing his J.D. at the OU College of Law in 1974. **During the Vietnam War, he served in the U.S. Army as sergeant fifth of the Seventh First Air Calvary. While serving his country, he received two Bronze Stars and participated in the largest combat mission while serving in Cambodia**. Mr. Britton had a long career as an attorney, practicing transactional law and litigation. Memorial contributions may be made to Britton Christian Church.

Freda Jane Cross of Edmond died March 22. She was born Nov. 1, 1952, in Cushing and graduated from Drumright High School. She graduated from UCO with a degree in English and math education in 1975. After several years teaching and working as a paralegal, she began studying law at Oklahoma City University, earning a J.D. in 1990. She began her solo practice that year and practiced until her death. Ms. Cross enjoyed fashion, style, gardening and the arts in addition to spending time with family and friends.

Charles Clark Green of Oklahoma City died March 16. He was born July 4, 1934, in Ada. He received a B.A. from OU and his J.D. from OU College of Law. **Upon graduation of law school, he spent three years at Pease Air Force Base in New Hampshire where he served as a JAG officer**. Mr. Green then returned to Oklahoma City as a third generation Oklahoma lawyer and enjoyed a varied law practice for 50 years. He belonged to St. Luke's United Methodist Church where he served in many capacities during his 60 years of membership. He enjoyed classical music, golf, traveling with friends and reading historical biographies. Memorial contributions may be made to the Alzheimer's Association or to St. Luke's United Methodist Church Foundation.

Charles Robert "Bob" Hendrick of Oklahoma City died April 4. He was born Oct. 8, 1932, and attended OSU, playing basketball for Coach Henry Iba. He graduated from OCU School of Law in 1963. He was president of Collins-Dietz-Morris Co. and T.B. Hendrick and Associates. He was a member of St. Luke's United Methodist Church and Rotary. A lifelong learner and voracious reader, he encouraged education by providing scholarships for several OCU students he never met. Memorial contributions may be made to OCU Scholarships, in care of Phil Greenwald, St. Luke's UMC.

James "Jim" Hope Hughes of Bartlesville died March 16. He was born May 18, 1919, in Guthrie, beginning his college studies at OU. **He interrupted his studies to join the Army Air Corps, teaching English pilots the art of flying during World War II. Later assignments had him flying supplies to allied forces throughout the China, Burma and India theatre**. After the war he returned to Oklahoma and completed his engineering degree. Upon graduation, Mr. Hughes was employed by Phillips Petroleum. While working in Washington D.C., he earned a J.D. from George Washington University. He was a patent attorney for Phillips until his retirement in 1985. He then became president of Fraction-ation Research Inc., retiring again in 1995. Memorial contributions may be made to the University of Oklahoma Foundation.

William James Miller of Ponca City died March 19. He was born Oct. 15, 1924, in Lawrence, Kan. He attended Purdue University and the University of Kansas. **He served in the U.S. Army, stationed in Red Bank, N.J**. After his discharge from the army, he received his J.D. from the University of Missouri. He moved to Ponca City in 1959 where he worked for Continental Oil Company as senior patent counsel. He was an international patent lawyer and traveled extensively overseas throughout Europe, Russia, South Africa and Canada, and he was one of the co-founders of the OBA Patent Law Section. He was inducted into the OBA Intellectual Property Law Section Hall of Fame in 2000. After his retirement, he was a co-founder of Miller Law Offices. He was a member of Toastmasters International, Lions Club and Rotary. He was also active in the Ponca City arts and music community as well as First United Methodist Church.

Terry Guy "Bulldog" Shipley of Norman died March 1. He was born Nov. 2, 1938, in Oklahoma City. He completed his J. D. at OU in 1965 and practiced law until his death. Mr. Shipley was a member of the Del City Lions Club and enjoyed fishing, working with stained glass and grilling outdoors with his friends and family. Memorial contributions may be made to Court Appointed Special Advocates (CASA) for Children of Norman.

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Arthur D. Linville (405) 636-1522

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AFARM Consulting, L.C.
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PERIMETER CENTER OFFICE COMPLEX, located at 39th and Tulsa currently has offices available ranging from 1,325 – 8,500 square feet. We are offering two months free rent on a three or five year lease contract. Please call (405) 943-3001 for appointment, or stop by M-F between the hours of 8 a.m. – 5 p.m.

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SOUTH OKLAHOMA CITY LAW FIRM seeks attorney for office sharing arrangement. Rent is negotiable. The firm may refer clients, and or have available additional legal work. Inquiries should contact Reese Allen at (405) 691-2555 or by fax at (405) 691-5172.

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ATTORNEY NEEDED. Legal research and writing position. Martindale – Hubbell AV-rated firm. 7 years+ experience. Salary 75,000+. Send 10 (ten) writing samples (briefs) to: NSK, P.O. Box 54695, Oklahoma City, OK 73154.

CORDELL & CORDELL PC, a domestic litigation firm with 42 offices across 19 states, is currently seeking an experienced attorney to launch a new office in Oklahoma City, OK. The candidate must be licensed to practice law in the state of Oklahoma, have 3-5 years of litigation experience with first chair family law experience. The position offers 100% employer paid premiums including medical, dental, short-term disability, long-term disability and life insurance, as well as 401K and firm paid retreats. Please submit resumes to Hamilton Hinton at hhinton@cordelllaw.com.

LITIGATION PARTNER WANTED FOR OKLAHOMA CITY OFFICE for a national insurance defense and employment firm. Candidate must have a minimum of 10 years experience in litigation and must demonstrate a high energy level as well as strong client relations skills. Construction defect, professional liability, employment and personal injury defense work necessary. Compensation package will reward skills, experience and existing relationships. Additional information may be found at www.helmsgreene.com. We would also consider a small litigation team. Please direct inquiries to Steve Greene at sgreene@helmsgreene.com or (770) 206-3371.

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ENID AV-RATED LAW FIRM NEEDS ASSOCIATE to assist in commercial litigation practice. Familiarity with oil and gas, banking and construction business helpful. 2 to 4 years experience preferred, but not required. Good opportunity for an individual seeking to join an established firm and develop a practice in Northwest Oklahoma. Send resume to mcb@mdpllc.com.

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THE SEMINOLE NATION OF OKLAHOMA is seeking applicants for the following job openings: court justice's and judge # 11-11. Seminole Nation Tribal Court. For more information, please see the Seminole Nation of Oklahoma website: www.seminolenation.com.

ASSOCIATE ATTORNEY: MITCHEL, GASTON, RIFFEL & RIFFEL PLLC, a regional law firm, is seeking Oklahoma-admitted attorneys with 0-3 years experience for growing law practice in their Enid and Woodward offices. Excellent salary and benefits. Reply to Office Manager Crystal Pritchett, 3517 W Owen K Garriott, Suite One, Enid, OK 73703, email cpritchett@westoklaw.com or by fax to (580) 234-5547.

PARALEGAL SPECIALIST - CIVIL DIVISION: The U.S. Attorney's Office is seeking to fill one paralegal specialist position in its civil division. Beginning salary is $38,790 to $57,408 per year depending on qualifications. See vacancy announcement 11-OKW-461559-DE at www.usajobs.opm.gov (Exec Office for U.S. Attorneys). Applications must be submitted online or by fax. See "How to Apply" section of announcement for specific information. Questions may be directed to Lisa Engelke, Human Resources Specialist, (405) 553-8777. Closing date is April 22, 2011.

POSITIONS AVAILABLE

THE CITY OF TULSA IS CURRENTLY SEEKING three qualified applicants in the following areas to represent the legal department: assistant city attorney III primarily handling contracts; (entry to high $60s); and a legal assistant / paralegal in litigation with experience in summation software is preferred (entry to high $30s). The City of Tulsa is also seeking a legal secretary (annual salary $28,146). Interested candidates can obtain additional information and apply online at www.cityoftulsa.org/jobs.

THE CITY OF TULSA IS CURRENTLY SEEKING highly qualified applicants for a city attorney position. This position requires the candidate be capable of planning, directing, managing and overseeing the activities and operations of the city attorney's office. The individual will coordinate legal activities with city departments and provide highly responsible and complex administrative and legal support with direct supervision over professional, technical and clerical staff in a high volume legal office. Qualified applicants will possess knowledge of and/or the ability to learn and analyze the city charter, ordinances and code provisions and a working knowledge of municipal, state and federal laws and constitutional provisions affecting municipalities. A valid license to practice law in the state of Oklahoma is required. Successful candidate must have previous management experience. The City of Tulsa is an Equal Opportunity Employer. We are committed to hiring a qualified and diverse workforce to provide exceptional service to the citizens of Tulsa. To view the complete job description, salary ranges, and detailed benefit information, visit our website at www.cityoftulsa.jobs. Please fill out an online application and paste your resume into the appropriate section.

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Getting Here

By Jessica Sherrill

Have you ever wondered how you got to where you are in life? I find that each year around my birthday I think about what led me to this great place in life. What I always find at the end of this search is that it's the people around me who have helped me get here.

Six years ago, I was a first year law student (or commonly known as a 1L) at the Oklahoma City University School of Law. I was scared to death — of my professors, of what I'd gotten myself into, and what I was going to do at the end of law school, assuming I survived, of course. Just a year before, I had wanted to get a Ph.D. in psychology to follow up my bachelors degree. But, my now-husband told me I could really make a large impact by going to law school. I could touch, not just one life at a time, but have a ripple effect on many more by using the law to make the world a better place. I knew one thing for certain, I never wanted just a job — I wanted a successful, meaningful career that benefited others.

So, there I was, lost in law school. During my first semester, I ran across a flyer about training to interview children in DHS custody to help the attorneys who advocate on their behalf. I attended the training and got involved as a volunteer for Oklahoma Lawyers for Children. Soon I met Mr. Don R. Nicholson II, who along with his good buddy, fellow attorney D. Kent Meyers, established Oklahoma Lawyers for Children to advocate for deprived and

abused children in Oklahoma County.

I decided I wanted to learn more and help more, so I set up a meeting with Don. I was so nervous and didn't really know what would come from it, but I decided that I needed to meet him because this organization really had me interested. When we met, we talked for a long time. He ended up offering me a job as a legal intern that very day. I hadn't expected to get a job out of it, just some good experience. But, from that day on, he took me in as his little shadow.

We went to Juvenile Court where I observed him in show cause hearings. We went to District Court where I watched as he represented children as a guardian ad litem. We filed paperwork with the court clerk. We met with the public defenders from Juvenile Court each week to talk about cases. We even went to other district courts in various matters — adoptions, guardianships, name changes and so on. He took me everywhere, and I learned so much from those outings. But the time I treasure most was when we'd sit and just talk about cases, the law and everything in between. He always encouraged me to write legal memos and draft the legal pleadings. And, he made time for me. For an attorney to do that for a law student is quite amazing!

Don always believed in me. And, when I passed the bar exam, he was the person I knew would be most proud. Sure, my family was ecstatic. But, he had been the person who molded me as a professional. It is not often that you meet someone who is willing to take the time and attention to "show you the ropes" like he did.

I started law school clueless and left knowing where the courthouses were (which is a bonus), already knowing some of the judges, and was familiar with the legal documents and how to file them. I was equipped with what it is to be a lawyer before I even became one because of Don Nicholson. And, for him, I am extremely grateful.

To this day, I am inspired by his mentorship and truly strive to find those budding students who need a little bit of guidance and direction. He has had a ripple effect on me to be not only an attorney who cares but to be an attorney who mentors.

Ms. Sherrill practices in Oklahoma City.

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MAY 6

REGISTRATION AND CONTINENTAL BREAKFAST 8:30 a.m.	IMMIGRATION CONSEQUENCES OF CRIMINAL CONVICTIONS RICHARD PRINZ, LAW OFFICE OF RICHARD J. PRINZ, HOUSTON 9	BREAK 9:50
EMPLOYER SANCTIONS AND INVESTIGATIONS RICK A. GUMP, LAW OFFICE OF RICHARD A. GUMP, JR., DALLAS 10	ETHICAL PITFALLS FOR PRACTITIONERS (ETHICS) LAURA F. BACHMAN, UNIVERSITY OF TULSA COLLEGE OF LAW BURTON LEGAL CLINIC, TULSA AMIR M. FARZANEH, [illegible] OKLAHOMA CITY 10:50	NETWORKING LUNCH (INCLUDED IN REGISTRATION) 11:40
APPELLATE PROCEDURES ARTHUR CAMPBELL COOKE, THE LAW OFFICE OF CAMPBELL COOKE, TULSA 12:10 p.m.	OVERVIEW OF IMMIGRATION SYSTEM E. VANCE WINNINGHAM 1	BREAK 1:50
LEGISLATIVE UPDATES AND RECENT DEVELOPMENTS TANYA COX, ACLU OF OKLAHOMA, OKLAHOMA CITY 2	ADJOURN 2:50	

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