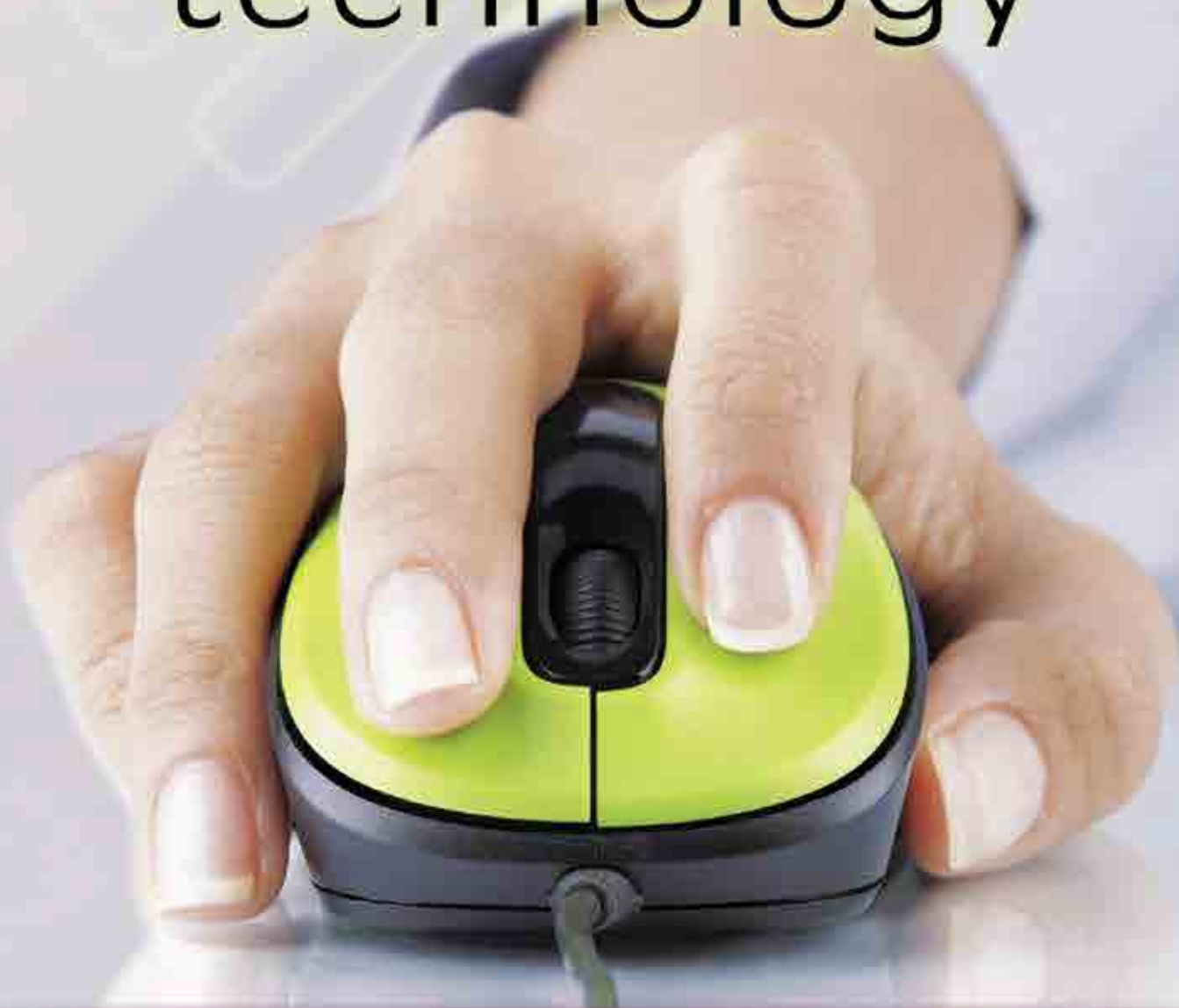


THE Oklahoma Bar JOURNAL

Volume 84 ♦ No. 8 ♦ March 16, 2013

technology



ALSO INSIDE

• Solo and Small Firm Conference • Justice Commission Issues Final Report

OBA/CLE Presents:

Modern Slavery in Oklahoma: Why OBA Members Must Help to Eliminate Coerced Labor and Sex for the Profit of Captors

Planner/Moderator:
Craig Williams
Oklahoma Bureau of Narcotics
and Dangerous Drugs,
Oklahoma City

Most people in Oklahoma think human trafficking is something that happens some place far away. The truth is, Oklahoma is a prime state for modern day slavery recruitment. This seminar will give you a better understanding of the issues you may encounter and how the legal community is impacted. Experts will also provide valuable information on how to recognize human trafficking and what you can do in your practice to assist victims of child sex, labor and other forms of trafficking to get the help they need. This program will launch the OBA initiative to join the fight against Human Trafficking.

May 9 - Oklahoma Bar Center

The seminar starts at 9 a.m.
and adjourns at 3 p.m.
For program details, log-on to:
my.okbar.org/CleCalendar

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EDITOR: SANDEE COOGAN

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OBA Members Encouraged to Learn More About Human Trafficking

By Jim Stuart

Most persons, if asked, would tell you they believe slavery no longer exists in the United States. After all, slavery was made illegal 150 years ago when President Abraham Lincoln signed the Emancipation Proclamation. Over the past 15 years, “human trafficking” has been a term used to describe activities that hold a person in compelled service, primarily through forced labor, sex trafficking and debt bondage.

Slavery of any kind is a horrible violation of human rights and human dignity. Human trafficking is believed to be one of the fastest growing and most profitable criminal enterprises. I first became aware of the seriousness of this problem through ABA President Laurel Bellows and her initiative to highlight and combat the effects of human trafficking.



President Stuart
practices in Shawnee.
jim@scdtlaw.com
405-275-0700

Oklahoma is not immune from such illegal activities due in part to its location in the I-35 corridor. Through the efforts of an OBA task

force and resources made available by recently elected ABA Governor and Oklahoma City attorney Jimmy Goodman, I plan to highlight ways in which OBA members can identify victims and help combat the effects of human trafficking. On May 9 the OBA will present a CLE program on human trafficking. I encourage you to attend.

Oklahoma is not immune from such illegal activities due in part to its location in the I-35 corridor.

OBA DAY OF SERVICE

In a previous message I mentioned that an OBA “day of service” was being planned, by which OBA members in all 77 counties will be given the opportunity to spend a day giving back to their communities. The OBA day of service is scheduled to take place on Sept. 20-21. Put this important event on your calendar — and step forward to help your county bar organize a project.

CLE ALASKAN CRUISE

Now is also the time to sign up for our OBA/CLE Alaska cruise, July 20-28. It will be a “cool” event, with breathtaking scenery and an exciting and fun way to get CLE for 2013. For the best cabin selection and the best price, put down a deposit by March 22. For more details you can call OBA Educational Programs Director Susan Krug at 405-416-7028, 800-522-8065 or simply check out the ad in this magazine.

Best regards from the Stuart family.

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EVENTS CALENDAR

MARCH 2013

- 18 **OBA Litigation Section meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Renée DeMoss 918-595-4800
- OBA Alternative Dispute Resolution Section meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Michael O'Neil 405-232-2020
- 20 **OBA Women In Law Committee meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Kim Hays 918-592-2800
- Ruth Bader Ginsburg American Inn of Court**; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Donald Lynn Babb 405-235-1611
- 25 **OBA Law Day Contest Awards Ceremony**; 2 p.m.; Oklahoma State Capitol, Oklahoma City; Contact Richard Vreeland 405-360-6631
- 26 **OBA Bench and Bar Committee meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact David Swank 405-325-5254
- 27 **Ruth Bader Ginsburg American Inn of Court masters meeting**; 5:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Donald Lynn Babb 405-235-1611
- 28 **OBA Work/Life Balance Committee meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Sara Schumacher 405-752-5565
- 29 **OBA Environmental Law Section meeting**; 11 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Jeri Fleming 405-334-6343

APRIL 2013

- 2 **OBA Communications Committee meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center; Contact Dick Pryor 405-740-2944
- OBA Government and Administrative Law Practice Section meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Tamar Scott 405-561-2635
- 4 **OBA Lawyers Helping Lawyers discussion group meeting**; 7 p.m.; Office of Tom Cummings, 701 NW 13th St., Oklahoma City; RSVP to Kim Reber kimreber@cabainc.com

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

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

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Encryption, Privacy and the Dark Side of the Internet

By Duane Croft

The Internet is now a part of our daily lives. Almost everyone uses it, almost every day. Most people with smartphones have Internet access 24 hours a day. However, I am not certain if most people realize how less than secure anything they do on the Internet is. Unless a person takes specific actions to prevent it, almost **anything** you do on the Internet can be observed by other people.

For example, you decide you want to write an email to your brother Bob. You write the email, input his email address and click “send,” and it goes straight to him. Except it doesn’t. It goes from your computer to your mail server. Your mail server reads Bob’s address and sends it to another server. This server reads the address and sends it to another server. The email may bounce between 10 or more servers before it reaches Bob. And each and every one of those servers may keep a copy of that email. And anyone with access to those servers can read your email. (If you want to see some possible email routes, go to www.yougetsignal.com/tools/visual-tracert and run some proxy traces to a given server. If you choose mail.ou.edu, it will simulate some possible routes an email going to someone at the University of Oklahoma might take.) Recently there was a very high-profile scandal involving ex-CIA Director David Petraeus, where his extramarital affair was uncovered when an investigation turned up emails between him and his mistress. He thought his emails were private, that only he and his girlfriend could see them. He was wrong and it cost him his career and his marriage.

There are similar problems when you surf the Web. When you log on, your computer is

given an Internet address (IP address). Every place you go on the Web records your IP address. You’re on Facebook and see a link to the latest song by Lady Gaga that someone illegally uploaded. You click on it and download the song to your MP3 player. Six months later, the music industry can do a search and see what IP addresses downloaded the song and then send you a little letter saying if you don’t pay them umpteen bucks, they will be filing a lawsuit against you. On the Internet, you have no privacy.

So the question becomes, is there any way to continue to use the net and have some level of privacy? This is particularly important for lawyers who are trying to communicate confidentially with their clients. And there is a solution, or at least a partial solution: encryption. I am going to talk about three different types of encryption ranging from the very easy to the somewhat more complicated. Encryption can protect your email from being read by anyone but the intended recipient. Encryption can prevent anyone from seeing where you browse on the Web. And while this sounds like a good thing, I will also mention some surprisingly bad things that have resulted from this.

LEVEL ONE: AES — ‘ADVANCED ENCRYPTION STANDARD’

AES is really simple encryption that is easy enough to use with most clients. It is a built-in capability for PDF files. It is very easy to encrypt a file this way and all you need is the password in order to decrypt the file. This makes it nearly perfect for sending secure emails. It is not the most secure encryption available, but if you use the higher level settings and pick a strong password, the security level should be about the same as a typical banking transaction. However, if you use a lower level setting and/or a simple password (e.g. “123456” or “password”), there are lots of programs available that can crack this encryption.

How to use AES to encrypt a PDF file: Let’s say you’ve prepared a confidential document and want to send it to your client via email. If you’re using Windows, you’ll need programs like MS Word and Acrobat. Open the document in Word. Click on the Create PDF in the Acrobat Ribbon — this creates a PDF version of your document. Then open the PDF in Acrobat. Click on File, then Document Security. Select Standard Security and choose a user password. Choose the highest encryption level available for your version of Acrobat — 128 bit or higher is preferred. 128-bit encryption is the minimum level of encryption used by most banks for encrypting electronic transactions. This will produce an encrypted PDF file that you can safely email to a client. When the client, or anyone else, attempts to open the PDF file, a pop-up box will come up asking for the password. If the correct password is entered, the PDF opens like normal. There are many other ways to do this. I’m a big fan of Open Office. Using Open Office, open your document, then select File, Export as PDF, then select the Security tab on the PDF Options pop-up and enter your password. This will also create an encrypted PDF file, just like the above.

The above process creates an encrypted file that will stop most people from being able to read your confidential material. Can the encryption be broken, say by people with super-computers? The National Security Agency, as recently as April 2012, denies being able to break AES encryption.¹

LEVEL TWO: PGP – ‘PRETTY GOOD PRIVACY’

PGP is more complicated to use, but provides much higher security. There’s also a variation of it called GPG, which is used primarily in Linux. Commercial and free versions are both available; the commercial versions give you some additional capabilities (such as encrypting all or part of your hard drive). It is a little harder to use because if you want to send a PGP encrypted file to someone, they have to have PGP (or GPG) also in order to open it. You can download commercial versions of PGP from Symantec at www.pgp.com.

PGP is a two-key system. After you install PGP, the first thing you have to do is generate your personal keys. You tell the program what email address (or addresses) the keys are going to be linked to and what password or pass phrase you will use. It will then generate two keys: a public key and a private key. You never give out your private key or your pass phrase to anyone, but you can give out your public key to the world. PGP will even (if you request) publish your public key to key servers on the Internet, so that people can search for you by name or email address and download your public key. It’s also a good idea to keep a backup of your private key somewhere, because if you lose it (via a computer crash for instance), you’ll never be able to decrypt your PGP files again.

After this, it is fairly simple to use. Say you want to send a private email to your brother Bob. Bob needs to have PGP and you need to have a copy of Bob’s public key. Prepare a file you want to send him. Then tell PGP to encrypt the file — if you’re using Symantec’s PGP, you open their desktop and point and click on the file name and choose the encrypt option. PGP will ask whom to encrypt it for and give you a list of what public keys you have. Pick Bob’s key and PGP will produce an encrypted file — it’s actually a text file and will look like garbage. Email the file to Bob. When he gets it, he will ask PGP to decrypt it. PGP will ask for his password or pass phrase and then decrypt the file using Bob’s private key.

There are some other options with PGP. Some of the commercial programs, including Symantec’s, can produce self-decrypting archives (SDAs). These are files that have the decryption program built into them, so all that is needed to open them is a password. If you mail an SDA to someone, they do not need to

have PGP on their machine to open the file. However, they do have to be running the same operating system as you — if you're running Windows and they're running Mac, they won't be able to open the file.

Another very useful option available in both the commercial and non-commercial versions of PGP is "signing" a file. You can sign an encrypted file or a non-encrypted file. What signing a file does is add a bit of code to it, embedding information about the file and about your private key. Then anyone with your public key (and remember, you can give your "public" key to the world) can have PGP verify two things about the file: 1) that you (or someone with access to your private key and your password so it should only be you) actually sent the file and 2) that the file has not been changed since you sent it. So for instance, I can write up a confidential document, encrypt it **and** sign it with PGP and email it to you. When you open it with PGP, you will get a message from PGP about whether my signature is valid or not. If the signature is valid, you can have a very high level of confidence that I actually sent it and that no one has altered it since I sent it. This is a much higher level of confidence than you would (or at least should) have that a typed letter on paper with my written signature on the bottom is genuine.

There is one other big advantage of PGP encryption: It can provide much higher security. With AES encryption, we were talking 128-bit encryption. PGP will encrypt to more than 4000 bits of encryption. Every time you increase the encryption level by one bit, you increase the effort needed to break the encryption by a factor of 10. Going from 128-bit encryption to 4000-bit encryption is an astronomical increase in security. How good is this higher security? Well, in 2000, the FBI was investigating Nicodemo Scarfo, who was charged with racketeering, illegal gambling and loan sharking.² Nicodemo regularly encrypted his emails with PGP. The FBI could not break the encryption and had to resort to trickery. They got a search warrant for his house and during the search made a copy of his private key and installed a keystroke logger on his computer in order to get his password. That was 12 years ago. Can the FBI break PGP encryption now? I don't know. There have been numerous incidents reported in the press since then that indicate the FBI still cannot break PGP encryption, but none are as well documented as the Nicodemo Scarfo case.

**“For the truly paranoid,
remailers can be nested: send an
encrypted email to ABC remailer
with instructions to send the
email on to XYZ remailer...”**

As an aside, if you want more email privacy than simple encryption, you can combine PGP encryption with remailers. A remailer is a site where you send an email and it re-mails it to whomever you ask it to. For instance, you want to send an email to Bob again. You write your email and send it to ABC remailer. ABC opens it, sees the instructions you included for them to send it on to Bob and they do so. If ABC is a Type I remailer (also called a "cypherpunk" remailer), it can handle PGP. In this case, you could encrypt your original email for ABC before sending it to them. After they get it, they would decrypt it, see the instructions for sending on to Bob and then send the decrypted email onward. As additional security, most Type I remailers include some random latency period: after they get your original email, they hold onto it for some period, could be seconds, could be hours, before sending it on to Bob. This combats traffic analysis. Traffic analysis would be someone monitoring your ISP and Bob's ISP and seeing that every time you sent an encrypted email to ABC, that Bob gets an email from ABC seconds later. For the truly paranoid, remailers can be nested: send an encrypted email to ABC remailer with instructions to send the email on to XYZ remailer with instructions to send it next to PQR remailer and so on, with each of the intermediate emails encrypted. The final email to Bob can also be encrypted. You can go to www.email.about.com/od/anonymousemail/qt/How-To-Find-A-Remailer-To-Send-Your-Anonymous-Email.htm for more information about how to find remailers and how to use them.

LEVEL THREE: TOR – THE ONION ROUTER

PGP was the gold standard of privacy back in the 1990s. Then the U.S. Navy made all this obsolete and invented onion routing (which they patented under U.S. patent 6266704). In 2004, TOR was developed, which stands for The (Second Generation) Onion Router, which

is an onion routing protocol which does not use the Navy's patent and is freely available to anyone with an Internet connection.

TOR is the highest level of encryption, it's almost certain that neither the FBI nor anybody else can break it. TOR allows you to surf the Internet with (almost) total privacy. It does this by using a network of thousands (or more — total number unknown) of routing sites. When you connect to the TOR network, the data to and from your computer is encrypted automatically and goes to a TOR entry relay. From there it bounces to another TOR site, then to another, then another for some large random number of bounces, potentially all the way around the globe, encrypted the entire time. Then the data leaves TOR and accesses the normal Internet. However, the normal data bits that allow you to be identified as the user have been scrambled. TOR gives you a false IP address and periodically changes it.

From 2004, when TOR was first developed, until 2005, TOR was supported by the Electronic Freedom Foundation. Currently TOR is controlled by the TOR Project, a non-profit organization in the USA, which receives support from the U.S. State Department and the National Science Foundation. These people support TOR because they recognize that there are many good reasons why people need privacy on the Internet. In 2011, the Free Software Foundation gave TOR their Award for Projects of Social Benefit, stating "...Tor has enabled roughly 36 million people around the world to experience freedom of access and expression on the Internet while keeping them in control of their privacy and anonymity. Its network has proved pivotal in dissident movements in both Iran and more recently Egypt."³

China, which doesn't approve of Internet privacy, attempts to block all TOR traffic. It is believed that China inspects all Internet packets for TOR handshaking protocols and blocks all packets containing these protocols. There has been some success in recent months in sneaking TOR through the Great Firewall of China (using a technique called Obfsproxy relays), but the current status of TOR in China is uncertain.⁴

TOR is actually very simple to use. Go to www.torproject.org and download TOR for your computer. It's available for Windows, Mac, Linux and Android. It's free. Once you install it, you start a program called Vidalia,

which connects you to the TOR network and opens a special browser that TOR installed (it is a specialized version of Firefox) which is configured to work with TOR. Your connection to the TOR network is encrypted — it apparently could be determined (see China above) that you are on TOR, but no one can tell what you're doing there. As long as you're using the TOR browser, your privacy is protected. If you want to send a truly private email, get yourself a Web-based email account that is not identified as belonging to you, and use it via TOR to send emails to whomever you want. If the recipient is using TOR to read his or her emails, then nobody can monitor your communication. If you are truly paranoid, you can PGP or AES encrypt the emails as well.

I call TOR "scary-level" encryption. It is true military-grade encryption — it was originally developed by the U.S. Navy. It's more than just encryption, it's an Internet hidden inside the Internet, the so-called "Darknet." TOR calls these the "hidden services." TOR allows the use of the .onion pseudo top-level domain. Websites can get a pseudo domain name through TOR that (since it is not a real domain name) can only be accessed through TOR. When you access one of these pseudo domain or hidden services via TOR, your data never leaves the TOR network and is always encrypted — the whole way from your computer to the hidden service website and back. As long as the encryption works, no one can tell that you visited a hidden website or what you did there.

Why am I almost certain the FBI cannot break TOR at this time? Well, besides the dissident movements in Iran and Egypt, guess who uses TOR? TOR is very popular with one particular class of people: criminals. If you get on TOR and look at the hidden services, many of them appear to be illegal. There are sites that will sell you stolen credit card numbers or hacked PayPal accounts. There are sites that will sell you illegal drugs. There are kiddie porn sites. There are sites where you can hire a hit man. If the FBI could identify who is running these sites, I suspect they would be shut down. Back in 2011, the hacking network Anonymous reportedly attempted to shut-down the kiddie porn sites on TOR. They managed to get and publish the IP addresses of 190 users, but the kiddie porn network is still very much up and running.⁵ And Anonymous did not break TOR's encryption. Their hack involved tricking 190 kiddie porn users into

uploading a patch to their individual TOR programs that let Anonymous track them.

There are probably lots of ways to access these hidden services. The only way I'm familiar with is to get on TOR and access the "hidden wiki." Just do a search for hidden wiki or you can go to http://kpvz7ki2v5agwt35.onion.to/wiki/index.php/Main_Page. The content of this page changes from time to time, but if you look on the right hand column, there are links that will take you to all kinds of scary places. Just accessing some of these sites is possibly illegal, so I do not recommend that you do so. But I think it is good to be aware of how to access these sites, since some of your clients might be going there!

As a little extra, let me tell you one very simple technique you can use that might tell you if someone is reading your email. This happened to me several years ago. I had a friend working for an American engineering company that was building a power plant in Egypt. He was on-site in Egypt and we regularly corresponded by email. However, on several occasions, emails that I sent him did not appear to arrive and emails that he said he sent me never showed up in my inbox. I became curious. I ran a number of trace routes to his email server, similar to the ones I described at the beginning of this article. The path varied a lot, except it always went through an "extra" server right before it got to his mail server. I had no idea why that server was there. I asked my friend about it and he said that all the company's Internet was routed through a government server that provided them with Internet access. We both were wondering if our emails were being read and occasionally censored. So I set a trap: I uploaded a garbage file to an Internet dropoff/pickup service — I don't remember which one I used then but www.sendspace.com is available for this purpose now. Then I sent an email to my friend, telling him I had uploaded the file for him to download and described it in terms that would catch a would-be censor's attention. A couple days later, I confirmed that my friend had never received the email about my upload. Then I went to whatever dropoff/pickup service I used and they told me the file had been downloaded one time since I uploaded it. Since my email was the only way someone would know how to get to that file, we were pretty certain that someone really was reading (and

censoring) our emails. So we started using PGP to encrypt all our emails. This got an immediate reaction. The people running the censor office complained to the local head of the engineering company that one of their employees was encrypting his email. The head of the engineering company got angry — not at my friend, but at the censor. You see, he had been doing his banking and investing by email, as well as communicating with his wife and family back in the states, and wasn't really happy about the idea that someone was reading his emails. He, and everyone else in the company, had been unaware that this had been going on. My friend told me that in a couple of weeks, almost everyone in the company was using PGP when they wrote home!

CONCLUSION

Internet privacy is important. Lawyers should be aware of how little privacy there is on the Internet if you are not using encryption. At the very least, some type of encryption should be used when sending confidential information over the Internet. The downside of really good encryption is that it allows people to do things on the Internet that are illegal. However, an argument can be made that this is necessary, as it also allows people to do things on the Internet that some governments consider to be illegal but that other people consider to be free speech.

1. www.schneier.com/blog/archives/2012/03/can_the_nsa_bre.html.
2. www.wired.com/politics/law/news/2001/08/46329 — or just Google "Nicodemo Scarfo pgp."
3. www.fsf.org/news/2010-free-software-awards-announced.
4. www.technologyreview.com/view/427413/how-china-blocks-the-tor-anonymitynetwork.
5. gawker.com/5855604/elaborate-anonymous-sting-snags-190-kiddie-pornfans.

ABOUT THE AUTHOR



Duane Croft practices family law in Norman. He earned a B.S. degree in physics/math from the University of Pittsburgh in 1979. He spent the next 20 years performing safety analysis engineering and accident analysis/investigation at several nuclear power plants. He graduated from OU College of Law, passing the U.S. Patent Bar in 2004 and the Oklahoma Bar in 2005.



The Basics of the Lawyer's iPad

By Jim Calloway

The iPad has proven very popular with the legal profession. Some lawyers are quite proficient at using their iPads with numerous apps installed and a proclivity to show off their latest app to anyone who will stand still and watch. Others mainly use the iPad for entertainment, browsing the Internet or responding to email. The editor of this legal technology-themed issue of the bar journal is Sandee Coogan. She asked me for a “beginner’s” article on how lawyers can use their iPad.

The iPad is the king of tablet devices, but not the only game in town. Droid tablets, like the Google Nexus, the Asus Transformer Pad and the Samsung Galaxy Note are greatly improved in features and gaining in popularity. Microsoft’s Surface tablet was launched late last year to decidedly mixed reviews, accompanied by a flood of snappy TV commercials. I have had no time with the Surface and limited time with Droid tablets. The ability to use a full version of Microsoft Word on the Surface is a plus. But, for most of us, the huge number of apps, particularly lawyer-specific apps makes the iPad much more appealing for lawyers. For the Droid side of the story, you can stop by the Droid Lawyer™ blog (www.thedroidlawyer.com). And, while the Surface could be the dominant force in mobile computing in a few years, it is certainly not there with the first edition.

WHY AN IPAD?

The iPad is elegantly designed and easy to use. The iPad has become popular because it is a simple computer that turns on instantly and can be operated with your fingertips. While a laptop computer can be effectively used at counsel’s table during a trial, laptops do not work well for motion dockets or many other types of hearings where a lot of lawyers are milling around in the

courtroom well. The iPad works very well in these situations. And if a judge calls you up to the bench to schedule a hearing, “instant on” is very important too.

WHICH IPAD?

When purchasing an iPad, one looks at three variables. First is the type of iPad. The options are iPad 2, iPad Mini and iPad with Retina display. (The iPad 1 is no longer recommended.) Next is the size of storage on the iPad. The 16 GB model will likely be fine if you only intend to use it for work and won’t be storing much in the way of music, photos and videos on the iPad. Others will opt for 32 GB or 64 GB. Finally you have to decide whether to spend an additional \$129 for a Wi-Fi plus cellular data model that supports 3G and 4G LTE on AT&T, Sprint or Verizon. Some purchasers keep their options open by buying the cellular model, but not setting up the monthly paid data plan until they are sure they will need it.

Your budget will drive your final iPad purchasing decision. One can purchase a 16 GB iPad 2 Wi-Fi only for \$399 and refurbished ones for even less. The top end model, the 64 GB iPad with Retina Display and Wi-Fi plus cellular data costs \$829 plus a monthly fee for the data plan.

The iPad Mini is very popular, less expensive and convenient to carry. A full-size iPad might be a better choice for the first iPad, but that is a personal decision. Veteran iPad users are beginning to report using the iPad Mini more frequently than the originals.

NOW WHAT DO I DO WITH MY IPAD?

First you have to download and install iTunes on a computer. Then you plug in your new iPad and follow the instructions to set it up. You will want to set up your email and calendar to synchronize with your primary email and calendar.

Then you want to protect your iPad and your information.

IPAD SECURITY

It is important to make sure any i-Device is properly secured, especially if you intend to use it for client work. The smaller the device, the easier it is to lose or have someone steal it, so taking some basic precautions is important.

- Adequate Passwords – go to **Settings>General>Passcode Lock>Require Passcode** and turn it on. We recommend turning off the option for **Simple Passcode**, and having a longer, more secure passcode.

- Consider using a password storage program to save your passwords. We recommend both **LastPass** (www.lastpass.com) and **1Password** (<https://agilebits.com/onepassword>) – both of them work on any browser as well as your iPad or iPhone. They securely store all of the passwords you use on websites, and will also help generate long, secure, unbreakable passwords for you.

- Auto-Lock – within **Settings>General**, make sure you set your iPad to automatically lock after a certain period of time. Never set it to Never.

- Make sure the **Erase Data** is set to ON, so data from the device is erased after 10 failed passcode attempts

- Download the **Find My iPhone** app (it works on the iPad, too) – it is an invaluable tool for both locating a lost or stolen iPad, as well as wiping it or locking it remotely once found.

- Backup – make sure you routinely backup your devices, so you don't lose sensitive information. You can backup the old-fashioned way using iTunes, or backup wirelessly to an iCloud account, which will likely be the preferred method.

LEARNING ABOUT THE IPAD

Step-by-step instructions to do every little thing with the iPad or apps would seriously bloat this article and make it unreadable. Apple has lots of online help available at www.apple.com/support, but I rarely use that resource. It always seems easier just to type whatever question I have into Google and locate an article on how to do something written by a blogger or professional reviewer.

Several websites provide information for lawyers who use iPads. These include Tom Mighell's blog iPad 4 Lawyers (<http://ipad4lawyers.squarespace.com>), Jeff Richardson's iPhoneJD (www.iphonejd.com), which includes many detailed reviews of apps and Brett Burney's Macs in Law (www.macsinlaw.com).

ABOUT ALL THOSE APPS

There are more than 1 million apps in Apple's App Store and 200,000 alone for the iPad. I'll highlight some "must have" apps here. But bear a few things in mind. Apps are relatively inexpensive, but the time invested in learning how to use them is not. There are often a dozen apps that accomplish the same things. Spend some time reviewing legal app blogs and consumer reviews. Ask trusted people about what they recommend. Your workplace may prefer one app over another. Consistency/uniformity at the office typically is a good thing. If your co-workers or friends use an app, they can provide you with a "support network" to better learn and use the app.

If you want to see even more apps that are useful for lawyers, check out Tom Mighell's book *iPad Apps in One Hour for Lawyers* (www.okbar.org/s/5fce4 at the ABA Bookstore).



DEALING WITH DOCUMENTS ON THE IPAD

The most common initial question is “how do I get documents on the iPad?” Although you can use iTunes to do this, that is not normally your best choice. Generally you will either email documents to yourself or using a cloud-based file sharing or file synchronization service like Dropbox or SpiderOak. (For more on cloud computing, your attention is directed to “Conquering Cloud Computing: Tips for Online File Storage” 83 *Oklahoma Bar Journal* 2697, Dec. 8, 2012.)

One of the nice things about iPhones and iPads is that you can open and read most email attachments with the built-in viewer. But the viewer tool, while handy, does not let you edit the attachments or even save them to your iPad.

There many great iPad apps to work with documents.

Because PDF files are so ubiquitous for lawyers, an initial “must have” app for lawyers is **GoodReader**, available for iPhone and iPad. (\$4.99, www.okbar.org/s/goodreader). It provides excellent annotation tools for PDF files, including the ability to highlight text, insert text boxes, post “sticky notes” comments, compose freehand drawings, lines, arrows, rectangles, etc. These tools are extremely useful when you are reading a court opinion or law review article. GoodReader also has a robust file manager and has the ability to sync directly with your accounts from Dropbox, Box.net, Google Docs, and many other similar services. GoodReader also works with Microsoft Office files and other document formats.

If you want to use an iPad for annotation, then you will probably want to purchase a stylus. Annotation with a finger doesn’t really work all that well. Three popular styli are the AdonitJotPro (\$29.95), Kensington Virtuoso (\$25 with included pen or \$15 without pen) and Wacom Bamboo (\$29.95).

PDF Expert (\$9.99, www.okbar.org/s/pdfexpert) is similar to GoodReader. But PDF Expert offers a few additional features that are hard to find in other apps and that appeal to legal professionals. PDF Expert supports PDF

“If you want to use an iPad for annotation, then you will probably want to purchase a stylus.”

forms and allows you to fill-in PDF forms via text fields, check boxes, radio buttons and other form elements. You can create a PDF form on your computer and transfer it over to your iPad when you need to complete the form away from the office.

If you want to draft and edit documents, there are a handful of “office suites” for the iPad

that can perform the core features found in Microsoft Office on your computer. One of the top choices for legal professionals is **Quickoffice Pro HD** (iPhone/iPad) which allows you to view and edit Microsoft Word (Quickword), Excel (Quicksheet), and PowerPoint files (Quickpoint). (\$19.99, www.okbar.org/s/yhk6a).

Another very popular app to work with Microsoft Office files is **DocumentsToGo Premium** (\$16.99, www.okbar.org/s/xt9z8). This app has been around for a long time and is in wide usage. Tom Mighell has worked extensively with both and gives the edge to QuickOffice Pro, but either will serve you well. Quickoffice does not handle footnotes while DocumentsToGo does, if that is an important consideration for you.

If you are still using WordPerfect, you will not find a tool to edit those documents on the iPad. But the **WordPerfect Viewer for the iPad** (\$5.99, Corel Corporation www.okbar.org/s/ohzmj) will allow you to open, view and search through WordPerfect documents.

NOTE TAKING

Note taking is another handy function that could let you use the iPad like you use a traditional legal pad.

Notability (99 cents, www.okbar.org/s/d5u5h) is also a “must have” tool at a bargain price. Very few note-taking apps perform all three recording functions with handwriting, typing and audio recording. Just imagine how handy it is to be able to turn on the audio recording feature when you realize that you are falling behind on your note taking during an important meeting.

Noteshelf (\$4.99, www.okbar.org/s/j4n90) Noteshelf is a great way to take notes and keep them organized. You can organize various

notebooks on subjects and projects as you desire. The various notebooks are displayed on shelves when not in use like they are displayed in iBooks or other ebook apps. This gives you the advantage of not only taking notes, but making certain you will know where they are when you need them.

BLUETOOTH KEYBOARDS

While touch typing directly on the iPad is fine for doing Internet searches or briefly answering email, if you really want to edit and prepare documents on the iPad, you will want a Bluetooth keyboard. Bluetooth is the wireless method that keyboards use to connect to the iPad since there is no place to plug them in. You can use the standard Apple keyboard, but that combination doesn't make a handy travel package. Most lawyers purchase a combination keyboard and iPad cover like the ZaggFolio, the Brookstone iPad Keyboard case or Logitech Ultrathin Keyboard Cover.

If you want to learn what several experts have recommended for iPad Bluetooth keyboards, see "Revisiting the iPad Keyboard Problem," www.attorneyatwork.com/revisiting-the-ipad-keyboard-problem. I have embraced the Logitech Ultrathin Keyboard Cover.

DOCUMENT SCANNING

Like smartphones, the iPad also contains a camera. While the iPad is a bit awkward to use to take snapshots, we should not forget that with the right app, this can be a great tool to scan documents. Several apps will convert pictures to PDF files and resolution of the iPad is such that you can take a picture of an 8.5" x 11" document for scanning. Lighting can be a problem when trying to take a picture of a full-sized document.

On the inexpensive side you can get an app like JotNot Scanner Pro (99 cents, www.okbar.org/s/d25g9) to do this, but if you are going to do this often you may appreciate the expanded features of Scanner Pro by Readdle (\$6.99, www.okbar.org/s/kxk9w), especially for multiple pages.

LEGAL RESEARCH

Your legal research provider has an app for legal research.

LexisNexis® has several apps including Lexis Advance™ and CourtLink®. More informa-

tion is online at www.lexisnexis.com/en-us/products/mobile.page. You can learn about the WestlawNext iPad app at www.store.westlaw.com/westlawnext/mobile-ipad/ipad-app/default.aspx.

Fastcase, your Oklahoma Bar Association-supplied legal research tool also has an iPad app at www.fastcase.com/ipad. Here are the instructions for synchronizing your iPad Fastcase account with the access you enjoy by computer, if you have not already done so:

For users who login through their bar association, law school or law firm landing page, simply login to your account, scroll over to the Options menu and select Mobile Sync. Once on the Mobile Sync page, you will be prompted to enter an email address. This will be your username for logging in using the mobile app (Tip: If you already use Fastcase for the iPhone or Fastcase for the iPad or Fastcase for Android and are syncing your accounts, please use the email address associated with your pre-existing app account.) When you've entered your email address, click Go. We will send an email to this address to confirm that you own it. The email will contain a link that you must click to complete the sync process. If you have already established a mobile app account, simply click the link in the email, and your two accounts will automatically link together.

If you might like reading news from various sources in a magazine-style format, you might try the free Flipboard app, www.okbar.org/s/rga-d. It will also handle Twitter and Facebook. It is hard to describe how well this app works, so please just give it a try.

There are many apps that a lawyer can use at trial. But that is really an entirely new article. I hear rumors that trial apps might even be a new book from Tom Mighell. But as I have noted in the bar journal several times before, you really cannot go wrong by starting with apps like TrialPad and TranscriptPad from Lit Software, www.litsoftware.com.

If you want some training on iPad basics, you can view Getting Started with iPad2 on our OBA MAP YouTube page, www.okbar.org/s/6w9uk, and Ten iPad Typing Tips at www.luigibenetton.com/2012/12/typing-on-an-ipad/

If you want to learn about even more apps, here are the ones highlighted at ABA TECHSHOW 2012's 60 Apps in 60 Minutes presentation, www.okbar.org/s/b8tio.

You can use an iPad in so many ways. In my article "Unexpected Uses of Tools and Unintended Consequences," 83 *Oklahoma Bar Journal* 2414, Nov. 3, 2012, I outlined how you can make great movies with the iPad. But I hope this article gives you a great start on using your iPad.

Author's note: This article is drawn in part from materials for CLE webinars that I have co-presented with Tom Mighell. Mr. Mighell is senior consultant for Contoural Inc. and author of "iPad in One Hour for Lawyers" and "iPad Apps in One Hour for Lawyers," both published by the American Bar Association. The word "we" is used in places to reflect our joint recommendation.

ABOUT THE AUTHOR



Jim Calloway is the director of the OBA Management Assistance Program and manages the OBA Solo & Small Firm Conference. He served as the chair of the 2005 ABA TECHSHOW board. His Law Practice Tips blog and Digital Edge podcast cover technology and management issues. He speaks frequently on law office management, legal technology, ethics and business operations.

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Is your firm's 401(k) subject to quarterly reviews by an independent board of directors?

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Who's Watching Your Firm's 401(k)?



The American Bar Association Members/Northern Trust Collective Trust (the "Collective Trust") has filed a registration statement (including the prospectus therein (the "Prospectus")) with the Securities and Exchange Commission for the offering of Units representing pro rata beneficial interests in the collective investment funds established under the Collective Trust. The Collective Trust is a retirement program sponsored by the ABA Retirement Funds in which lawyers and law firms who are members or associates of the American Bar Association, most state and local bar associations and their employees and employees of certain organizations related to the practice of law are eligible to participate. Copies of the Prospectus may be obtained by calling (866) 812-1510, by visiting the website of the ABA Retirement Funds Program at www.abaretirement.com or by writing to ABA Retirement Funds, P.O. Box 5142, Boston, MA 02206-5142. This communication shall not constitute an offer to sell or the solicitation of an offer to buy, or a request of the recipient to indicate an interest in, Units of the Collective Trust, and is not a recommendation with respect to any of the collective investment funds established under the Collective Trust. Nor shall there be any sale of the Units of the Collective Trust in any state or other jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state or other jurisdiction. The Program is available through the Oklahoma Bar Association as a member benefit. However, this does not constitute an offer to purchase, and is in no way a recommendation with respect to, any security that is available through the Program.

C12-0201-010 (2/12)



E-Filing in Oklahoma

By Brant M. Elmore

Soon a new tool will be available to Oklahoma legal practitioners. The Oklahoma Supreme Court is in the process of implementing electronic filing (e-filing) and a unified case management system in the state courts. Collectively, this tool will be known as the Oklahoma Unified Case Management System (OUCMS).¹

The task of implementing the OUCMS is monumental. The process has been ongoing for several years. However, e-filing in the state courts is now imminent. The Administrative Office of the Courts has promulgated and the Oklahoma Supreme Court has approved Rules for E-filing in Selected Pilot Courts.²

American Cadastre LLC (AMCAD) is developing the state's e-filing system. AMCAD is customizing their electronic filing software to Oklahoma's legal system. Once the software passes formalized testing, it will be put into use in selected pilot courts. The Administrative Office of the Courts will post on the Supreme Court's website when each of the district and appellate courts implement the system.³ The first pilot court will likely begin using the OUCMS in July. Over the next few years, e-filing will become commonplace in the state's courts.

Once fully implemented, Oklahoma's e-filing system will provide registered users with the ability to e-file in any district court or appellate court within the state. At the same time, the OUCMS will permit viewing of cases and the documents therein through a public access portal.

The state will no longer be divided by two separate case management systems. The Oklahoma Court Information System (OCIS) and the

On Demand Court Records system (ODCR) operated by KellPro Inc., are both presently in operation within the state.⁴ These two systems are not integrated and rely on aged technology. The OUCMS will replace both the OCIS and the ODCR networks.

The OUCMS will consolidate court data throughout the state. It is anticipated that all of the data from the OCIS and ODCR systems will be integrated into the OUCMS. After the OUCMS is implemented in a county, the court clerk will maintain the court record in an electronic format.⁵ Records and documents in each and every court clerk's office will be maintained in the same electronic format and will be easily accessible by the parties, attorneys, judges and the public. As the court record will be maintained in an electronic format, the district courts will submit an electronic record (e-record) to the appellate courts.⁶

Oklahoma's e-filing system will be unified. As opposed to the federal system, where a user is required to register with each of the separate federal courts, maintain multiple user accounts and attain knowledge of the multiple operating systems, Oklahoma's e-filing system will operate throughout the state. An attorney licensed to practice in Oklahoma will only need to register once with the Administrative Office of the Courts.⁷ Through this one user account, the attorney will

be able to e-file in all of the district courts and appellate courts in the state. The operating system will be identical in each of the district courts. The documents viewed on the public access portal will be the same as the official court record.

Certain legal practitioners are accustomed to e-filing. The Oklahoma Attorney General's Office and other federal court practitioners were required years ago to become e-filers. These practitioners will likely transition seamlessly to the OUCMS. Those unaccustomed to e-filing should make every effort to adopt this useful tool. The OUCMS will provide many advantages to state court practitioners.

A registered user will be able to e-file from the convenience of their office to any of the district courts and appellate courts across the state. Although the rules as to when a document is deemed filed will remain unchanged, the system will generally be accessible 24 hours per day, seven days per week.⁸ Registered users will be able to circumnavigate long distances, weather conditions and traffic to easily file documents.

The OUCMS will permit electronic service (e-service) of documents that do not require personal service as a matter of law.⁹ The court clerk's office may also e-serve notices, orders, opinions, decisions, correspondence and other documents.¹⁰ E-service will be accomplished by emailing a copy of the electronic document (e-document) to the registered user's designated case-specific email address as well as any designated secondary email address.¹¹ In addition to the requirement of e-service, the OUCMS will generate notices to registered users regarding docket activity in cases in which the user has made an entry of appearance.¹²

State court legal practitioners will be able to effectively operate a "paperless office" or "digital law practice" if they desire.¹³ Registered users will be able to create an e-document on their computing device and file that document with the court clerk without the need of creating a paper document. The court clerks within the state will maintain the court record in an electronic format.¹⁴ The shift to electronic filing and a unified case management system will permit parties to have immediate access to documents filed in a case.¹⁵ A "digital law practice" can improve efficiency and productivity both inside and outside the office.¹⁶

Although a "paperless office" carries with it the potential to use less paper, it does not mean

having no paper in the office.¹⁷ For this reason, attorneys, parties and judges will have the option of paper on demand. Paper will continue to be a part of our lives but effective lawyers will find ways to make their law practice more efficient by using the OUCMS.

Although in a digital format, the form of documents will be relatively unchanged. E-documents, will to the extent practicable, be formatted in accordance with the applicable court rules governing formatting of conventional paper documents.¹⁸ The sole exception is that the first page of an e-filed document will have a top margin of at least two inches to allow for the insertion of an electronic file stamp.¹⁹ All e-documents will be filed in a text-based PDF format (*i.e.*, the document will be converted from a Word or WordPerfect document into a PDF file on the user's computer).²⁰ Because text-based PDF documents are text searchable, a user will be able to use optical character recognition (OCR) software to perform high-volume searches of documents and records.²¹ This feature is particularly advantageous in cases involving numerous volumes of transcripts, records or documents.

“A registered user will be able to e-file from the convenience of their office to any of the district courts and appellate courts across the state.”

Generally, attachments and exhibits will also be filed in a text-searchable PDF format.²² Where an attachment or document cannot be converted to a text-searchable PDF, then the attachment or exhibit will be submitted in a non-text searchable PDF format (*e.g.*, scan the attachment or exhibit with a scanner). Non-text images (*i.e.*, photographs) may be submitted in a JPEG standard format.²³ Special provisions are made for attachments or exhibits which cannot be e-filed. In that circumstance, the filer will be required to append a notice of attachment not electronically filed to the principal e-document and forward a copy of that notice and the attachment under cover sheet to the

clerk and other parties within 24 hours of the e-filing of the principal document.²⁴

Parties will continue to pay filing fees and costs as before implementation of e-filing. However, the OUCMS will permit the payment of fees and costs to occur by credit card or other online method approved for use with the OUCMS.²⁵ Where appropriate, parties will be able to e-file a pauper's affidavit requesting a waiver of costs or filing fees in the same manner as prescribed by statute.²⁶ No longer will valuable time be spent standing in line to pay fees or costs.

A registered user will be able to submit proposed orders to the district court. The filer will submit the proposed order in an editable format via the OUCMS e-filing system. The proposed order will not become part of the court record. Once the judge finalizes the order, the order will be converted to a non-editable PDF document and filed in the official court record.²⁷

The OUCMS may permit certain individuals and agencies associated with the courts to e-file. Bondsmen, jurors, process servers and CASA workers may be permitted to e-file.²⁸ Quick and easy access to these documents could benefit the parties and the court in certain actions.

Because information placed on the Internet is accessible by people across the globe, certain practices must be changed. Attorneys or parties that e-file have the same duty to review their documents for personal identifier information as set forth in Rule 31 of the Rules for the District Courts of Oklahoma.²⁹ Pleadings, papers, exhibits or other documents should not contain Social Security numbers, taxpayer identification numbers, financial account numbers or driver's license numbers.³⁰ However, this rule does not apply in felony cases, misdemeanor cases, traffic ticket cases or any other cases where statutory law or rules and forms promulgated by the Court of Criminal Appeals require the inclusion of the complete personal identifier number.³¹

Extra care will have to be taken in the filing of sealed documents. Before a document can be filed under seal, a registered user will be required to first obtain a court order authorizing such filing.³² A filer will not e-file the document while a request for an order sealing is pending.³³ If the document or paper sought to be sealed is attached to the motion or application, then the purpose of sealing will be defeat-

ed as the document or paper will be viewable by the public.³⁴

Certain case types (e.g., juvenile, adoption, mental health, etc.) will remain confidential.³⁵ The procedure for sealing documents will not be applicable to filings in these case types as any and all filings in the case will not be available for public viewing.³⁶

It is likely that both the Oklahoma Supreme Court and the Oklahoma Court of Criminal Appeals will amend or implement additional rules governing e-filing.³⁷ State court practitioners will want to be attentive to such enactments in addition to familiarizing themselves with the Rules for E-filing in Selected Pilot Courts.

As with any other tool, determine how e-filing will best benefit your practice and make a plan for its implementation into your office. The OUCMS will be here for many years to come and you will want to make effective use of this tool in both operating your practice and serving your clients. The frontier is wide and open in e-Oklahoma.

Author's note: The views expressed herein are those of the author, and do not necessarily reflect those of the Oklahoma Supreme Court, the Oklahoma Court of Criminal Appeals, the Administrative Office of the Courts, the E-Courts Committee or Judge Gary L. Lumpkin.

1. Rule 2(a), OKLAHOMA RULES FOR E-FILING IN SELECTED PILOT COURTS, 2012 OK 61 (Okla. 6/21/2012).

2. See *id.* Rule 1; OKLA. STAT. tit. 20, §3004 (2011).

3. See *id.* Rule 1(b).

4. See websites located at www.oscn.net/applications/oscn/start.asp?viewType=DOCKETS (last visited March 4, 2013); www1.odcr.com (last visited March 4, 2013).

5. Rule 11(b), *supra* note 1.

6. See *id.* Rule 11(c),(d).

7. Rule 9, *supra* note 1.

8. Rule 5 *supra* note 1.

9. Rule 8(a) *supra* note 1.

10. See *id.* Rule 8(c).

11. See *id.* Rules 2(e), 8(d), (e).

12. See *id.* Rule 8(b).

13. Jim Calloway, "Opening a Law Practice: Equipping the Law Office" 2012, *Oklahoma Bar Journal*, Vol. 83, No. 26, P. 2072 (Oct. 6, 2012).

14. Rule 11(b), *supra* note 1.

15. Adrienne N. Cash, "Welcome to the Future: The Paperless Law Office and E-filing," *Oklahoma Bar Journal*, Vol. 82, No. 29, P. 2421-22 (Nov. 6, 2010).

16. See *id.*; see also Calloway, *supra* note 9, at 2072-73.

17. See *id.*

18. Rule 12(a), *supra* note 1.

19. *Id.*

20. See *id.* Rule 12(b)(1).

21. See Calloway, *supra* note 9, at 2074-75.

22. Rule 12(b)(2), *supra* note 1.

23. See *id.* Rule 12(b)(2).

24. See *id.* Rule 12(b)(3),(4).

25. Rule 6(a), *supra* note 1.

26. See *id.* Rule 6(b).

27. Rule 12(d), *supra* note 1.

28. *See id.* Rules 14.
29. Rule 31, *supra* note 1.
30. *Id.* at Rule 31(c).
31. *Id.* at Rule 31(b).
32. Rule 16(a), *supra* note 1.
33. *Id.*
34. *Id.*
35. *Id.*
36. *Id.*
37. Rule 1(a), (c), *supra*, note 1.

ABOUT THE AUTHOR



Brant M. Elmore is a judicial assistant to Judge Gary L. Lumpkin of the Oklahoma Court of Criminal Appeals. A native Oklahoman, he earned his J.D. from the OU College of Law in 1998. He formerly served as assistant district attorney for Garvin County, assistant Oklahoma attorney general and as an appellate defender for the Oklahoma Indigent Defense System. He has been honored to work alongside the many talented and knowledgeable judges, attorneys and clerks on the E-Courts Committee for nearly two years.

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TO HELP A NEW KID FEEL
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Summer, a Holland Hall eighth grader, is on a competitive power tumbling team. In talking with her teammates who attend larger schools, she's come to value the closeness of her smaller school family.

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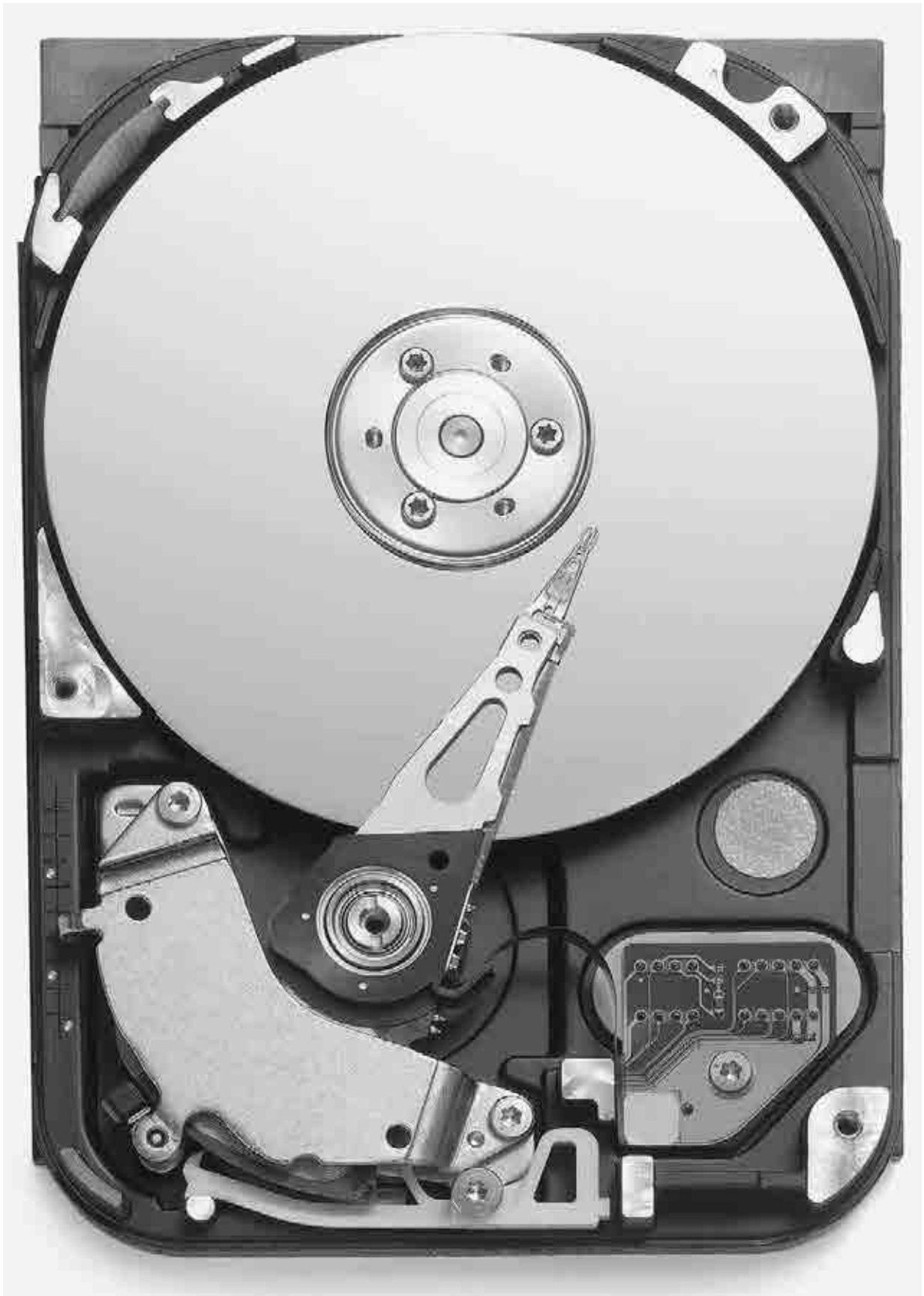


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– Summer,
Holland Hall Eighth Grader



Electronic Discovery

By Ronald Collett

Don't let the term "e-discovery" intimidate. It's essentially discovery adapted for the way people communicate and do business today. Instead of typewritten letters, we now have word processor documents. Accounting ledgers have been replaced by spreadsheets and database files; computer hard drives have replaced filing cabinets and cardboard boxes.

If you work for a large company, chances are that your Information Technology (IT) department and litigation team have the e-discovery process streamlined. They use data maps to show the location of relevant data and have data retention policies and software deployed over the company network to perform data collection with little or no interruption to business activities. If you are a small practice attorney and your client is an individual or small business, often, you will be the first person to advise the client that they have a responsibility to preserve electronically stored information (ESI) and will guide them through the process.

THE RULES

In 2006, the Federal Rules of Civil Procedure (FRCP), rules 16, 26, 33, 34 and 37 were amended (in a one-sentence summary) to indicate that ESI is a discoverable record type and should be treated as any other type of record. The rules don't address specific technologies, but they make clear the obligation to quickly secure, hold and produce all relevant data for litigation when directed.

WHAT SHOULD HAPPEN

When your client has a reasonable expectation that they will be sued, their IT shop (or the owner if they have no IT shop) should, as soon as possible, produce a map of where data is

stored within their system (*i.e.*, where documents, spreadsheets, databases, emails, text messages, .pdf files, *etc.* are stored). They should also immediately place a litigation hold on the ESI to ensure that no changes or deletion of pertinent data occurs.

WHAT REALLY HAPPENS

Your client calls to tell you that they have received formal notification of being sued months after they first knew there could be a problem.

WHAT TO DO FIRST

Stop spoliation. Meet with the client and get them to stop using or destroying the ESI; warn them against a modern day rendition of the *Oliver North, Fawn Hall* evidence destruction incident. Make sure the client's teenager is not using the company laptop for gaming and web surfing. In short, convey to the client that ESI must be immediately preserved and that failing to do so could evoke the wrath of the judge and result in severe financial penalties. Discuss with the client what ESI could be pertinent to the case and where that data is stored. Some clients may have already prepared a data map that shows where information is stored on the company network or offsite (*i.e.* cloud, internet, cell phones, thumb drives, backups, *etc.*). Clients with smaller operations may have data stored

on one or a few office computers that aren't even networked together.

WHAT TO DO NEXT

Take steps to preserve the relevant ESI. In your previous meeting with the client (and their staff as necessary), you will have determined what the relevant ESI is in the case and where it is kept. The ESI should be preserved with all of the original file dates and metadata (data that accompanies a file that often shows author, revision information and is not readily visible to the user). As with big corporations, the client's IT team may be knowledgeable in preserving data for use in litigation. If not, a vendor versed in the use of forensic data collection methods and tools is recommended. The ESI should be collected as a forensic image in the case of an individual hard drive, USB drive, *etc.*, or as a forensic copy in the case of ESI stored on the network or in cloud storage. When the preservation is complete, the relevant ESI could be stored at a secure network location in the case of a larger client with a network or in most cases the ESI will be stored on one or more computer hard drives. These drives will typically contain the ESI in a file format that is not "native" (the way we see them on the screen everyday *i.e.*, .doc, .xls, .html) but in a format that serves as a container and preserves the original metadata that accompanies many files and prevents changes to the files. As insurance against loss, additional copies of the preserved ESI can be made. The drives should be stored with care and treated as evidence with complete chain of custody documents that show the creation and handling of the ESI drives/storage. After preserving the ESI, *stop!* This may be all that needs to be done. The steps that follow can be expensive. At this point, the ESI has been preserved and stored. Your client can go back to normal usage of their computer systems, and you can get back to attorney work to determine what happens next.

PRODUCING THE RELEVANT DATA

If there is no settlement, and the case proceeds, opposing counsels will meet to determine what preserved ESI is relevant to the case and will be provided in the e-discovery request or order. This means hashing out which emails, text messages, documents, spreadsheets, drawings, images and other data will be given to the opposing counsel and what data will remain protected. Remember that contents of

computer "recycle bins" and deleted files are also discoverable.

The FRCP rules allow for the requesting party to specify the format of data produced. In 2013, as this is written, data is typically produced in .pdf, .tif (a graphics file format), native format or paper. Yes, *paper*. If opposing counsel wants paper, likely, there is not much relevant data, or they have lots of time and a stable of attorneys who can be involved in paper document review.

When it has been determined what ESI will be provided and the format that it will be delivered in, production can begin. Large firms and corporations often have in-house litigation support teams to handle production. Smaller firms will typically direct the hiring of a vendor to complete this task. In either case, software tools are used to sort and cull the agreed upon data. If the production format is paper, the data goes by way of a disk or the internet to a print shop and into boxes. In the native file format, the data is copied to a disk or secure internet storage. In the case of a .pdf or .tif pro-

“The ESI should be preserved with all of the original file dates and metadata (data that accompanies a file that often shows author, revision information and is not readily visible to the user).”

duction, the data will usually be numbered or Bates stamped and placed on a disk or some other type of media. The native, .tif and .pdf formats are computer searchable, which is important for efficient document review.

Don't be intimidated by "e-Discovery." It's only discovery streamlined by technology. If you are familiar with letters, ledgers, file folders and filing cabinets, you have conceptual knowledge of e-discovery and ESI. This high-level "50,000 foot view" is where you should start and where case decisions should be made. The technical aspects of e-discovery are always changing. There will always be a new piece of computer hardware, software or technique that

changes the way things are done. If you are tech savvy and have the time, you can keep up with these changes. If not, you can ask for the assistance of knowledgeable staff (at larger firms) or e-discovery vendors.

So when tasked with e-discovery remember these important steps:

- When it looks like a lawsuit is possible place a litigation hold on pertinent ESI;
- Stop spoliation (destruction, alteration or use) of the pertinent ESI;
- Preserve the pertinent ESI using in-house IT staff or vendors;
- Determine what ESI is relevant to the case;
- Use in-house staff or vendors to produce the relevant ESI in the required format.

Again, you likely have all the background you need to deal with e-discovery. Don't get bogged down in the technology aspects. Let others deal with that constantly changing front; and remember, it's just discovery made modern.

ABOUT THE AUTHOR



Ronald Collett is a partner at eBastille LLC, a company specializing in data preservation, recovery and computer forensics. He has over 20 years of experience in law enforcement and computer forensics investigations.



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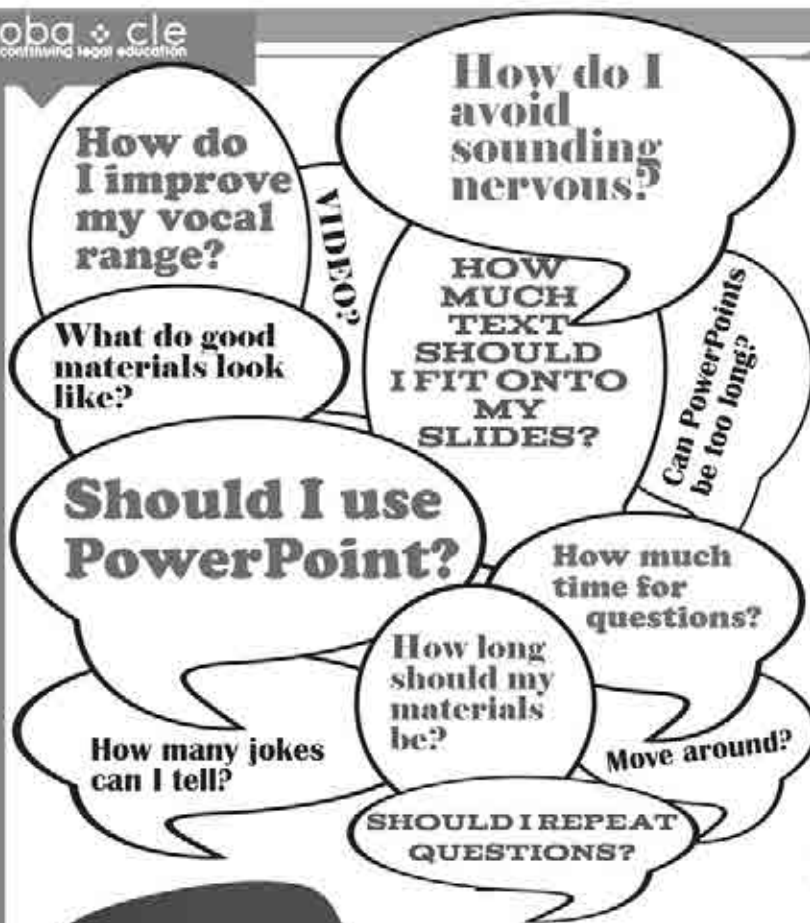
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MARKETING

Changing the Face of Law Office Marketing

By Don G. Pope

No one disputes the impact technology has on our lives. Nowhere is this more evident than in the area of law office marketing. Twenty years ago, when first starting my private practice, a marketing strategy primarily consisted of a budget for Yellow Pages, possibly radio or TV advertising (if you could afford it), networking, participation in civic organizations and writing articles for publication. The computer was a tool for production of documents, organizing files and keeping track of your calendar. The Internet was in its infancy and was just beginning to show promise as a tool for finding information. The kids of the day were learning how to type by being on four chat rooms at the same time. At a CLE that I attended many years ago, the speaker discussed the necessity of adapting to changing technology. He expounded on the history of how attorneys over the years had been required to change — from handwritten documents to typewritten, from carbon paper to copy machine, from typewriter to memory writer and later to word processors. He said something that has always stuck with me: “Those who failed to adapt would succumb to the Grim Reaper of progress and be swept aside by those who did.”

So the question arises: How are you adapting the marketing of your practice to the new opportunities offered by today’s technology?

When establishing online marketing, the first thing to consider is setting up a website. Properly designed and optimized, a website is invaluable in getting your name before the public. In addition to establishing your website, the new trend is to broaden your online presence with

the use of social media. Discussed below are tips and ideas for how to begin, expand and improve your online presence in each of these areas.

WEBSITES

As mentioned above, in past days, Yellow Pages was the vehicle of choice for attorney advertising. When first setting up my private practice in 1992, it was disheartening to see, in the Norman phone book alone, there were 34 pages of

advertising under the attorneys section of the Yellow Pages. In 2011, that was down to seven. While that is not to say that Yellow Pages should be disregarded, the marketing trend is clearly moving to online advertising. A March 2012 survey of 4,000 adult internet users conducted by The Research Intelligence Group (TRIG) showed that three out of four of those seeking attorneys reported using online resources at some point in the process.

Websites are critical in establishing an online presence, however, there is much more to it than that. Studies have shown that it takes about 200 milliseconds to make a good first impression on a website visitor. As such, your website must be designed so that it will make that favorable first impression in a very short time. When visitors look at your website, they are trying to determine 1) what can your firm do for them, 2) whether you appear trustworthy and 3) whether they believe you can help them. It is important that they can affirmatively answer these questions. Website design is a topic unto itself and beyond the realm of this paper; however, care and consideration should be taken when building your website.

Once your website is properly designed for both appearance and functionality, you must then take steps for it to be found. If you were concerned with your ad being buried in 34 pages of Yellow Pages advertising, imagine your website being buried among thousands of other attorney websites. While specific searches may be conducted for attorneys, such a search may still generate hundreds or thousands of responses. If you are number 999 or even 99 on the list, it is not likely your website will be viewed. You should strive to have your website on the first page of listings when searched. To do this, you must raise the visibility of your website in the eyes of the most popular search engines. This process is called Search Engine Optimization (SEO).¹ Properly done, this may improve your ranking when searches are performed. While there are things you can do to help your website's visibility, the factors utilized by search engines such as Google are constantly changing, and enlisting a professional can be very helpful. Whether you use a professional or do it yourself, below are a few tips to aid your website's visibility.

Start by improving your title tags. What is a "title tag?" Titles are the words that appear in the title bar of your browser window, not necessarily on the webpage itself. These titles are

probably the most important variables when it comes to ranking well on search engines. Using words that prospective clients may use in searching for services, *e.g.* divorce, bankruptcy, criminal law, etc., will improve your ranking on a relevant search. Each page on your site is a searchable entity, so create unique names for each page. Use the most descriptive words first as search engines give more weight to the first few words, *e.g.* criminal defense attorney, rather than attorney for criminal defense. How you change these title tags depends on your website. If you have an administrative console which allows you to make these changes, you can utilize that process. Otherwise you will need to consult with your web designer. Keep in mind he is not an attorney, so putting some thought and research into identifying useful title tags will aid him in improving your website.

Since search engines see quality incoming links as lending credibility to your website, it is important to cultivate those links. Although there are many ways to get incoming links, here are a few simple methods. Get listed in established directories. There are many "directories" you can sign up for. Lawyer directories such as bestlawyers.com, attorneypages.com, lawyers.com or local-attorneys.com, as well as generic directories such as manta.com, superpages.com, citysearch.com, etc. are available. Some charge for these links, many are free. If you Google your company name you will likely see many that have already linked to your site. Update and verify those links to improve the connectivity.

Provide quality link-worthy content. Create quality content that is of interest to your prospective clients. Since people are often more likely to link to a blog than a website, consider creating and posting content to your blog which will then lead people to your website. Updating your blog on a regular basis also improves your visibility. Hubspot conducted an inbound marketing survey of 1,400 small- to medium-sized businesses and found that the magic number for effective blog posts is 52.² The report showed that companies that reached 52 blog posts doubled the number of leads they brought in every month. While this survey was not lawyer-specific, it is instructive.

Last, but not least, monitor your website. Once it is up and running, it is critical to see if it is working as you hope and expect it to. While in-house monitoring of new clients to

see whether they have viewed your website is worthwhile, you should also set up an online monitor like Google Analytics.³ This is a free service, and once set up, it will tell you how many visitors you have had, how many of those visitors are first time visitors, how long they stayed on your site, how many pages they viewed, where they are from and a bevy of other information.

SOCIAL MEDIA

In addition to a website, social media is increasingly being used by law firms to market their practice. The four primary social media outlets are Facebook, LinkedIn, Twitter and blogs. The use of social media and blogs will improve the visibility of your website.

The most effective tool for your law practice is blogging. It has been reported that 60 percent of small law firms generate new business from their blog. To be effective you should blog regularly, but it is not necessary to overdo it. Once a week is most effective. Use your blog to update, educate and stay in touch. Where possible, use images. Blogs with pictures are clicked on more often than blogs with just text. You should commit to update regularly and maintain conversations with those who comment. Allowing comments is recommended, but you should regulate those to keep out negative material. Focus your content on the areas of law you practice. Write about the challenges facing your clients and potential clients. Report on items of interest in the news and new court opinions. Searching Twitter and Facebook can help you discover trends. Consider creating a top ten list of recurring legal issues. Allow people to subscribe by email to your blog. Position yourself as an expert in your area. Doing so will potentially generate calls from news media when that area becomes an item of interest. While you may set up a blog within your website, there are also several sites where you may create a free blog. Two of the more popular are www.wordpress.com and www.blogger.com.

LinkedIn

LinkedIn is considered the business version of Facebook and is a powerful tool to connect with other professionals. To jumpstart the

“The most effective tool for your law practice is blogging. It has been reported that 60 percent of small law firms generate new business from their blog.”

LinkedIn process, first create a comprehensive profile. Be sure to load your profile with keywords which will enhance the link to your website. Next, check your contact list on Outlook or Gmail. You can download an Outlook tool bar from LinkedIn which will review your emails and contacts to select individuals and businesses to add to your contacts list. The more contacts the better. Look for power users who have 500 or more contacts. LinkedIn has a process which allows you to recommend persons in your contacts list for various skills. While you may request recommendations, it is better to make recommendations of others first. If they accept, then you can send an email asking for a recommendation from them.

LinkedIn also has a number of interest groups to join, such as OU Alumni, OCU Law School Alumni, Consumer Bankruptcy Attorneys and Criminal Defense Attorneys. These groups can be great sources for answering questions in your area of practice as well as a valuable source for prospective new clients. You might even consider forming your own group. Be active! Answer questions that may be posted (being careful to put a disclaimer that this does not constitute legal advice). Update your status at least three times a week. Put a snip of your blog on your status with a link to the full blog. List all your events such as seminars, speaking engagements, accomplishments, etc.

An active presence in LinkedIn can be valuable in establishing your name and expertise to your contacts.

Facebook

The King Kong of social media sites is undoubtedly Facebook, which now has over one billion users, with over 150 million in the United States alone. While Facebook is primarily geared to personal connections you can establish a separate company page. While you may maintain both a personal and a business page you should keep the two separate. You don't want the distraction of having a link to interesting cases or wall posts to potential clients next to your party pics. Attention should be paid to the Rules of Professional Responsibility, Rule 7.1-7.4 regarding limitations as to

direct contact with potential clients and restrictions on advertising as listed therein.⁴

While Facebook has vast potential to reach new clients, setting up your business page in an attractive and professional manner may be tricky. Many businesses use LinkedIn instead. In fact, a recent infographic by Siteimpulse⁵ shows that 61 percent say that LinkedIn is their go-to social media page. Even so, Facebook can be used to good advantage. The prime term for connecting with others on Facebook is called engagement. Many suggest that the engagement of your fans, not the number thereof is key. There are many ways to boost your engagement on Facebook. Join relevant Facebook groups and contribute something of value to the community. Consider using the "Suggest to Friends" feature of your Facebook page. Don't be boring. Make your Facebook business page interesting so it stands out from the rest. Write about hot topics, such as Hollywood divorces, or criminal cases that have caught the public's attention. Ensure that all the information on your page is correct and up-to-date. This includes addresses, phone numbers, Web addresses, etc. Encourage discussion. Talk to your readers to keep them coming back. Reply to their questions in a timely manner, "like" their comments, and start engaging discussions. Ask your fans for feedback relating to your business. You might be surprised by all the great advice you get. Come up with engaging status updates that include prompts such as "Click like or Share if..." This is a simple formula, and it's all about whether people agree with you. Choose something that you're sure most of your fans will enjoy, and therefore "like" or share. Including images in these updates is a great way to increase engagement. Ask open-ended questions that get your fans thinking. Consider creating status updates with links to your blog or perhaps just an item of interest in the news.

A good example of a well-done Facebook fan page is that of Fenwick and West Law firm in California.⁶ This page is engaging with regular updates of activities involving the firm. It is well worth studying. With forethought and effort, you too can create a successful Facebook presence.

Twitter

Twitter is more of an information and engagement medium, as opposed to a marketing tool. Twitter may be looked at as a whole new way

of sharing and receiving news, building relationships, and engaging people who you could never have dreamed of engaging. Twitter is one of the fastest growing social networks on the web. People use this network to communicate and stay connected through the exchange of 140 character messages, including links to other websites. The idea is to build relationships through conversation with the people you follow and those who follow you. The term "follow" is used similarly to "friend" on Facebook. On Facebook, you try to enhance relationships with people you already know in the physical world. Twitter is more expansive in that it is used to communicate globally, irrespective of whether you already know those people.

Law firms can use it to quickly share information with people interested in the firm's business, gather real-time market intelligence and also generate important feedback. It enables law firms to build relationships with clients, business partners, and to develop their brand recognition.

In addition, Twitter can be a very useful tool in a lawyer's business development practices. It is an excellent way to expand your network, build your reputation, comment on legal issues and trends, and establish relationships with members of the media, relevant market sectors and other thought leaders. It is also an excellent tool for lawyers to research public opinion on many different topics and understand developing trends. While there are news broadcasts every day and updates on your computer home page every few minutes, the immediate buzz of new events with Twitter beats them all. Using Twitter's search function, you can immediately discover what is being said and reported about breaking news as it is happening. In addition it is a great way for you to expose your practice and expertise online.

CONCLUSION

In essence, there are a variety of tools for getting your name before the public online, and a successful approach involves a mixture of avenues, not just one. The nice thing about it is, many of these are relatively simple and inexpensive, if not free, so you can experiment with little to lose to find the best combination for you. One fact is inescapable: the Grim Reaper of Progress is still around for those who do not adapt. Step out, take a chance, boldly go where

no one has gone before. Most of all, experiment, have fun and learn what works for you.

1. If you would like to study the topic of SEO more extensively, you can check out a free app available for your iPhone or iPad, called SEO Tips. This app has a series of videos that you can watch to learn about SEO.

2. www.hubspot.com/lead-generation-tips.

3. www.googleanalytics.com.

4. Oklahoma Statutes, Title 5, Appendix 3-A, Oklahoma Rules of Professional Conduct, Rules 7.1-7.4.

5. www.siteimpulse.com e-marketing consulting site.

6. www.facebook.com/fenwick?ref=ts.

ABOUT THE AUTHOR



Don Pope is managing attorney with Don G. Pope & Associates in Norman. His practice focuses on family law, bankruptcy, wills, estates and probate. He is currently the Cleveland County Bar Association president and the chair of the OBA Law Office Management and Technology Section.

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E-Discovery Under Rule 26

By Cody J. Cooper

Under Rule 26(f) of the Federal Rules of Civil Procedure (FRCP), opposing parties must now discuss e-discovery at least 21 days before a scheduling conference is heard or a scheduling order is due under Rule 16.¹ Rule 26(f) also applies to “all sorts of discoverable information, but can be particularly important with regard to electronically stored information.”² This varies greatly from the current Oklahoma requirement under 3226(f), which states that “[a]t any time after commencement of an action, the court may direct the attorneys for the parties to appear for a conference on the subject of discovery.”³ While Oklahoma statutes state that a discovery conference is discretionary, it is mandatory under the federal rules. Additionally, both sides are required to discuss the form or forms in which discovery will take place, what information will be within the scope of the suit, issues about claims of privilege, and e-discovery.⁴

The advisory committee notes for the 2006 amendment to FRCP 26 state, “[w]hen a case involves discovery of electronically stored information, the issues to be addressed during the Rule 26(f) conference depend on the nature and extent of the contemplated discovery and of the parties’ information systems. It may be important for the parties to discuss those systems, and accordingly important for counsel to become familiar with those systems before the conference. With that information, the parties can develop a discovery plan that takes into account the capabilities of their computer systems. In appropriate cases identification of, and early discovery from, individuals with special knowledge of a party’s computer systems may be helpful.”⁵ The practical implications of this note are clear. The committee expects both sides’ counsel to cooperate with each other and have a

full understanding of their respective client’s data when they go to the conference.

As the advisory committee notes make clear, it is each attorney’s job to become familiar with their client’s information systems. Indeed, in the discovery conference, counsel is often required to exercise this working knowledge by discussing what data is in each system and the respective retention policy for that system. This means that counsel must become intimately familiar with a client’s data creation and storage and be able to be conversant in the same. This could require looking at a map of each client’s database for his or her company or going through each application your client is using and discussing where the data is stored for each application.

Furthermore, the volume and dynamic nature of electronically stored information may further

complicate preservation obligations. “The ordinary operation of computers involves both the automatic creation and the automatic deletion or overwriting of certain information. Failure to address preservation issues early in the litigation increases uncertainty and raises a risk of disputes.”⁶ Again, this means that attorneys must be forthright in the information they possess, and both sides need to cooperate in the discovery conference or risk potential adverse actions (sanctions, etc.). The discussion between attorneys needs to be open and honest, and both sides need to focus on “the balance between the competing needs to preserve relevant evidence and to continue routine operations critical to ongoing activities.”⁷

Additionally, courts should be hesitant to provide one side an overly burdensome or broad preservation order for fear that “[a] blanket preservation order may be prohibitively expensive and unduly burdensome for parties dependent on computer systems for their day-to-day operations.”⁸ In fact, the advisory committee for the Federal Rules of Civil Procedure states that “[a] preservation order entered over objections should be narrowly tailored. *Ex parte* preservation orders should issue only in exceptional circumstances.”⁹ Ultimately, the parties need to take all of these considerations into account and try to reach a reasonable agreement.

ESI AND E-DISCOVERY

Before delving into a brief overview of what I believe are some of the most important aspects of e-discovery, remember that parties to litigation can always agree to produce discovery in paper format, not electronic. However, this doesn’t mean you can avoid electronic discovery (e-discovery). As any attorney knows, discovery is a critical process of litigation that is often tedious, time-consuming and incredibly expensive. While traditional document discovery requires combing through thousands upon thousands of pages of paper (many times much more), e-discovery could exponentially increase that amount to stratospheric numbers in the millions, tens of millions, or even hundreds of millions. Breaking it down to its most rudimentary thought, e-discovery is simply the discovery of electronically stored information. While seemingly simple, the actual process of e-discovery, as well as the potential adverse effects, is far from it.

For as long as computers have been around, data has been stored. Whether in the form of a

paper punch card, a floppy disk, a zip disk, a hard drive, or in the ever-present cloud, people have been storing computer-generated data. Since its invention, the entrepreneurial race has been creating larger and faster electronic storage in paradoxically smaller packages. Some industry experts believe Moore’s law equally applies to the development of electronic storage as it does to processors. Moore’s law, in an over-simplified nutshell, is the idea that every 18 months the number of transistors on an integrated circuit doubles. This is thought to be equally true of the amount of storage space that can fit in an identical space, meaning more storage in a smaller area. With the exponential increase in storage availability comes a number of hidden costs and dangers, particularly when it comes to e-discovery.¹⁰

WHAT IS ESI?

ESI is an acronym used to describe “Electronically Stored Information.” ESI encompasses all data that is **stored electronically**. I emphasize these words not for dramatic effect, but to call your attention to the broad scope of ESI. Say, for instance, you have a contract that your client and another party have signed. Clearly this physical paper copy isn’t ESI. But, if you decide to scan that document and send it to yourself in an email, voilà, you’ve got ESI. Some of the types of ESI most people are probably aware of are application data (Word documents, Excel sheets, PowerPoint projects), messaging systems (emails, instant messages, voice mail, electronic calendaring) and databases. But ESI also includes things that you might not be aware of. For example, your computer and most applications generate data every time you perform an action like clicking on specific data, making revisions to a document, searching for a specific website, watching a YouTube video or listening to a song. These examples, however, are far from an exhaustive list. Since attorneys are responsible for producing and requesting discovery, it is critical that any attorney dealing with e-discovery have a general knowledge of the types of information that could potentially be subject to discovery.

It is equally important that attorneys have a working understanding of the types of electronic information you might want to request or you may need to produce because of the possible ramifications for failing to do so. Your clients will rely on you to know what to request, and it is incumbent on each attorney to recognize the different types of data to ade-

quately draft and respond to discovery.

Now that we have a working understanding of what ESI is, we need to look at one of the most important things about ESI and that is how ESI is stored. Other than knowing what ESI to look for, the second most important thing an attorney needs to know is where to look for ESI. While ESI storage may seem common sense, it's helpful, nonetheless, to provide a refresher (or introduction depending on the reader) to the places information can be stored.

There are three primary ways ESI can be stored: online, near-line, or offline.¹¹ First, ESI can be stored online. This simply means that information is stored at a readily accessible location and requires no human intervention (think hard drive on your computer or a cloud accessible to anyone upon immediate request). Near-line storage can be summed up as direct access removable storage (think flash drives, portable hard drives or CDs/DVDs). Offline storage is most commonly backup tapes. These are just magnetic tapes, similar to cassette tapes, or for those of you young enough to have no idea what a cassette tape is, just imagine a spool of plastic ribbon encased in a plastic casing that is capable of storing information on it. Storage location can be incredibly important because, while producing data from readily accessible records like the hard drive from a computer or a USB drive is relatively simple, the costs and difficulty can potentially increase exponentially when backup tapes are involved. The difficulty can increase because of the amount of information that can be stored on backup tapes. Because the information is historical, those working with it are likely unfamiliar with what is stored on the tapes. This increase in costs can lead to fights between the sides as to who should bear the burden of producing the requested data.

PRESERVATION OF DATA

Aside from combing through the data you plan to produce or receive from the opposing side, preserving the right data and eventually producing it is likely the most onerous part of e-discovery. Preservation of data has many

“The obligation to preserve evidence arises when a party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation.”

important questions that are too technical to be discussed in their entirety within this article, but this should provide a brief overview. However, it is important to recognize that there are many more complex questions that will arise throughout the ongoing preservation of data for purposes of litigation. The first thing to think about when you are faced with the question of preserving data for ongoing or pending litigation is, when does your obligation to preserve begin? Typically your obligation begins when you reasonably anticipate the evidence will be relevant to future litigation.¹² If you are the requesting party, you can avoid

a potential dispute as to when your opponent should have anticipated the data being relevant to litigation by drafting a litigation hold letter and sending it to your opponent. At its most rudimentary level, this letter tells your opponent the locations and types of data you might request so that they are put on notice to not destroy the information.¹³ Second, you should determine what is your client's data retention policy? A retention policy is a set of official guidelines or rules governing storage and destruction of documents or ESI.¹⁴ In *Arthur Anderson LLP v. United States*, the United States Supreme Court recognized there is nothing wrong with data retention policies that call for destruction of documents so long as the destruction does not occur at a time when a legal duty to preserve that evidence has arisen.¹⁵ The burden to preserve is not unilateral to defendants, “plaintiffs also have a duty to suspend regular destruction under records-retention policies once they plan to file suit.”¹⁶ Understanding your client's data retention policy is important because it is the duty of each attorney to ensure that their client preserves all relevant data throughout litigation.

“The obligation to preserve evidence arises when a party has notice that the evidence is relevant to litigation or when a party should have known that the evidence may be relevant to future litigation.”¹⁷ The duty to preserve evidence is one that is placed on counsel.¹⁸ In addition to implementing a “litigation hold” on the destruction of relevant information, counsel is

responsible for ensuring that a client actually does implement such hold and continues to implement the hold throughout litigation.¹⁹ “To do this, counsel must become fully familiar with the client’s document retention policies, as well as the client’s data retention architecture.”²⁰ This means that counsel is required to become intimately familiar with her client’s data and procedures. After you have an understanding of what data your client has and their retention policy, it is counsel’s responsibility to locate relevant data and ensure the client preserves that data. This means you have to preserve data that could potentially be subject to discovery, even if it is not specifically requested.²¹

PRODUCING AND REVIEWING DATA

Once data has been preserved, the big question then becomes how to review and eventually produce the data. Reviewing data for privilege presents a potentially massive undertaking for counsel, depending on the volume and sensitivity of the information being produced. For particularly large cases, counsel will likely have to request large extensions in production deadlines and may even have to increase the number of attorneys reviewing the data. Parties have the ability to stipulate that any production of privileged data to the other is deemed to not be a waiver of any such privilege; but again, this topic is more detailed than this article intends to cover. Under the FRCP (Rule 34), the requesting party can request a specific format, and the producing party can respond by complying or objecting. But if they object, they must provide an alternative format.

The Oklahoma statutes, however, do not address production of data in specific formats, and the parties are left to decide and then ask the court to referee when they can’t agree. Much of the data production argument will involve production in native or non-native format. Native format means the format in which the information is naturally kept. Native format is important because it contains metadata, which means that native format contains “hidden” information such as, among other things, who created the data, when the data was created, and what application created the data. Metadata can best be understood as “data about data” that can’t be seen just by looking at an individual record. Think of it as looking in your iTunes music library at your favorite song; you can see the artist and album, but you can’t see what year it was created or the producer of the music. Metadata would allow you

to see those things. Producing documents with metadata also raises a number of issues.

When a party receives a request for electronic data, the party and counsel “are under a duty to make a reasonable search for all relevant, non-privileged documents and ESI within the scope of the particular request (assuming the request is well-framed).”²² Finding this data can present difficulty depending on the number of records available. Keyword searches are primarily how data is chosen, and they “work best when the legal inquiry is focused on finding particular documents and when the use of language is relatively predictable.”²³ Fashioning too broad of a keyword search will likely result in a dispute between the parties as well as the potential to return significantly more documents than desired. Too narrow, and the potentially helpful documents could be left out. Too broad and a party could be buried in information. The difference between a good search and a bad search can be the difference of finding (or disclosing) the smoking gun and being lost in a forest of useless information.

POTENTIAL ADVERSE EFFECTS

Under both FRCP 37 and 12 O.S. 3037, the court has broad discretion to punish parties for failing to comply with discovery. Default judgment or dismissal, sanctions, and adverse inferences are the primary concerns with failing to cooperate with e-discovery. In one of the five *Zubulake* cases, UBS failed to comply with preservation instructions and repeated orders by the court. The court then threatened them with an adverse inference at trial.²⁴ The court followed through with its threat and permitted the jury to make an adverse inference with respect to emails deleted and irretrievably lost when UBS’s backup tapes were recycled.²⁵ In the end, the *Zubulake* jury rendered a judgment against UBS for more than \$29 million.²⁶ In *Coleman (Parent) Holdings, Inc. v. Morgan Stanley & Co. Inc.*, a Florida court issued an adverse inference against Morgan Stanley for “overwriting emails, failing to timely process hundreds of backup tapes, and failing to produce relevant emails and their attachments.”²⁷ Morgan Stanley had judgment entered against it for \$1.45 billion based largely on the instruction given, but that judgment was subsequently successfully appealed.²⁸

These two cases are a subset of cases imposing harsh penalties on parties that purposefully fail to comply with courts and opposing counsel

during e-discovery. Sometimes there is little an attorney can do to ensure a client complies with what is expected of them, but it is important that counsel communicate the potential weighty risks a client, and their counsel, could be faced with in the event that they aren't complicit.

CONCLUSION

E-discovery is an ever-increasing and necessary part of litigation. Society's increasing reliance upon computers for both personal and business activities means that electronic data will continue to increase every day. This presents a challenging problem for lawyers and their clients. While this mountain of data can be used both as a sword and as a shield, even the most experienced lawyer needs to tread the waters carefully. It is important to keep in mind your ethical obligations to your clients, courts and opposing parties, and focus on a fair and reasonable resolution for all discovery disputes. Depending on the nature of your case, often times it is cheaper to agree with opposing counsel to simply conduct discovery in paper form rather than incurring the excess expense of producing massive amounts of data; but regardless, you will likely be required to deal with esi and e-discovery in some form or fashion. Ultimately, this decision will have to be something each attorney will decide based on their belief of what is best for their client.

1. FED. R. CIV. P. 26(f) (2012).
2. FED. R. CIV. P. 26(f) (2006 committee notes).
3. 12 O.S. 3236(f) (2012).
4. FED. R. CIV. P. 26(f) (2006 committee notes).
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*

10. Much of this paper is derived from secondary sources discussing e-discovery and its seminal cases. With that said, any attorney looking to educate themselves on e-discovery and digital evidence would be best served by obtaining a copy of West's Nutshell Series for Electronic Discovery and Digital Evidence written by Shira A. Scheindlin and Daniel J. Carpa. The commentary for the 2006 amendments to the Federal Rules of Civil Procedure is also helpful when reviewing Rule 26(f).

11. SHIRA A. SCHEINDLIN & DANIEL J. CAPRA, ELECTRONIC DISCOVERY AND DIGITAL EVIDENCE 14-16 (West 2009).

12. See Andrew R. Lee, *Keep or Toss? Document Retention Policies in the Digital Era*, 55 La. B.J. 240, 244 (2008).

13. See generally Bradley C. Nahrstadt, *What's the Deal with Litigation Hold Letters? (With Forms): Hold on a minute: How do these things really work?*, 18 No. 6 Prac. Litigator 23 (2007); *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212 (S.D.N.Y. 2003); *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422 (S.D.N.Y. 2004).

14. *Id.* at 33.

15. See *Arthur Anderson LLP v. United States*, 544 U.S. 696, 704 (2005).

16. SCHEINDLIN & CAPRA, *supra* note 11, at 35.

17. *Id.* at 36.

18. *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422, 431-32 (S.D.N.Y. 2004).

19. See *id.* at 432.

20. *Id.*

21. Lee, *Supra* Note 3, at 240.

22. SCHEINDLIN & CAPRA, *supra* note 11, at 137.

23. *Id.* at 137-38.

24. See generally *Zubulake*, 229 F.R.D. 422.

25. *Id.* at 437.

26. Nahrstadt, 18 No. 6 Prac. Litigator at 24.

27. *Id.* at 25.

28. *Id.*

ABOUT THE AUTHOR



Cody J. Cooper is an attorney in the Litigation Department of Phillips Murrah P.C. His primary practice areas are commercial litigation, class actions, complex torts and intellectual property. A Norman native, he graduated with honors from OU College of Law in 2012 and received his bachelor's degree in management information systems and finance. He served as the managing editor of the *OU American Indian Law Review*.



2013 Oklahoma Forensic Academy

Friday, March 29, 2013

Moore/Norman Technology Center, 13301 S. Pennsylvania Ave. Oklahoma City

Sponsored by:

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Registration - Doughnuts & Coffee - Opening Remarks: 8:00 to 9:00a.m.

9:00 to 9:50 Checkpoints

- Jeff Sifers, District Attorneys Council (DAC) & Oklahoma County Sheriffs Office

9:50 to 10:00 Break

10:00 to 10:50 Blood Draws & Search Warrants For Test Refusals

- Richard Alpert, ADA, Fort Worth, TX

10:50 to 11:00 Break

11:00 to 11:50 DUI Update

- John Hunsucker, Esq., Oklahoma City, OK
- Bruce Edge, Esq., Tulsa, OK

11:50 to 12:30 Lunch (Included with Seminar Registration Fee)

12:30 to 1:20 Emerging Trends in DNA Forensic Evidence

- Janice Joslin, Technical Manager, Oklahoma Forensics Center, OSBI

1:20 to 1:30 Break

1:30 to 2:20 Seizures of Cell Phone Text Messaging

- Charles S. Rogers, Senior AAG, Oklahoma City, OK
- Warren Gotcher, Esq., McAlester, OK

2:20 to 2:30 Break

2:30 to 3:20 DNA Evidentiary Foundations

- Scott Rowland, First Assistant District Attorney, Office of Okla. County District Attorney

3:20 to 3:30 Break

3:30 to 4:20 Ineffective Assistance of Counsel & Prosecutorial Misconduct: What is the Bar to Do? (1 hour Ethics)

- Gina Hendrix, Office of General Counsel, Oklahoma Bar Association

The seminar has been pre-approved by the Oklahoma Bar Association for seven (7) hours of CLE Credit (including one (1) hour of ethics).

Forensics Academy Registration - Make Checks payable to the Criminal Law Section of the OBA Mail/Email/Fax Registrations (if you fax your registration payment will be accepted at the seminar) to either: Mike Wilds, NSU, 3100 E. New Orleans, BALA, Broken Arrow, OK 74014, wilds@nsuok.edu fax: (918) 449-6571 or Trent Baggett, District Attorney's Council, 421 NW 13th, Ste, 290, OKC, OK, 73102, Trent.Baggett@dac.state.ok.us, fax: (405) 264-5099.

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On the Road to Durant Again

OBA Solo & Small Firm Conference 2013 and YLD Midyear Meeting

By Jim Calloway



It is time to get on the road again and meet up with some friends for the 2013 OBA Solo & Small Firm Conference, set for June 20-22. The Choctaw Casino Resort in Durant will again be our location. It should be another great event. Those who attended last year know it is a truly superb venue.

There will be lots of fun and serious topics to cover. One focus this year will be giving solo and small firm lawyers more tools to protect their clients in case of their death or disability. This is not the most pleasant topic to think about, but it is a critical part of a lawyer's responsibility to the client. OBA Ethics Counsel Travis Pickens and Oklahoma City attorney Jim Slayton will handle this session.

"Some Ethical Considerations for Advocacy" will be our legal ethics presentation from Oklahoma Supreme Court Vice Chief Justice John F. Reif.

"The Wind Comes Sweeping through the Oil Patch: Energy Law and the Small Firm" will be a topic covered

by a panel discussion in a plenary session. This will help you with the latest information to help clients who come in with a proposed oil, gas or wind power lease in their hands.

Legal technology issues will be addressed by our special guest Debbie Foster, managing partner of Affinity Consulting's Tampa Bay office and a former chair of ABA TECHSHOW®. She will be joined by me and Oklahoma lawyer Jeffrey Taylor for our traditional opening "50 Hot Tips in 50 Minutes." Mr. Taylor has gained a lot of notice for his Droid Lawyer™ blog

and will be fresh back from his first presentations at ABA TECHSHOW®. Ms. Foster will give an important presentation for today's lawyer – "The Paperless Office Redefined." She will also teach "Practice Management: Traditional or Cloud?"

We have a great lineup of substantive law updates for the solo and small firm lawyer including "A Cornucopia of Criminal Law" with Assistant U.S. Attorney Robert Don Gifford, "Family Law Update" with Tulsa lawyer Kim Hays and "Liens, Liens,



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Liens: From Attorney's Liens, to Materialman's Liens" with Collin R. Walke.

There will also likely be a big audience for "A Simple DUI or Malpractice Waiting to Happen?" with Bruce Edge of Tulsa and John Hunsucker of Oklahoma City.

You may not have thought much about the UCC since law school, but there are many recent changes in this area, so you may want to sit in on "Secured Transactions for the General Practitioner" with J. Mark Lovelace.

Other topics like drug testing and marketing your law practice will also be covered at the conference.

YLD MIDYEAR MEETING

The Young Lawyers Division Midyear meeting takes place in conjunction with the conference and our YLD feature presentation is "An Everyday Approach to Solo/Small Firm Practice" by LeAnne McGill, Edmond; Kaleb Hennigh, Enid; Jennifer Castillo, Oklahoma City; and Bryon J. Will, Oklahoma City.

Many lawyers are seeing increased use of mediation. "Leveling the Playing Field for the Solo and Small Firm Lawyer Through Mediation" will be presented by Gil Steidley of McAlester and retired District Judge Rick Branam of Coalgate.



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"How Long Has It Been? Preparing for Trial" will be the topic covered by Oklahoma County District Judge Barbara Swinton.

Of course, we will have fun activities for your small children to keep them safe and occupied as you attend class. Solo & Small Firm Conference registration includes meals

and evening events. There is a goodie bag with interesting gifts for attendees. There are lots of door prizes.

We hope to see you at the OBA Solo & Small Firm Conference. The early bird deadline to register is June 6. Use the printed form or register online at www.okbar.org/s/solo.

Hotel reservations can be made by calling 800-788-2464 and referring to the Oklahoma Bar Association and/or Block Code 1306OBAOKL.

Mr. Calloway is director of the OBA Management Assistance Program.

Solo Kids Camp 2013

Make the OBA Solo & Small Firm Conference a family vacation! Kids will enjoy activities designed just for them while you attend conference programming.

Friday, June 21

Friday will find us exploring the Choctaw Nation's history and traditions. It will include an outdoor nature hunt, literature and crafts. We will have a movie and outside games as well.

Saturday, June 22

Put on your camp shirt and walking shoes for a full-day fieldtrip of discovery inside the Chickasaw territory in Sulphur. First, we will tour the Bedrè Chocolate Factory. After our tour, we will then travel to the Chickasaw Cultural Center to explore the Chickasaw history and traditions with hands-on activities: dancing, singing, crafting, planting and weaving.

Note: Adults are welcome to accompany us on Saturday's field trip for an additional charge of \$20.

More details about Kids Camp will be provided following conference registration.



OBA SOLO & SMALL FIRM CONFERENCE

JUNE 20-22 2013 • CHOCTAW CASINO RESORT • DURANT, OK

DAY 1 • Thursday June 20

6 -
8:30 p.m.

Welcome Dinner • Center Stage

DAY 2 • Friday June 21

8:25 a.m.

Welcome

Jim Stuart, OBA President

8:30 –
9:20 a.m.

50 Hot Tips in 50 Minutes

Jim Calloway, Debbie Foster
& Jeffery Taylor

9:20 a.m.

Break

9:30 –
10:20 a.m.

Planning Ahead: Protecting Your Client's Interests in the Event of Your Disability or Death

Travis Pickens & Jim Slayton

10:20 a.m.

Break

10:30 -
11:45 a.m.

The Paperless Office Redefined

Debbie Foster

11:45 a.m. -
12:45 p.m.

LUNCH BUFFET *(Included in Seminar Registration Fee)*

12:45 -
1:45 p.m.

**An Everyday Approach to
Solo/Small Firm Practice
(YLD Feature Presentation)**

LeAnne McGill, Kaleb Hennigh,
Jennifer Castillo & Bryon J. Will

A Cornucopia of Criminal Law

Robert Don Gifford

**How Is Your Practice Affected
by Domestic Violence? Best
Practice to Protect Your Clients
and Yourself**

Gail Strickland & Susan Krug

1:45 p.m.

Break

2 -
3 p.m.

**Practice Management:
Traditional or Cloud?**

Debbie Foster

**Secured Transactions for the
General Practitioner**

J. Mark Lovelace

**Drug Testing:
The Inside Story**

Justin Humphrey

Approved for 12 hours MCLE / 1 Ethics

DAY 3 • Saturday June 22

8:25 a.m.	Welcome John Morris Williams, OBA Executive Director		
8:30 – 9:20 a.m.	The Wind Comes Sweeping through the Oil Patch: Energy Law and the Small Firm Lawyer Jim Stuart, Daniel Sprouse & Shannon Ferrell		
9:20 a.m.	Break		
9:30 – 10:20 a.m.	Some Ethical Considerations for Advocacy Hon. John F. Reif – Vice Chief Justice, Oklahoma Supreme Court		
10:20 - 10:45 a.m.	Break (Hotel check out)		
10:45 - 11:35 a.m.	Marketing Your Practice Debbie Foster	A Simple DUI or Malpractice Waiting to Happen? Bruce Edge & John Hunsucker	
11:35 a.m.	LUNCH <i>(Included in Seminar Registration Fee)</i>		
12:30 – 1:20 p.m.	Are you a Droid or iOS Lawyer? iPhones & iPads Jim Calloway	Are you a Droid or iOS Lawyer? Droid Phones & Tablets Jeffery Taylor	How Long Has It Been? Preparing for Trial Judge Barbara Swinton
1:20 p.m.	Break		
1:30 - 2:20 p.m.	Family Law Update Kim Hays	Liens, Liens, Liens: From Attorney's Liens to Materialman's Liens Collin R. Walke	Leveling the Playing Field for the Solo and Small Firm Lawyer Through Mediation Gil Steidley & Rick Branam
2:20 p.m.	Break		
2:30 - 3:30 p.m.	What's Hot & What's Not in Running Your Law Practice Jim Calloway, Debbie Foster & Jeffery Taylor		





2013 OBA SOLO & SMALL FIRM CONFERENCE & YLD MIDYEAR MEETING

CHOCTAW CASINO RESORT, DURANT, OK

JUNE 20-22, 2013

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No discounts. Cancellations will be accepted at anytime on or before June 6, 2013 for a full refund; a \$50 fee will be charged for cancellations made on or after **June 7, 2013. No refunds after June 12, 2013. Call 1-(800) 788-2464 for hotel reservations.**

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

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Oklahoma Justice Commission Issues Final Report, Adjourns

Full report available at www.okbar.org/s/finalreport

After a two-year review of the justice system in Oklahoma that included everything from DNA and false confessions to eyewitness identification and the use of informants, the Oklahoma Justice Commission (OJC) has released its final report and recommendations.

The commission was established by the OBA in September 2010 to “enhance the reliability and accuracy” of convictions in Oklahoma. Led by former Oklahoma Attorney General Drew Edmondson, the group included law enforcement officers, defense attorneys, prosecutors, members of the judiciary and victim advocates.

“For two years, this diverse group of individuals dedicated themselves to the study and betterment of our justice system,” Mr. Edmondson said. “I am proud of their service, and if enacted, I believe the recommendations issued will ensure that justice is more efficiently and accurately rendered.”

According to the report, members of the commission first reviewed cases where wrongful convictions occurred. Based on that initial study, the commission identified five broad areas of inquiry for further review including false confessions; eyewitness identifications; forensic evidence, including DNA; general criminal procedure, including the use of informants; and victim and family rights.

“We were surprised to find that 27 percent of the 301 wrongful convictions we studied involved false confessions that were made by suspects during investigation of the crimes,” Mr. Edmondson said. “Those were the kinds of things we’ve attempted to redress — instances



Oklahoma Justice Commission Chair Drew Edmondson speaks during a press conference in March announcing the commission’s findings.

where a common factor existed and practical ways to prevent future error.”

The commission’s final report includes the recommendation that future confessions be videotaped as the technology and circumstances allow.

“This practice protects law enforcement by preventing allegations of coercion and preserving the subtle details of a suspect’s behavior for investigative and prosecutorial purposes,” Edmondson said. “The commission recognizes this practice may not always be feasible, but we believe it should be standard practice when possible.”

The commission also recommended new procedures for police line-ups and photo identification. The report expresses support for the Office of the Chief Medical Examiner in its

efforts to regain national accreditation, obtain new facilities and secure additional pathologists in order to reach that standard.

"The commission reviewed instances where DNA evidence proved faulty and found that of the cases studied, only one instance occurred in an accredited laboratory," Mr. Edmondson said. "This clear correlation underscores the importance of the work done by the medical examiner's office, and it is in the public's interest that they be given the resources and facilities they need to conduct their work."

The commission also noted that Oklahoma is currently the only state in the U.S. that does not have a post-conviction DNA testing law and proposed legislation to allow access to DNA in cases where additional testing could establish innocence.

Legislation to remedy that fact has been proposed this year by State Rep. Lee Denney, R-Cushing, who is also a member of the justice commission.

"When a person's life and liberty are at stake, we have a duty to be as thorough and exacting

as possible to ensure that we are not sending an innocent person to prison," Rep. Denney said. "Currently, Oklahoma is the only state in the union that does not have a post-conviction DNA testing process in place. This legislation creates that process, and it enhances the credibility of our justice system."

"The members of the commission recognize that the incarceration of an innocent person is an injustice, not only to the wrongfully convicted, but to society as a whole as the real perpetrator remains at large," Mr. Edmondson said. "The recommendations made in this report were based on thoughtful research and discussion. I am grateful to my fellow committee members and their undertaking of such a serious task, and I appreciate the Oklahoma Bar Association's work in facilitating the study of these issues."

The commission dedicated the report and its recommendations to the late Professor J. William Conger, a commission member who died Jan. 1. The report is available at www.okbar.org/s/report.

Oklahoma Justice Commission Membership

Chair Drew Edmondson,
Oklahoma City

Dwight Adams, forensic specialist,
Edmond

Judge Thomas Alford, Muskogee

Secretary Carrie Bullard,
Oklahoma City

2012 OBA President

Cathy Christensen, Oklahoma City

Police Chief Bill City, Oklahoma City

John Claro, legal scholar,
Oklahoma City

Lee Cohlmlia, District Attorneys Council, Oklahoma City

The late J. William Conger, OCU School of Law

Rep. Lee Denney, Cushing

Tim Dorsey, police, Edmond

Andrea Hamor Edmondson, victims' advocate,
Oklahoma City

Steve Emmons, CLEET representative, Ada

Chad Farmer, police, Muskogee

OSBI Director Stan Florence, Oklahoma City

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Sen. Constance N. Johnson, Oklahoma City

Mack Martin, defense attorney, Oklahoma City

Stewart Meyers, member of the public, Oklahoma City



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Bob Ravitz, public defender, Oklahoma City

Judge Clancy Smith, Oklahoma Court of Criminal
Appeals, Oklahoma City

Custer County District Attorney Dennis Smith, Arapaho

Joshua Snavelly, member of the public, Edmond

Jackie Steyn, victims' advocate, Oklahoma City

Retired Judge Reta Strubhar, Oklahoma Court of
Criminal Appeals, Yukon

Andrea Swiech, OSBI, Oklahoma City

Rogers County Sheriff Scott Walton, Claremore

Oklahoma County Sheriff John Whetsel

Vonda Wilkins, defense attorney, Guymon

Sue Wycoff, former defense attorney, Norman

John Yoeckel, member of the public, Oklahoma City

Committee Continues Monitoring Legislation

By Duchess Bartmess

The 2013 Oklahoma Legislative Session is in full swing. The deadline for measures to be reported out of committee for action on the floor of the house of origin — and the deadline for measures being reported out of the house of origin — have both passed.

As a result, a number of the bills and joint resolutions that were designated to be reviewed and tracked by the Legislative Monitoring Committee through the legislative process are no longer considered on active status. However, there still are plenty of active measures left that the committee's subcommittees will continue to watch and review.

The following is the list of the LMC subcommittees with most of the legislative measures on general order in the house of origin at the time this report was prepared. All measures that are passed by the full house of origin are still subject to amendment as they pass through the opposite house.

CHILDREN AND FAMILY LAW SUBCOMMITTEE

HB 1033 — permitting inspection of certain court records by attorney representing parent

HB 1118 — creating the Oklahoma Truth in Adoption Act

HB 1228 — requiring state commissioner of health to publish certain data

HB 1259 — Demarion's Law; requiring insurance or self-insurance coverage of child care facilities



HB 1373 — creating the Alimony Guidelines Task Force

HB 1384 — creating the Parents' Bill of Rights

HB 1789 — requiring payment of full foster care rate and other benefits for kinship foster care

HB 2099 — creating the Children with Disabilities Comprehensive Systems of Service

HB 2130 — clarifying juvenile detention requirements and case transfer procedure

HJR 1023 — clarifying juvenile detention requirements and case transfer procedure

SB 200 — creating the Comp-Source Mutual Insurance Company Act

SB 521 — directing DHS to develop and implement workforce improvement program

SB 671 — expanding definition of persons responsible for a child's health and safety

SB 679 — modifying provisions of Children and Juvenile Code

SB 1040 — clarifying certain jurisdiction regarding child support orders

CIVIL LAW AND PROCEDURE SUBCOMMITTEE

HB 1374 — providing for notice by publication when certain person cannot be located

SB 484 — jury duty; increasing certain time period

SB 951 — declaring certain rulings and contracts void and unenforceable

COMMERCIAL LAW, BUSINESS ENTITIES, CONTRACTS AND INSURANCE SUBCOMMITTEE

HB 1672 — creating the Continuity of Care Act of 2013

HB 1767 — title insurance or certificate of title; countersign modification

HB 1792 — creating the Oklahoma Temporary Motorist Liability Plan

HB 1995 — amending various provisions of the Oklahoma General Corporation Act

HB 2057 — debit cards; disclosure of fees and interest; information reporting; disclosure

HB 2208 — allowing insurance proceeds benefits to be assignable; release of proceeds

SB 173 — firearms, making certain decisions about carrying certain weapons immune

SB 582 — service liens on personal property; modifying certain notice and procedural requirements

SB 594 — Oklahoma General Corporation Act; modifying requirements for division into certain classes

SB 991 — prohibiting stacking of certain insurance policies

SB 1043 — providing certain protections to members and managers of limited liability comp

SB 1058 — authorizing debtor or creditor to initiate refund or credit

Note: As of March 10, Gov. Fallin has signed one bill, HB 1646, which amends Section 1027 of Title 18 of the Oklahoma Statutes, by deleting paragraphs 2, 3 and 4 of subsection D regarding classes of voting stock in domestic corporations.

CONSTITUTIONAL LAW SUBCOMMITTEE

HJR1006 — guaranteeing the right to engage in certain farming and ranching practices

HJR1007 — modifying provisions to certain activity for legislators with exceptions

HJR1011 — expenditure limitations

HJR1023 — re-establishing the Oklahoma Juvenile Justice Reform Committee

HJR1024 — modifying date for organizational day of the Legislature

HJR1026 — clarifying manner in which citizens may keep and bear arms

HJR1032 — manufacturing facilities ad valorem exemption

HJR1033 — State Capitol bonds

HJR1034 — modifying provisions related to certain activity of legislators

HJR1041 — authorizing the sale of certain beer, wine and spirit accessories

SJR10 — placing limit on total state indebtedness

SJR16 — modifying provision related to personal property tax exemption

SJR17 — renaming ABLE Commission as Oklahoma Commission on Alcohol and Drug Enforcement

SJR21 — modifying appointment procedure; requiring Senate confirmation

SJR22 — modifying certain appointment procedure for chief justice

SJR24 — limiting term of service for certain justices and judges

SJR33 — providing that certain provision not be construed to prohibit certain military personnel

COURTS, JUDICIARY AND ATTORNEYS SUBCOMMITTEE

HB 1242 — authorizing district court judges to carry firearms

HB 1644 — relating to legal representation of the executive branch

SB 484 — increasing certain time period regarding jury duty

SB1041 — prohibiting sealing of records without specified authority

SJR 22 — modifying certain appointment procedure for chief justice

SJR 24 — limiting term of service for certain justices and judges

CRIMINAL LAW AND PROCEDURE SUBCOMMITTEE

HB 1088 — repealing Sections 901, 902 and 903 of Title 21 — blasphemy

HB 1243 — updating description of handgun license

HB 1250 — authorizing courts to order use of Global Positioning System (GPS) monitoring

HB 1277 — modifying mandatory and temporary preclusions for handgun licenses

HB 1293 — authorizing court to enter certain order regarding driving privileges

HB 1328 — sentencing powers of the court and supervision fees; payment of fee

HB 1336 — Elderly and Incapacitated Victim's Protection Program; modifying penalties

HB 1413 — authorizing armed private investigators to openly carry a firearm

HB 1462 — providing for 10-year registration certificates

HB 1558 — Bus Passenger Safety Act; modifying exception to certain prohibited act

HB 1722 — providing application requirements for reprieves, commutations and pardons

HB 1723 — allowing municipal judges to carry firearms in courtrooms

HB 1838 — modifying expungement category

HB 1847 — authorization to declare convenience stores selling drug paraphernalia as nuisance

HB 1889 — limits on contributions to candidates; political parties to be treated as separate entities

HB 1912 — changing applicability of certain protective order requirements

HB 2071 — carrying firearms in certain places; deleting certain prohibitions

HB 2182 — authorizing clerk to provide records in electronic format

HB 2221 — modifying definition of concealed handgun

SB 618 — requiring certain persons to submit to DNA testing; clarifying requirements for use

SB 708 — making it unlawful to cut or damage fence

SB 984 — deferred prosecution agreements; modifying requirements for certain agreements

SB1038 — modifying procedures related to District Attorney supervision

EDUCATION — COMMON AND HIGHER SUBCOMMITTEE

HB 1531 — directing the State Board of Education to adopt a certain school grading scale

HB 2228 — creating the Protection Against Pedophiles Act

HB 2279 — creating the Health Education for Middle Schools Act of 2013

SB 230 — modifying employment actions and procedures for school support personnel

SB 361 — modifying attorney involvement in due process hearings of school employees

ENERGY, OIL, GAS, MINERALS, ENVIRONMENT & NATURAL RESOURCES SUBCOMMITTEE

HB 1525 — Petroleum Storage Tank Release Indemnity Fund

HB 1937 — creating the Oklahoma Brine Recycling Act

HJR 1006 — guaranteeing the right to engage in certain farming and ranching practices

SB 220 increase in Scenic Rivers Commission power [title stricken]

GENERAL GOVERNMENT — LOCAL & STATE SUBCOMMITTEE

HB 1336 — Elderly and Incapacitated Victim's Protection Program; modifying penalties

HB 1415 — creating the Modernization of Agency Creation Process and Sunrise Act

HB 1450 — creating the Modernization of Oklahoma Open Records Act

HB 1454 — information regarding tax credits; time period for information and disclosure

HB 1455 — creating the Streamlining and Savings Act of 2013

HB 1489 — creating the Modernization of Self-Defense Act Application Process of 2013

HB 1492 — requiring elections be held on certain date

HB 1499 — limiting exemptions for Government Business Licensing One-Stop Program

HB 1887 — changing election dates for members of the board of education

HB 1913 — modifying various provisions of the Administrative Procedures Act

HB 1914 — creating the Public Agency Fee Moratorium Justification and Disclosure Act of 2013

HB 1930 — modifying approval of emergency rules

HB 2161 — providing exception to certain confidentiality restriction

HB 2200 — permitting the state or its agencies to contract with a collection agency

SB 594 — General Corporation Act; modifying requirements for division into certain classes

PUBLIC HEALTH, SAFETY & WELFARE SUBCOMMITTEE

HB 1021 — preventing enforcement of certain federal health care acts;

HB 1260 — which relates to the Uniform Controlled Dangerous Substances Act; modifying scope of certain definition

HB 1418 — creating the Josephine Meade Anti-Hunger Act

HB 1491 — State Department of Health shall allow individuals to request birth and death certificates through the web

SB 217 — State Department of Health shall allow individuals to request birth and death certificates through the web [title stricken]

SB 618 — requiring certain persons to submit to DNA testing; clarifying requirements for use

SB1030 — victim impact panel programs; establishing requirements for certain programs

REAL PROPERTY, LANDLORD & TENANT SUBCOMMITTEE

HB1767 — title insurance or certificate of title; countersign modification

SB 708 — making it unlawful to cut or damage fence

REVENUE & TAX SUBCOMMITTEE

HB 1252 — creating the Task Force on Management of Federal Funds; subject to Open Meeting Act

HB 1316 — providing for donation option on income tax return

HB 1363 — sales tax; definitions; use tax

HB 1393 — remittance of sales tax

HB 1625 — sales tax exemptions; gross receipts relating to core charges

HB1716 — repealer of Oklahoma Franchise Tax Code

HB 1918 — taxable income; deduction; penalties; Patient Protection and Affordable Care Act

HB 1919 — income tax deduction; foster children

SJR 16 — modifying provision related to personal property tax exemption

TRANSPORTATION & MOTOR VEHICLES SUBCOMMITTEE

HB 1516 — authorizing the Department of Public Safety to issue provisional driver licenses

HB 1839 — requiring criminal history background checks for certain persons

SB 582 — service liens on personal property; modifying notice and procedural requirements

SB 583 — motor vehicle liens; modifying notice and procedural requirements

WORKERS' COMPENSATION SUBCOMMITTEE

HB 1258 — providing insurance carriers with options for payment of indemnity benefits

HB 1299 — workers' compensation; modifying exemption

HB 2054 — workers' compensation; modifying noncompensable injury

HB 2201 — creating the CompSource Mutual Insurance Company Act

For more detailed information go to the OBA website at www.okbar.org/s/billsummaries.

OBA BILLS

The OBA legislative agenda contained five bills, which were passed by the House of Delegates. Association bylaws restrict the legislative agenda to include bills that have a narrow focus on the practice of law and the courts.

Of those five bills only one is still alive, and it is:

HB1086 — an act relating to civil procedure; amending 12 O.S. 2011, Section 2502, which relates to attorney-client privilege; modifying term; and providing an effective date.

Ms. Bartmess practices in Oklahoma City and chairs the Legislative Monitoring Committee. She may be reached at duchessb@swbell.net.

Antipasto

By John Morris Williams

Antipasto is the course before a meal. It can be interpreted to mean “before the meal.” This month’s edition is dedicated to technology. While antipasto and technology seem a strange pairing, there is a message here somewhere. I consider the active use of our systems as the meal and antipasto all the wisdom, testing, installation, consulting, reading and inquiries necessary to create, maintain and operate technology.

Technology is wonderful, frustrating, often expensive — and sometimes a complete failure. Before one leaps off into the world of thinking that technology can solve or resolve all matters, a second look might be recommended. A bit of antipasto or taking in the course before the purchase is highly recommended.

One of the great resources we have here at the OBA is Management Assistance Program Director Jim Calloway. Jim has chaired the ABA TECHSHOW and is a nationally recognized speaker. Before you make a big technology decision, especially in areas like billing, trust accounting and timekeeping, you might want to talk to Jim.

As I have earlier reported, the OBA is in the middle of some major technology



updates. This has been a three-year planning process. We had a task force and our Bar Association Technology Committee has worked long and hard to help in the selection process. It is the antipasto phase that is critical to good results.

One of the other things about the antipasto phase is the decision to go on to pasta or stop. Technology is expensive and emerging in many areas. The iPad was thought a year ago to be the end all. Now there are competitors bringing out new products and prevailing wisdom suggests that we might see the iPad go the way of the BlackBerry. I am not making a comment or recommendation, just noting that fads have become a big part of technology selection. Sometimes it is good to

stay with something that is working and realize the risks and benefits of not changing or upgrading. Most attorneys are dealing primarily with data. As long as you have good backup, regardless of the age of the data and the software, you should be at low risk of losing anything.

Recently I upgraded my personal accounting and income-tracking software. I will not mention the product name here. However, I will say the new version requires conversion of existing data from the old version. The upgrade scrambled years of data. Fortunately, I had a backup. However, the new version erased my old version and left me with a mess. I know a number of attorneys that use this software and am fearful of the update negatively impacting trust accounting. In short, before you buy or update — do your research. Do the antipasto phase. When it comes to technology that touches your

confidential files and your trust accounting, the anti-pasto phase can save you from ethical violations and countless hours of wasted time reconstructing your files and software. A backup is not fool-proof in how it reloads onto your system. Corrupt data that is backed up will be corrupt data when it is reloaded. Thus, from time to time you should test your backups. Backup testing is a very important part of the antipasto process.


I cannot overstate that technology as a tool is helpful;

however, skipping the antipasto phase and not using due diligence in product selection can have expensive and hazardous results. I can remember too many times thinking if I had a typewriter the thing that just took me an hour would have taken 10 minutes. Mainly, it was because I did not know how to properly utilize the system or had picked the wrong product to use. Poor training, poor product selection and using technology to perform tasks that it was not intended for are major causes of lost time and productivity.

Before you dine on new products and systems, do some antipasto, and it could save you some major heartburn!



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




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Morals from the Professional Responsibility Commission's Annual Report

By *Travis Pickens*

The Office of General Counsel recently compiled and filed the Professional Responsibility Commission Annual Report. The best news in the report is that, overall, the number of grievances filed is down from the last year. From 2011 to 2012, complaints went from 1,214 against 999 lawyers to 1,149 complaints against 891 lawyers. This is especially heartening since the number of lawyers increases significantly twice a year when the law school graduates are sworn in — from a total of 16,955 attorneys in 2011 to 17,232 in 2012.

Several factors are hopefully working to improve ethics performance among Oklahoma lawyers. Beyond timely and consistent enforcement of the rules, there are other positive morals that can be gleaned from the report.

The first moral is that efforts to present more and better education and heighten ethics awareness may be working. General Counsel Gina Hendryx, members of the Professional Responsibility Commission and I make over 90 presentations each year — specifically on ethics and the Rules of Professional Conduct — to county bar associations, prac-

tice groups, groups of legal assistants, continuing education seminars, law school classes, inns of court and other law-related gatherings. That does not include the presentations made each year by the OBA's Management Assistance Program Director Jim Calloway, who averages over 30 presentations a year. These presentations relating to law office management and client service directly address many issues that enhance ethics compliance by lawyers. Jim Calloway also conducts on-site law office evaluations and makes specific recommendations to law firms.

The Diversion Classes presented by my office and the Management Assistance Program as originated by our Professional Responsibility Commission are also part of the efforts to increase ethics education. There are currently five classes offered as part of the OBA's Diversion program:

- Professional Responsibility/Ethics
- Trust Accounting
- Communication and Client Relationship Skills
- Law Office Management

“Several factors are hopefully working to improve ethics performance among Oklahoma lawyers.”

- Professionalism in the Practice of Law

One unsung factor in the report that I believe contributes mightily to fewer ethics issues is the increased utilization of resources offered through Lawyers Helping Lawyers. It is well established that alcohol and substance abuse, mental and emotional issues are often contributing factors to ethical violations committed by lawyers. The Lawyers Helping Lawyers Foundation garnered its initial funding last year due to the generosity of several lawyers and firms. Impacted lawyers are beginning to ask for and get help for intensive therapy or evaluations, beyond the six counseling sessions every OBA member is entitled to. Increasing the money avail-

able through the LHL Foundation to help lawyers must be a permanent priority. Often, the lawyers in trouble have put themselves in financial positions that delay indefinitely or preclude the appropriate help and support they need.

Finally, Oklahoma law schools are increasingly responding to the reality that many graduates will be practicing as solos or within a loose association upon graduation and may not have institutional supervisors and mentors. Practical skills classes and workshops are in place or are being developed that will educate students and help equip them to meet these demands. Jim Calloway's annual "Opening Your Law Practice" seminar offered free to new lawyers is also helping to start lawyers off right.

ETHICS 20/20 UPDATE

Every state but California bases its Rules of Professional Conduct upon the ABA Model Rules of Professional Conduct. There are state-specific differences of course, but essentially, the model rules provide the

template from which 49 states work in fashioning their own rules. Therefore, when there is a change or addition to the model rules, it is likely that change, or something similar, will bubble up for consideration by each state and ultimately adoption.

Ethics 20/20 was a three-year study of how globalization and technology are transforming the practice of law and how the regulation of lawyers should be updated in light of these developments. The Commission on Ethics 20/20 made several resolutions and reports to the ABA House of Delegates meetings in August 2012 and February 2013.

At the ABA meeting in Chicago in August 2012, the commission proposed — and the house adopted — several resolutions. The resolutions addressed a wide range of topics, including confidentiality in a digital age, ethics issues arising from new forms of advertising, outsourcing, and issues relating to lawyer mobility.

Since August, the commission has focused on several specific ethics-related issues arising out of globalization. At the February 2013 ABA meeting in Dallas, the commission submitted, and the house adopted, resolutions that pertained to limited practice authority for foreign in-house counsel, and choice of rule provisions relating to the disciplinary rules of a particular jurisdiction to be applied. There were also recommendations pertaining to rules outside the Rules of Professional Conduct, but that relate in some way to these areas.

These changes are not in place in Oklahoma, but be watching. They will undoubtedly be considered sometime soon. For details of the model rule changes passed in Chicago and Dallas, go to www.americanbar.org.

Mr. Pickens is ethics counsel for the OBA. Have an ethics question? It's a member benefit and all inquiries are confidential. Contact Mr. Pickens at travis@okbar.org or 405-416-7055; 800-522-8065.



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**LAWYERS HELPING LAWYERS
DISCUSSION GROUP**



Meeting Summaries

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, Jan. 11, 2013.

REPORT OF THE PRESIDENT

President Stuart reported he attended the December Board of Governors meeting followed by the luncheon at Justice Kauger's home, Pottawatomie County Bar Association meeting, Southern Conference of Bar Presidents planning session, services for Past President Bill Conger and swearing in of Chief Justice Tom Colbert. He also worked on Board of Governors swearing-in arrangements, gave a luncheon presentation at the Garfield County Bar Association meeting and worked on the budget and various 2013 president transition issues.

REPORT OF THE PRESIDENT-ELECT

President-Elect DeMoss reported she attended the December Board of Governors meeting, board holiday event, luncheon at Justice Kauger's home, swearing in of Chief Justice Colbert and swearing in of President Stuart and others. She had done site visits for the 2014 Annual Meeting location and has been involved in planning for the Litigation Section and Diversity Committee.

REPORT OF THE VICE PRESIDENT

Vice President Caudle reported he attended the

December board meeting, new board member orientation, luncheon at Justice Kauger's house, memorial service for Bill Conger and Comanche County Bar Association CLE with Professor Spector. He reviewed the Board of Editors packet of proposed articles for future OBA bar journals, worked on President Stuart's 2013 theme of "Lawyers Giving Back" and contacted the Communications Committee chair regarding the next 2013 meeting and agenda.

REPORT OF THE PAST PRESIDENT

Past President Christensen reported she attended the December Board of Governors meeting, December luncheon at Justice Kauger's home, Law-related Education Committee meeting and subcommittee meeting, memorial service for Past President J. William "Bill" Conger, swearing in of Supreme Court Chief Justice Colbert and planning session for upcoming Southern Conference of Bar Presidents meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the Board of Governors holiday event, December board meeting, December YLD meeting, OBA directors meeting, memorial service for Past President J. William "Bill" Conger, swearing in of Chief Justice Colbert, Southern Conference of Bar Presidents planning meeting,

and swearing in of OBA President Stuart and other officers and governors. He submitted all planning information for the SCBP meeting and reception at the ABA midyear meeting, preliminary information for the board retreat in February and bill request for the 2013 legislative session. He prepared for Legislative Reading Day and prepared the speakers list for OBA Day at the Capitol.

BOARD MEMBER REPORTS

Governor Coogan reported she attended the December Board of Governors meeting. **Governor Gifford** reported he chaired the Military and Veterans Law Section meeting and attended the Military Assistance Committee meeting, memorial service for Past OBA President Bill Conger, swearing in of Chief Justice Colbert, and the Cleveland County Bar Association Christmas party. In addition, he spoke to the Iowa Nation's tribal child support services and court staff, as well as gave a presentation to the soldiers of the 95th Division on the law of armed conflict. **Governor Hays** reported she attended the December Board of Governors meeting and Christmas party, December luncheon at Justice Kauger's home, OBA Family Law Section CLE planning meeting and Tulsa County Bar Association Family Law Section meeting. She communicated with the OBA Communications Committee and Law Day Committee. **Governor**

Meyers reported he attended the board Christmas party, December board meeting and luncheon at Justice Kauger's home. **Governor Pappas** reported she attended the December board meeting and Christmas party in addition to the December luncheon at Justice Kauger's house. **Governor Parrott** reported she attended the Board of Governors Christmas party, December board meeting, luncheon at Justice Kauger's home, Oklahoma County Bar Association board meeting and the memorial service for Bill Conger. **Governor Smith** reported he attended the board's Christmas party, December board meeting and retirement party for Judge Carl Robinson. **Governor Stevens** reported he attended the December board meeting, memorial service for Past President J. William "Bill" Conger, swearing in of Chief Justice Colbert and January Cleveland County Bar Association meeting. **Governor Thomas** reported she attended the board's holiday event, December board meeting, luncheon at Justice Kauger's home and swearing in ceremony of OBA President Stuart and other new officers and governors.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Vorndran reported he attended the December Board of Governors meeting, luncheon at Justice Kauger's home, December YLD meeting and Pottawatomie County Bar Association meeting.

SUPREME COURT LIAISON REPORT

Justice Kauger reported the Supreme Court is looking at the OBA's 2013 budget and has appointed a committee.

COMMITTEE LIAISON REPORTS

Governor Hays reported the Law Day Committee continues to work on the Ask A Lawyer TV show, and they are exploring the idea of working together with the Law-related Education Committee to offer teachers lesson plans on track with the annual Law Day theme. She said the Solo & Small Firm Conference Planning Committee will be holding its first meeting of the year soon.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx briefed board members on non-disciplinary matters involving the OBA. She reported there are three active cases against the OBA, which she believes have no merit. A written status report of the Professional Responsibility Commission and OBA disciplinary matters for December 2012 was submitted for the board's review.

DOMESTIC VIOLENCE FATALITY REVIEW BOARD ANNUAL REPORT

Executive Director Williams said OBA member Gail Stricklin, who is the OBA's representative on the review board, submitted the board's report that shows in 2011, 114 people died in Oklahoma as a result of domestic violence. The report provides more details and was submitted to the Board of Governors as background material for their information.

OKLAHOMA BAR JOURNAL PROJECT

Board of Editors Chair Melissa DeLacerda asked each board member to write a short article for the November 2013

issue of the bar journal, which will focus on President Stuart's emphasis for the year — lawyers who give back to their communities. The task is to identify a lawyer in their district who is an unsung hero. Board members were asked to interview the lawyer and others who work with the lawyer in their volunteer role. It was noted this is the first time for this type of story in the bar journal. Guidelines and tips for writing the piece were provided. The submission deadline is May 1, 2013. President Stuart asked board members to notify Ms. DeLacerda whom they are writing about.

The Oklahoma Bar Association Board of Governors met for a special meeting at the Oklahoma Bar Center in Oklahoma City on Tuesday, Jan. 29, 2013.

It was determined a quorum was present, and President Stuart thanked board members for their extra effort to attend this special meeting.

EXECUTIVE SESSION

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

2013 OBA BUDGET

Board members voted to approve the OBA's budget as amended.

NEXT MEETING

The Board of Governors met at Post Oak Lodge in Tulsa on Feb. 22, 2013. A summary of those actions will be published after the minutes are approved. The next board meeting will be held at 1:30 p.m. on Friday, April 19, 2013, at the Oklahoma Bar Center in Oklahoma City.



You mean we aren't friends on Facebook?

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Save the Date

Day of Service

Sept. 20 and 21

County Bars are urged to plan community service projects
in their areas for these dates. More details coming soon!



OBF Launches New Website

By Susan Shields

The Oklahoma Bar Foundation recently updated its website, taking the OBF and its mission, “Lawyers Transforming Lives through the Advancement of Education, Citizenship and Justice for All,” into the digital age. Take a look at www.okbarfoundation.org.

For OBF Fellows, OBA members, grantees and members of the public, the site is a resource for information about the OBF grant programs — including the court grant program — and OBF grantees. The site also includes helpful information about setting up a lawyer’s trust account (under the IOLTA tab), making contri-

butions and payment of Fellow dues online, signing up for the OBF affinity credit card and helpful articles and resources about OBF programs and trustees.

This site is the culmination of efforts of the OBF Technology Task Force — led by OBF Chair-Elect and current OBA Vice President Dietmar Caudle, other OBF trustees, OBF Executive Director Nancy Norsworthy, OBF staff and web developer Steve Webb of Left Handed Spider.

When you visit the new site, you will notice some new features. On the upper, right-hand side of the home page,

Use your Smartphone and scan the code to visit the new and improved website



you will see “Make a Contribution,” “Become a Fellow” and “Make Your Fellows Payment” buttons. You can now make a donation to the OBF and pay your Fellows dues online!



Be sure to take a look under the "About OBF" tab at the top of your screen, and go to the "Membership Benefits" section. This includes information about the OBF-sponsored credit card and the *Oklahoma Courthouse Legends* book authored by OBF Fellow and OBA member Kent Frates and photographer David Fitzgerald. A portion of each book sold goes to support the OBF.

I invite you to take a further look at the new and improved OBF website and to bookmark its address in your web browser. While you're at it, bookmark the OBF Facebook page, www.facebook.com/okbarfoundation. Check back often to keep informed about our foundation's grant awards, membership benefits for our Fellows and other important information.

Ms. Shields is OBF president and can be reached at susan.shields@mcafeetaft.com.

OBF OKLAHOMA BAR FOUNDATION

Home | About OBF | Become a Fellow | Grants | Giving to the Foundation | IOLT

Membership Benefits

Through words and photographs, the beautiful *Oklahoma Courthouse Legends* book tells stories about Oklahoma's 77 County Courthouses. Author Kent F. Frates and noted photographer David Fitzgerald have captured Oklahoma's turbulent history involving famous trials, infamous outlaws, courageous lawyers and judges, and other historical characters and events. A portion of the proceeds from website purchases at the above link support Oklahoma Bar Foundation grant programs.

A SMALL WAY TO MAKE A BIG DIFFERENCE:

The Oklahoma Bar Foundation and Oklahoma Bar Association announce a new credit card program exclusively for our members. The new program through UMB Bank, NA offers a competitive interest rate and rewards program.

Be sure to check out the new OBF website
www.okbarfoundation.org

- Learn more about the OBF
- Make a contribution
- Become a Fellow
- Make a Fellows payment
- Learn about membership benefits and more!

and connect with us through facebook!
www.facebook.com/okbarfoundation

- 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 Fellow 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.



OKLAHOMA
BAR FOUNDATION

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 25 different programs or projects during 2012 and 26 in 2011 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)

_____ **My charitable contribution to help offset the
Grant Program Crisis is enclosed**

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!

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YLD Addresses Trends to Aid Young Lawyers

By Joe Vorndran

The landscape of the legal profession is undergoing a significant change and the impact of this change affects us all. According to the National Association of Law Placement (NALP) there has been a steady decline in the employment rate for recent law school graduates since 2008. Within this trend there is also a declining number of lawyers entering private practice and a sharp increase in lawyers working in non law-related jobs, and those choosing to be sole practitioners right out of school.

TRENDS IN OKLAHOMA

As the youngest among us struggle to find their place in the profession, the overall membership is aging rapidly and many are looking for a smooth transition out of practice or into a reduced role. Within the Oklahoma Bar Association 56.4 percent of our membership is over the age of 50 and very few of those solo and small firm practitioners have adequately planned for their retirement.

As I attend Young Lawyers Division events throughout the state, I am struck by the number of young attorneys thirsty for mentorship and with a motivation to work, but without any opportunity to do

so. What is most striking to me is the newfound willingness, and even excitement on the part of young lawyers to venture into smaller and more rural practice settings.

CONNECTING YOUTH AND EXPERIENCE

In response to these trends, the YLD with the support of the Solo & Small Firm Conference Planning Committee and the Board of Governors will be hosting a networking event at this year's Solo & Small Firm Conference. The event should serve a broad base; young lawyers seeking advice, mentorship and opportunity, as well as their more experienced counterparts who may be looking for an associate, an office share arrangement or someone to take over their practice.

The hope is that relationships can be formed to assist the newest members of our profession in their quest to become outstanding lawyers and

allow those in the twilight of their practice to share their wisdom. Please spread the word about this event and continue to look to the bar journal for more detailed information as the conference nears.

Mr. Vorndran is YLD chair and practices in Shawnee. He can be reached at joe@scdtlaw.com.

Bar Exam Survival Kit

While the YLD aims to pair young lawyers with experienced ones in 2013, the division also lent its support to February's crop of bar exam test-takers. In an effort to help relieve the anxiety, stress, fatigue and occasional health abnormalities that plague many test-takers, the YLD Board of Directors created and handed out a "Bar Exam Survival Kit" before the test began on Feb. 26, 2013. Items in the kit included: test taking gear (pencil sharpeners, ear plugs, pencils, pens and erasers); stress and mental health management items (antacid and aspirin); and brain catalysts (peppermint, cinnamon candy and gum). Leanne McGill led the committee behind the kits which were very well received by the February examinees.





G. Blaine Schwabe, III



Robert J. Getchell

SOLVING PROBLEMS, MANAGING OPPORTUNITIES

GableGotwals welcomes G. Blaine Schwabe, III and Robert J. Getchell as new Of Counsel attorneys to the Firm.

Blaine is widely-known for his expertise in business litigation, bankruptcy and insolvency law, having guided numerous clients through difficult and complex Chapter 11 cases across a wide range of industries. He understands the intricacies of bankruptcy litigation from both the debtor and creditor perspective, giving him unique insight into these difficult cases. Blaine will be located in the Oklahoma City office.

Having spent almost 20 years as staff attorney and general counsel for abstract and title companies, Bob's experience includes residential, commercial and investment-related real estate transactions. Bob is also an experienced litigator having represented various individual, investment and corporate clients, including some of the country's largest banks, in adversarial matters covering a wide range of real estate matters. Bob will be based in the Tulsa office.

Welcome Blaine and Bob!

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March

- 18 OBA Litigation Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Renée DeMoss 918-595-4800
- OBA Alternative Dispute Resolution Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Michael O'Neil 405-232-2020
- 20 OBA Women In Law Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Kim Hays 918-592-2800
- Ruth Bader Ginsburg American Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Donald Lynn Babb 405-235-1611
- 25 OBA Law Day Contest Awards Ceremony;** 2 p.m.; Oklahoma State Capitol, Oklahoma City; Contact Richard Vreeland 405-360-6631
- 26 OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact David Swank 405-325-5254
- 27 Ruth Bader Ginsburg American Inn of Court masters meeting;** 5:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Donald Lynn Babb 405-235-1611
- 28 OBA Work/Life Balance Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Sara Schumacher 405-752-5565



- 29 OBA Environmental Law Section meeting;** 11 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Jeri Fleming 405-334-6343

April

- 2 OBA Communications Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Dick Pryor 405-740-2944
- OBA Government and Administrative Law Practice Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Tamar Scott 405-561-2635
- 4 OBA Lawyers Helping Lawyers discussion group meeting;** 7 p.m.; Office of Tom Cummings, 701 NW 13th St., Oklahoma City; RSVP to Kim Reber kimreber@cabainc.com
- OBA Lawyers Helping Lawyers discussion group meeting;** 7 p.m.; University of Tulsa College of Law, John Rogers Hall, 3120 E. 4th Pl., Rm. 206, Tulsa; RSVP to Kim Reber kimreber@cabainc.com
- 5 Board of Bar Examiners meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Oklahoma Board of Bar Examiners 405-416-7075
- 10 OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Kara Smith 405-923-8611
- 12 OBA Law-related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Suzanne Heggy 405-556-9612
- OBA Family Law Section meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU-Tulsa, Tulsa; Contact Donelle Ratheal 405-842-6342
- 15 OBA Alternative Dispute Resolution Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Michael O'Neil 405-232-2020
- 16 OBA Civil Procedure and Evidence Code Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact James Milton 918-594-0523

- 17 OBA Clients' Security Fund meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Micheal Salem 405-366-1234
- OBA Women in Law Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Dierdre Dexter 918-584-1600
- 19 OBA Board of Governors meeting;** 1:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-235-7600
- Oklahoma Association of Black Lawyers meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Donna Watson 405-721-7776
- OBA Rules of Professional Conduct Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Paul Middleton 405-231-2622
- 20 OBA Title Exam Standards Committee meeting;** 9 a.m.; Stroud Conference Center, 218 W. Main St., Stroud; Contact Jeff Noble 405-942-4848
- OBA Young Lawyers Division meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Joe Vorndran 405-275-0843
- 23 Board of Bar Examiners Admissions Ceremony;** Oklahoma State Capitol Supreme Courtroom, Oklahoma City; Contact Oklahoma Board of Bar Examiners 405-416-7075

Bench and Bar Committee meeting; 12 p.m. Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Barbara Swinton 405-713-7109

25 Work/Life Balance Committee meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Sara Schumacher 405-752-5565

26 OBA Professional Responsibility Commission meeting; 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Deadra Goss 405-416-7063

Lawyers Helping Lawyers Assistance Program meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact O. Clifton Gooding 405-948-1978



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At Home



At Work



And on the Go

OBA Member Appointed Secretary of State



Lawyer Larry V. Parman of Oklahoma City has been appointed Oklahoma secretary of state by Gov. Mary Fallin. In the post he will serve as a senior advisor to the governor on policy, economic and legislative issues. He began serving March 1.

"Larry Parman is a successful and experienced businessman who knows what it takes to create jobs in this challenging economy," said Gov. Fallin. "He will be a great asset to the state and to my office as we work to develop and implement reforms that improve our business environment and spur private sector growth."

Mr. Parman has served since 1984 as the CEO of Parman & Easterday, an Oklahoma City estate planning, elder law and business planning firm. He has also been a partner in Notch It Up Strategies LLC, a firm that offers marketing and executive development programs to business owners and C-level executives. He also served

as president of The Hawthorn Group, a public affairs firm in Alexandria, Va., and president and CEO of Trencor Inc., an Oklahoma-based financial holding firm.

He has served on the board of directors for a variety of civic and business related institutions, including the Oklahoma Council on Economic Development, the Research Institute for Economic Development and Junior Achievement of Oklahoma City, where he also served as chairman of the board for two terms. He is also a current member of the Missouri Bar and the American Academy of Estate Planning Attorneys. He also served as a captain in the U.S. Army, receiving an honorable discharge in 1978.

He received a bachelor's degree from the University of Missouri-Columbia and his law degree from the University of Missouri-Kansas City School of Law.

Robert Bacharach Confirmed as Federal Appellate Judge

In a 93-0 vote, the U.S. Senate recently confirmed Robert Bacharach of Oklahoma City to the U.S. 10th Circuit Court of Appeals. He was nominated to the court by President Obama in January 2012, but his nomination stalled over election-year politics. The seat had been open since 2010 when Robert Henry stepped down to become president of OCU.

Judge Bacharach has served as a magistrate judge for the Western District of Oklahoma since 1999, receiving the ABA's highest rating for judicial nominations.

He earned his law degree in 1985 from the Washington University School of Law and his bachelor's degree in 1981 from OU.



Aspiring Writers Take Note



We want to feature your work on "The Back Page." Submit articles related to the practice of law, or send us something humorous, transforming or intriguing. Poetry is an option too. Send submissions no more than two double-spaced pages (or 1 1/4 single-spaced pages) to OBA Communications Director Carol Manning, carolm@okbar.org.

Lawyers Giving Back



Oklahoma County Bar Association YLD members Curtis Thomas, Michael Avery, Merideth Herald, Kevin Cunningham, Justin Meek, Brian Cramer and Dan Couch assist with the Salvation Army Christmas program.



Legal Aid staff attorney Craig Reffner (left) and Oklahoma County Bar Association President John Heatly assist a veteran during the Sooner Stand Down, an annual Oklahoma City event geared toward matching homeless veterans with medical, legal and social services.

Lawyers Encouraged to Devote Time, Talent to Serving Communities in 2013

OBA President Jim Stuart is encouraging all Oklahoma lawyers and law firms to make giving back a top priority. During 2013, the *Oklahoma Bar Journal* is supporting this effort by spotlighting those lawyers and law firms who give of their time, talent and financial resources to make their communities a better place. Have a great story or photos to share? Email Lori Rasmussen at lorir@okbar.org.

OBA Member Reinstatement

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

Kirk A. Wheeler, OBA No. 9520
P. O. Box 1801
Largo, FL 33779

OBA Member Resignations

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

Sidney Marie Conway
OBA No. 10764
1035 N. 27th W. Avenue
Tulsa, OK 74127

Nicholas Brian Hadzellis
OBA No. 19471
4609 Keith Drive
Fort Worth, TX 76244

Timothy A. Hart
OBA No. 19475
9901 S. Maybelle Avenue
Jenks, OK 74037-3456

John Richard Henry
OBA No. 4104
915 S. Columbus Street
Alexandria, VA 22314

Lance Eugene Houghtling
OBA No. 13899
4001 S. 4100 Road
Talala, OK 74080

Julia Holman Messitte
OBA No. 21897
660 Parrington Oval
Norman, OK 73019

Ryan Curtis Mushrush
OBA No. 22886
9445 Carlyle Park Place
Highlands Ranch, CO 80129

Patricia Ann Patten (Nave)
OBA No. 6946
2109 Hawkesbury Way
Lexington, KY 40515-1145

Jesse Earl Pond III
OBA No. 20807
7812 N.W. 82nd St.
Oklahoma City, OK 73132

Robert Alan Pritchard
OBA No. 21439
1019 Audubon Drive
Memphis, TN 38117

Ruth Ann Rosauer
OBA No. 18300
172 Highlands Square Dr.
PMB 307
Hendersonville,
NC 28792-5852

Michael Joseph Spychalski
OBA No. 19710
712 Marble Canyon Circle
Irving, TX 75063

Heather Bickle Westerman
OBA No. 18651
906 Stratford Road
Ligonier, PA 15658-9005

Clinton High School Mock Trial Team Heads to Nationals Again

Clinton High School's Gold Team defeated Jenks High School's Purple Cobra Team in the final round of competition to claim the Oklahoma High School Mock Trial Championship for the second year in a row. The final round of competition was held March 5 in the Bell Courtroom at the OU Law Center in Norman. The two teams argued a case that focused on a student suing her former university after her expulsion. Teams are paired with volunteer attorney coaches. Clinton's attorney coaches are Julie Strong and Judge Jill Weedon.



Clinton High School Gold Team celebrates their first-place win in the state Mock Trial championship.

Oklahoma Bar Association President Jim Stuart of Shawnee said, "The Mock Trial program is an excellent way to present information to students about the workings of our legal system. Both teams did a great job arguing their side of the case, and I am confident the Clinton team will represent Oklahoma well at the national competition in Indianapolis in May."

Boot Camp CLE Draws Volunteers

Dozens of Oklahoma lawyers turned out March 7 for the OBA Boot Camp, a CLE designed to train attorneys to handle the unique legal needs of America's veterans and military servicemembers. 7.5 hours of MCLE was free to those who agreed to provide 20 hours of pro bono service through the Oklahoma Lawyers for America's Heroes program. More information about volunteering for the program is available at www.okbar.org/heroes.



Bar Members Take to the Capitol

Legislative issues were the focus during OBA Day at the Capitol March 12. Attendees heard from several speakers on topics of interest to the legal profession and pending legislation affecting the administration of justice in Oklahoma. Participants later adjourned to the Capitol to express their own opinions to lawmakers.

Attorney Rick Rose, chief of staff for Oklahoma Speaker of the House T.W. Shannon, discusses "Issues from the Speaker's Office" at the bar center during OBA Day at the Capitol.

OBA Members Raise Funds for OETA

Kicking off our “Year of Stuartship,” OBA members manned the phone banks at the OETA Festival on March 12 to take donations for public television. Members called in and donated nearly \$5,000, which was presented to OETA as a check by President Jim Stuart at the end of the evening. More donations are still pouring in.

That amount keeps the OBA at the “Underwriting Producers” donor level. Many thanks to all members who called in and donated on behalf of the OBA, and to the 21 OBA members — some brand new and some long-time veterans — who volunteered their time to answer all those calls!

Melinda Alizadeh-Fard
John Claro
Jerrod Geiger
Samuel Glover
Greg James
Mark Koss
Wilson McGarry
Mike Mims
Dwayne Morris
Ernest Nalagan
Ed Oliver
Robert Powell
Jennifer Prilliman
Charles Rouse
Linda Ruschenberg
Michael Shanbour
Ricki Sonders
James T. Stuart
Ian Tennery
Margaret Travis
Mary Travis



OBA President Jim Stuart presents an on-air donation to OBA member and OETA spokesperson Kimberly Brasher during OETA Festival 2013.

You Are Not Alone: All Interested Attorneys Invited to Attend LHL Discussion Groups



The OBA’s Lawyers Helping Lawyers Assistance Program Committee (LHL) hosts a series of monthly meetings led by LHL Committee members. The small-group discussions, held in both Oklahoma City and Tulsa on the same day, are intended to give group leaders and participants the opportunity to ask questions, provide support and share information with fellow bar members to improve their lives — professionally and personally.

Next meeting: Thursday, April 4, 7 – 8:30 p.m.

Topic: Depression, Anxiety and the Practice of Law

Oklahoma City
The Office of Tom Cummings
701 NW 13th Street

Tulsa
University of Tulsa College of Law
John Rogers Hall
3120 E. 4th Pl., Room 206

Your confidential RSVP for food/drink ordering to kimreber@cabainc.com is helpful, but not required.



Electronic member survey

Coming Soon!

Your
input is
important!

You will receive the survey via email.
Complete it by April 5 and you could win
a \$500 Apple gift card!

Kudos

Crowe & Dunlevy attorney **Jimmy Goodman** of Oklahoma City has been elected to the American Bar Association Board of Governors for a three-year term.

Michael F. Smith has been elected as chairperson elect of the OBA Appellate Practice Section and will begin his term in the 2014 calendar year. He is a trial and appellate lawyer in McAfee & Taft's Tulsa office, focusing on complex civil litigation. The section offers opportunities for Oklahoma lawyers to experience professional growth through monthly meetings with presentations by appellate court judges, Oklahoma Supreme Court justices and other experts in appellate practice.

Susan K. (Noland) Johnson has been elected Oklahoma County special judge-elect. She will take the oath of office on Monday April 1 at 9 a.m. in courtroom 809 at the Oklahoma County Courthouse. The public is invited to attend.

On The Move

Members of the Dunlap Codding law firm announce they have moved their offices to 609 W. Sheridan Ave. in Oklahoma City.

GableGotwals announces **G.G. Blaine Schwabe III** has joined the firm's Oklahoma City office. His practice focuses on business litigation, bankruptcy, insolvency law, debtor-creditor relations and commercial law. Mr. Schwabe also has experience in telecommunications litigation and insurance company insolvency. He earned his B.B.A. from OU in 1970 and earned his J.D. from the OU College of Law in 1974.

Robert. J. Getchell has joined GableGotwals as a new of counsel attorney at the firm's Tulsa office. His practice will focus on real estate law, particularly in the area of litigation, bankruptcy and transactional matters. He has more than 20 years experience as a staff attorney and general counsel for abstract and title companies. An experienced litigator, he has represented various individual, investment and corporate clients. He received his J.D. from Oral Roberts University in 1985 and his B.A. in history from ORU in 1982.

Andrews Davis announces that **David H. Dobson** has accepted a position of counsel with the firm and will join the litigation department. His experience includes general insurance defense, product liability, professional liability, employment and labor, health law, lending law, and alternative dispute resolution and mediation. An Oklahoma City native, he holds a J.D. from OCU and a B.A. in history from OU.

Spencer B. Housley announces the opening of Housley Law Group PLLC located at 4808 N. Classen Blvd. in Oklahoma City. The firm will practice primarily in the fields of personal injury, medical malpractice and family law.

Mitch D. McCuistian of Oklahoma City has joined the law firm of Evans & Davis as an associate attorney where his practice will focus on estate planning, business organization and succession planning, as well as general civil litigation. He studied finance and marketing at the University of Arkansas before attending the OU College of Law in 2012 where he served as class president.

Steidley & Neal PLLC is pleased to announce that **Jackie Jo Perrin** of McAlester has joined the firm as an associate. She earned her bachelor's degree from Southeastern Oklahoma State University in elementary education, and went on to earn a master's degree in special education specializing in learning disabilities. She obtained her J.D. from the OCU School of Law. Her practice is primarily in the areas of family law, personal injury, wrongful death, estate planning, probate, oil and gas, construction law and real estate issues. She is a member of the Pittsburg County Bar Association and has been active in the Tri-County Bar Association of McCurtain, Choctaw and Pushmataha counties.

The law firm of Helms & Underwood is pleased to announce that **Glenn Kath-**

leen Brown of Oklahoma City has become a new associate at the firm. Ms. Brown graduated *magna cum laude* from OCU School of Law in May 2012. During law school, she received Faculty Honor Roll and Dean's List honors, won a CALI award in administrative law and was selected for the Order of the Barristers.

At The Podium

OBA 2011 President **Deborah Reheard**, who chairs the Oklahoma Lawyers for America's Heroes Program, and OBA Governor **Robert Don Gifford III**, chair of the Military and Veterans Law Section, recently gave presentations on the Heroes Program and an overview of military law to the Arkansas Bar Association in Little Rock, Ark.

Amir Farzaneh and Tyler Christians recently presented "Deferred Action for Childhood Arrivals, What Does It Mean for Employers"

to human resources professionals at Farzaneh Law Firm in Norman.

John Rothman of Tulsa presented "Ethical Considerations of Full Settlement Authority in Mediation" to the Oklahoma City Commercial Attorneys Association on March 12.

Paul R. Foster of Norman presented to the Community Bankers Association at its Winter Leadership Conference held in South Lake Tahoe, Nev. His presentation was titled, "Current and Emerging (Actual Real Life) Regulatory and Legal Issues." **Carrie L. Foster**, also of Norman, presented on the topic "The Oklahoma Financial Privacy Act – Civil Subpoenas" at the conference.

Conor Cleary of Tulsa will deliver a lecture on the legal challenges to the Defense of Marriage Act and Proposition Eight. The lecture is part of a bimonthly lecture series on legal topics relevant to LGBT Oklahomans and will take place March 28 at the Dennis R. Neill Equality Center in Tulsa at 7 p.m.

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

Submit news items via email to:
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Oklahoma Bar Association
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Articles for the April 13 issue must be received by March 18.

IN MEMORIAM

John Belt of Oklahoma City died on March 10. He was born on March 14, 1936 in Dallas. Prior to entering college, **he served in the Army**. He received his B.F.A. and J.D. from OU and started practicing law in 1963. An accomplished actor and singer, his passion for creative expression led him to become a renowned advocate for the arts in Oklahoma City. He helped create and grow over 40 local nonprofits including

the Lyric Theatre, Oklahoma Theater Center, Allied Arts Foundation, Arts Council of Oklahoma City, Oklahoma Mental Health Foundation and the Oklahoma Humanities Council. At the time of his death, he was serving as secretary and general counsel of the Oklahoma City Community Foundation, advisory director of City Arts Center, trustee of the Kirkpatrick Family Fund, the Kirkpatrick Foundation and the William

E. Davis Affiliated Fund and was a member of the Board of Directors of The Paseo Arts Association. He was an accomplished lawyer and served as president of the Oklahoma County Bar Association and assumed various other leadership roles with the OBA. His contributions to the Oklahoma City community are astounding, particularly the effort he led to restore the historic Paseo arts district.

Jimmy Birdsong of Oklahoma City passed away on Feb. 9. Mr. Birdsong was born on April 27, 1925, in Little Rock, Ark., and moved to Oklahoma City as a young boy. **He served in the Army during World War II and was in the Third Infantry Division. During the war, he was shot by a German sniper while tending to two injured soldiers in his unit. Miraculously, the bullet hit a steel-plated Bible given to him by his mother in his breast pocket, preventing the bullet from hitting his heart, but the slug ricocheted into his arm instead. His unit received the Presidential Citation and he was awarded the Purple Heart, Bronze Star, European Theater Operations Ribbon, and three battle stars.** After his military service, he earned his bachelor's from OU and graduated from the OCU School of Law. He passed the Oklahoma bar exam in 1954 and practiced law for 35 years at the firm he founded. He also represented the 45th District in the state Senate from 1965 to 1981. He served as assistant majority floor leader from 1969 to 1972 and was majority floor leader from 1973-1974. During his political career, he authored and passed more than 100 bills. A devoted family man and enthusiastic outdoorsman, Mr. Birdsong loved fishing, golfing and race horses.

John Kenneth Bush of Fayetteville, N.C., died Feb. 7 in Oklahoma City. He was born in Fayetteville, N.C. on Jan. 30, 1955. He graduated from New London, N.C. in 1974 and graduated from East Carolina University with honors. He earned his J.D. from Oklahoma City University in 1998

and established a practice in Oklahoma City. A sports lover and outdoorsman, he cherished time spent outdoors and time spent with his family.

Alan C. Durbin passed away on March 1. He was a partner at Andrews Davis and practiced at that firm for over 40 years. After graduating from high school in Michigan, he moved to Oklahoma and received his B.A., M.A. and J.D. from the University of Oklahoma. In his time at Andrews Davis, Alan practiced in the area of real property and title law. He also served on the Oklahoma title Examination Standards Committee. An adoring husband and dedicated father, Mr. Durbin inspired those around him and used his knowledge and experience to mentor many lawyers throughout his career. He was always devoted to his church, serving as deacon and an elder at the First Christian Church in Norman.

Judge Charles Hill died on Feb. 26, in Wichita, Kan. Born on Sept. 16, 1932, in Pittsburgh, Pa., he began a career in law enforcement in 1958, working undercover for the Federal Bureau of Narcotics (a predecessor of the Drug Enforcement Agency). His work brought him to Oklahoma City in 1961 and he eventually joined the Oklahoma State Bureau of Investigation. In 1966, he joined the Oklahoma City Police Department and worked there for 20 years, retiring with the rank of captain. While working as a police officer he earned a B.A. and J.D. from OCU. He started a private practice in 1986 and practiced criminal defense law until his appointment as spe-

cial judge in 1995. He was a charter member of the Oklahoma City Fraternal Order of Police, Lodge 123. His career accomplishments attest to the commitment he made to serving, protecting, and above all, to justice. Memorials may be made to the St. Paul A.M.E. Church (Wichita, Kan.) scholarship fund.

Michael Raymond McKee died Feb. 20, in Norman. He was born May 1, 1942, in Little Rock, Ark. He graduated from Harding High School in Oklahoma City. He attended OU and studied contemporary European history and German for his undergraduate degree. Following his passion for service, he joined the Peace Corps after college which took him to Truk Island in Micronesia. Upon his return he earned his J.D. from the OU College of Law and established his practice four years later. His true pleasure in life was helping others. Whether he was serving as the assistant city attorney in Norman, helping new attorneys in his firm launch their careers, or assisting non-native speakers navigate English, a common theme throughout his life was service to others. Memorial donations may be made to the Chinese Fellowship Fund at Trinity Baptist Church in Norman.

James Robert (Jimmie) Meredith passed away Feb. 17 in Tulsa. He was born Aug. 16, 1920, in Blytheville, Ark., and moved to Tulsa with his family in 1932. He graduated from Tulsa Central High School in 1938 and joined the Oklahoma National Guard shortly thereafter. After his military service, he attended the University of Tulsa where he earned his undergraduate

and law degrees. He passed the Oklahoma bar exam in 1960 and was a member of the OBA for more than 60 years. He worked for the First National Bank of Tulsa and retired at age 55 as vice president and senior trust officer. Mr. Meredith established a private practice following his retirement. Outside of his professional life, he was an avid family historian, researching his family's history and compiling it for future generations.

Kenneth "Ken" Nance of Oklahoma City died on Feb. 14. Born on Oct. 1, 1941, he moved to Oklahoma City as an infant and remained there for the rest of his life. He graduated from Capitol Hill High School in 1959 and went on to OCU where he earned his bachelor's and J.D. He started working in politics and served as an assistant attorney general after law school. In 1968 he was elected to the Oklahoma House of Representatives and served in the Legislature until 1978. Following his public service, he established a law practice and started his consulting firm in 1979. This upcoming legislative session would have been his 50th consecutive at the Capitol.

Gary Lucas Neal of Tulsa died Feb. 18. He was born Sept. 27, 1946, earned his B.A.

from Oklahoma Northeastern State College in 1968, and graduated from the OU College of Law in 1975. **He served in the Navy from 1968 to 1972, working in Navy Intelligence.** An avid outdoorsman and adventurer, he lived his life with enthusiasm and championed causes like that of the Avian Research Center, the organization largely responsible for the rehabilitation of the American Bald Eagle. In his 40 years of practice, Mr. Neal helped build the firm Riggs Abney Neal Turpen Orbison & Lewis. Contributions in Mr. Neal's honor can be made to The Nazih Zuhdi Transplant Institute.

D.B. "Barry" Rooker III passed away June 28, 2012 in Oklahoma City. Mr. Rooker was born May 5, 1943, in Oklahoma City, graduated from McCloud High School and earned both his B.A. and J.D. from the University of Oklahoma. His innate curiosity, unique wit, and engaging personality enabled him to find success in business as well as in his personal travels around the country and world. Mr. Rooker owned and operated Qualitron Aero Services in Houston, Texas, a company that provided aircraft services to the private aviation industry. He was an avid classic car restorer, a

voracious reader, and a great friend to many. Memorial contributions can be made to the Westminster Presbyterian Church Choir.

David Young of Sapulpa passed away on Feb. 15. He earned his bachelor's degree from OU and went on to study law at the University of Michigan. He graduated with a J.D. in 1949. **He served in the Marine Corps from 1942-1952 and was in the Marine Corps Reserve from 1952-1972. He retired with the rank of colonel on June 12, 1981. During his military career, he served with the 2nd Marine Division and was a lieutenant in the 2nd Amphibious Tractor platoon in the Pacific during World War II. Later, he was the major company commander in the 1st Armored Amphibious Tractor Battalion during the Korean Conflict.** He was elected district attorney for Creek and Okfuskee counties in 1966 and served in that role for 20 years. He practiced law at Young, Young and Young with his brothers and father. He was very active in the community where he was a member of the First Baptist Church, Chamber of Commerce, Sapulpa Historical Society, Lion's Club, American Legion and Veterans of Foreign Wars.

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ASSOCIATE ATTORNEY: We are a small law firm looking for an attorney with at least 2-5 years of experience. The ideal candidate will have experience in insurance defense/personal injury litigation, including trial work, depositions, preparing motions, and attending court hearings. A background in civil rights law and/or education law representing public entities and/or corporate defense is beneficial. The position entails some trial work, representing public entities in administrative hearings, counseling clients on legal issues and presentations at in-service seminars. Client representatives are professional and/or managerial. The firm is more than 20 years old and has a well-established clientele. We work hard and take great pride in our work, but we avoid the "corporate" law-firm culture. Our work environment is pleasant, and we function on a collaborative basis between attorneys and staff. All replies confidential; send résumé, writing sample, and salary requirements to Center for Education Law, 900 N. Broadway, Suite 300, Oklahoma City, OK 73102 or center@cfel.com.

THE PAWNEE NATION OF OKLAHOMA is accepting applications for the position of Public Defender. For a complete job description, please visit the Pawnee Nation website at www.pawneenation.org. To apply, submit a cover letter and curriculum vitae to the Pawnee Nation of Oklahoma, Attn: Linda Jestes, Secretary, Pawnee Nation Business Council, PO Box 470, Pawnee, OK 74058. Applications may also be emailed to vwills@pawneenation.org. The deadline to apply is 5 p.m. on Tuesday, March 19, 2013.

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AV RATED TULSA LAW FIRM IS SEEKING AN ATTORNEY with a minimum of 5 years of business and civil litigation experience to provide research and writing support for trial team. Candidate should have excellent and provable experience in both areas. The compensation package is commensurate with level of experience and qualifications. An exceptional benefit package includes bonus opportunity, health insurance, life insurance, and 401K with match. Applications will be kept in strict confidence. Please send résumé to "Box F," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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Ballad of the Hearsay Rule

By Bryan Lester Dupler

Relevance reigns our evidence rules
And second is, hearsay's enjoined
The measure of just and true inquest
From long experience coined:
Extra curiam dictis,* as proof of facts
Asserted, on most issues tried,
Shall not be admitted (nor writings, nor acts)
Where a cross-enquiry's denied.

Here is that storied injunction of old
That devils the judge all day
Force and weight upon myriad questions
And many could go either way.
For statements are often offered to show
They were made, or simply *scienter*
In jests ere the blow, or slurs ere the blade
The truth of a word's but a splinter.

Exceptions evolved, in two general classes
The distinction is sometimes ethereal
Some apply only when the speaker's gone missing
In others, that fact's immaterial.
A trinity first, when rendered in prose
Too much of what's said is extraneous
The common law saw them just how they arose:
These statements are all quite *spontaneous*.

Excited utterances fairly leap forth
From startling events and conditions
And statements perceiving the fact, or just after
Are *present sense impressions*.
The things we say about how we feel,
Whom fear, or love, or hate
Can prove a declarant's then *state of mind*
In damn near every state.

Victims talk to doctors and nurses
When hurt by wreck or crime
And *statements made for diagnosis or treatment*
Are admitted in court all the time.
And if the declarant were in a great hurry
But jotted a detailed record
This *past recollection* can be read to the jury
If the witness's memory's gone checkered.

Business records are a potent source
Of acts in due course recorded
And are by the hearsay rule excepted
When kept, and boxed, and hoarded.
These are the common hearsay exceptions
Where declarants might be available
A song made strong with greater detail
For brevity, would be assailable.

When the speaker's not on hand for trial
From death or lesser travail
Here are some rules, unheeded by fools,
That lead us to treasure or Gaol:
A prior sworn statement from some other hearing,
Where a chance of inquiry extended
To the party against whom the transcript is offered,
Is proper. The matter is ended.

In trials of homicide and civil cases,
In courts across the nation
Great Wigmore has freed, from hearsay's braces,
Dying declarations.
A statement against pecuniary interest
Is useful trial propaganda
And if you make a *statement against penal interest*
We probably should read you *Miranda*.

The statement of a child of less than thirteen
Describing vile acts, or abuses
Is admissible under a quite modern rule
Though *Crawford* may limit its uses
The longer a lawyer practices law
The more hearsay one sees
With luck, I'll find that "catch-all" kind
With its "equivalent circumstantial guarantees."

A gentle reminder while the coffee's warm
Before our thought's diverted
All these exceptions take hearsay as proof
On the factual matters asserted.
And just one word of warning more
That bears our careful reflection
Most any hearsay is good evidence
Unless there's a timely objection.

O, worthy rule, your noble light
Upon our trials does cast
The glory of our common law
From cruel misfortune's past
Good sentinel and faithful patron
Of the right to cross-examine:
A suitor's chance for boon or bust
A lawyer's feast or famine.

**Out of court statements*

Mr. Dupler is a judicial assistant at the Oklahoma Court of Criminal Appeals.

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June 22-July 6

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