THE Oklahoma Bar JOURNAL
Volume 85 ◆ No. 14 ◆ May 17, 2014

DIVERSITY in the LAW

ALSO INSIDE

- Century Old Letter Provides Judicial Flashback
- OBA Awards
- Small Towns — Big Opportunities
- Sovereignty Symposium

PROGRAMS

May 22
Tulsa, OK
OSU-Tulsa - Rm 104
700 N. Greenwood Ave.

May 23
Oklahoma City, OK
Oklahoma Bar Center
1901 N. Lincoln Blvd.

Where the Wind Comes Sweepin' Down the Plain: An Oklahoma Environmental Melody

Program Planner/Moderator:
LeAnne Burnett, Crowe & Dunlevy, P.C., Oklahoma City

Topics Covered

1. The Air That I Breathe (The Hollies, 1974)
   ODEQ v. USEPA: A Look at Oklahoma's Challenge to EPA's Tribal New Source Review Rule and Jurisdictional Implications
2. Shake Rattle and Roll (Haley & The Comets, 1954)
   Hydraulic Fracturing - Rockin' the House?
3. Bad to the Bone (George Thorogood & The Destroyers, 1974)
   Aguinda v. Chevron and the Amazon Crusader, Steven Donziger (The continuing saga of the World's largest environmental judgment)
4. Last Dance, Last Chance? (Donna Summer, 1978)
   The Tale of the Lesser Prairie Chicken
5. Hit Me With Your Best Shot (Pat Benatar, 1980)
   Using "Sue and Settle" to Affect Agency Action
6. Spiders and Snakes (Jim Stafford, 1974)
   Rare Topics in Endangered Species

The seminar starts at 9:00 a.m. and adjourns at 2:50 p.m.
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A Proud Member of the Oklahoma Bar

By Renée DeMoss

Hicks Epton of Wewoka, Okla. was a proud member of the Oklahoma Bar Association. Oklahoma lawyers recognize Mr. Epton as the father of Law Day, a day in which bar associations across the country honor and celebrate our legal system. Mr. Epton established this enduring legacy with the support of the Seminole County Bar Association by annually sponsoring a program initially entitled "Know Your Courts — Know Your Liberties" beginning on May 1, 1946.

With the support of the American Bar Association, President Dwight D. Eisenhower issued a proclamation in 1958 designating May 1 as Law Day, with these words, "It is fitting that the American people should remember with pride, and vigilantly guard, the great heritage of liberty, justice and equality under the law. It is our moral and civil obligation as free men and as Americans to preserve and strengthen that great heritage."

Since Congress enacted legislation in 1962 that permanently designated May 1 as Law Day, it has become a national day of celebration of our founders' greatest legacy — a republic composed of three separate and equal branches, with the judicial branch entrusted with ensuring that all Americans receive justice under the law.

How fitting, then, that on April 3, 2014, just one month before our recent Law Day celebration, Oklahoma Supreme Court Chief Justice Tom Colbert received a letter regarding Oklahoma's legal system written over 100 years ago by another proud member of the Oklahoma bar, pioneer lawyer Samuel W. Hayes. Sam Hayes was only 32 years old when he took his seat as the first justice of the Oklahoma Supreme Court on Nov. 16, 1907, following President Theodore Roosevelt's proclamation admitting Oklahoma to the Union.

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Oklahoma had been a state only a scant six years when Justice Hayes submitted a letter dated April 22, 1913, for inclusion in the "Oklahoma Century Chest," a time capsule buried under the basement floor of the Oklahoma City First Lutheran Church until its recent opening.

In the letter, Justice Hayes, who was at the time grappling with the monumental task of creating and implementing a new state court system, voiced his dream that our brand new state would ultimately enjoy a legal system that included both a non-partisan system of selecting judges for all of our state courts and adequate compensation for judges so that those most qualified would be able to devote their lives to the work. (*See the separate article in this issue.*)

> ***…lawyers are the guardians of a fair, impartial and qualified judiciary that enables judges to act without concern for the day-to-day whims of politics and election-focused politicians.***

Proud Oklahoma lawyers Mr. Epton and Justice Hayes sought in their own ways to ensure that we would always remember, and vigilantly protect, the judicial branch that our nation's founders thoughtfully and purposefully designed to function as an equal branch with the executive and legislative branches.

They also recognized that lawyers are the guardians of a fair, impartial and qualified judiciary that enables judges to act without concern for the day-to-day whims of politics and election-focused politicians. Such a judiciary is essential to protect our individual liberties, to uphold our constitutional rights and to prevent the tyranny of the majority.

Like Hicks Epton and Justice Sam Hayes, I, too, am a proud member of the Oklahoma bar. Over the past few weeks I have witnessed OBA members join together to guard against proposed state legislation that would intentionally weaken our judiciary and our bar.

Since 1967, when the people of Oklahoma turned to the OBA to help install a new judicial selection system to replace one riddled with corruption, our system has been praised as one of the best in the nation, free of politics and scandal. OBA members' defense of that system, and of the entire Oklahoma judiciary, has been nothing short of amazing. The Oklahoma Bar Association is a force to be reckoned with when united in a noble cause.

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EVENTS CALENDAR

MAY 2014

19 **OBA Litigation Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact David VanMeter 405-228-4949

Licensed Legal Intern Swearing-In Ceremony; 12:45 p.m.; Judicial Center, Oklahoma City; Contact Wanda Reece 405-416-7000

20 **OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Judge David B. Lewis 405-556-9611

OBA Communications Committee meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Doerner Saunders Law Office, 3200 S. Boston Ave., Ste. 500, Tulsa; Contact Dick Pryor 405-740-2944

23 **OBA Board of Governors meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000

26 **OBA Closed** – Memorial Day observed

27 **OBA Women in Law Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and University of Tulsa, Tulsa; Contact Allison Thompson 918-295-3604

28 **OBA Work/Life Balance Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Sarah Schumacher 405-752-5565

JUNE 2014

3 **OBA Government and Administrative Law Practice Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Scott Boughton 405-717-8957

5 **OBA Lawyers Helping Lawyers discussion group meeting;** 6 p.m.; Office of Tom Cummings, 701 NW 13th St., Oklahoma City; RSVP to Kim Reber kimreber@cabainc.com

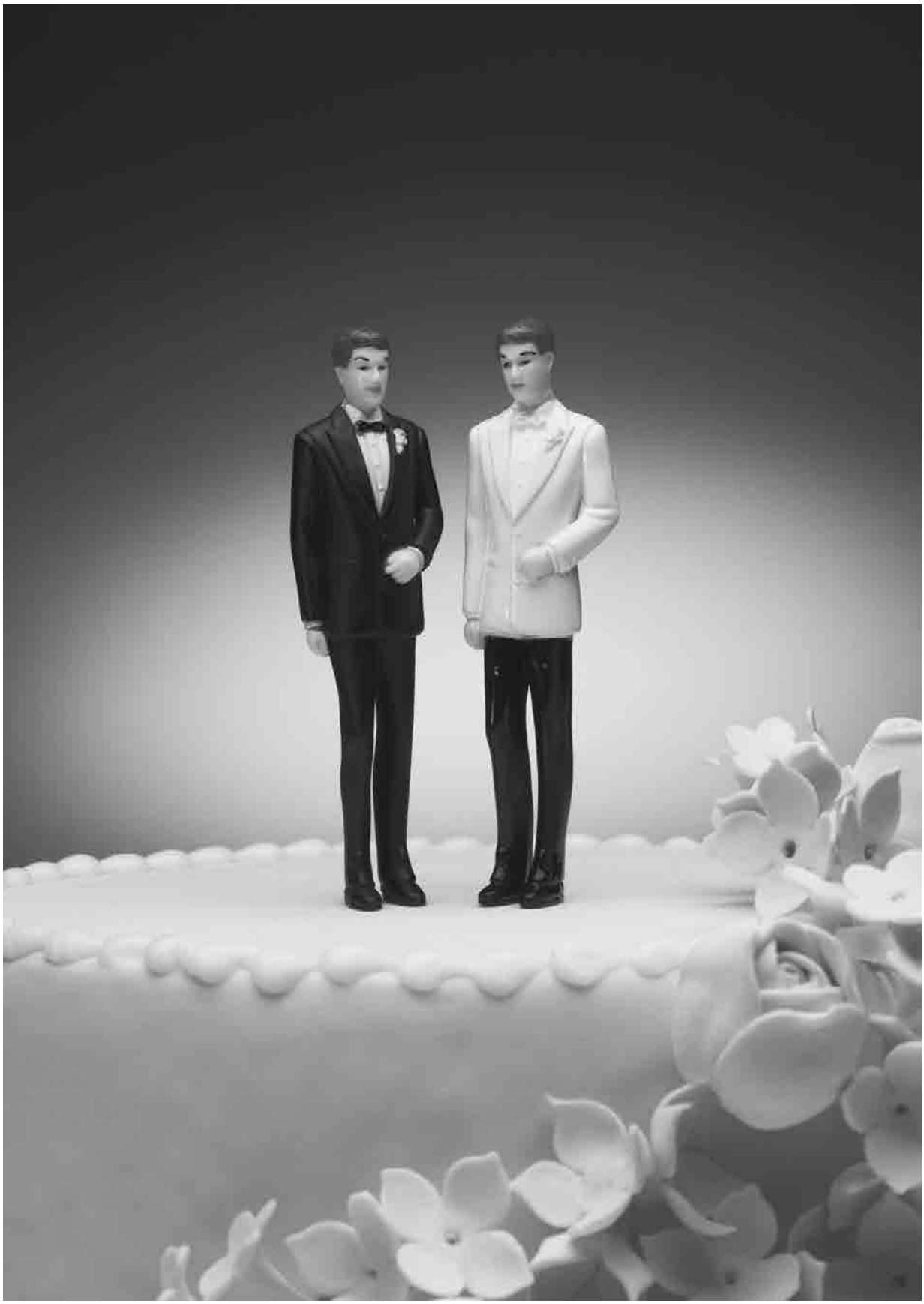
OBA Lawyers Helping Lawyers discussion group meeting; 6 p.m.; University of Tulsa College of Law, John Rogers Hall, 3120 E. 4th Pl., Rm. 206, Tulsa; RSVP to Kim Reber kimreber@cabainc.com

6 **OBA Professional Responsibility Commission meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Dieadra Goss 405-416-7063

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

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

THE OKLAHOMA BAR JOURNAL (ISSN 0030-1655) IS PUBLISHED THREE TIMES A MONTH IN JANUARY, FEBRUARY, MARCH, APRIL, MAY, AUGUST, SEPTEMBER, OCTOBER, NOVEMBER AND DECEMBER AND BIMONTHLY IN JUNE AND JULY BY THE OKLAHOMA BAR ASSOCIATION, 1901 N. LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA 73105. PERIODICALS POSTAGE PAID AT OKLAHOMA CITY, OK. POSTMASTER: SEND ADDRESS CHANGES TO THE OKLAHOMA BAR ASSOCIATION, P.O. BOX 53036, OKLAHOMA CITY, OK 73152-3036. SUBSCRIPTIONS ARE $60 PER YEAR EXCEPT FOR LAW STUDENTS REGISTERED WITH THE OKLAHOMA BAR ASSOCIATION, WHO MAY SUBSCRIBE FOR $25. ACTIVE MEMBER SUBSCRIPTIONS ARE INCLUDED AS A PORTION OF ANNUAL DUES. ANY OPINION EXPRESSED HEREIN IS THAT OF THE AUTHOR AND NOT NECESSARILY THAT OF THE OKLAHOMA BAR ASSOCIATION, OR THE OKLAHOMA BAR JOURNAL BOARD OF EDITORS.



Bishop v. United States and the Future of Same-Sex Marriage in Oklahoma

By Conor Cleary

On Jan. 14, 2014, Judge Terence C. Kern, senior U.S. district judge for the Northern District of Oklahoma, issued his much-anticipated opinion in *Bishop v. United States ex rel. Holder*, striking down Oklahoma's constitutional amendment banning same-sex marriage as a violation of the Equal Protection Clause of the U.S. Constitution.[1] Judge Kern's opinion is part and parcel of a rapidly shifting legal landscape on the issue of same-sex marriage. Just over 10 years ago no state allowed same-sex marriage, now 17 states do.[2] With a few notable exceptions, these advances have been confined to states on the west and east coasts.[3] Judge Kern's decision, along with those from federal judges in other conservative states,[4] means that same-sex marriage could soon be a reality in states not thought of as on the cutting edge of gay rights. This article explores the evolution of same-sex marriage in the United States, explains the basis for Judge Kern's opinion in *Bishop*, and discusses what the future holds for same-sex marriage in Oklahoma and beyond.

HISTORICAL BACKGROUND

In 2003, the Massachusetts Supreme Court, in *Goodridge v. Dep't of Pub. Health*, ruled that the state of Massachusetts could not prohibit same-sex couples from marrying.[5] The reaction and response to this ruling was dramatic. President George W. Bush, facing a tough re-election contest in 2004 against John Kerry, a U.S. senator from Massachusetts, the same state that had just become the first to allow same-sex marriage, endorsed an amendment to the U.S. Constitution defining marriage as the union of one man and one woman.[6] Meanwhile, individual states proposed amendments to their own constitutions. In the lead up to the 2004 elections, Oklahoma politicians warned that, without a constitutional amendment defining marriage as the union between one man and one woman, a similar result could happen in Oklahoma.[7] In addition to Oklahoma, 10 other states introduced constitutional bans on same-sex marriage that year. Each of these states voted overwhelmingly to approve the amendments,[8] with 76 percent of Oklahoma voters approving the amendment.[9]

Oklahoma's constitutional amendment provided the following:

> A. Marriage in this state shall consist only of the union of one man and one woman. Neither this Constitution nor any other provision of law shall be construed to require that marital status or the legal incidents thereof be conferred upon unmarried couples or groups.
>
> B. A marriage between persons of the same gender performed in another state shall not be recognized as valid and binding in this state as of the date of the marriage.
>
> C. Any person knowingly issuing a marriage license in violation of this section shall be guilty of a misdemeanor.[10]

The day after the election, two same-sex couples — Mary Bishop and Sharon Baldwin, and Susan Barton and Gay Phillips — filed suit in federal court in Tulsa alleging that the amendment was unconstitutional. The early years of the case were spent wrangling over procedural and jurisdictional questions,[11] but by 2009 the U.S. District Court for the Northern District of Oklahoma began to consider the merits of the case. Yet, before the district court issued a ruling, the U.S. Supreme Court agreed to hear two cases concerning same-sex marriage, *United States v. Windsor* and *Hollingsworth v. Perry*. Because these two cases would affect, if not dictate, the outcome in *Bishop*, the district court delayed its ruling pending their outcome.[12]

UNITED STATES V. WINDSOR

Windsor concerned the constitutionality of Section 3 of the Defense of Marriage Act (DOMA) and whether the federal government may define marriage for purposes of federal law as exclusively the union of two individuals of the opposite sex.[13]

Edith Windsor and Thea Spyer married in Canada in 2007. In 2009, Spyer died, leaving her entire estate to Windsor. When Windsor attempted to claim the estate tax exemption for surviving spouses, the federal government denied her request due to Section 3 of DOMA which excludes a same-sex partner from the definition of "spouse" as that term is used in the Internal Revenue Code and other federal statutes and regulations.[14] Windsor brought suit in federal district court, which ruled in her favor and declared Section 3 of DOMA unconstitutional.[15] After the 2nd Circuit Court of Appeals affirmed the district court, the Supreme Court granted cert to determine the constitutionality of Section 3. On June 26, 2013, the Supreme Court ruled for Windsor, declaring Section 3 of DOMA unconstitutional. While the result of the court's ruling was clear (Ms. Windsor received her tax refund), its reasoning and rationale were less so. This lack of clarity leaves unanswered whether *Windsor* supports or undercuts the constitutionality of same-sex marriage bans.

The confusion concerning *Windsor's* impact stems from the court's use of two strands of constitutional jurisprudence — federalism and equal protection. On the one hand, the court felt that Section 3 intruded on states' rights. Historically, marriage has been an institution regulated by the states. The court explained that "[t]he recognition of civil marriages is central to state domestic relations law, . . . [and] "[t]he definition of marriage is the foundation of the State's broader authority to regulate the subject of domestic relations with respect to the protection of offspring, property interests, and the enforcement of marital responsibilities."[16] "Against this background" of state regulation, the court concluded, "DOMA rejects the long-established precept that the incidents, benefits, and obligations of marriage are uniform for all married couples within each State[.]"[17]

On the other hand, the court did not confine its holding to a federalism rationale.[18] Instead, the court explained that "[t]he State's power in defining the marital relation is of central relevance in this case quite apart from principles of federalism."[19] Explaining how "the State's decision to give this class of persons the right to marry conferred upon them a dignity and status of immense import,"[20] the majority concluded that the "injury and indignity" resulting from Section 3 of DOMA was "a deprivation of an essential part of the liberty protected by the Fifth Amendment."[21] In the majority's eyes, Section 3 violated the Equal Protection Clause because its "principal effect is to identify a subset of state-sanctioned marriages and make them unequal."[22]

Recognizing the dueling rationales of the majority opinion, Chief Justice Roberts wrote a dissenting opinion emphasizing that federalism was the basis of the majority's holding, explaining that the "logic of the [majority's] opinion does not decide, the distinct question whether the States, in the exercise of their historic and essential authority to define the marital relation may continue to utilize the traditional defini-

> **"…Oklahoma's marriage amendment unjustifiably discriminates against homosexuals because restricting marriage to opposite-sex couples is not rationally related to any legitimate government purpose."**

tion of marriage."[23] As the chief justice read the majority opinion, it upheld the state's authority to define marriage without federal interference, including the decision to define marriage as the union of one man and one woman.[24]

Justice Scalia disagreed with the chief justice, authoring a separate and blistering dissent, explaining why he believed the majority had "fool[ed]" people into believing its opinion was based on federalism principles.[25] Characterizing the majority opinion as "rootless and shifting,"[26] Justice Scalia explained that the real basis of the court's opinion was a continuation of the court's holdings in *Romer v. Evans*[27] and *Lawrence v. Texas*[28] — that a "bare desire to harm" an unpopular group cannot be a constitutional basis for upholding a law.[29] If this is the true basis of the majority opinion, according to Justice Scalia, then it foreshadows "the view that [the] Court will take of state prohibition of same-sex marriage."[30] Justice Scalia mockingly predicted that the court, "which finds it so horrific that Congress irrationally and hatefully robbed same-sex couples of the 'personhood and dignity' which state legislatures conferred upon them, will of a certitude be similarly appalled by state legislatures' irrational and hateful failure to acknowledge that 'personhood and dignity' in the first place."[31]

HOLLINGSWORTH V. PERRY

While *Windsor* considered whether the federal government may refuse to recognize same-sex marriages *in states allowing such marriages*, *Perry* concerned whether a state may refuse to allow same-sex marriage *at all*.[32] In May 2008, the California Supreme Court struck down the state's legislative ban on same-sex marriage, allowing approximately 18,000 same-sex couples to marry.[33] Less than six months later, California voters approved the ballot initiative Proposition 8 which amended the California Constitution to define marriage as the union between one man and one woman. Two same-sex couples who wished to marry in California filed suit, alleging Proposition 8 violated the U.S. Constitution. *Perry* thus had the chance to be the gay rights movement's *Brown v. Board of Education*,[34] squarely presenting the question of whether it is constitutionally permissible for a state to prohibit same-sex marriage.

But *Perry* ended with a whimper rather than with a bang. After a California federal court invalidated Proposition 8 as a violation of the Due Process and Equal Protection Clauses of the U.S. Constitution, the governor and attorney general of California declined to appeal the decision. Although the 9th Circuit ruled that the official proponents of Proposition 8 had standing to defend it, the Supreme Court disagreed, and dismissed the appeal.[35] Because the court dismissed *Perry* for lack of standing, it did not address the constitutionality of same-sex marriage bans nor explain whether its ruling in *Windsor* called into question their constitutionality.

BISHOP V. UNITED STATES

Within months of the Supreme Court's decisions, several U.S. district courts issued rulings concerning state same-sex marriage bans in light of *Windsor* and *Perry*.[36] Each of these rulings endorsed the broader equal protection analysis found in *Windsor.* On Jan. 14, 2014, Judge Kern released his opinion, concluding that Oklahoma's marriage amendment unjustifiably discriminates against homosexuals because restricting marriage to opposite-sex couples is not rationally related to any legitimate government purpose.[37] Examining each of the justifications for the marriage amendment offered by its proponents,[38] the court found that the marriage amendment was not rationally related to any of them. The state argued that restricting marriage to heterosexual couples encourages responsible procreation and promotes the ideal environment for child-rearing, but the court noted that "[c]ivil marriage in Oklahoma does not have any procreative prerequisites"[39] and "[e]xcluding same-sex couples from marriage has done little to keep Oklahoma families together thus far, as Oklahoma consistently has one of the highest divorce rates in the country."[40] The state also abstractly argued that allowing same-sex marriage would "negatively impact" the institution of marriage

as a whole. Yet, as the court pointed out, "the 'negative impact' argument is impermissibly tied to moral disapproval of same-sex couples as a class of Oklahoma citizens."[41] The court forcefully explained that the "negative impact" argument "is also insulting to same-sex couples, who are human beings capable of forming loving, committed, enduring relationships."[42] Finding no rational connection between the marriage amendment and any of its purported justifications, the court concluded the amendment is "an arbitrary, irrational exclusion of just one class of Oklahoma citizens from a governmental benefit."[43] Judge Kern's opinion did not result in same-sex marriage being immediately legal in Oklahoma, however, as he stayed his decision pending an appeal to the 10th Circuit.[44]

THE FUTURE OF SAME-SEX MARRIAGE IN OKLAHOMA AND BEYOND

Since the Supreme Court's decisions in *Windsor* and *Perry* last June, several federal district courts have considered the constitutionality of their states' bans on same-sex marriage, and every single court to issue a ruling has found, as in *Bishop*, the bans to be unconstitutional.[45] The state of Oklahoma immediately appealed Judge Kern's decision to the 10th Circuit Court of Appeals, which will hear it along with an appeal from a Utah federal court decision invalidating that state's same-sex marriage ban.[46] The 10th Circuit heard oral arguments in April and a decision is expected sometime later this year. The 10th Circuit could affirm Judge Kern's decision, which would require Oklahoma to issue marriage licenses to same-sex couples just as it issues licenses to heterosexual couples. On the other hand, the 10th Circuit could reverse the district court's opinion and uphold the constitutionality of Oklahoma's marriage amendment. In either case, however, the 10th Circuit's decision almost certainly will be appealed to the United States Supreme Court which, with the rapidity with which lower courts are issuing decisions on the constitutionality of same-sex marriage bans, will feel pressure to grant *certiorari* to it, or a similar appeal, and settle the issue once and for all.

1. No. 04-CV-848-TCK-TLW, 2014 U.S. Dist. LEXIS 4374 at *119-121 (N.D. Okla. Jan. 14, 2014).

2. *See* www.freedomtomarry.org/states (last accessed May 2, 2014).

3. *See id*.

4. *See infra* note 36. A Texas federal judge recently struck down Texas's same-sex marriage ban. Federal judges in Kentucky and Tennessee also issued rulings requiring those two states to recognize same-sex marriages performed in other states. *See id*.

5. 798 N.E.2d 941, 968 (Mass. 2003).

6. ABC News, "Bush on Religion and God," Oct. 26, 2004, available at http://goo.gl/cyhIQ4 (last accessed May 2, 2014).

7. *Bishop, supra*, at *81. ("On February 6, 2004, three days after the second ruling by the Massachusetts Supreme Court, Tulsa and Oklahoma City newspapers both reported that State Senator James Williamson, author of the Marriage Protection Amendment, made public statements regarding the need for a constitutional amendment in order to prevent a similar ruling in Oklahoma.") (citing Marie Price, "Republican Legislators Wary of Same-Sex Ruling," *Tulsa World*, Feb. 6, 2004).

8. CNN, "Same-Sex Marriage Bans Winning on State Ballots," Nov. 3, 2004, available at http://goo.gl/Bb5fvu ("Voters in Arkansas, Georgia, Kentucky, Michigan, Mississippi, Montana, North Dakota, Ohio, Oklahoma, Oregon and Utah all approved anti-same-sex marriage amendments by double-digit margins.") (last accessed May 2, 2014). In 2006 and 2008, several more states approved their own constitutional amendments. The amendments passed in every state in which they were proposed, except Arizona in 2006. That victory was short lived, as it passed there in 2008. *See* National Conference of State Legislatures, "Same-Sex Marriage and Domestic Partnerships on the Ballot," available at http://goo.gl/9Z3gft (last accessed May 2, 2014).

9. *See* Oklahoma General Election Results for State Question 711, http://goo.gl/vNkyLe (last accessed May 2, 2014).

10. Okla. Const. Art. 2, §35.

11. The plaintiffs originally sued the governor and attorney general, who claimed sovereign immunity. After the district court concluded the governor and attorney general did not have sovereign immunity, the 10th Circuit reversed on different grounds, instructing the district court to dismiss the case for lack of standing. *Bishop v. Okla. ex rel. Edmondson*, No. 06-5188, 2009 WL 1566802, *2 (10th Cir. June 5, 2009). The 10th Circuit reasoned that that the governor and attorney general were not proper defendants because they are not in charge of issuing marriage licenses in Oklahoma. *Id*. at *3. Instead, the proper defendants should have been district court clerks who issue marriage licenses. *Id*. After being granted leave to amend their complaint, the plaintiffs sued Sally Howe Smith, the district court clerk for Tulsa County.

12. *Bishop, supra*, at *12 ("The Court delayed ruling in this case pending the Supreme Court's decisions [in *Windsor* and *Perry*].").

13. *U.S. v. Windsor*, 133 S.Ct. 2675, 2682 (2013)

14. Section 3 of DOMA provides:

> In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.

1 U.S.C. §7. In light of this statute, Windsor could not claim the estate exemption, which applies to "any interest in property which passes or has passed from the decedent to his surviving *spouse*." 26 U.S.C. §2056(a) (emphasis added).

15. Windsor did not challenge Section 2 of DOMA which provides that no state shall be required to recognize and give effect to any marriage performed in another state. *See* Defense of Marriage Act §2, 28 U.S.C. §1738C; *Windsor, supra*, at 2682-83 ("DOMA contains two operative sections: Section 2, *which has not been challenged here*, allows States to refuse to recognize same-sex marriages performed under the laws of other States.") (emphasis added).

16. *See Windsor, supra*, at 2691 (internal backets, quotation marks and citiations omitted).

17. *Id*. at 2692.

18. *Id*. ("Despite these [federalism] considerations, it is unnecessary to decide whether this federal intrusion on state power is a violation of the Constitution because it disrupts the federal balance.").

19. *Id*.

20. *Id*.

21. *Id*.

22. *Id*. at 2694.

23. *See id*. at 2696 (Roberts, C.J., dissenting) (internal quotation marks and citation omitted).

24. *See id*. at 2697 (After explaining that the majority opinion is based on the federal government's departure from state regulation of marriage, suggesting that "there is no such departure when one State adopts or keeps a definition of marriage that differs from that of its neighbor[.]").

25. *Id*. at 2705 (Scalia, J., dissenting).

26. *Id*.

27. 517 U.S. 620 (1996). *Romer* struck down Colorado's Amendment 2, which would have prevented the State of Colorado or any of its municipalities from recognizing gay and lesbian individuals as a protected class.

28. 539 U.S. 558 (2003). *Lawrence* overruled the court's holding in *Bowers v. Hardwick*, 478 U.S. 186 (1986), which had allowed states to criminalize sodomy. The court found that sodomy laws "demean[ed] the lives of homosexual persons . . . by making their private sexual conduct a crime." *Id.* at 575, 578.

29. *Windsor, supra*, at 2709 (Scalia, J., dissenting).

30. *Id.*

31. *Id.* at 2710.

32. *See Hollingsworth v. Perry*, 133 S.Ct. 2652 (2013).

33. *See In re Marriage Cases*, 183 P. 3d 384 (Cal. 2008).

34. 347 U.S. 483 (1954).

35. Specifically, the Supreme Court found that the proponents of Proposition 8 had no stake in the outcome of the appeal of the district court's decision. The proponents had not suffered any injury. They were only interested in vindicating the constitutional validity of a law enacted by the citizenry. This "generalized grievance" could be shared by any concerned citizen and was insufficiently "concrete and particular" to confer standing to appeal. *See Perry, supra*, at 2662.

36. Prior to the Oklahoma district court's decision in *Bishop*, state courts in New Jersey and New Mexico, and a federal court in Utah struck down their states' same-sex marriage bans. *See Garden State Equal. v. Dow*, 82 A.3d 336, 339, (N.J. Super. 2013), *aff'd* by *Garden State Equal. v. Dow*, 79 A.3d 1036, 1038–39, (N.J. 2013); *Griego v. Oliver*, 316 P.3d 865 (N.M. 2013); *Kitchen v. Herbert*, No. 2:13-cv-217, 2013 WL 6697874 (D. Utah Dec. 20, 2013). Since *Bishop*, federal courts in Virginia, Texas, and Michigan have reached the same result. *See Bostic v. Rainey*, No. 2:13CV395, 2014 WL 561978 (E.D. Va. Feb 13, 2014); *De Leon v. Perry*, No. SA-13-CA-00982-OLG, 2014 WL 715741 (W.D.Tex. Feb 26, 2014); *DeBoer v. Snyder*, No. 12–CV–10285, 2014 WL 1100794 (E.D. Mich. Mar. 21, 2014). Other federal courts have issued more limited rulings finding that a state must recognize same-sex marriages performed in other states. *See, e.g., Obergefell v. Wymyslo*, 2013 WL 6726688 (S.D. Ohio Dec. 23, 2013); *Bourke v. Beshear*, 2014 WL 556729 (W.D.Ky. Feb. 12, 2014); *Tanco v. Haslam*, No. 3:13-CV-01159, 2014 WL 997525 (M.D. Tenn. Mar 14, 2014).

37. The court used a traditional equal protection analysis and employed rational basis review. *See Bishop, supra*, at *85-86 n.32. The court declined to find that homosexuals are a suspect class warranting the application of heightened scrutiny to the marriage amendment. *See id.* at *90-94. ("Classifications against homosexuals and/or classifications based on a person's sexual orientation are not subject to any form of heightened review in the Tenth Circuit.") (citation omitted).

38. The state offered four justifications for the marriage amendment: 1) encouraging responsible procreation and child-rearing; 2) steering naturally procreative relationships into stable unions; 3) promoting the ideal that children be raised by both a mother and a father in a stable family unit; and 4) avoiding a redefinition of marriage that would necessarily change the institution and could have serious unintended consequences. *See id.* at *101-02.

39. *Id.* at *106.

40. *Id.* at *114.

41. *Id.* at *117-18. Ironically, Judge Kern cited Justice Scalia in explaining how the "negative impact" argument was really just a disguise for arbitrary prejudice against homosexuals: "'Preserving the traditional institution of marriage is just a kinder way of describing the State's moral disapproval of same-sex couples.'" *Id.* at *118-19 (quoting *Lawrence*, 539 U.S. at 602 (Scalia, J., dissenting)).

42. *Id.* at *118.

43. *Id.* at *120.

44. *Id.* at *121-22.

45. *See supra* note 36.

46. *See Kitchen, supra* note 36. The 10th Circuit did not consolidate the Utah and Oklahoma appeals, but the same three-judge panel will hear both appeals.

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Diversity Requires More American Indian Lawyers and Judges

By Klint A. Cowan

The practices of federal Indian law and tribal law form a unique structure on the landscape of American law. The practices address legal issues arising from the existence and recognition of American Indian tribal governments, which predate the American revolution. These practice areas, unlike any other, deal specifically with the legal rights of persons classified as political minorities. Yet, despite the impact of federal law on the lives of American Indians, relatively few have become practicing attorneys. The bar should endeavor to address this deficiency by educating, mentoring and developing American Indian attorneys.

Law schools first recognized the need for American Indian law students in the 1960s. The modern effort to bring American Indians into the profession began in 1967, when professors at the University of New Mexico School of Law created an intensive summer program for American Indians planning to attend law school.[1] The program, now known as the American Indian Law Center's Pre-Law Summer Institute (PLSI), simulates the first semester of law school and gives American Indian students a chance to acclimate to the Socratic method and other issues faced by first-year law students.[2] The institute has helped foster camaraderie among American Indian law students and has likely contributed to a rise in American Indian law graduates.[3] Recognizing the need to bring more American Indians into the legal profession, law schools followed the PLSI example. The last two decades have seen the creation of many programs and scholarships aimed at American Indian students. For example, every law school in Oklahoma has developed comprehensive programs in federal Indian law and tribal law. So have 23 other law schools throughout the United States.[4]

Oddly, based on census data through 2000, it was not at all clear that these efforts were working. In 1990, the U.S. Census identified 1,502 American Indian attorneys, equal to approximately 0.2 percent of the total number of attorneys. In 2000, there were 1,720, an increase of only 228.[5] The situation may have improved more recently. By 2010, data from the American Community Survey identified 2,640 American Indian attorneys.[6] But that data also showed that those attorneys composed no more than 0.3 percent of the profession. When attorneys identifying as American Indian *and* another race are considered, the data suggest that American Indians have accounted for no more than 0.6 percent of attorneys at any time during the past two decades.[7] The dearth of

American Indian attorneys is especially troubling when one considers that American Indians represent 1.7 percent of the U.S. population, nearly 3 times the percentage of American Indian attorneys.[8]

Moreover, despite the apparent upward trend between 2000 and 2010, the recent past has also demonstrated that even when qualified American Indian attorneys exist, there is no guarantee they will attain important posts such as judicial clerkships or judgeships. While there are attempts to rectify the first issue, there is unlikely to be significant progress on the number of American Indian judges (outside of tribal courts) in the near future. In an attempt to improve the numbers of American Indian judicial clerks, PLSI participates in the ABA Judicial Clerkship Program. That program began in 2001 as an effort to increase minority participation in the judicial clerkship application process.[9] The goal of PLSI's participation is to secure clerkships for its alumni.[10] It is probably reasonable to expect clerkship positions held by American Indians to rise as bar associations and the judiciary implement these and other minority clerkship programs. Indeed, it would be difficult for the numbers of American Indian clerks to dip below the most recent data available. The last comprehensive study of judicial clerkship demographics showed an abysmal rate of clerks who identify as American Indian. That study, released in 2000 and covering a five-year period ending in 1998, found that American Indians composed between 0.1 percent and 0.6 percent of all federal, state, and local clerks.[11]

The number of American Indians serving as judges (outside of tribal courts), however, presents an even more significant problem for those who believe diversity is important in all areas of the law, including the bench. Further, given the important role of federal case law in the daily lives of American Indian people and their tribal governments, having American Indians on the federal bench seems especially vital. Nevertheless, according to the Federal Judicial Center, only two American Indians have *ever* served as federal judges.[12] And President Obama's attempts to raise that number have been met with criticism. Between 2010 and 2013, the president nominated two American Indians to seats on federal district courts. On Dec. 17, 2011, the Senate returned the first nomination without action despite the nominee receiving an ABA Rating of Unanimously Qualified.[13] In response the president nominated a non-Indian candidate for the position. The second American Indian nomination is pending.[14] Further, when the president considered nominating an American Indian to the U.S. Court of Appeals for the 10th Circuit, a hostile reaction from Oklahoma's congressional delegation appears to have derailed the nomination.[15] The negative response is troubling because no American Indian has ever served on a federal appellate court.

"...even when qualified American Indian attorneys exist, there is no guarantee they will attain important posts..."

The fields of federal Indian law and tribal law continue to grow. Over the last decade, many large firms have established Indian law practices.[16] Much of this growth has been driven by the rise of tribal economies through gaming, energy and other resources. It has been aided by Congress' termination in 2000 of the requirement that the Bureau of Indian Affairs approve tribal attorney contracts.[17] But unless our profession makes more significant strides in growing the number of American Indian attorneys, and especially American Indian judges, we risk leaving behind the very people who are most affected by the development of these areas of law.

1. *See* http://ailc-inc.org/.
2. *Id*.
3. *Id*.
4. *See* Turtle Talk, Law Schools Offering Native Law Programs, available at http://turtletalk.files.wordpress.com/2009/04/law-schools-offering-indian-law-programs.pdf.
5. Lawrence Baca, *American Indians and the "Box Checker" Phenomenon*, IILP Review 2011: The State of Diversity and Inclusion in the Legal Profession 70 (2011) (discussing the discrepancy between Census Bureau data on the number of American Indian attorneys and law school data on the number of American Indian graduates).
6. U.S. Census 2010, EEO 1r. Detailed Census Occupation by Sex and Race/Ethnicity for Residence Geography, EEO Tabulation 2006-2010 (5-year ACS data) by EEO Occupation Code 2100 (this survey estimated that individuals identifying as American Indians and another racial group accounted for an additional 3460 attorneys, or an additional 0.3% of all attorneys). This data is available at http://factfinder2.census.gov/.
7. ABA, Lawyer Demographics 2008 (2009) available at http://americanbar.org.
8. Tina Norris, Paula L. Vines, and Elizabeth M. Hoeffel, The American Indian and Alaska Native Population: 2010, 3, U.S. Census Bureau No. C2010BR-10 (Jan. 2012).
9. For more information on the ABA Judicial Clerkship Program, see http://www.americanbar.org/groups/diversity/diversity_pipeline/projects_initiatives.html.
10. *See* http://ailc-inc.org/PLSI-Clerkship.html.

11. National Association for Law Placement, *Courting Clerkships: The NALP Judicial Clerkship Study*, Table 2 Racial/Ethnicity Distribution of Judicial Clerkships by Level of Clerkship: 1994-1998 (2000) available at http://www.nalp.org/clrktb1_8#02..

12. Federal Judicial Center, Diversity on the Bench, American Indian Judges on the Federal Courts, available at http://www.fjc.gov/servlet/nDsearch?race=American+Indian (identifying Frank Seay and Michael Burrage as the only federal judges to be identified as American Indians). *See also The Oklahoman*, "Three Confirmed To Be Judges, U.S. Marshal," Archive ID 577837 (June 10, 1994) available at http://newsok.com/3-confirmed-to-be-judges-u.s.-marshalarticle/2468675/?page=1.

13. *See* http://www.judiciary.senate.gov/nominations/Materials 112thCongress.cfm (Arvo Mikkanen, *Kiowa*).

14. *See* http://www.judiciary.senate.gov/nominations/Materials 113thCongress.cfm (Diane Humetewa, *Hopi*).

15. Jim Meyers, *Tulsa World*, "Court Vacancy Causes Stir: The White House has not sought input from some key Oklahoma Decision Makers," 2010 WLNR 10653891 (May 23, 2010) (recounting the negative response to the potential nomination of Keith Harper, *Cherokee*, to the 10th Circuit).

16. For instance, at least two members of the top 10 law firms by size have developed Indian law practices. Those are: K&L Gates, http://www.klgates.com/indian-law-practices/?nomobile=perm; and Greenberg Traurig, http://www.gtlaw.com/Experience/Practices/American-Indian-Law.

17. Indian Tribal Economic Development and Contract Encouragement Act of 2000, P.L. 106-79, §§2, 3, 114 Stat. 46.

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The Melting Pot Outside Your Office

By Ruth J. Addison and Daniel Gomez

Abraham Lincoln said, "[y]ou can have anything you want — if you want it badly enough. You can be anything you want to be, do anything you set out to accomplish if you hold to that desire with singleness of purpose."[1] It remains true that the American dream is open to all people, but barriers still exist and unfortunately, not everyone grows up hearing or believing this ideal. For some, doubt is rooted in a perceived lack of diversity and inclusion among professionals.

Diversity is a term that has been around for generations and is generally defined as "[t]he condition of having or being composed of differing elements: variety; *especially*: the inclusion of different types of people (as people of different races or cultures) in a group or organization."[2] Traditionally, diversity is a statistic concerning certain identifiers including, but not limited to, gender, race, nationality, religion or belief, sexual orientation, physical or mental disabilities and/or genetic background.[3]

In recent years, the concept of diversity has evolved beyond statistics and now involves a broader ideal of "inclusion." Inclusion is "[t]he act of including; a relation between two classes that exists when all members of the first are also members of the second."[4] As author and diversity consultant Vernā A. Myers aptly analogizes in her book *Moving Diversity Forward: How to Go From Well-Meaning to Well-Doing*, published by the American Bar Association Center for Racial & Ethnic Diversity: "Diversity is being invited to the party; inclusion is being asked to dance."[5]

It is no secret that the legal profession — law firms in particular — has done poorly in both the areas of diversity and inclusion, and Oklahoma is no exception.[6] It is undeniable that lawyers, as a group, do not resemble the general populace from a demographic standpoint.[7] Even within our own ranks, representation at the partnership level of large law firms does not comport with the demographics of persons holding law degrees.[8] The legal profession has also fallen behind other industries and economic sectors, which have seen significant progress in the areas of diversity and inclusion. Fortunately, the profession has not ignored the trends and, in recent years, efforts to improve have gained traction. This article addresses important aspects of this very issue, including the changing landscape of the people we represent, the demand by businesses that their law firms do better in diversity and inclusion initiatives, and steps that law firms in Oklahoma can take to better recruit and retain diverse attorneys. Additionally, it explores issues faced by diverse attorneys in what can be an unfamiliar and challenging law firm culture and difficul-

ties faced by firms attempting to retain diverse attorneys.

THE ECONOMIC REALITIES OF CHANGING DEMOGRAPHICS

American history is one of diversity, and it should come as no surprise that we remain a country of diverse persons. Our populace represents almost every country on Earth.[9] As former U.S. Secretary of State Colin Powell once said, "America is a nation of nations, made up of people from every land, of every race and practicing every faith. Our diversity is not a source of weakness; it is a source of strength, it is a source of our success."[10] The world is a diverse place, full of diverse people, thoughts and actions. It consists of approximately 7.1 billion people.[11] Of those, approximately 315 million reside in the U.S.[12] Of the approximately 3.8 million people residing in Oklahoma, more than 1 million are minorities that contribute to the state's diversity.[13]

The trend of diversity in this country has accelerated. In 2012, the U.S. government published statistics documenting that Caucasians are a new minority in babies.[14] Projections state that in five years minorities will make up more than half of children under the age of 18.[15] This rings true as minorities make up 49.9 percent of the population under the age of five.[16] Within a generation, diverse groups will become the majority.[17] Increasingly, these minorities are retaining their cultural identities while also partaking in the American dream. The majority can no longer assume that diverse persons will eventually assimilate entirely into one homogenous "American" culture; but now more than ever, cultural understanding is a necessity, not merely an aspiration.[18]

As the "minorities" become the majority, they will run our businesses, economy government and will have a strong presence in every other aspect of commerce. From a lawyer's perspective, this means the demographics of our clients and other consumers are changing. For these reasons alone, law firms should make a cognizant and quantifiable effort to implement strategies to cultivate diversity. In order to serve the workplace, we need to resemble it. It is no longer enough to conduct training seminars, ask employees to watch PowerPoint presentations about diversity or even hire diverse people for statistical reasons.[19] Law firms need to do more to create an environment of inclusion and growth. Understanding different cultures and the nuances in their languages is an asset to businesses and thereby to the law firms that seek to represent them. It will help law firms communicate with their diverse clients and thus increase their effectiveness in serving them. Being on the same page with a client will result in a satisfied client. Thus, if firms are to benefit from the services of diverse groups, it will be in their best interests to cultivate attorneys from diverse groups.

This will require hiring and training attorneys from diverse groups to handle their businesses. In this way, firms will be able to keep up with competition and not fall behind emerging business trends. After all, the primary objective of most businesses is to generate income and increase profit. Law firms are businesses. This begs the question, "[w]hy are businesses in corporate America succeeding, but law firms are not?" Corporate America is ahead of the game because it is competing in a global market. The global market consists of diverse consumers, and businesses are doing whatever it takes to maintain security, including hiring and retaining diverse people.[20] The next logical step will be for those that serve these increasingly diverse businesses — such as law firms — to keep up.

THE ONGOING CALL TO ACTION

Not surprisingly, diversity initiatives in the legal profession appeal to the bottom line. In 1999, the chief legal officers of roughly 500 major corporations signed a document titled *Diversity in the Workplace — A State of Principal* encouraging their outside counsel to do better in diversifying their workplaces.[21] In 2004, seeing little action, Rick Palmore, then general counsel for Sara Lee and now an executive for General Mills, drafted a more specific "Call to Action" addressed to corporate legal departments calling for more direct action requesting that, as a group, corporate clients commit themselves to "end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse."[22] About 100 companies, including American Airlines, Boeing and General Motors, signed on to the Call to Action and its effects are felt today.[23]

The most prominent repercussion was felt by outside counsel for Wal-Mart Stores Inc., branded as Wal-Mart, which dropped law firms and refused to provide more business to certain counsels that were not meeting diversity stan-

dards.[24] DuPont is also cited as having "parted ways" with one firm that did not adequately support its diversity efforts.[25] It was in response to this call to action that many of the larger law firms and those representing large corporate clients began forming diversity committees within their firms to assure that that they would not fall behind their peers in obtaining, or retaining, business from these large companies. Those among us who have pursued this type of work have undoubtedly encountered diversity surveys and detailed requests for information about diversity as part of their proposals. This is clear evidence that businesses are continuing to pursue diversity.

Many corporate general counsel and executives who are in charge of retaining legal counsel have not been shy in discussing their adherence to the call to action, which underscores what is often referred to as the "business case" for diversity.[26] A study by the Minority Corporate Counsel Association (MCCA) states, "law firms that only pay lip service to diversity may pay a stiff economic price. Law firms that do not take diversity seriously are already losing money."[27] Competency is obviously the main criterion when a business seeks to retain outside counsel, but all else being equal, and in light of the ongoing call to action, diversity within the law firm is increasingly becoming the determining factor when businesses retain counsel.[28] As expressed by general counsel for Merck Sharp & Dohme Corp. (Merck), a worldwide leader in medicine and research, "[w]e are in the fortunate position of having many highly capable law firms lining up to work with us. And it was hard in some ways to differentiate among these firms. But we found that diversity was something that would allow us to make that differentiation."[29] There further appears to be a growing network of diverse in-house counsel that routinely recommends law firms with good diversity records to one another and law firms that fail to improve in this area risk losing out on lucrative opportunities altogether.[30]

CLIENTS ARE CONSUMERS

Lawyers are innovators who thrive on favorable outcomes and creative arguments. This is how we obtain and maintain business, because clients are our consumers. Consumers want the best product for the best price. They also want the benefit of hiring law firms without going through the hassle of shopping around and playing the odds. It makes sense that law firms with diverse groups of attorneys, as opposed to a homogeneous one, provide a better think tank. Simply put, diversity brings different life experiences and thinking styles to the table — something that requires the workplace to adapt in order to remain efficient. It is the one-stop shop ideology. Retail companies like Wal-Mart and The Target Corporation, branded as Target, have capitalized and advanced on this idea for years. Retail consumers are able to purchase a majority of their household goods, clothing, groceries, etc., in the same location. The idea behind this approach is that there is something for everyone. Law firms should employ the same tactic. If law firms are not proactive in seeking diverse attorneys, they will soon find whole generations of potential clients taking their business and wallets elsewhere. In discussing the benefits of diversity regarding outside counsel, general counsel for Shell Oil summarizes that "[w]hen you use people of diverse backgrounds and different ways of looking at things, you get a better solution."[31]

"…law firms that fail to improve in this area risk losing out on lucrative opportunities altogether."

Diversity is thus a material element to a successful business nationally and internationally.[32] At the most basic level, many, if not all, law firms understand the importance of diversity. It is the reason they form practice and industry groups. If a firm diversifies practice areas and expands the skill set offered by its attorneys, it can service a larger population and in turn, increase revenue and enhance its reputation. Why not employ the same idea using racial, sexual preference, gender, religious and socioeconomic backgrounds? The answer comes back to an understated truth — employers hire individuals that they are comfortable with and/or are like them. The same principle applies to clients. It is our experience that potential clients and diverse attorneys in and outside of Oklahoma call seeking racially diverse counsel or referrals. The majority are looking for someone with law firm experience outside our prac-

tice areas. Unfortunately, the options locally are limited, and we are forced to rely on a small, though developing, network of diverse attorneys. Law firms that fail to improve in this area risk falling behind the increasingly diverse bars of larger competitors in larger surrounding markets such as Dallas, Houston, Kansas City and Saint Louis.

INCLUSION REQUIRES A PROACTIVE EFFORT ON EVERYONE'S PART

Many articles and reports are available that describe the various reasons some young diverse attorneys struggle, especially in the law firm environment.[33] Although there are exceptions, some report that they are wholly unfamiliar with the unwritten rules for success in a law firm. They feel that they will not succeed because law firm culture is foreign to them.[34] They have no knowledge of the dos and don'ts, or what skills to polish in order to thrive.[35] Moreover, they do not have the benefit of a mentor or family member who has been there before.[36] No one has ever explained that law firm culture requires the ability to carefully navigate and negotiate through organization politics.[37] This causes further isolation and a feeling that the attorney is not meeting expectations or working hard enough.[38] Reports also show that mentorship within a firm is a key to success and many young diverse attorneys struggle to connect in an environment where they share little or no cultural identity with any of the decision-makers in the firm.[39] Unintentionally, individuals tend to favor people who are most like themselves; and young diverse attorneys report feeling that they fall behind their white male colleagues in the area of mentorship and relationships with the partners at their firms.[40] Despite this, several diverse attorneys are trying to bridge the gap within law firms by choosing to act as trailblazers for future generations. Diversity begets diversity, and as these trailblazers move further in their careers, there is hope that some of the reported barriers will erode over time.

Among law firms that have made strides in diversity hiring, retention is a problem that has drawn considerable attention. Some young diverse attorneys report difficulty in believing they can succeed or achieve shareholder or partner status when that group bears little resemblance to themselves.[41] This sometimes results in these young diverse attorneys looking elsewhere. They may seek opportunities in corporate America or the public sector where they see other successful diverse attorneys.

There are also reports of social stigmas, struggles or presumptions of incompetence.[42] For example, many diverse professionals recall situations in which a Caucasian colleague described them as polite or articulate.[43] Normally, such statements are compliments, but in this context, they are not because these attributes are presumed about their Caucasian counterparts.[44] This encourages feelings of isolation. These unintentional slights are referred to as "micro-inequities" or "micro-insults," and can be particularly harsh to their recipient while the perpetrator remains oblivious to the implication of the seemingly benign statement.[45] It is material that once a young diverse attorney is hired, all efforts be made to retain that attorney and to avoid the pitfalls that can result in diverse attorneys seeking other opportunities.[46]

So how do law firms deal with this? Myers' book, *Moving Diversity Forward*, provides a complete outline on how to accomplish diversity in your legal office and an essential reading for those who take the matter seriously. Among the most important factors to consider is to shed your colorblind glasses, recognize each person's differences, and embrace the same. If law firms are serious about this, they can implement the following 10 steps:[47]

1) Take steps to ensure that diverse candidates see people that look or have similar backgrounds on all levels-from the shareholders to the support staff;

2) Educate employees and members on diversity;

3) Set out hiring guidelines and employ strategies to meet, and get to know diverse individuals;

4) Include diverse attorneys on marketing and networking opportunities;

5) Include diversity in the mission statement;

6) Create internal committees that incorporate diverse candidates on a variety of different situations;

7) Assess employees' learning and communication styles and strengths;

8) Promote each employee's strengths;

9) Participate in pipeline programs with area high school children and allow them to shadow attorneys; and

10) Take action against all negative and/or prejudicial behavior against diverse individuals.

CONCLUSION

Law firms must recognize diversity and inclusion and learn to understand these critical concepts. Diverse attorneys have different backgrounds. Different backgrounds mean different thought processes and levels of understanding. Open and honest discussions surrounding diversity is necessary among law firm decision-makers. Decision-makers will now begin to understand what they do not know. When diverse attorneys are hired, the job has just begun. They need familiarization and direction within the job environment. A majority of diverse candidates have never had anyone explain how a law firm works and what it takes to succeed. In this regard, mentorship is key. Decision-makers must also appreciate the unstated pressures that diverse attorneys are under to assimilate. A law firm should prefer inclusion to assimilation. Inclusion is embracing the attorney rather than the firm leaving it to the attorney to find his or her own way.

Managing partners want the firm to succeed after their watch is completed. They want a legacy. This ensures staying power, branding and growth. In our changing world, this will not work if no one takes diversity and inclusion seriously. Management should stress this objective. Most firms have some form of a diversity committee, and commitment to the same is essential. Firms without diversity committees are behind and should promptly take action to form a committee. An effort to nurture each person's skills must commence, along with a thorough assessment of what that person brings to the table. In order to develop business and client relations, a law firm must work together.

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15. *Id*.

16. *Id*.

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18. *See* John T. Hewitt, *Diversity at its Best: From Melting Pot to Salad Bowl*, Racing Toward Diversity Magazine (March 21, 2011, 7:10 p.m.) (Some even challenge the idea of the country as a "melting pot" where all different elements merge together into one homogeneous group and instead prefer the analogy to a "salad bowl" where "each ingredient retains its flavor, color and texture, each complementing one another and enhancing its overall nutritional value."), http://racingtowarddiversity.com/blog/2011/3/21/from-melting-pot-to-salad-bowl.html).

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34. *Id*. at 136.

35. *Id*. at 139- 140.
36. *Id*. at 127.
37. *Id*. at 138.
38. *Id*. at 139.
39. Neil Hamilton and Sarah Gillaspey, *Diversity Changes: Corporate Clients and Law Firms*, Minnesota Lawyer (June 10, 2010), www.stthomas.edu/media/hollorancenter/pdf/Diversity-change1.pdf.
40. *Id*.
41. Stone, at 135-136, 138.
42. *Id*.
43. *See* E. Macey Russell, *Resisting Challenges to the Diversity Value Proposition*, Institute for Inclusion in the Legal Profession Review 2012: The State of Diversity and Inclusion in the Legal Profession (2012), 73, www.theiilp.com/Resources/Documents/IILPReview2012.pdf.
44. *Id*.
45. Myers, at 53-54.
46. As described by Ginsburg, retention is also important to the bottom line because losing associates early in their careers often leads to a loss to the firm for their investment in training the new associate; *see also* Stone, at 138-139.
47. *See also* Stone, at 142.

ABOUT THE AUTHORS

Ruth Addison is a trial lawyer with McAfee & Taft. Her practice focuses on labor and employment and litigation. She is chair of the OBA Diversity Committee. In 2012, the Tulsa County Bar Association honored her with a President's Award for her leadership as chair of its Diversity Development Committee, which was recognized for its efforts in developing a program to educate high school students about legal careers that are often under-represented by minority groups.

Daniel Gomez works for Conner & Winters in Tulsa where he practices Native American law and commercial litigation. Since 2012, he has served as chair for the Tulsa County Bar Association's Diversity Development Committee and is a member of the Hispanic National Bar Association and the National Native American Bar Association.

Sexual Orientation: Acceptance 1982 – 2014

By Jane Eulberg

Borrowing from Barbara Mandrell and George Jones, "I was a gay lawyer in Oklahoma, when being a gay lawyer in Oklahoma wasn't cool."

I moved from Wichita to Oklahoma City in 1982 to attend Oklahoma City University School of Law. I didn't know any lesbian, gay, bisexual and transgender (LGBT) people in Oklahoma City except my long-term partner. Because we had gone from having two good-paying jobs to one, we felt quite poor. We lived in a mobile home in Midwest City and to save gas we rode together to her work and my school, meaning that I was on campus from 7:45 a.m. to 5:15 p.m. nearly every day. As a result, I spent more time than most in the law library. Rummaging around in the stacks one day, I happened upon a pile of law-related newspapers. The issue on top caught my eye. The headline mentioned, "Gay Attorney Bill Rogers from OKC." I was so glad to learn there was at least one gay attorney in Oklahoma City. I wanted to meet him. However, at that time it was not acceptable to be a gay attorney in Oklahoma, so I kept that thought to myself and didn't meet him until years later.

During my 1L year in law school, someone posted a notice on the bulletin board about the National Women's Law Conference in Los Angeles in the spring. With advice from a kind professor, I requested and received a small stipend from the law school student board and attended the conference. What an eye opener it was! One of the sessions was about starting an LGBT group in our home states. I decided that I would try to do it in Oklahoma some day and kept the materials.

Fast forward to 1995. I was working in the Federal Courthouse in Oklahoma City on April 19, 1995. THE BOMBING. It gave me a whole new perspective on things. I decided that "someday" was "now." Even with the bombing pushing me forward, I was still quite afraid to do it. By then I had been practicing for 10 years and had made many friends in the legal community. Long story short, I talked one-on-one with probably 20 or more attorneys and judges about my desire to start an LGBT group. Some responses were positive, a few were negative, but most ran along the line of "Are you crazy? Do you realize what you are doing?"

Five other brave LGBT attorneys, myself, and one LGBT-friendly attorney became the board of the Oklahoma Lesbian and Gay Law Association. They elected me president (surprise!). The purpose was to educate the legal community about LGBT issues. Our first big project was to sponsor a CLE that we hoped would become an annual event. We each talked to our own friends and wound up with approximately 40 paying lawyers/judges as members of the group. You all know who you are. We held our Oklahoma City grand opening at the Waterford Hotel, attended by some 60 lawyers/judges. We also held a grand opening in Tulsa.

Our keynote speaker in Oklahoma City was Jay Novick, former chief assistant to Janet Reno in Florida and co-chair of the National Lesbian and Gay Law Association. He was very excited about a LGBT group being formed in a state like Oklahoma. Leigh Jones, legal beat reporter for the *Journal Record*, wanted to interview me about the formation of the group. However, I was too apprehensive to do it, so she interviewed Mr. Novick instead. I sat next to him and listened so I could learn how to be interviewed. Ms. Jones wrote a nice article about us for the *Journal Record*. The *Oklahoma Bar Journal* printed a four-paragraph announcement of our formation and upcoming grand opening. The *Tulsa Family News* published an article announcing the formation of our group. The *Gayly Oklahoman* (not to be confused with the *Daily Oklahoman*) published a nice article about our grand opening and put a picture of the board on the front page.

We heard from local LGBT lawyers who were so closeted that none of us on the board were aware of them. We published three quarterly newsletters, and we received congratulatory letters from folks in other states. We were on top of the world. We were doing a good thing and had been much more widely accepted than we ever dreamed.

The fun didn't last very long though, and we never got to put on that first CLE.

I was a federal employee at the time. My employer requested an ethics opinion from the Judicial Conference of the United States Committee on Codes of Conduct about my association with the group and an interview of me by

Author's Note: In the summer of 1998, Crowe & Dunlevy partner Jimmy Goodman interviewed me about the formation of the Oklahoma Lesbian and Gay Lawyers Association for publication in the Oklahoma County Bar Association legal newspaper, The Briefcase. I refer to it as "The Interview That Wasn't" because before it could be submitted for publication, the Judicial Conference of the United States Committee on Codes of Conduct issued its private opinion that publicizing the interview would violate the federal judicial codes of conduct. I am thrilled that now, 16 years later, long after I resigned from my federal job, the Oklahoma Bar Journal is publishing it. As my article states, the Oklahoma association no longer exists, but the interview provides additional insight into this area of diversity.

New Organization Formed to Address Lesbian/Gay Issues

Several Oklahoma attorneys have formed a professional organization to address lesbian and gay legal and social issues. The Oklahoma Lesbian and Gay Law Association (OLGLA) joins the 31 other professional associations already chartered throughout the United States with similar goals. OLGLA is affiliated with the National Lesbian and Gay Law Association, an entity represented in the ABA House of Delegates.

OLGLA is a statewide professional organization created by and for attorneys who are interested in obtaining a greater knowledge of the unique issues affecting gays and lesbians, and in supporting efforts to dispel negative stereotypes, developing acceptance, understanding and respect in their place.

The following interview with Jane Eulberg, president of OLGLA, was conducted by Jimmy Goodman.

Where did the idea come from to start OLGLA?

It was a long, and slow, progression. It started in 1984. I was in law school and was the president of the women law students' organization. Someone had posted a brochure on the bulletin board at school about the National Women in Law Conference being held in Los Angeles that year. One of the faculty members and I attended the conference. It was so exciting. There were hundreds of women lawyers, judges and law professors — a wide variety of panel discussions and lectures. One of the sessions was about lesbian and gay law associations, and I picked up the packet of materials on "how to start a chapter in your state." I probably still have it somewhere. I read it when I got back home and just wondered if anything like that would ever be possible in Oklahoma.

Then, through the years, from time to time the idea would pop back up in my head. When I saw announcements and pictures in the bar journal about the Oklahoma City Association of Black Lawyers, I dreamed that someday there would be an announcement about a lesbian and gay law association in the bar journal. The same thing happened when I saw announcements and pictures in the bar journal about the Oklahoma Indian Bar Association and about the women lawyers' groups. I kept thinking, if they can do it, so can we — maybe sometime.

In 1994 a friend on the law faculty at the University of New Mexico, Gloria Valencia Weber, sent me a brochure about a CLE being offered in Albuquerque on issues affecting lesbians and gay men and their families. It was cosponsored by the New Mexico Bar Association Family Law and the National Lesbian and Gay Law Association. I attended it and came back tremendously

Jimmy Goodman that was to be published in the *Oklahoma County Briefcase*.

The opinion was negative and, in short, stated that I could not allow the interview to be published and that I had to resign from the group or lose my job.

I tearfully resigned from the group, and it sort of faded away. None of the other board members had the exaggerated passion that I had about the group and its mission.

One of my greatest regrets is that in 1998 I did not stand my ground and resign from my federal job instead of resigning from the group.

Back to Bill Rogers. He became one of my finest mentors. He died a few years ago, but what a legend he was. He founded the Cimarron Alliance Foundation, and I served with him on the board of that organization for several years. He probably did more to educate others about LGBT issues than our group would have ever been able to do. When I finally got to meet him, he told me his story about being a gay lawyer in Oklahoma in the

"My hope is that it keeps getting easier and that soon being an LGBT judge or attorney or staff member in Oklahoma is a non-issue."

impressed. Their speakers included nationally known litigators as well as local practitioners. When I came back home, I dreamed about the possibility of doing something like that in Oklahoma.

I was in the federal courthouse on April 19, 1995, when the Murrah Building was bombed. That had a profound effect on me, as it did on everyone in Oklahoma City and beyond. But one day, about a year and a half later, I was thinking about the bombing and about how uncertain life is, and I was feeling down because I felt I hadn't really done anything with my life, and my mind was just wandering — and it just popped up again — the idea of having a lesbian and gay law association in Oklahoma. That is when I decided that, if others would help me, it was time to do it.

I am delighted to report that many others, practitioners in public as well as private law, most of whom need to remain unnamed, were ready, willing and able to help. We, the steering committee, worked long and hard to get the group organized. We held our opening kickoff/membership drive at the Waterford Hotel in Oklahoma City in June 1997 and at the Doubletree Downtown in Tulsa in November 1997. Board member Kerry Lewis was instrumental in organizing the Tulsa event. We developed a quarterly newsletter (now edited by Ken Upton). We will be creating a webpage. We chose Scott Braden as our liaison to the law schools. We have started many projects that are successful because our members do great work.

What are the goals of OLGLA?

Our mission statement is "to promote equality in and through the legal profession and society. Through change in our legal and social structure we can eliminate discrimination against members of the lesbian and gay community." The goals listed in our brochure/membership application are to provide "a resource base to address issues that affect the lesbian and gay community, a referral source for legal representation, continuing legal education programs for the legal community, legal expertise through briefs, memoranda and reference guides on issues that affect the lesbian and gay community, and a resource base for lesbian and gay law students." My overarching goal for OLGLA is simply to make us visible to the entire legal community, so as to dispel stereotypes about who we are.

There is an article in the May 1998 issue of *Ladies' Home Journal* by a mother whose gay teenage son committed suicide. The article is titled "My Son Didn't Have to Die." The mother says she will never know why he did it, but she does know he felt depressed, ashamed, tormented by his peers and unable to accept himself — "all because he was gay." At the end of her article, she says, "I wish more homosexual adults would come out publicly, because gay kids need positive role models."

I regret that Robbie never heard Ellen DeGeneres's speech after she won an Emmy award last fall for the coming-out episode of her sitcom, Ellen. She specifically addressed gay teens, saying "Don't ever let anybody make you feel ashamed of who you are."

People have inquired if you will be trying to promote some "homosexual agenda" within the bar?

You'll have to define what you mean by "homosexual agenda" before I can answer this one. If you mean providing positive, professional role models within and outside the legal community, the answer is yes. If you mean sensitiz-

years before I went to law school. It was easier for me than it was for him.

My hope is that it keeps getting easier and that soon being an LGBT judge or attorney or staff member in Oklahoma is a non-issue.

When I told retired Professor Nancy Kenderdine I was writing this article, her comment was, "The atmosphere here re gays reminds me of when I graduated from OU and a job notice on the bulletin board said, 'Only people who can grow beards need apply' and you can quote me on that!"

But things have improved a lot. You cannot imagine how pleased I am at the pace of acceptance in the Oklahoma legal community. Back in the 1980s, Bill Rogers lost his job after he marched in the first Gay Pride Parade in Oklahoma City. I watched that parade while hiding behind a large tree. Now the Oklahoma Bar Association and many law firms have their own diversity committees that include sexual orientation.

THE FUTURE IN OKLAHOMA?

Recently I had the opportunity to meet several LGBT and straight law students from OU and OCU. Their attitudes about LGBT issues are so refreshing – total acceptance without giving it a second thought. A few months ago I talked with the Diversity Committee chair at Phillips Murrah. That firm's pride in having out-LGBT attorneys is well deserved. Undoubtedly the same is true at other firms. I predict there will soon be an LGBT bar association in Oklahoma, affiliated with the Oklahoma Bar Association. I think a judge or two will soon

ing the legal community to issues affecting lesbian and gay clients, the answer is yes. If you mean helping to overcome ignorance, prejudice, misunderstandings and attitudes harmful to people in our profession, the answer is yes. If you mean working for justice, compassion, respect and understanding for gay people who suffer as victims who deserve representation, the answer is yes.

Why did gay and lesbian lawyers decide to form their own organization? Some lawyers have said to me, "Can't they do what they want to by just being good lawyers who are gay?"

It is important to honor diversity and celebrate the gifts that people who are different bring to the norm — by having different groups of lawyers such as black lawyers, Native Americans, women lawyers, the Federalist Society, trial lawyers, the criminal defense group, title lawyers group, the judges group, etc. We recognize the unique contributions each lawyer makes to the wholeness of the legal world. Groups like OLGLA address particular legal issues that affect its constituencies.

OLGLA permits its members to remain anonymous. Why do you still need that?

As one of our members said, "You're darned if you do, and you're darned if you don't." If you speak out, you get blasted for promoting the "homosexual agenda." If you stay in the closet, you get blasted for "being ashamed of something." In fact, many lesbian and gay attorneys feel they need to remain anonymous so they are not discriminated against within their own firms or by others in the legal community. Hopefully, through the efforts of organizations like OLGLA, the next generation of lawyers won't have to have that fear. One of the biggest problems of being gay is not gayness but the reaction of heterosexuals to it.

Who are the members of OLGLA?

We are Republicans, Democrats and Independents; black and white; lesbians, gays and heterosexuals; litigators, transactional lawyers, judges, partners at large firms, medium size firms, small firms; associates, solo practitioners and government lawyers. We live in the Oklahoma City area, the Tulsa area and in rural Oklahoma. We don't agree on all issues, but we all have similar goals for the organization.

Why is the business of OLGLA important to other members of the bar?

The legal profession improves when all its members live life as fully as possible and contribute their full potential to the pursuit of justice. As OLGLA works to diminish prejudice and promote understanding, other attorneys are better sensitized to serve the gay and lesbian entrepreneurs and their families and friends who need legal help, such as CPAs, business owners, physicians, nurses, teachers and real estate developers. Lesbians and gays and their families and friends need corporate lawyers, tax lawyers, real estate lawyers, estate planning lawyers and litigators.

How do you see OLGLA making things better for gay and lesbian people in Oklahoma?

The answer to this is essentially found in the answers to the questions you have already asked — visibility, promoting understanding through education, addressing legal issues that affect the lesbian and gay community, trying to make the state a little kinder and more tolerant.

come out. If they have not already, I think all the LGBT law professors will come out. And, finally, if the Judicial Conference of the United States Committee on Codes of Conduct was asked the same questions today that it was asked in 1998, I think its answers would be different. The future is as bright as the Oklahoma sun in August.

IDEAS TO INCREASE ACCEPTANCE

Here are a few ideas for those interested in furthering the acceptance of LGBT issues in the legal community:

1) Invite a local LGBT lawyer/judge to present a session for all your attorneys and staff members – a training/awakening session of sorts. Make attendance mandatory.
2) Support your alma mater's LGBT student law association.
3) As a firm or an individual, join one of the national associations. One umbrella organization is the National LGBT Bar Association, an affiliate of the ABA. Its website is www.lgbtbar.org.
4) Help start an LGBT bar association in Oklahoma and get it affiliated with the OBA and with the ABA.
5) If you are an LGBT judge, attorney or staff member and if you can, come out. I think you will be pleasantly surprised at the acceptance of your peers.

ABOUT THE AUTHOR

Jane Eulberg received her undergraduate degree *magna cum laude* in mathematics and computer science at UCO in Edmond in 1971 and J.D. with highest honors from OCU School of Law in 1985. From 1971-1982 she worked in IT for Pizza Hut Inc. in Wichita, Kan. In additon to private practice for John W. Norman Inc.; Edwards, Sonders & Propester; and Phillips Murrah, she clerked for two federal district judges, and for Oklahoma Supreme Court Justice Daniel Boudreau. She retired in 2004.

Diversity
in the LAW

Lessons from the Field: My Life-Changing Law Practice as an Air Force JAG

By Katie Illingworth

When I walked off the C-130, exhausted, loaded with flak vest and helmet, blinked into the bright mountain sun and looked out over the stark beauty of the Hindu Kush mountains, I marveled at the turns my life had taken that had landed me literally in the middle of the war in Afghanistan.

The "diversity" theme of this month's *Oklahoma Bar Journal* intrigued me. There are countless different contexts around and meanings to the word "diversity." There is diversity of culture, race, gender, viewpoints and experience, just to name a few. For attorneys, diversity can mean diversity of practice, which perfectly sums up the beginning of my legal career as an Air Force judge advocate (JAG).

Like many of us, the events of Sept. 11, 2001, deeply affected me. I remember standing in my college apartment that morning at OU, watching the live images on my television screen of planes slamming into the twin towers as deep grey smoke billowed forth from the points of impact. I was shaken to my core, and the world as I knew it felt darker and more disordered than I had ever known before. The events of that day changed me, and began a long period of reflection as I tried to decide how I was going to contribute to the world after having this experience as part of my history.

Two years later, I moved to Washington, D.C. for law school. I was drawn to the national political scene, and knew a legal career would fit well with my interest in problem-solving and my love of debate. It turns out I was correct, as I loved law school (as much as one can love law school). In my second year, I began to consider what path in the law I would choose to practice in. During that same year, a question started popping up in all my conversations at school—*"What are you going to specialize in?"* I felt as if I barely knew enough about the law at that point to really specialize in anything, and was often perplexed by the question. For me, because there were so many areas of the law I enjoyed, including contracts, labor law, criminal law and procedure, constitutional law, trusts and estates and others, it felt like I shouldn't have to just pick one or two areas of specialization.

I knew there was really one choice for me out of law school, as I contemplated my desire to serve and my love for so many areas of the law — I decided to be a JAG. When I told my family, to say they were shocked is putting it mildly, as I don't think anyone would peg me the "outdoorsy" type. When I told my father I was joining the military, it was like a scene from a movie as I watched the humor, then concern, pass across his face as he realized I was not joking. I think the entire family was

afraid I wouldn't even survive officer training school, and if I look back now, I was a little afraid myself.

So I applied, interviewed with a full bird colonel at Andrews Air Force Base, and was accepted (contingent upon bar passage), following a military tradition in my family that includes a Lady Marine grandmother, a Marine grandfather who served in World War II, and another grandfather who flew as a bomber pilot for the Army Air Corps in WWII. So I set to work that summer, following a highly regimented schedule of intense running and other physical training in preparation for officer training school alternating with my bar studies.

A few months later, during the week of Thanksgiving, I had passed the bar, had passed Officer Training School with flying colors and received the phone call that I was on my way to my first assignment — in Hawaii! When I drove through the front gates for the first time of the 15th Airlift Wing at Hickam Air Force Base, Hawaii, a base whose old buildings still bear gunpowder scars from the attack on Pearl Harbor on Dec. 7, 1941, I knew I had become part of living history. I loved it. I thrived. I ran every morning along Pearl Harbor, watching the submarines float in, and thanked my lucky stars for such an opportunity.

I began to realize that in choosing to become a JAG, I had chosen not just a particular legal career path, but a way of life. The Air Force Officer Training and JAG school cadre had already drummed into my head that I was an officer first, a lawyer second. Despite my luck and good fortune at living in Hawaii, along with the commitment came hardships. My husband (a fellow JAG) and I were separated from each other for nearly two years of marriage. He deployed two weeks after we were married in support of Operation Iraqi Freedom, and I deployed within a month of his return. I didn't come home for two Christmases in a row, one of which I spent in harm's way. But even though I endured hardship and sacrifice as part of this JAG life I had chosen, I also knew I was part of something bigger than myself and I had the opportunity to practice alongside incredibly gifted and talented attorneys who were not only top notch practitioners, but lived and embodied values of integrity, honor and sacrifice, values so often dismissed in today's society as outdated and overly idealistic.

"I began to realize that in choosing to become a JAG, I had chosen not just a particular legal career path, but a way of life."

Another pull for me towards choosing JAG was the way the JAG Corps views trial practice. When I first interviewed, the colonel told me to expect to first chair at least one trial within my first four years of practice. Well, within two weeks of my arrival to Hickam as a first lieutenant, I was handed my first criminal case file to review for potential charging and prosecution. It was a drug case, specifically cocaine use and distribution, involving an airman first class who was a repeat offender involved in Oahu's drug scene. The facts of the case were especially aggravating because he was an aircraft maintainer on Hickam's F-15 fighter jets. It was an obvious point that the safety and integrity of the aircraft at our airlift base directly depended on the skill and attention of the maintainers.

From the first day I was handed the case file, two senior captains at my legal office mentored me, taught me how to organize my case, assemble my trial brief, handle evidence and talk to a jury. We held multiple "murder boards," as I rewrote my opening statement and closing argument over a dozen times. The group of seven attorneys in my office critiqued me, my delivery, my words, my posture, even the looks that flickered across my face in response to panel members' answers during a mock *voir dire*. I learned how to develop a proof analysis, a thorough examination of the elements of proof required for a charge and the corresponding evidence for each element. This key document became the cornerstone of my future trials and my own experiences in mentoring younger prosecutors, and is a lesson I consider one of the most valuable I have learned as an attorney to date. The level of training and attention to detail, the strategic case brainstorming and the camaraderie all honed my skills as an advocate and as a counselor.

As soon as I had gotten comfortable in my job at Hickam and had made a habit of spending every Saturday morning on Oahu's beautiful beaches, my world changed. My colonel

walked into my office on a quiet Friday afternoon, sat down, looked across the desk and smiled at me. I smiled nervously back and asked, "What's going on?" She replied, "You've been chosen by higher command to go to the mountains and review some contracts." *Mountains? Contracts?* The confusion must have been all over my face because she continued, "When I say mountains, I mean the Hindu Kush. In *Afghanistan*. And when I say contracts, I mean *Army contracts*."

If I had thought I was in for an adventure in Hawaii, it was nothing compared to the half year I was about to spend at Bagram Airbase in Afghanistan. As I was soon to learn, I had been tasked as an Air Force asset embedded into the headquarters of Combined Joint Task Force (CJTF)-82. Run by the renowned 82nd Airborne of the U.S. Army, CJTF-82's mission in Afghanistan was as command over RC-East, a large geographic area in the country to the north and east. I was one of a few Air Force officers chosen to work inside of the command alongside our Army comrades, as well as various military personnel stationed there from all over the world. Although my job description had nothing to do with my duties as a JAG in Hawaii, I began to understand that this type of flexibility as a practitioner was par for the course in my JAG career. To prepare myself, I attended an intense training course to hone my skills in government contracts.

Once I arrived in theater, I was one of three attorneys tasked with the legal review of every Army contract that affected RC-East. There I moved away from my former prosecutorial role and was knee deep in contract negotiations and fiscal law. Some of these contract negotiations involved negotiations with local Afghans, which meant various crash courses in cultural and gender sensitivities in preparation for discussions with locals.

Another key part of my job there was to help problem solve if a contract as originally written hit some legal snags. If my analysis was that a contract was legally deficient in some way, it was expected that I would find an alternative that was legally sufficient and also fulfilled the mission requirement. I had been trained to be that type of attorney as an Air Force JAG, and I understood the success of the mission was affected by my ability to "think outside the box" and seek out legal and feasible alternatives when various contract and fiscal law issues held up a contract. On top of these practice challenges, I was also forced to face my mortality as I experienced all manner of dangers, from earthquakes and sandstorms to Taliban rocket attacks, on a routine basis.

These few experiences represent a small fraction of my life and experiences as a JAG. I finished my Air Force tour out at Peterson Air Force Base in Colorado Springs, a "space base" that was part of Air Force Space Command. There, as chief of military justice, I oversaw all criminal trials at my office, including cases involving theft, sexual assault and even a couple of child pornography cases. Throughout my JAG tour, I also provided legal assistance to military members, their families and veterans, advising on and assisting with family law issues, estate planning, bankruptcy, consumer debt as well as several situations involving the application of such laws as Uniformed Service Employment and Reemployment Rights Act, Servicemembers Civil Relief Act and the Fair Debt Collection Practices Act, among others.

Then there were all the job "perks," including riding in military aircraft, singing the national anthem for an immigration ceremony in Afghanistan that welcomed soldiers into U.S. citizenship, being intimately involved in humanitarian efforts for local Afghan children, a stint as a special assistant U.S. attorney in Hawaii, and so many more. This is just one picture of what diversity of practice can mean for a legal practitioner, and who knew diversity of practice could be so interesting and so fun?

ABOUT THE AUTHOR

Katie Illingworth has practiced law since 2007 and was admitted to the Oklahoma bar in 2013. She spent four years as an Air Force judge advocate, six months of which she was deployed in support of Operation Enduring Freedom in Afghanistan. Ms. Illingworth currently practices as associate general counsel at First Financial Network Inc., a 25-year financial services firm headquartered in Oklahoma City.

Diversity
in the LAW

Avoiding Disparate Impacts in Background Checks of Potential Employees

By Ruth J. Addison

Many hiring decisions require the use of background checks. Since most employees have access to sensitive information held by their employers or work in regulated industries or interact with the public, background checks may be necessary to avoid negligent hiring. Every employer's worst nightmare is a bad hire. Therefore, it is in the employer's best interest to investigate an applicant's background before making an offer of employment. A bad hire is an employee that the employer has invested time and effort into, but is incompatible with the employer. A bad hire can negatively influence other employees' attitudes and office morale. Hence, employers should take precautions to protect themselves not only from a bad decision, but also from future litigation by providing and requesting certain information during the application process. These include, but are not limited to, equal employment opportunity statements, an at-will employment disclaimer, an I-9 employment eligibility verification that acts as proof the applicant can lawfully work in the United States and background checks.

One of the primary concerns with background checks is that it may reveal criminal history of an applicant that has no bearing on the position in which the applicant applied. For example, an applicant with a misdemeanor driving-under-the-influence conviction should not automatically be disqualified from a position that does not involve driving, such as housekeeping or janitorial service work.

Since racially diverse people are arrested and convicted at a higher rate than the majority, it may prejudice racially diverse applicants from obtaining gainful employment. If criminal history is revealed, the employer should be very fair, cautious and meticulous in its approach. Failure to do so may create a "disparate impact" claim and an Equal Employment Opportunity Commission (EEOC) charge of discrimination. In Oklahoma, employers are required to include

language in employment applications that says a conviction does not necessarily disqualify him or her from employment.[1] Employers also must include language that advises the applicant that they do not need to disclose expungements.[2]

This article will help guide employers, in Oklahoma, through the steps to properly conduct background checks and avoid discrimination claims.

WHY EMPLOYERS SHOULD UTILIZE BACKGROUND CHECKS

While it is not always practical to conduct background checks, they do help employers: 1) verify applicants for employment in sensitive positions; 2) determine if the applicant is suitable and qualified for the desired position; 3) determine if they have made the right hiring decision; and 4) help avoid unwanted workplace scenarios, conflict, violence and negligent hiring claims.[3] Additionally for some regulated businesses and industries, the employers must conduct background checks. For example, due to the sensitive nature of the job, the following classes of employers are required, under Oklahoma and federal law, to perform pre-employment background checks:

1. Healthcare
2. Childcare
3. Detention facilities
4. Motor carriers
5. Facilities under government contracts[4]

RULES GOVERNING BACKGROUND CHECKS

Background checks may or may not include consumer reports subject to the Fair Credit Reporting Act (FCRA).[5] If the employer is requesting information from a third-party, more likely than not, the third-party will be considered a Credit Reporting Agency (CRA).[6] If the employer is conducting its own independent background check on websites like OSCN or ODCR, then the FCRA will not apply, but the employer is still obligated to advise the applicant and obtain written consent.[7]

In 1990, the EEOC issued a report titled "Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions" which serves as an authority for enforcement of the FCRA, governed by the Consumer Financial Protection Bureau (CFPB).[8] It outlines a four- step process for conducting an appropriate background check.

The Investigative Process: Four Basic Steps

The first step deals with what the Credit Reporting Agency (CRA) can disclose to the employer. Specifically, the CRA may only supply a consumer report if the employer certifies it will use the information only for a "permissible purpose," it will not use the information in violation of federal or state equal opportunity law, it will notify the applicant that the report is being requested, it will obtain the required consent, it will give required notices if a decision not to hire is made based on the report, and, in the event an "investigative consumer report" is requested, it will give the additional disclosures.[9]

The second step is to advise the applicant that a consumer report is being requested, that the information may be used for hiring decisions and obtain the applicant's written permission. Under Oklahoma law, an employer must provide a box for the applicant to check if he or she wants a copy of the report sent to them contemporaneously (at no charge to the applicant).

If also requesting an "investigative consumer report," then the employer must advise the applicant. The applicant must receive this disclosure within three days after the request, unless it was part of the initial disclosure.[10] The employer must alert the applicant of the right to make a written request of details of the scope of the investigation as well as provide a copy of the document titled "A Summary of Your Rights Under the Fair Credit Reporting Act."[11] If the applicant makes a written request for details of the scope of the investigation, the employer must provide that information within five business days.[12]

The third step is triggered if the employer decides to reject the applicant based on the information contained in the report. In that case, the employer must provide the applicant with both a copy of the consumer report and a copy of the summary of rights publication.

The fourth step arises once the applicant is rejected. Once formally rejected, the employer must provide the applicant with a "Notice of Adverse Action." That Notice must provide the contact information for the CRA that supplied the consumer report, a statement that the CRA did not make the decision and cannot

give any specific reasons for it, and disclosures about the right to dispute the accuracy or completeness of the report and to get an additional report for free within 60 days upon request.[13]

Post Investigation: What Kind of Information Is Included in the Consumer Report

Background checks generally include, but are not limited to, driving records, vehicle registrations, credit records, criminal records, Social Security numbers, education records, court records, bankruptcy records, state licensing records, military records and the names of past employers. Employers should not consider the following eight items in their hiring considerations: 1) bankruptcies after 10 years; 2) civil suits; 3) civil judgments; 4) records of arrest, from date of entry, after seven years; 5) paid tax liens after seven years; 7) accounts placed for collection after seven years; and 8) any other negative information (except criminal convictions) after seven years.[14] Additionally, employers should not base their decision not to hire an applicant solely on arrest records.[15] Arrest records are unreliable because they do not prove that the applicant was convicted.[16] Hence, the EEOC has determined that employers must make an additional inquiry.[17]

What Employers Should Not Do With the Report

Once an employer has had an opportunity to review the consumer report or criminal background check, it must weigh the information, while simultaneously recognizing that the Civil Rights Act makes it unlawful to discriminate based on gender, race, nationality, religion or belief, age, physical or mental disabilities and/or genetic background.[18] In short, employers must treat everyone equally and fairly.

DISPARATE IMPACT

Pre-employment criminal background checks generally exclude more racially diverse applicants than non-diverse applicants from employment. "African Americans now constitute nearly 1 million of the total 2.3 million incarcerated population."[19] "From 1980 to 2008, the number of people incarcerated in America quadrupled-from roughly 500,000 to 2.3 million people."[20] In fact,"if African American[s] and Hispanics were incarcerated at the same rates of whites, today's prison and jail populations would decline by approximately 50 percent."[21] Since, racial minorities are overrepresented in the criminal justice system; the result is that a staggering number of diverse

"In short, employers must treat everyone equally and fairly."

candidates will not be able to obtain gainful employment. As a result, the EEOC has recognized the potential discriminatory impact of background checks for diverse applicants.[22]

Disputes arise when an applicant or current employee challenges the employer's employment practices alleging that he or she suffered age, race, ethnicity or sex discrimination due to disparate impact.[23] "A disparate impact violation is established when an employer is shown to have used a specific employment practice, neutral on its face but causing a substantial adverse impact on a protected group, and which cannot be justified as serving a legitimate business goal of the employer."[24] In other words, a practice by an employer that is facially neutral, but has the effect of harming a protected class is deemed discrimination. Proof of intentional discrimination is not required.[25]

How to Establish a Prima Facie Case

In order to maintain a disparate impact claim, an applicant or existing employee must show three things. **First**, "a specific identifiable employment practice or policy caused a significant disparate impact on a protected group."[26] If shown, then **second**, "the burden shifts to defendant [employer] to show that the challenged practice is job related and consistent with business necessity.[27] **Third**, if the employer is successful, "the plaintiff is then required to suggest an alternative employment practice that serves the employer's legitimate employment goals yet lacks the undesirable discriminatory effect."[28]

The EEOC's position is that disparate impact may exist when less than 80 percent percent of racially diverse applicants are unable to obtain employment in a particular industry.[29] For example, in "November 2010, a Chicago janitorial services provider agreed to pay $3 million to approximately 550 rejected black job applicants under a four-year consent decree, settling the EEOC's allegations of race and national origin discrimination in recruitment and hiring. The EEOC had alleged that the provider had recruited through media directed at Eastern European immigrants and Hispanics and

hired people from those groups over African Americans, and that the provider's use of subjective decision making had a disparate impact on African Americans. As part of the decree, the provider also agreed to extensive changes in its employment policies, to engage in "active recruitment" of African American employees, to hire previously rejected black applicants, to implement training on discrimination and retaliation, and to hire an outside monitor to review compliance with the decree."[30]

In short, applicants must prove that the challenged employment standard selects employees in a substantially different manner from that of protected classes using statistical evidence of adverse impact on racially diverse applicants.[31]

How to Establish a Business Necessity

Employers must show that the denial was consistent with the standard for "business necessity."[32] This standard is satisfied if the employer is able to consider and prove that the following factors influence the job position:

1. The nature and gravity of the offense(s)
2. The bearing, if any, of the offense(s) on any specific responsibilities
3. The time lapse since the date of the offense
4. The age of the applicant at the time of the offense
5. Evidence of rehabilitation

For example, an applicant that has a child endangerment conviction for failing to buckle a child in a car seat should not mechanically be barred from obtaining a position that does not put them in a position to involve or engage minor children, like working in a file room filing or shredding documents or even stocking supplies.[33]

HOW BEST TO AVOID A DISPARATE IMPACT CLAIM

Despite the strict procedural requirements, background checks remain one of the best avenues to preparing a defense to negligent hiring claims. Employers must take great care to be proactive and develop non-discriminatory and unbiased practices and methods to hire qualified applicants. However, employers need to be cognizant of their industry and the types of applications they may receive. Since it is impossible to know who will apply for a particular position, employers should not create rules that effectively excludes applicants with criminal histories. Employers should consider each application fairly and without prejudice.

1. *See* 22 O.S. §19(F); 63 O.S. §2-410.
2. *Id*.
3. *See Hutchinson v. City of Okla. City*, 919 F. Supp. 2d 1163, 1184 (W.D. Okla. 2013) ("Oklahoma law recognizes the tort of negligent hiring and retention. An employer will be held liable if, at the time of the tortious incident, the employer had reason to believe that the [tortfeasor-employee] would create an undue risk of harm to others.").
4. See 10 O.S. §404.1; 56 O.S. §1025.2.
5. *See* 15 U.S.C. §1681 *et. seq*.; Background checks can be included in consumer reports. Consumer reports are defined as "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for . . . employment purposes …." *Id*. at 1681a(d)(1).
6. *See Id*. at (f). (A Consumer Reporting Agency "means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.").
7. *See* www.oscn.net; www1.odcr.com.
8. Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions, www.eeoc.gov/policy/docs/arrest_records.html (last visited May 5, 2014); *see also* Pre- Employment Inquires and Arrest & Conviction, www.eeoc.gov/laws/practices/inquiries_arrest_conviction.cfm (last visited May 5, 2014).
9. *See* 15 U.S.C. §1681 *et. seq*.; Background checks can be included in consumer reports. Consumer reports are defined as "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for … employment purposes…."
10. *Id*. at 1681a(d)(1). 10 Id. at §1681 *et. seq*.
11. *Id*.
12. *Id*.
13. *Id*.
14. These rules are Oklahoma specific. Each state will have its own guidelines and considerations. *See* Employment Background Check Guidelines, Business Management Daily, www.hiresafe.com/Employment_Background_Check_Guidelines.pdf (Last visited May 5, 2014); see also Pre-Employment Inquiries and Arrest & Conviction, www.eeoc.gov/laws/practices/inquiries_arrest_conviction.cfm (last visited May 5, 2014); *see also* Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, EEOC Enforcement Guidelines, *supra*.
15. *Id*.
16. *Id*.
17. *Id*.
18. *See* 42 U.S.C. §2000(e)).
19. *See* Criminal Justice Fact Sheet, National Association for the Advancement of Colored People, Incarceration Trends in America, www.naacp.org/pages/criminal-justice-fact-sheet (Last visited May 5, 2014).
20. *Id*.
21. *Id*.
22. *Id*.
23. These claims often arise due to a failure to hire claim based on allegations of discrimination related to age, race, disability, and sex. *See* 42 U.S.C. §2000e-2(k); *see also* Meeting of Feb. 16, 2011- EEOC to Examine Treatment of Unemployed Job Seekers, Written Testimony of James S. Urban, Partner, Jones Day, www.eeoc.gov/eeoc/meetings/2-16-11/urban.cfm (last visited May 5, 2014); see also Women Are Getting Even, Disparate Impact Claims, www.wageproject.org/files/mo_impact.php (Last visited May 5, 2014).
24. *See Ricci v. DeStefano* 557 U.S. 557, 576- 578 (2009).
25. *See Griggs v. Duke Power*, 401 U.S. 424 (1971).

26. *Voltz v. Coca-Cola Enterprises Inc.*, 91 F.App'x 63, 73 (10th Cir. 2004); *See Carpenter v. Boeing Co.*, 456 F.3d 1183, 1187 (10th Cir. 2006) ("[A] plaintiff may establish a prima facie case of disparate impact discrimination by showing that a specific identifiable employment practice or policy caused a significant disparate impact on a protected group.") (internal citations omitted).

27. *Id*. at *Voltz, supra*.

28. *Id*. (internal citations omitted); *see also Ricci, supra* at 578. ("Even if the employer meets that [business necessity] burden, however, a plaintiff may still succeed by showing that the employer refuses to adopt an available alternative employment practice that has less disparate impact and serves the employer's legitimate needs.").

29. EEOC "Uniform Guidelines on Employee Selection Procedures" 29 C.F.R. §1607.4 (D) http://goo.gl/Ld8AsL (Last visited May 5, 2014).

30. *See* Scrub, Inc., to Pay $3 Million to Settle EEOC Racial Discrimination Suit (*EEOC v. Scrub Inc.*, No. 09 C 4228 (N.D. Ill. consent decree entered Nov. 9, 2010) www.eeoc.gov/eeoc/newsroom/release/11-9-10c.cfm (last visited May 5, 2014).

31. *See Drake v. City of Fort Collins*, 927 F.2d 1156 (10th Cir. 1991) (Plaintiff filed suit against the city and police department because of a two-year college requirement. The court found that plaintiff failed to establish a disparate impact claim because while 12.5 percent of African Americans were rejected, 18 percent of Caucasians were also rejected. Hence, the plaintiff was unable to show a statistical evidence of discrimination.)

32. *Voltz, supra*.

33. *See Waldon v. Cincinnati Pub. Sch.*, 941 F. Supp. 2d 884, 889 (S.D. Ohio 2013), motion to certify appeal denied (May 28, 2013)(A state law required background checks on current school employees, even those who did not interact with children. The employer terminated 10 employees—nine of whom were African American. A suit ensued and a motion to dismiss was filed. The court denied the motion and held that the former employees stated a plausible cause of action because the employer's employment practice did not measure aptitude, the time lapse since the date of the offense or evidence of rehabilitation. Instead, the policy acted as a complete bar to employment if the applicant had criminal history.)

ABOUT THE AUTHOR

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Raising the Bar

The Case for Diversity and Inclusion in the Legal Profession

By Hannibal B. Johnson

Diversity and inclusion, taken together, are the wave of the future and the *sine qua non* of organizational excellence. Andres T. Tapia, in his book, *The Inclusion Paradox*, captures the essence of the case for diversity and inclusion.

> [T]he possibilities for an exponential explosion of creativity, innovation and life-improving products and services birthed through the union of diversity & inclusion [are evident]. Embracing the mix and knowing how to make it work will give us the power to create an alternative, uplifting, and creative vision.
>
> [C]orporations, not-for-profits, government, law enforcement and the military will have to attract and retain the best talent from multiple labor pools if they are to survive the talent war. The key to attraction lies in creating truly inclusive environments. Don't be fooled by how soft and effortless that sounds. Inclusion is one of the hardest things to achieve.[1]

To its credit, the legal profession has made and continues to make strides toward diversity and inclusion. But this is a marathon without a finish line. Pacing and perseverance are required.

In every sphere of the profession — pre-law education, paraprofessional training, law schools, academia, government service, the criminal justice system, the judiciary, private practice, law firms, corporate legal departments and more — commitments to and improvements in diversity and inclusion must be made if equality of opportunity and the elevation of excellence are to be touchstones. Moreover, the success of the legal profession will increasingly turn on its ability to tap into and leverage the diverse human capital at its disposal. This too requires careful attention to diversity and inclusion. Why, more specifically, do diversity and inclusion matter?

WHY DIVERSITY AND INCLUSION MATTER

As demographics and economic variables change, so too must the legal profession. With respect to diversity and inclusion, adopting an assertive, proactive posture — leading change — offers a competitive edge. Internalizing diversity and inclusion — understanding these concepts on an intellectual level and living them out on a practical one — can make an organization more attractive, profitable and nimble. Organizational fidelity to several key propositions will determine the success of diversity and inclusion undertakings.

Diversity and inclusion are both moral imperatives and business necessities. The case for diversity and inclusion is two-dimensional: one moral, the other economic.

The *moral case* for diversity and inclusion is straightforward and intuitive. Valuing people — treating others with dignity, respect and fairness — is a near-universal moral imperative, prized by countless philosophical and religious traditions. Diversity and inclusion dovetail with time-honored, widely-shared values.

The *business case* for diversity and inclusion has become increasingly pervasive and persuasive. Globalization and demographic shifts have altered the labor pool and reconfigured purchasing power. Diverse groups represent tremendous human capital and consumption capacity. Organizations that fully appreciate this new reality will positively alter productivity, creativity and culture, and are likely to enhance stature in the process.

Diversity is. Inclusion may or may not be. *Diversity* refers to the differences and similarities between and among individuals in the context of our shared humanity (*e.g.*, race, gender, age, religion, ability status, sexual orientation and a host of other dimensions of one's identity).[2] Inclusion suggests affirmative, proactive approaches to highlighting shared interests, respecting differences and affording everyone the opportunity to reach his/her full potential.[3] Organizational success depends in substantial part on leveraging diversity and inclusion into strategic imperatives that support organizational goals.[4]

Contact is necessary, but not sufficient. Inclusion entails more than simply accumulating persons of varying backgrounds in check-the-box fashion. Leveraging diversity in service of inclusion requires skilled facilitation that empowers both organizations and the individuals within them. Inclusion involves not just recruitment and hiring, but also development, advancement and retention. A sound diversity and inclusion strategy should address systemic barriers to equal opportunity, provide support systems for everyone and hold organizational leaders accountable for fashioning a culture in which success is possible for all.

With change comes resistance. Embracing diversity and inclusion means tackling the "but-this-is-the-way-we've-always-done-it" syndrome. Culture change rarely comes easily. Resistance and roadblocks should be expected and, just as certainly, confronted. The aim of meeting diversity and inclusion challenges head-on is not to stifle dissent, but rather to stimulate behaviors deemed consistent with organizational core values and necessary for optimal individual and group performance.

"America's leading advocacy group for the legal profession, the American Bar Association (ABA), ranks diversity and inclusion among its core focus areas."

Diversity and inclusion work never ends. There will always be new people to educate, sectarian strife to resolve, and interpersonal crises to address. Successfully navigating the diversity and inclusion voyage requires taking the long view, thinking critically and strategically[5] and planning for sustainability.[6] How is the legal profession faring in terms of diversity and inclusion?

DIVERSITY AND INCLUSION IN THE LEGAL PROFESSION

The legal profession has embraced diversity and inclusion as central values. Translating those values into operational imperatives remains a work in progress.

The Association of American Law Schools (AALS) highlights diversity and inclusion as critical to robust learning environments and essential to excellence in the legal profession. AALS stresses equal opportunity and supports affirmative action.[7]

Federal, state and local governments often cite diversity and inclusion among their core values. Government-affiliated attorneys are thus likely to work for employers who, at a minimum, acknowledge the importance of diversity and inclusion and commit to workplaces that embrace differences.[8] The degree to which government subdivisions actualize those diversity and inclusion values varies widely.

America's leading advocacy group for the legal profession, the American Bar Association (ABA), ranks diversity and inclusion among its core focus areas. The ABA has pledged to eliminate bias in the legal profession and the justice system and promote full and equal participation by all persons in all aspects of law-related careers.[9] The ABA Diversity Committee

works to develop suggestions and strategies for greater diversity in legal education in the United States.[10] This sweeping, explicit embrace of diversity and inclusion lays the foundation for front-line changes at all levels of the profession and practice.

The Leadership Council on Legal Diversity (LCLD), a collective of corporate chief legal officers and law firm managing partners, is dedicated to creating a diverse legal profession. LCLD uses its considerable clout to ratchet up the performance of the legal profession in the realm of diversity and inclusion, building upon a 2004 document, "Call to Action: Diversity in the Legal Profession,"[11] by the chief legal officers of nearly 100 major corporations. The Call to Action sought to expand opportunities for diverse attorneys within the signatory corporations and the law firms with which they did business.

LCLD cited *business justifications* for its push for enhanced diversity and inclusion, impressing upon the corporate community: 1) the importance of hiring, engaging, developing, retaining and promoting the best talent, an impossibility so long as barriers to full participation and success for women, minorities[12] and others remain; and 2) the growing chorus of complaints from clients and communities about the failure of the legal profession to closely mirror real world demographics.[13]

The call to action that sparked the LCDC push for diversity and inclusion read, in part:

> As Chief Legal Officers, we hereby reaffirm our commitment to diversity in the legal profession. Our action is based on the need to enhance opportunity in the legal profession and our recognition that the legal and business interests of our clients require legal representation that reflects the diversity of our employees, customers and the communities where we do business.
>
> [I]n addition to our abiding commitment to diversity in our own departments, we pledge that we will make decisions regarding which law firms represent our companies based in significant part on the diversity performance of the firms. We intend to look for opportunities for firms we regularly use which positively distinguish themselves in this area. We further intend to end or limit our relationships with firms whose performance consistently evidences a lack of meaningful interest in being diverse.[14]

The call to action circulated among corporate counsel throughout the nation. Within a matter of months, a bevy of corporate titans signaled their support, including: Shell Oil, General Motors, Marriott, Dow Chemical, Aon, American Airlines, Merck, UPS, MCI, PepsiCo and Sears.

Evidence suggests that the Great Recession eroded many of the gains spurred by the call to action. Some consider this proof of the commonly-held perception that diversity and inclusion initiatives too often become expendable in economic hard times.[15]

National organizations like the AALS, ABA and LCDC have become champions of diversity and inclusion. Has this national support trickled down to Oklahoma?

DIVERSITY AND INCLUSION IN THE LEGAL PROFESSION: OKLAHOMA

In terms of the legal profession in Oklahoma, diversity[16] is; but inclusion has not always been. African Americans, for example, have long practiced law in the state. For decades following Oklahoma's acceptance into the Union in 1907, however, African American attorneys faced discrimination in ways great and small.

In the early 20th century, an impressive array of African American lawyers practiced in Indian and Oklahoma Territories, the precursors to the modern state of Oklahoma. Many established practices in Guthrie, the capital of Oklahoma Territory and, until 1910, the capital of the state of Oklahoma.[17] A Tulsa lawyer and civil rights advocate, Amos T. Hall, continued the barrier-breaking tradition of those great men.[18]

These lawyers faced overt and covert barriers in a state suffused in the ways of the Jim Crow South. Facing abject racism and discrimination, they nonetheless pushed forward in the practice of their craft.[19]

In 1948, a significant *de jure* barrier to inclusion within the Oklahoma legal profession fell. In *Sipuel v. Board of Regents of the University of Oklahoma*,[20] the United States Supreme Court ruled that the State of Oklahoma must provide instruction for African Americans on par with that afforded whites. The case centered on desegregation of the University of Oklahoma Law School. Thurgood Marshall, representing the National Association for the Advancement of Colored People (NAACP) in a forerunner to *Brown v. Board of Education*,[21] acted as the lead

counsel on the case. Amos T. Hall served as co-counsel.

Sipuel heralded change to *de jure* exclusion in the law school context. Nonetheless, full inclusion of African Americans in all facets of the legal profession proved elusive. *De facto* exclusion continued long after *Sipuel*.

In recent years, professional organizations, corporations, law firms, and others in Oklahoma have made significant strides in terms of diversity and inclusion. The Oklahoma Bar Association (OBA) maintains a Diversity Committee whose aims are to: 1) bring more lawyers of color, women, young lawyers and lawyers practicing in the public and corporate sectors into OBA leadership; and 2) promote full and equal participation by minorities throughout the profession and practice by increasing opportunities.[22] The OBA honors law-related individuals and organizations with annual Ada Lois Sipuel Fisher Diversity Awards for promoting diversity in Oklahoma. The OBA Diversity Committee presents these awards, first bestowed in 2012 at a luncheon during the annual OBA Diversity Conference.[23]

> **"With organization leadership aboard, venturing into the waters of diversity and inclusion becomes less daunting."**

Diversity and inclusion rank as priorities among professional associations at the local level too. For example, the Tulsa County Bar Association maintains a standing Diversity Development Committee charged with developing diversity within the practice of law and the TCBA, guiding firms engaged in diversity recruitment and promoting community outreach.[24]

The legal profession in Oklahoma has made noteworthy advances in diversity and inclusion in the judiciary and other high profile areas of government service. Consider, for example, the number of African Americans in key judicial and executive posts.[25] This undeniable progress should offer encouragement and hope to all.

Yet another sign of the movement toward inclusion among the Oklahoma legal profession is an initiative of Tulsa-based corporations Williams and WPX Energy called "The Pipeline+ Program (Pipeline+)." Pipeline+, working closely with the Northeastern Oklahoma Black Lawyers Association, goes beyond the discussion of the lack of diversity and, by example and inspiration, works to close the "diversity gap." Pipeline+ identifies, educates, and motivates high school students of color considering careers in the legal profession. The program introduces these students to the law school experience, the practice of law and an assortment of legal practitioners. Pipeline+ also provides financial assistance for law students of color attending Oklahoma law schools.

What practical steps might be undertaken to elevate diversity and inclusion throughout the legal profession?

PRACTICAL STEPS TOWARD DIVERSITY AND INCLUSION

How does an academic institution, a law firm, a corporate legal department or a team of government lawyers get started on the work of diversity and inclusion or enhance its ongoing activities? Ownership by leadership is essential. Buy-in at the top, among those with decision-making and spending authority, sets the stage for a diversity and inclusion push that is organic, integrated and sustainable.

With organization leadership aboard, venturing into the waters of diversity and inclusion becomes less daunting. A number of practical steps may enhance the likelihood of smooth sailing.[26] Speaking the language of diversity and inclusion, without more, is insufficient. Words must be followed with deeds.

Organizations moving toward diversity and inclusion should: 1) conduct an objective assessment; 2) create a long-term, integrated strategy; 3) engage professionals for advice and guidance; 4) implement programs for hiring, developing, retaining, and promoting diverse talent; 5) create and sustain training,[27] development, and mentoring programs; 6) institutionalize diversity and inclusion; 7) develop relationships and share best practices information with other entities; 8) measure success through appropriate metrics; 9) incen-

tivize and reward positive behaviors; and 10) hold people accountable for results.

What philosophy underlies the foregoing measures? Stated differently, what individual and organizational capacity fosters a culture in which diversity and inclusion thrive?

CULTURAL COMPETENCY: DEVELOPING CAPACITY AROUND DIVERSITY AND INCLUSION

If diversity and inclusion rank highly among organizational imperatives, then it follows that developing individual and collective capacity around these complementary principles should be a first-order priority. That capacity is generally known as cultural competency.[28]

Cultural competency speaks to a person's awareness, attitudes, knowledge and skills around matters of diversity and inclusion. Again, *diversity* refers explicitly to the ways in which individuals differ from one another. Implicitly, it suggests that beyond such differences lie core commonalities — shared interests — upon which to build a common future. *Inclusion* signals embracing others; recognizing that people are inextricably intertwined; extending dignity and respect to all members of the human family.

Cultural competency suggests an awareness of one's own cultural identity and views about differences, coupled with a willingness to learn about and build upon the varying cultural and community norms of those with whom one comes into contact. It implies an understanding of the within-group differences that make each individual unique, but also an appreciation for the between-group variations that add richness and texture to our legal apparatus, our institutions and our nation as a whole.

Cultural competency has both moral and economic dimensions. It serves philosophical principles of fairness and justice and furthers business ends.

From a moral perspective, cultural competency promotes respect for and appreciation of the worth and dignity of all people. It therefore furthers the cause of justice.

Beyond moral considerations, the economics of cultural competency seem clear. Given rapidly changing demographics and globalization, those organizations with ill-developed cultural competency will become increasingly likely to suffer economic consequences (*e.g.*, lower productivity, a less agile workforce and missed market opportunities).

The legal profession is no exception to the rule. Cultural competency enhances the ability of lawyers to relate to clients, co-workers, fellow practitioners and the community at large.[29]

To what extent should resistance to and roadblocks in the way of cultural competency be anticipated? If and when encountered, how might such pushback be addressed?

ANTICIPATING AND COUNTERING RESISTANCE AND ROADBLOCKS

Organizations should anticipate resistance to diversity and inclusion, if not at the outset, then later, perhaps in the form of "diversity fatigue" (*i.e.*, a feeling that diversity and inclusion are getting too much attention or are being oversold; diversity and inclusion "burnout"). Effective communication, positive programs and continuing education help mitigate such blowback.

Communications about diversity and inclusion should: 1) articulate a vision; 2) share the business case; 3) establish a broad definitional umbrella;[30] 4) emphasize the integration of diversity and inclusion into regularized organizational policy, procedure and practice; 5) stress the support of top management, citing specific examples of such buy-in; 6) acknowledge and respond to employee concerns; and 7) elevate opportunity and fairness as key organizational values.

Organizations that provide forums for resistance and signal openness to adjustments and course corrections may deftly diffuse resistance to diversity and inclusion. On a sustained basis, employee networks, councils and task forces serve as resources for troubleshooting diversity and inclusion issues and challenges.

Diversity and inclusion programs should be positive and affirming. They should also be aligned with the overall vision of the organizational culture. This vision should weave in the justification for and benefits from diversity and inclusion and paint a portrait of what that means at the individual and group levels.

The continuing education needed to address criticism of and backlash toward diversity and inclusion begins at the top. Diversity and inclusion efforts fail in the absence of top-level commitment and leadership by example.[31]

Resistance should not be the basis for forgoing diversity and inclusion work or ending it prematurely. If that resistance manifests itself as diversity fatigue, consider co-optation (*i.e.*, bringing in critics to help reshape and refocus diversity and inclusion initiatives in ways that instill new vitality and vigor). Roadblocks and resistance and/or diversity fatigue need not be allowed to derail otherwise sound diversity and inclusion programs.

CONCLUSION

The case for diversity and inclusion has at least two dimensions: one moral; the other, economic. The moral case for is straightforward. Valuing diversity and inclusion is the right thing to do. It is about respect for the dignity and worth of self and others.

Though the moral underpinnings of diversity and inclusion feel intuitive and natural, we often have difficulty living up to them. We find ways to distinguish and divide instead of coalesce and collaborate. For those who need an extra nudge to move into the realm of diversity and inclusion, the business case may provide just the right impetus.

Research continues to cement the business case for diversity and inclusion. When organizations invest in diversity and inclusion, the dividends include: (1) an increased talent pool; 2) improved retention, employee engagement and teamwork that lead to diminished conflict and litigation; 3) enhanced customer/client relations, which translates into increased market opportunities; and 4) expanded creativity and innovative solutions from a variety of perspectives that yield competitive advantage in the marketplace.[32]

Economists urge that we are each motivated by our individual self-interest. Diversity and inclusion, properly led and managed, serve that interest. Understanding, appreciating and valuing diversity and then working toward inclusive organizational cultures, is the principled course. It is also the economically prudent worldview.

1. Andres T. Tapia, *The Inclusion Paradox—The Obama Era and the Transformation of Global Diversity* (Lincolnshire, Illinois: Hewitt Associates 2009), at 15.

2. Diversity includes characteristics and identities beyond the narrow categories enumerated in equal opportunity and affirmative action non-discrimination statutes.

3. Dr. Judith Palmer formulated three diversity and inclusion paradigms: 1) The Golden Rule; 2) Right the Wrongs; and 3) Value the Differences. The author suggests a fourth paradigm, *Takatoka*, a Cherokee word meaning, roughly, "standing together." The *Takatoka* paradigm subsumes the others, but rests upon notions of shared space and mutual interests. *See Three Paradigms for Diversity Change Leaders,* adapted by The Koi Group © 2001 from an original article written by Judith D. Palmer, *Three Paradigms for Diversity Change Leaders*, available at http://tinyurl.com/lmhtke7 (last visited Nov. 29, 2013).

4. *See, e.g.*, Society for Human Resource Management, Diversity_CLA_Definitions_of_Diversity_Inclusion.ppt (last visited Dec. 6, 2013); "How We Define Diversity and Inclusion," Cornell University, Division of Budget and Planning, http://tinyurl.com/qhzjk3r (last visited Dec. 6, 2013); "What is the Difference Between Diversity and Inclusion?," Diversity University Newsletter, Sept. 27, 2011, available at http://tinyurl.com/d89eukw (last visited Dec. 6, 2013).

5. *See generally*, Thomas, David A., *Diversity as Strategy*, *Harvard Business Review*, Sept. 2004, available online at http://tinyurl.com/mh4ytoy (last visited Nov. 26, 2013).

6. *See generally*, Thomas, David A., and Robin Ely, Making Differences Matter: *A New Paradigm for Managing Diversity, Harvard Business Review*, Sept. 1, 1996; William Sonnenschein, *The Diversity Toolkit: How You Can Build and Benefit from a Diverse Workforce* (New York, NY: McGraw Hill 1999).

7. *The Association of American Law Schools, Statement on Diversity, Equal Opportunity and Affirmative Action*, www.aals.org/about_handbook_sgp_div.php (last visited Dec. 1, 2013).

8. Diversity and inclusion at the federal level is instructive. In Executive Order 13583: Establishing a Coordinated Government-wide Initiative to Promote Diversity and Inclusion in the Federal Workforce, President Barack Obama noted: "Our Nation derives strength from the diversity of its population and from its commitment to equal opportunity for all. We are at our best when we draw on the talents of all parts of our society, and our greatest accomplishments are achieved when diverse perspectives are brought to bear to overcome our greatest challenges." See Executive Order 13583, available at http://tinyurl.com/3vdzteh (last visited Dec. 1, 2013); U.S. Office of Personnel Management, Office of Diversity and Inclusion, Government-wide Diversity and Inclusion Strategic Plan, 2011, http://tinyurl.com/l9dhmxg (last visited Dec. 1, 2013).

9. *See* http://www.americanbar.org/portals/diversity.html (last visited Nov. 24, 2013).

10. *See generally,* http://tinyurl.com/mtcbkfl (last visited Nov. 30, 2013).

11. *See* http://tinyurl.com/neyu72l.

12. Caution should be exercised in the use of the term "minority" as a referent to persons who are not members of the dominant social group in the United States (i.e., European Americans). Some consider the word to be a pejorative reference to socioeconomic status rather than a mere shorthand for "non-white" status. Still others view "minority" as connoting someone "less than," and for that reason reject the term as having the potential to cause psychic damage to its targets. "People of color" is a less objectionable general term for non-white people when addressing issues of race and ethnicity. Specific references to various dimensions of diversity are more appropriate than the catch-all "minority" (e.g., African Americans; Latinos; the LGBT community; Muslims).

13. *See* http://www.lcldnet.org/how_to_join_commitment_statement.html (last visited Nov. 24, 2013).

14. Roderick A. Palmore, then CLO of Sara Lee Corporation and a member of the board of directors of the Association of Corporate Counsel ("ACC"), wrote the Call to Action. The ACC board endorsed the Call to Action at its Oct. 24, 2004, meeting. See http://tinyurl.com/neyu72l (last visited Nov. 24, 2013).

15. Imad Abdullah, "Is the Call to Action Working?," Diversity Matters, Baker Donelson (Spring 2011), available at http://tinyurl.com/nok9dmj (last visited Dec. 4, 2013).

16. "Diversity" encompasses a wide array of differences. Major identity markers or core dimensions of diversity often include: race, ethnicity, national origin, gender, gender identity, sexual orientation, age, ability status, religion, and socioeconomic status. The author speaks primarily to race in this section on account of personal experience and intellectual/academic familiarity.

17. Early African American legal eagles included: B. C. Franklin (Ardmore, Rentiesville, and Tulsa); E. I. Saddler (Guthrie, Muskogee, and Tulsa); George W.F. Sawner (Guthrie); W. H. Twine (Guthrie and Muskogee); George N. Perkins (Guthrie); Robert Emmett Stewart (Guthrie); G. W. P. Brown (Guthrie), A. L. Ayers (Langston); William H. Harrison (Tulsa and Oklahoma City); and James Coody Johnson (Wewoka). Bruce Fisher and Jerome Holmes, *African American Lawyers in Oklahoma*, *75 Oklahoma Bar Journal 66* (Sept. 11, 2007) (Special Centennial Issue of the *Oklahoma Bar Journal*), at 1; John Hope Franklin and John Whittington Franklin, eds., *My Life and an Era — The Autobiography of Buck Colbert Franklin* (Baton Rouge, Louisiana: Louisiana State University Press, 1997), at 51.

18. Amos T. Hall collaborated with Thurgood Marshall, who later became the first African American United States Solicitor General and United States Supreme Court Justice, on important civil rights cases. In 1969, Hall was appointed special judge of the District Court of Tulsa County. He served until 1970, when voters elected him to the post of associate district judge for Tulsa County— the first African American to be elected to a county-wide office and the first African American to be elected a judge in Oklahoma. He won the post with more than fifty-percent of the vote in a four-man primary. *See, e.g.*, Hannah D. Atkins, Hall, Amos T. (1896 – 1971), Oklahoma Historical Society's Encyclopedia of Oklahoma History & Culture, http://tinyurl.com/qhdvdwu (last visited Nov. 25, 2013).

19. *See generally, My Life and an Era—The Autobiography of Buck Colbert Franklin* xiii-xxii (John Hope Franklin and John Whittington Franklin, eds., Baton Rouge, LA: Louisiana State University Press 1997). Hannibal B. Johnson, *Black Wall Street: From Riot to Renaissance in Tulsa's Historic Greenwood District* (Austin, Texas: Eakin Press, 1998), at 105 - 106.

20. *Sipuel v. Board of Regents of the University of Oklahoma*, 332 U.S. 631 (1948).

21. *Brown v. Board of Education*, 347 U.S. 483 (1954).

22. *See generally,* Oklahoma Bar Association Committee Annual Reports for 2012, available at http://tinyurl.com/jvsve7x (last visited Nov. 30, 2013).

23. *See generally*, http://tinyurl.com/pxusb5v (last visited Nov. 30, 2013).

24. *See* Tulsa County Bar Association, http://www.tulsabar.com/join-a-committee (last visited Dec. 1, 2013).

25. Tom Colbert, chief justice of the Oklahoma Supreme Court; David B. Lewis, associate judge, Oklahoma Court of Criminal Appeals; Vickie Miles-LaGrange, chief judge, United States District Court for the Western District of Oklahoma; Carlos Chappelle, presiding judge, Tulsa County District Court; and Danny C. Williams, Sr., United States attorney for the Northern District of Oklahoma.

26. *See, e.g., Diversity in the Legal Profession: Next Steps, American Bar Association*, 2011, available at http://tinyurl.com/kw9hk6q (last visited Nov. 29, 2013).

27. Diversity and inclusion education should focus on the following key learning objectives: 1) promoting mutual respect; 2) creating awareness; 3) stimulating strategic thinking; and 4) enhancing critical thinking.

28. See National Center for Cultural Competence, "Conceptual Frameworks/Models, Guiding Values and Principles," http://nccc.georgetown.edu/foundations/frameworks.html (last visited Dec. 5, 2013). According to the National Center for Cultural Competence, cultural competency requires that organizations:

> [H]ave a defined set of values and principles, and demonstrate behaviors, attitudes, policies and structures that enable them to work effectively cross-culturally[;] have the capacity to (1) value diversity, (2) conduct self-assessment, (3) manage the dynamics of difference, (4) acquire and institutionalize cultural knowledge and (5) adapt to diversity and the cultural contexts of the communities they serve[;] incorporate the above in all aspects of policy making, administration, practice, service delivery and involve systematically consumers, key stakeholders and communities. Cultural competence is a developmental process that evolves over an extended period. Both individuals and organizations are at various levels of awareness, knowledge and skills along the cultural competence continuum.

See also, Terry L. Cross, Barbara J. Bazron, Karl W. Dennis, and Mareasa R. Isaacs, *Towards a Culturally Competent System of Care: A Monograph on Effective Services for Minority Children Who Are Severely Emotionally Disturbed: Volumes I, II, and III* (Washington, D.C.: CASSP Technical Assistance Center, Georgetown University, March 1989), available online at http://tinyurl.com/qe2jkzv (last visited Dec. 5, 2013). Key parts of the work of the National Center for Cultural Competence are based on the work of Cross, Bazron, Dennis, and Isaacs.

29. *See generally*, Katherine Frink-Hamlett, "The Case for Cultural Competency," *New York Law Journal*, April 25, 2011, available at http://tinyurl.com/kpsgakb (last visited Dec. 4, 2013).

30. Adopting a comprehensive and clear definition of diversity will help tamp down resistance to diversity and inclusion initiatives. The definition should be broad enough to include race, ethnicity, national origin, gender, parental status, religion education, physical abilities, age, sexual orientation, work status, functional expertise, political/ideological persuasion, and much more. "Diversity" should capture the various and sundry differences people bring to the table.

31. What might organizations do to ensure leadership support of diversity and inclusion?: 1) help strengthen the facilitation and intervention skills of leaders to equip them to counter verbal and non-verbal resistance to diversity and inclusion; 2) hire coaches to help leaders hone their skills in addressing employees who raise concerns about potential bias as a result of diversity inclusion efforts; 3) offer opportunities to enhance leaders' team-building and conflict resolution skills; 4) create opportunities for leaders to demonstrate their support for and understanding of diversity and inclusion; 5) require leaders to participate in outside community organizations (i.e., associations, nonprofit boards) in which they are exposed to communities outside their own demographic and socio-economic backgrounds; 6) make diversity and inclusion a core leadership competency against which to develop, assess, and promote the next generation of organization leaders; and 7) link leaders' compensation to performance objectives related to recruiting, developing, and advancing a diverse group of employees. Adapted in part from Workplace Diversity: How to Tackle Resistance, Catalyst, May 13, 2009, http://tinyurl.com/on48dpy (last visited Oct. 31, 2011); Gary S. Topchik, Confronting Negativity in the Workplace, http://www.ccfbest.org/worklife/confrontingnegative.htm (last visited Oct. 31, 2011).

32. Marcus Robinson, Charles Pfeffer, and Joan Buccigrossi, "Business Case for Inclusion and Engagement," 2003, available at http://tinyurl.com/ybwun92 (last visited Dec. 5, 2013).

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Hannibal B. Johnson, a Harvard Law School graduate, is an author, attorney, consultant and college professor. Mr. Johnson's work focuses primarily on diversity and inclusion, African American history and culture and community leadership. He teaches at Oklahoma State University and the University of Oklahoma and previously taught at the University of Tulsa College of Law. He has authored many books and a play on diversity and African American history. Mr. Johnson has received numerous awards and honors for his work and community service.

Real Estate Law Section

Marketable Record Title: A Deed Which Conveys Only the Grantor's 'Right, Title and Interest' Can Be a 'Root of Title'

By Kraettli Q. Epperson

Some title examiners are suggesting that it is the law in Oklahoma that: if a deed expressly states that it is conveying the "right, title and interest" of the grantor, then such deed cannot serve as a "root of title" (sometimes referred to herein as the "root") under the Marketable Record Title Act (MRTA or the act) (the "non-root position").[1] If this non-root position prevails, then the MRTA would be rendered essentially useless, because — *by statute* — *all* statutory form quit claim deeds and statutory form warranty deeds (sometimes referred to herein as "statutory deeds") only convey the "right, title and interest" of the grantor regardless of whether such limiting language is added to the statutory form deed language.[2] Put another way, since most "links" in any record "chain of title" consist of such statutory deeds, if this non-root position prevails, none of these "links" will be treated as the root for anyone's chain of title.

PURPOSE OF THE MRTA

The MRTA has been an incredibly strong tool for over 50 years in Oklahoma, since its adoption in 1963, because it extinguishes all real property claims of interest — both valid and invalid — arising before a conveyance (i.e., deed or decree) known as the root, and this act confers marketable record title on the grantee in such root (and its assignees). The MRTA makes titles safe and easily transferrable, by eliminating not only stray claims, but also originally valid, but old and unused, claims of interest.[3] Such ancient claims are extinguished under the act when the local land records show no activity by the "pre-root" interest claimant asserting an ownership interest, within the 30-year-old period subsequent to the root.[4]

As stated by the Oklahoma Supreme Court in a 1982 case: "*Legal effect is, in some instances, accorded by the Act [MRTA] to the recording of void instruments. This is consistent with the* ***statute's objectives of limiting the necessity of title investigation to records which post-date the root of title and of facilitating land title transactions.***"[5]

Such act creates valid marketable record title automatically, without the intervention of a court; this produces the beneficial effect of promoting the certainty of title while eliminating the expense of litigation and the delay of real estate closings due to requiring curative lawsuits (e.g., probates and quiet title actions).[6] As stated in the most recent 1990 version of the Prefactory Note in the Uniform Laws Commission discussion of the Model Marketable Title Act:

> *The basic idea of the Marketable Title Act is to codify the venerable New England tradition of conducting title searches back not to the original creation of title, but for a reasonable period only. The Model Act is designed to assure a title searcher who has found a chain of title starting with a document at least 30 years old that he need search no further back in the record.*

The period of time established under the act to review the land records under both the Model Marketable Title Act and the Oklahoma version was initially 40 years and was then shortened to 30 years.[7]

This cleansing action, which eliminates ancient "unused" interests, fosters the public policy of maximizing the productivity of land by implementing the axiom of "use it or lose it." This policy is also reflected in the concept of title by prescription (i.e., adverse possession).[8]

ROOT OF TITLE

Under the MRTA, the instrument known as the "root of title" (the root) is described as:

> *(e)* ***"Root of title" means that conveyance or other title transaction in the chain of title*** *of a person, purporting to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded as of a date thirty (30) years prior to the time when marketability is being determined. The effective date of the "root of title" is the date on which it is recorded.*
>
> *(f) "Title transaction" means any transaction affecting title to any interest in land, including title by will or descent, title by tax deed, mineral deed, lease or reservation, or by trustee's, referee's, guardian's, executor's, administrator's, master in chancery's, sheriff's or marshal's deed, or decree of any court, as well as* ***warranty deed, quitclaim deed,*** *or mortgage.*[9]

It should be noted that this list of "title transactions" which can constitute the root, includes a *"warranty deed, [and] quitclaim deed."* Absent other guidance, this *"warranty deed, [and] quitclaim deed"* presumably means the statutory form warranty deed and statutory form quit claim deed. As noted above, the statutory form warranty deed "shall convey to the grantee, his heirs or assigns, **the whole interest of the grantor** in the premises described," and the statutory form quit claim deed "shall convey all **the right, title and interest of the maker** thereof in and to the premises therein described."[10]

THE NON-ROOT POSITION

There is an ongoing discussion among title examiners in Oklahoma as to whether the addition of the words: "right, title and interest" to the granting language of a quit claim deed or warranty deed changes the fundamental nature of the deed so that it cannot operate as a root for the lands being described.

The reasons the non-root position should be rejected are: 1) the *Reed* case, on which it is based, is not instructive or dispositive, and 2) it would undermine the entire system of marketable record title established by the Legislature through its adoption of the MRTA in 1963 and implemented by title examiners continuously since then.

The *Reed* Case

This non-root position is based principally on the holding of a 1945 Oklahoma Supreme Court case which dealt with a dispute between a grantor and a grantee in a warranty deed. The dispute concerned what portion of the lands described in a warranty deed are covered by the warranty language in the deed, when the granting clause is preceded by language limiting such conveyance to the "right, title and interest" of the grantor.[11]

As stated in the syllabus by the *Reed* court:

> ¶0 1. COVENANTS - *Covenant of warranty where granting clause of deed contained words "all their right, title and interest in and to" preceding description of property.* In the granting clause of a deed the words, "all their right, title and interest in and to," preceding the description of the real property, limits the grant to the present interest of the grantor, and the covenant of warranty refers only to the right, title and interest of the grantor in the premises at the time of the conveyance. *Kimbro v. Harper*, 113 Okla. 46, 238 P. 840, is overruled in so far as it conflicts herewith.

The *Reed* holding should not have any impact on the interpretation of the MRTA because its facts and argument do not affect the implementation of the MRTA, for the following reasons:

1. The *Reed* case turned on a) the actual knowledge of the grantee of the defect in title, b) the record title reflecting such defect, and c) the intent of the two parties. The decision was not really based on the addition of the "right, title and interest" language to the warranty deed. The *Reed* court explains its rationale as follows:

¶8 The plaintiff contends that grantors at the time held title to 23/24ths undivided interest in the land described; that the words, 'all their right, title and interest in and to', preceding the legal description of the land conveyed, were qualifying words, which expressly limited the grant to the interest in the land then held by the grantors. The defendant contends that such words do not cut down the interest conveyed to any limited amount, but warrants the

title to the entire interest in the land covered by the legal description.

¶9 The contention of the defendant is without merit where ***the record shows that the grantor did not have title to the entire interest in the land, and the grantee knew it, and it was not the intention of the parties that the deed should convey more than the grantor had in the land.*** AND

2. There was no discussion of the MRTA in the 1945 *Reed* case, because the MRTA was not even adopted until 1963. Under the MRTA, the nature of marketable record ownership of land is fundamentally changed to be based on a limited 30-year review of record title, instead of a review all the way back to the issuance of the patent from the sovereign. This new procedure for determining the true owners of real property involves extinguishing all pre-root interests and vesting superior title to the holder of title under the root and his/her assigns, against all claimants. This is without regard to whether such pre-root claims would otherwise be valid and senior. In other words, due to the new effect of the MRTA, contrary to the holding in *Reed*, the grantor in the root can *"convey more than the grantor had in the land."*

Even a void instrument (i.e., a void tax deed) which — by its nature — makes no representation of ownership of the whole interest, can be a valid root of title and create marketable record title.[12]

THE UNINTENTED NEGATIVE CONSEQUENCES OF THE NON-ROOT POSITION

If the impact of the non-root position was applied to only those deeds with such "right, title and interest" language **added** to the granting clause, the impact would be limited to excluding such deeds — which are probably few in number — from consideration as a root. Examiners would have to find a root instrument — at least 30 years old — which did not contain such a limitation. Subsequent post-root conveyances, which comprise the required 30-year unbroken and unchallenged chain, could contain such a restriction, since the holder of the title under the unrestricted root instrument would be treated as claiming and conveying a full non-limited interest, and the subsequent grantors would be passing such interest forward.[13]

However, because a statutory form quit claim deed conveys only "all the right, title and interest of the maker," and a statutory form warranty deed only conveys "the whole interest of the grantor" — regardless of whether or not someone adds to the statutory deed form the language limiting its grant to the right, title and interest of the grantor — if such non-root position prevails, then not only will the possibility of a deed being a root be denied to those expressly limited deeds, but the potential to be a root **will also be denied to any statutory form deed.**[14]

Such a negative result would be contrary to both 1) the presumption that all legislative enactments are to be interpreted in a way so as to carry out their stated purpose, and are not treated as a nullity,[15] and 2) the act's stated intent to extinguish old claims.[16]

If the non-root position prevails, this would force a title examination to extend beyond the legislatively-mandated 30-year period, to look for a "conveyance or other title transaction" which is neither an expressly limited deed nor a statutory form deed. Presumably, the only instruments which then could be considered as a possible root would be court proceedings, such as probate and quiet title decrees. This fails to add any benefit to the title examination process because such decrees are already deemed uncontestable after 10 years under the Simplification of Land Titles Act.[17]

CONCLUSION

In the face of 1) the problems identified above with relying on the *Reed* case, 2) the express language of the MRTA, 3) the inherent statutorily-imposed limitation on all statutory form deeds to conveying the "right, title and interest" of the grantor, and 4) the disastrous retrograding impact on the title examination process, the non-root position must be rejected.

1. 16 O.S. §§71-78.

2. 16 O.S. §18: "A quitclaim deed, made in substantial compliance with the provisions of this chapter, shall convey all **the right, title and interest of the maker** thereof in and to the premises therein described."; 16 O.S. §19: "A warranty deed made in substantial compliance with the provisions of this chapter, shall convey to the grantee, his heirs or assigns, **the whole interest of the grantor** in the premises described...".

3. 16 O.S. §73: "*...All such interests, claims or charges, however denominated, whether legal or equitable, present or future, whether such interests, claims or charges are asserted by a person sui juris or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void.*

4. 16 O.S. §71: *Any person having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for thirty (30) years or more, shall be deemed to have a marketable record title to such interest as defined in Section 78 of this title, subject only to the matters stated in Section 72 of this title. ..."*

5. *Mobbs v. City of Lehigh*, 1982 OK 149, ¶17.

6. *The Oklahoma Marketable Record Title Act, Tulsa Law Journal (Vol. 9, No. 1, 1973, pg. 74) See Bennett v. Whitehouse*, 690 F. Supp. 955, 962 (U.S.

Dist. Ct. W. Dist. OK. 1988). *Also see Anderson v. Pickering*, 1975 OK CIV APP 42, ¶16. And *see* "*Anderson v. Pickering and the Marketable Record Title Act*," by H. Henley Blair and Henry Rheinberger 51 *OBJ* 2517 (1980).

7. 16 O.S.§71 (Session Laws 1970, c. 92, §1, eff. July 1, 1972).

8. 60 O.S.§333, and 12 O.S.§93(4).

9. 16 O.S.§78.

10. 16 O.S. §19; 16 O.S. §18; real estate attorneys typically refer to the statutory "quit claim deed" as a "quit claim deed," but they commonly refer to the statutory "warranty deed" as a "**general** warranty deed" to distinguish it from a "**special** warranty deed. A "**special** warranty deed" gives all of the usual present and future warranties found in a **general** warranty deed (i.e., 16 O.S.§19), except that, if such defects or encumbrances arise **before** the grantor/warrantor came into title, they would not be covered. *Whayne v. McBirney* 1945 OK 42, ¶¶0, 14. *See* the Oklahoma Real Estate Commission's standard form UNIFORM CONTRACT OF SALE OF REAL ESTATE: RESIDENTIAL SALE (11-2013) which provides: "Seller agrees to sell and convey by **General** Warranty Deed, and Buyer agrees to accept such deed...".

11. *Reed v. Whitney*, 1945 OK 354

12. *Mobbs v. City of Lehigh*, 1982 OK 149, see ¶1, 15, 16, and ¶17.

13. 16 O.S.§29; the "shelter rule" is explained in *Knowles v. Freeman*, 1982 OK 89, ¶18 and 22.

14. 16 O.S. §§18 & 19; and 16 O.S.§§40 and 41.

15. *Curtis v. Board of Educ. of Sayre Public Schools*, 1995 OK 119, ¶9.

16. 16 O.S.§73.

17. 16 O.S.§61-63, 66.

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Rural Lawyers Tout Big Possibilities in Small Towns

By Kirby Lee Davis

Three recent deaths have left District Court Judge Michael D. DeBerry with only two attorneys serving one of the areas he covers — and both surviving practitioners are 65 years old or older.

"We need lawyers in southeastern Oklahoma," said DeBerry, who serves McCurtain, Choctaw and Pushmataha counties. "Antlers is dying, and Hugo is dying. We really need lawyers."

Like many states, Oklahoma faces a growing shortage of legal help in its rural communities, with more needs expected as aging lawyers retire or pass on. While estimating demand remains difficult, with many attorneys' careers stretching past traditional retirement age, the Oklahoma Bar Association Law Schools Committee touted the broad rural opportunities to 40 University of Tulsa students Friday.

"There are attorneys out there who, like Bruce, are covered with work, because there's only three or four attorneys in town, and they have been there forever," said Dru Tate, a 2010 TU law school grad who works at Bruce Coker and Associates of Okemah. "They don't get a lot of students fresh out of law school."

Many attorneys spoke warmly of the advantages rural markets provide.

"For me, it's the quality of life," said 2012 TU law school graduate Ryan Olsen, who started with Vinita's Logan and Lowry as an intern and never left.

An avid hunter and fisher, he said he appreciates that firm's low-key atmosphere and one-minute commute from his rural home.

"You just never know what's going to walk in the door," he said of his clients' needs, which range from family and criminal law to coal-mining legislation and health care. "I've really enjoyed the variety of things I do every day."

Small Oklahoma towns are experiencing a need for more lawyers, providing opportunities for those willing to relocate. Photographer: Emily Buchanan

Several attorneys said the rural workload remains quite steady, with a wide variety of cases readily available.

"We can do almost anything you want to do, other than securities, mergers and acquisitions," said David Butler, a member of the Enid firm Mitchell and DeClerck.

Marion Fry, a 1999 TU graduate, appreciated his opportunities, both as assistant district attorney in LeFlore County and a Choctaw Nation Court of Appeals judge.

"It's just like being in a big town," he said of his Poteau posts. "People in small towns need attorneys just like people do in large cities. I

think you're missing an opportunity if you don't think about small-town Oklahoma."

Newly married, with a baby on the way, Tate appreciated the flexibility provided by Coker's law firm.

"It turned into the perfect job for me," she said. "I do drive to Okemah two days a week. The other days I work from home."

Tate said many potential positions may be identified by simply surveying existing practitioners and their ages. Several attorneys recommended opening friendly relations with rural OBA chapters, judges and their clerks to learn local needs and cultures.

"Some of the valuable insight you may get would be the cases you want to stay away from, if you know what I mean," Tate said.

Butler urged students to study demographic resources like the Oklahoma Directory of Lawyers to discover places such as Fairview, which he said has one attorney 86 years old, one 70 and one in his 40s.

"Be persistent," said Butler. "Do your research. Learn about the community. Learn about the lawyers who are there. You can find a spot."

Tate touted the non-competitive environment among rural lawyers, with many willing to farm out business to new practices, associates or partners.

"They have more business than they can handle," said retired Ardmore District Judge Tom Walker, noting some rural attorneys may be more willing to rent or share office space than take on an associate or partner.

"You've then got the best of both worlds," he said. "You have the knowledge of an experienced attorney, but you're also on your own."

Rural law practices offer many benefits, especially a healthy balance of work and family life/recreation. Photographer: Emily Buchanan

While salaries may trail some urban positions, several attorneys said earnings can still be quite rewarding. A rural area's lower cost of living balances out some salary differences, Walker said.

"Small towns are great," Fry said. "You get to know people, too. The people are great. They take time to listen to you. They care about you. They want to know how you are. Not how you are, but how you are, really."

ABOUT THE AUTHOR

Kirby Lee Davis is the Tulsa bureau chief for *The Journal Record*. This article, originally published in *The Journal Record* March 31, 2014 issue, is reprinted with permission from the publisher.

OBA Awards: Call for Nominations

Once a year, attorneys are recognized and praised for the work they do the other 364 days of the year. That day comes during the annual meeting when the OBA Awards are given out to the state's most outstanding attorneys and legal organizations. If you know an attorney who deserves recognition for their professionalism, selflessness or overall excellence, please nominate them.

It only takes a moment to nominate someone, and it could mean the world to a bar colleague or organization that is making Oklahoma a better place.

HERE'S HOW TO NOMINATE

- Anyone can submit an award nomination, and anyone nominated can win.
- The deadline in August 15, but get your nomination in EARLY!
- Nominations don't have to be long; they can be as short as a one-page letter to the OBA Awards Committee.
- The entire nomination cannot exceed five single-sided, 8 1/2" x 11" pages. (This includes exhibits.)
- Make sure the name of the person being nominated and the person (or organization) making the nomination is on the nomination.
- If you think someone qualifies for awards in several categories, pick one award and only do one nomination. The OBA Awards Committee may consider the nominee for an award in a category other than one in which you nominate that person.

Annual Meeting 2013: David Prater of Oklahoma City receives the Fern Holland Courageous Lawyer Award from 2013 OBA President Jim Stuart.

- You can mail, fax or email your nomination (pick one). Emails should be sent to awards@okbar.org. Fax: 405-416-7089. Mail: OBA Awards Committee, P.O. Box 53036, Oklahoma City, OK 73152

AWARDS UP FOR GRABS

Outstanding County Bar Association Award – for meritorious efforts and activities

2013 Winners: Comanche County Bar Association, Osage County Bar Association

Hicks Epton Law Day Award – for individuals or organizations for noteworthy Law Day activities

2013 Winners: Custer County Bar Association, LeFlore County Bar Association

Golden Gavel Award – for OBA Committees and Sections performing with a high degree of excellence

2013 Winner: Lawyers Helping Lawyers Committee

Liberty Bell Award – for non-lawyers or lay organizations for promoting or publicizing matters regarding the legal system

2013 Winner: Women's Service and Family Resource Center of El Reno

Outstanding Young Lawyer Award – for a member of the OBA Young Lawyers Division for service to the profession

2013 Winner: Jennifer Castillo, Oklahoma City

Earl Sneed Award – for outstanding continuing legal education contributions

2013 Winners: Donna J. Jackson, Oklahoma City; D. Kenyon Williams Jr., Tulsa

Award of Judicial Excellence – for excellence of character, job performance or achievement while a judge and service to the bench, bar and community

2013 Winner: Judge Clancy Smith, Tulsa/ Oklahoma City

Fern Holland Courageous Lawyer Award – to an OBA member who has courageously performed in a manner befitting the highest ideals of our profession

2013 Winners: Albert J. Hoch Jr., Oklahoma City; David Prater, Oklahoma City; Micheal Salem, Oklahoma City

Outstanding Service to the Public Award – for significant community service by an OBA member or bar-related entity

2013 Winners: Molly Aspan, Tulsa; Linda Scoggins, Oklahoma City

Award for Outstanding Pro Bono Service – by an OBA member or bar-related entity

2013 Winners: William J. Doyle, Tulsa; Gaylene McCallum, Bartlesville

Joe Stamper Distinguished Service Award – to an OBA member for long-term service to the bar association or contributions to the legal profession

2013 Winner: Steven Barghols, Oklahoma City

Neil E. Bogan Professionalism Award – to an OBA member practicing 10 years or more who for conduct, honesty, integrity and courtesy best represents the highest standards of the legal profession

2013 Winner: Reid E. Robison, Oklahoma City

John E. Shipp Award for Ethics – to an OBA member who has truly exemplified the ethics of the legal profession either by 1) acting in accordance with the highest ethical standards in the face of pressure to do otherwise or 2) by serving as a role model for ethics to the other members of the profession

2013 Winner: Frederick K. Slicker, Tulsa

Alma Wilson Award – for an OBA member who has made a significant contribution to improving the lives of Oklahoma children

2013 Winner: Ben Loring, Miami

Trailblazer Award – to an OBA member or members who by their significant, unique visionary efforts have had a profound impact upon our profession and/or community and in doing so have blazed a trail for others to follow.

Not awarded in 2013.

More Helpful Award Info Online

Go to *www.okbar.org/news/Recent/2014/OBAAwards.aspx*

to find:

- **Nomination form** (You don't need one, but if you want one – you've got it!)
- **Award winner history** (Helpful so you don't nominate someone for an award they've already received)
- **Bios on the people honored to have awards named for them**
- **Tips for writing stronger nominations** (You want your nominee to win, right?)

Session Nears End, Many Bills Still Active

By Duchess Bartmess

Although there is less than two weeks until the last day the Oklahoma Legislature can constitutionally meet this session, there is a large number of active measures still pending. A number of those measures continue to be monitored by the Legislative Monitoring Committee. The following is an update on the measures being watched that have been discussed in earlier *Oklahoma Bar Journal* reports.

MEASURES NO LONGER CONSIDERED ACTIVE

No longer active are HB 2686, HB 2731, HB 3368, SB 1678, SB 1775, SB 1893 and SB 1897.

MEASURES SIGNED BY THE GOVERNOR

HB 2325 Signed April 7, 2014. Extends civil immunity during a time of emergency to those individuals and agencies providing shelter, adds the federal government to the list of requesting agencies and adds tornadoes to the list of natural disasters covered by the statute.

HB 2366 Signed April 22, 2014. Adds new law to Title 12 creating the Oklahoma Citizens Participation Act with the stated purpose of addressing constitutional rights of persons to participate in government.

HB 2405 Signed April 21, 2014. Amends section 153 of the Governmental Tort Claims Act limiting liability to provisions of the act regardless of other state law or the constitution.

HB 2536 Signed April 28, 2014. Adds two new sections of law regarding legal custody of a child with specified limitations and exceptions.

HB 2790 Signed April 28, 2014. Modifies probate procedure, adds new requirement to the elements for petition for summary administration; authorizes issuing letters of special administration without a hearing; alters requirements for notice to creditors and notice of hearing.

SB 1600 Signed April 29, 2014. Adds to the locations where an officer with probable cause may, without a warrant, arrest a person involved in an accident who is under the influence of alcohol, intoxicating liquor, or a controlled dangerous substance.

SB 1904 Signed April 21, 2014. Modifies the definition of "Oklahoma assets" under the Family Wealth Preservation Trust Act.

SB 1993 Signed April 28, 2014. Creates a new statutory responsibility for support and education by the mother of a child born out of wedlock; modifies procedures relating to establishment of paternity of the child; includes new language to make each parent responsible for support of child; modifies provisions relating to responsibilities of parent whose rights have been terminated and as to child if adopted.

MEASURES VETOED BY THE GOVERNOR

HB 3001 Vetoed April 28, 2014. Specifies procedures regulating visitation if a custodial parent prevents visitation with the noncustodial parent or hides the child for more than six months, the noncustodial parent will not have to pay any ordered child support or alimony for the time visitation is prevented or child is hidden.

MEASURES STILL CONSIDERED ACTIVE

SB 1475 On general order in the House as of April 9, 2014. Changes the responsibilities of court-appointed fiduciary reporting requirements; alters termination provisions; and makes notice of revocation requirements.

SB 1497 House amendments read April 7, 2014. Provides any person denied access to meetings of a public body, other than executive sessions may bring a civil suit for declarative or injunctive relief, or both; authorizes reasonable attorney fees.

SB 1612 House amendments read April 21, 2014. Pertains to interference with visitation rights of noncustodial parent; modifies procedures related to enforcement of visitation rights; requires assessment of attorney fees and court costs; provides forms.

SB 1754 On general order in the House as of March 31, 2014. New language to require property and casualty insurers licensed in Oklahoma who write commercial insurance to provide, upon written request of a client of the insurer, the commercial loss history of the insured for the past 36 months; establishes time frames and fines for failure to comply.

SB 2089 On general order in House as of April 9, 2014, with title stricken. Adds requirement that a landlord of a multifamily dwelling of more than four families shall maintain public safety and protection from habitual gang or drug activity; defines "habitual gang or drug activity;" adds authority of tenant to bring suit for failure to provide such safety and protection; grants district attorney authority to prosecute landlord; district attorney given discretionary authority to distribute monies recovered.

HB 2338 On general order in Senate as of March 25, 2014. Exempts from liability any individual, business, school, or church that renders emergency care, aid, shelter, or other assistance during a natural disaster or catastrophic event unless damage was caused by the gross negligence or willful or wanton misconduct of the individual or entity rendering the emergency care, aid, shelter, or assistance.

HB 3365 On general order in the Senate as of March 25, 2014. New law regarding product liability action brought against a product manufacturer or seller; creates rebuttable presumption applies for the same liability action brought against a manufacture or seller if it is established that the product was subject to premarket licensing or approval by the federal government; limits application.

The following measures have survived the major legislative deadlines but have not been discussed and are still considered to be active:

HB 2667 Senate amendments read April 22, 2014 (stricken title). Modifies the list of crimes requiring termination of parental rights; directs the district attorney to file a petition or motion for termination of parental rights no later than 90 days after the court has ordered the individualized service plan, if the parent has made no measureable progress in correcting the conditions which caused the child to be adjudicated deprived.

HB 2334 Senate amendments read April 23, 2014 (stricken title, stricken enacting clause). Amends Section 843.5 of Title 21, relates to child abuse; clarifies statutory language related to the definition of child abuse, child sexual abuse, and child sexual exploitation and adds that nothing in this bill prohibits any parent or guardian from using reasonable and ordinary force as a means of discipline including, but not limited to, spanking, switching, or paddling.

HB 2508 Senate amendments read April 23, 2014. Provides conditions and procedures for reduction of top individual income tax rate and addresses adjustment of corporate income tax rate.

HB 3159 Sent to governor April 21, 2014. Relates to sentencing powers of the court; clarifying probation requirement by adding a private supervision provider of other person designated by the court; mandates supervision will be initiated not exceed two years, unless a petition is filed alleging a violation of any condition of deferred judgment or seeking revocation of a suspended sentence, if filed during the supervision period.

HB 3188 Senate amendments read April 23, 2014. Provides procedures regarding limiting professional liability for voluntary architectural or engineering services; modifying scope of immunity including immunity for persons producing risk-assessment reports for specific structures; excluding liability for loss related to such services.

HB 3365 Sent to governor April 28, 2014. New law providing certain rebuttable presumptions in production liability actions; providing grounds for rebutting presumptions; providing circumstances for which a product liability action may be asserted; providing for liability under certain circumstances.

SB 1141 House amendments read April 22, 2014. Reduces the fee for civil cases filed in district court that is credited to the Council on Judicial Complaints Revolving Fund from $2 to $1.35.

SB 1538 House amendments read April 21, 2014. Provides any person aggrieved by a violation of the crime of human trafficking may bring civil action against those who committed the crime, establishes statute of limitations for the cause of action; adds to definition of victim.

SB 1720 House amendments read April 28, 2014, (stricken title, stricken enacting clause). Provides an explanation to imposing a $40 per month fee for a suspended or deferred sentence for any offense that does not order supervision by the Department of Corrections.

SB 1875 Sent to governor April 28, 2014. Addresses expungement of records. Specifies application procedures relating to deferred sentence; sealing of records with exceptions; authorizes admissibility of records for specified purposes; provides for retroactivity of certain provisions.

SB 1908 House amendments read April 28, 2014. Addresses offers of judgment, repeals section 1101 of Title 12 of the Oklahoma Statutes. civil procedure statute related to procedures concerning an offer, acceptance by plaintiff, notice and filing in actions to recover money only.

CURRENT BILL STATUS

To find the current status of a bill, scroll down to the bottom of the Oklahoma State Legislature's website at www.oklegislature.gov. More information about bills the OBA is watching can be found at www.okbar.org/members/Legislative.

ABOUT THE AUTHOR

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

MEMBER BENEFIT

Go.

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Century-Old Letter Provides Judicial Flashback

By Jarrod Beckstrom

Oklahoma Supreme Court Chief Justice Samuel W. Hayes sat at his desk on April 22, 1913, and penned a letter to a man he didn't know and would never meet. In fact, that man would not be born for another 36 years, but the contents of the letter and its relevance today is uncanny, almost eerie.

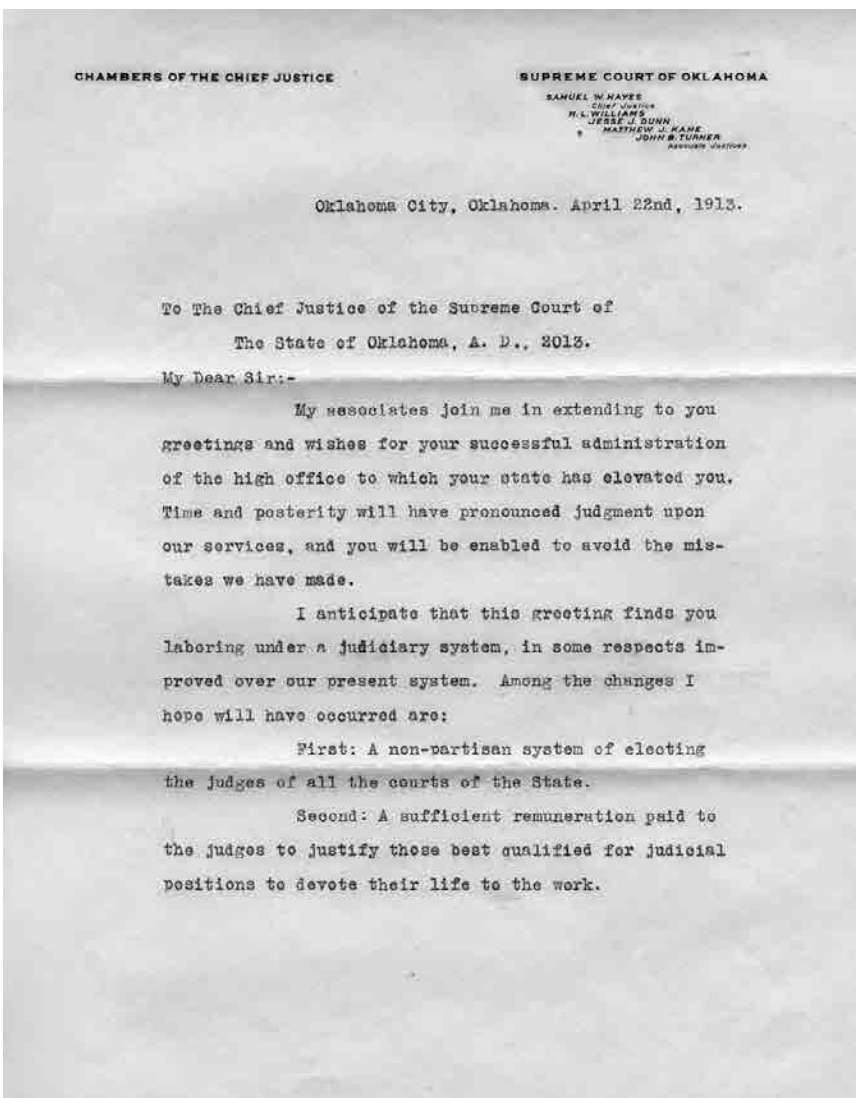
Justice Hayes folded the letter into thirds, stuffed it in an envelope and placed it in a chest at the First Lutheran Church in Oklahoma City. It wouldn't be read until 100 years later.

The letter was addressed "To The Chief Justice of the Supreme Court of The State of Oklahoma, A.D., 2013." Chief Justice Tom Colbert read the letter at a public ceremony last month, and the words reached across a century.

After a well-wishing greeting, the letter's tone turned occupational and discussed Justice Hayes' hopes for the Oklahoma judiciary in 2013. Two world wars, 25 state governors and a multitude of societal changes later – his words were poignantly relevant to the recent challenges to Oklahoma's courts.

"I anticipate that this greeting finds you laboring under a judiciary system, in some respects improved over our present system," Hayes wrote and continued to list three areas in which he hoped progress had been made: 1) A non-political system of electing judges, 2) Sufficient remuneration for judges in order to attract the best legal talent to the bench and 3) Quality trial courts and access to justice for all Oklahomans.

Progress has been made in many regards, but the challenge of protecting the system of justice is forever ongoing.



CHAMBERS OF THE CHIEF JUSTICE

SUPREME COURT OF OKLAHOMA

SAMUEL W. HAYES, Chief Justice
R. L. WILLIAMS
JESSE J. DUNN
MATTHEW J. KANE
JOHN B. TURNER, Associate Justices

Oklahoma City, Oklahoma. April 22nd, 1913.

To The Chief Justice of the Supreme Court of
The State of Oklahoma, A. D., 2013.

My Dear Sir:-

My associates join me in extending to you greetings and wishes for your successful administration of the high office to which your state has elevated you. Time and posterity will have pronounced judgment upon our services, and you will be enabled to avoid the mistakes we have made.

I anticipate that this greeting finds you laboring under a judiciary system, in some respects improved over our present system. Among the changes I hope will have occurred are:

First: A non-partisan system of electing the judges of all the courts of the State.

Second: A sufficient remuneration paid to the judges to justify those best qualified for judicial positions to devote their life to the work.

"I cannot tell you the uncanny foresight that Justice Hayes had," Chief Justice Colbert said after the reading. "It's like he was sitting here with a crystal ball and seeing us sitting here today, and seeing the issues we are addressing every day."

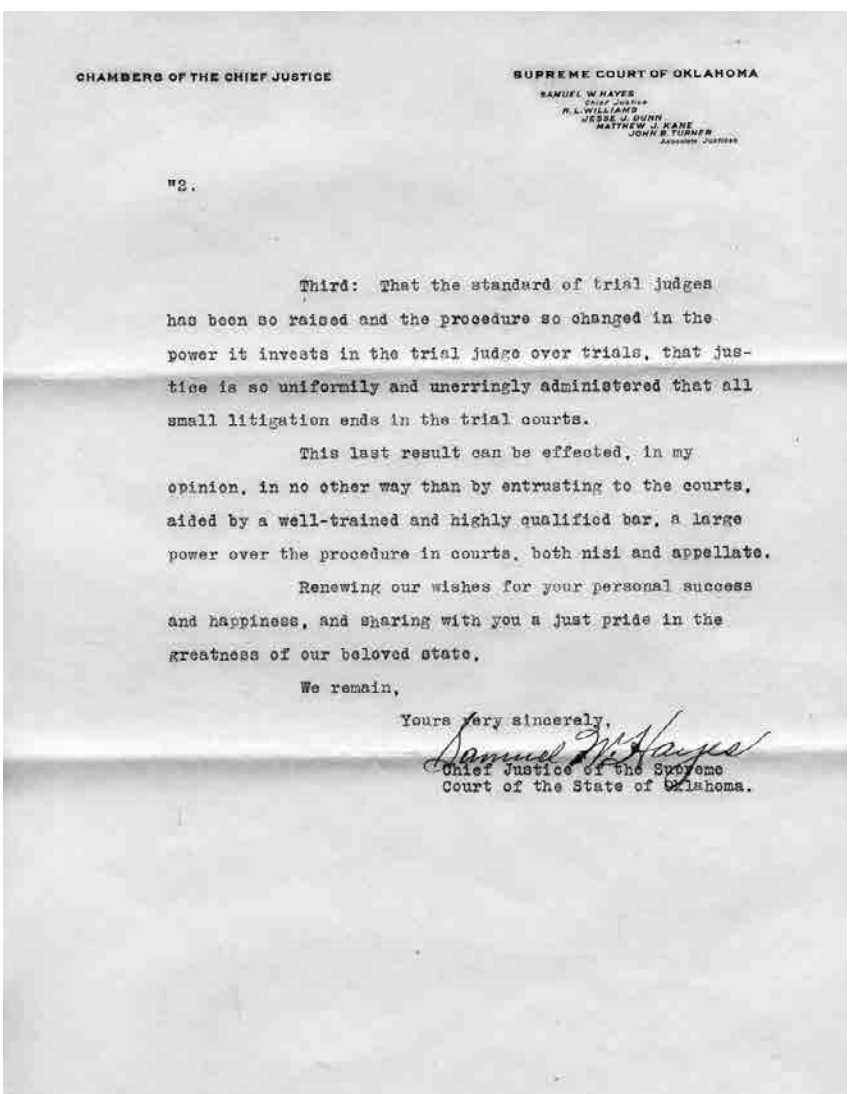
Among those issues was ensuring all citizens have a "fair shake" in court and the ability to have a fair trial.

Vice Chief Justice John Reif pointed out that the three points Justice Hayes focused on in his letter were representative of the "three legs of the stool of judicial independence" and that "its strength is in all three of its legs…that was the meaning of judicial independence in 1913 and is the meaning of justice in 2014."

The letter is a fascinating read and a reminder that even though we have come a long way in 100 years, we must remain vigilant in protecting the third branch and citizens' rights to fair and impartial courts free from political influence.

Jarrod Beckstrom is a communications specialist in the OBA Communications Department.

Chief Justice Samuel W. Hayes



CHAMBERS OF THE CHIEF JUSTICE

SUPREME COURT OF OKLAHOMA

SAMUEL W. HAYES
Chief Justice
R. L. WILLIAMS
JESSE J. DUNN
MATTHEW J. KANE
JOHN B. TURNER
Associate Justices

"2.

Third: That the standard of trial judges has been so raised and the procedure so changed in the power it invests in the trial judge over trials, that justice is so uniformly and unerringly administered that all small litigation ends in the trial courts.

This last result can be effected, in my opinion, in no other way than by entrusting to the courts, aided by a well-trained and highly qualified bar, a large power over the procedure in courts, both nisi and appellate.

Renewing our wishes for your personal success and happiness, and sharing with you a just pride in the greatness of our beloved state,

We remain,

Yours very sincerely,

Samuel W. Hayes

Chief Justice of the Supreme Court of the State of Oklahoma.

New Lawyers Take Oath

Board of Bar Examiners Chairperson Stephanie C. Jones of Clinton announces that 76 applicants who took the Oklahoma Bar Examination on February 25-26, 2014 were admitted to the Oklahoma Bar Association on Tuesday, April 22, 2014 or by proxy at a later date. Oklahoma Supreme Court Chief Justice Tom Colbert administered the oath of attorney to the candidates at a swearing-in ceremony at the State Capitol. A total of 121 applicants took the examination.

Other members of the Oklahoma Board of Bar Examiners are Vice-Chairperson Scott E. Williams, Oklahoma City; Monte Brown, McAlester; Robert D. Long, Ardmore; Bryan Morris, Ada; Loretta F. Radford, Tulsa; Roger Rinehart, El Reno; Donna L. Smith, Miami; and Thomas M. Wright, Muskogee.

The new admittees are:

Allen, Jesse Lee
Bell, Katheryn Cole
Box, Tyler Corbett
Bruce, Leah Katherine
Caldwell, Jade
Carter, Courtney Elizabeth
Chaudry, Natasha
Clark, Marle Nichelle
Clydesdale, Jonathan Mark
Compton, Cody Lee
Cooper, Shaquana L.
Cosner, William Thomas
Curlik, Rodger Vaughn
Dabiri, Hossein

Law school students from TU College of Law and other out-of-state law schools take the oath to become lawyers.

Davis, Christopher Neil
Dean, Angela Dawn
Deen, Blake Thomas
DeFehr, Matthew Richard
Dikeman, Jordan Wade

Students from OU College of Law and OCU School of Law take their oath.

Dow, Ashlyn Elizabeth
Doyle, Sherry Lynn
Duren, Dylan Tyler
Eick, Melissa Jeanne
Faith, Ross Bain
Ferguson, Ryan Scott
Flesch, Dane J
Floyd, David Clay
Garretson, Douglas Martin
Gore, Ronald Marvin
Gray, Daniel Ryan
Harden, Nichole Alexandra
Hill, Rebecca Ann
Hopkins, Robyn
Inhofe, Anna Lee

Jabara, Rami M.
Jacoby, Stephanie Noel
Johnson, Jessica L.
Jones, Hilary Ann
Jordan, Bayley Carter
Jordan, Courtney Rae
Kovash, Joseph Wade
Leizear, Alan Raymond
Lewis, Brad Stockton
Loman, Caitlynn Marie
Luebke, Joseph Karl
Mackert, Dean Emerson
Martin, Amber Brianne
Martin, Kenneth Albert
Morris, Jordan Ashley
Muzaffar, Zane
Norris, Brandon James
Nuhfer-Whiteman, Jennifer Ann
Oglesby, Micheal Steven
Payton, Rayshon Jamil
Perdue, Deborah Patrice
Polchinski, Ryan William
Prado, James R.
Radovcic, Michael
Raines, John D.
Saint, Mathew Scott
Sams, Laura
Scott, Tralynna Lane Sherrill
Sharp, Alex Michael
Shelton, Christopher Dale
Singer, Ruth Espey
St John, Alexis Nicole
Stacy, Matthew Alan
Sullivan, Paula Kim
Toppah, JoEtta Marie
Torgerson, Julie Anne
Trevino, Jaime J.
Tunder, Jennifer Lynn
Virgin, Emily Marie
Wentz, David Benjamin
Wood, John R.
Young, John Chapman

Tribal Nations – Global Impact
The Sovereignty Symposium
XXVII

June 4 - 5, 2014
Skirvin Hotel
Oklahoma City, Oklahoma

The Twenty-Seventh Sovereignty Symposium is dedicated to the life and work of Justice Rudolph Hargrave.

'Cheyenne Warrior Woman'

The Sovereignty Symposium was established to provide a forum in which ideas concerning common legal issues could be exchanged in a scholarly, non-adversarial environment. The Supreme Court espouses no view on any of the issues, and the positions taken by the participants are not endorsed by the Supreme Court.

THE SOVEREIGNTY SYMPOSIUM AGENDA

Wednesday Morning
4 CLE credits / 1 ethics included
7:30 – 4:30 Registration Honors Lounge
8:00 – 8:30 Complimentary Continental Breakfast
10:30 – 10:45 Morning Coffee / Tea Break

8:30 – 5:30 PANEL A: TRIBAL NATIONS' GLOBAL BUSINESS
(This Panel Continues From 1:30 - 5:30)
Crystal Room

MODERATOR: JAMES C. COLLARD, Director of Planning and Economic Development, Citizen Potawatomi Nation
JAMES LANKFORD, Oklahoma District 5 Representative, United States House of Representatives
VINAI THUMMALAPALLY, Executive Director, SelectUSA [Invited]
LARRY V. PARMAN, Oklahoma Secretary of Commerce
ENRIQUE VILLAR-GAMBETTA, Honorary Oklahoma Consul to Peru
DON CHAPMAN, (*Côqayohômuwôk*), President, Uncas Consulting Services LLC
MARCUS VERNER, Director, Export Assistance Center, United States Department of Commerce
CHARLES 'CHUCK' D. MILLS, President and CEO, Mills Machine Company

8:30 – 5:30 PANEL B: A FAIR AND IMPARTIAL JUDICIARY
(This Panel Continues From 3:45 - 5:30)
Centennial 1-2

MODERATORS: PHILLIP LUJAN, (*Kiowa/Taos-Pueblo*), Presiding Judge, Citizen Potawatomi Nation Tribal Court
THOMAS S. WALKER, (*Wyandotte/Cherokee*), Appellate Magistrate of the Court of Indian Offenses for the Southern Plains Region of Tribes, District Judge, (Retired), Brigadier General (Retired), Oklahoma National Guard

8:30 - 9:30 THE JUDICIAL SELECTION PROCESS

WILLIAM P. BOWDEN, Major General (Retired), United States Air Force, Baker Commission Member
CATHY CHRISTENSEN, Past President (2012), Oklahoma Bar Association

9:30 - 12:00 THE TRIBAL COURT PERSPECTIVE

CARLA PRATT, Associate Dean for Academic Affairs, Nancy J. LaMont Faculty Scholar, Professor, Dickinson Law School, Pennsylvania State University
LISA OTIPOBY-HERBERT, (*Comanche*), Justice, Kaw Nation Supreme Court, Magistrate, Court of Indian Offenses, Bureau of Indian Affairs
AARON DUCK, Associate District Judge, former Chief Judge of Chickasaw District Court

DISCIPLINE

TERRY WEST, The West Law Firm

8:30 – 12:00 PANEL C: TRUST LAND-SITES FOR ECONOMIC DEVELOPMENT AND GLOBAL IMPACT
Grand Ballroom A

MODERATORS: DOUGLAS COMBS, (*Mvscogee Creek*), Justice, Oklahoma Supreme Court
LEAH HARJO-WARE, (*Mvscogee/Yuchi*), Attorney
DAVID MULLON, (*Cherokee*), Chief Counsel, National Congress of American Indians
EUGENIA CHARLES-NEWTON, (*Navajo*), Faculty Services Librarian, Texas Tech School of Law Library, Texas Tech University
JIM JAMES, (*Ohkay Owingeh*), Deputy Director of Field Operations, Office of Special Trustee for American Indians, Bureau of Indian Affairs
CHRISTIE JACOBS, Representative, Indian Tribal Governments Division, Internal Revenue Service
DAVID M. ENGLISH, Professor, School of Law, University of Missouri
KATHLEEN GUZMAN, Professor, School of Law, University of Oklahoma
DAVID SMITH, Kilpatrick, Townsend, and Stockton
SHARLENE M. ROUND FACE, Southern Plains Regional Realty Officer, Bureau of Indian Affairs

Wednesday Afternoon
5 CLE credits / 1.5 ethics included
3:30 – 3:45 Tea / Cookie Break for all Panels

1:15 – 2:30 OPENING CEREMONY AND KEYNOTE ADDRESS
Grand Ballroom D-F

MASTER OF CEREMONIES: STEVEN W. TAYLOR
Justice, Oklahoma Supreme Court
PRESENTATION OF FLAGS
HONOR GUARD: KIOWA BLACK LEGGINGS SOCIETY
DRUM: SOUTHERN NATION
CAMP CALL: GORDON YELLOWMAN
(*Cheyenne*), Chief, Council of the 44, Director, Cheyenne and Arapaho Tribes Language Program
INVOCATION: ROBERT E. HAYES, JR.
Bishop of the United Methodist Conference of Oklahoma
MARY FALLIN
Governor, State of Oklahoma

RENÉE DEMOSS
President, Oklahoma Bar Association
TOM COLBERT
Chief Justice, Oklahoma Supreme Court
ROBERT HENRY
President, Oklahoma City University
INTRODUCTION OF CHIEF JUSTICE BEVERLEY MCLACHLIN AND PRESENTATION OF HONORARY DEGREE FROM OKLAHOMA CITY UNIVERSITY
KEYNOTE: BEVERLEY MCLACHLIN, P.C.
Chief Justice, Supreme Court of Canada
PRESENTATION OF AWARDS: YVONNE KAUGER
Justice, Oklahoma Supreme Court
HONOR AND MEMORIAL SONG FOR JUSTICE RUDOLPH HARGRAVE: SOUTHERN NATION
CLOSING PRAYER: GORDON YELLOWMAN
(*Cheyenne*), Chief, Council of the 44, Director, Cheyenne and Arapaho Tribes Language Program

2:30 - 3:30 ROUNDTABLE DISCUSSION
Grand Ballroom D-F

MODERATOR: ROBERT HENRY
President, Oklahoma City University
BEVERLEY MCLACHLIN, P.C.
Chief Justice, Supreme Court of Canada
TOM COLE
Congressman, 4th District of Oklahoma, United States House of Representatives
GREGORY E. PYLE
(*Choctaw*), Chief (Retired), Choctaw Nation of Oklahoma
W. RICHARD 'RICK' WEST, JR.
(*Cheyenne*), President and CEO, Autry National Center
TERRY NEESE
Founder and CEO, Institute for the Economic Empowerment of Women
ENOCH KELLY HANEY
(*Seminole*), Master Artist, Former Principal Chief, Seminole Nation of Oklahoma, Former State Senator, Oklahoma Senate

3:45 – 5:30 PANEL A: TRIBAL ECONOMIC DEVELOPMENT-TRIBAL AND LOCAL GOVERNMENT COOPERATION
Crystal Room

MODERATOR: JAMES C. COLLARD, Director of Planning and Economic Development, Citizen Potawatomi Nation
GAVIN CLARKSON, (*Choctaw*), Associate Professor, College of Business, New Mexico State University
DIANE LUPKE, International Economic Development Council
JANIE HIPP, (*Chickasaw*), Director, Indigenous Food and Agriculture Initiative, School of Law, University of Arkansas
TIM GATZ, Deputy Director, Oklahoma Department of Transportation
TERRY NEESE, Founder and CEO, Institute for Economic Empowerment of Women
JONNA KAUGER KIRSCHNER, Commercial Counsel, Chickasaw Nation Industries, Inc.
ALISHA MURPHY (*Navajo*), Buder Scholar, Kathryn M. Buder Center for American Indian Studies, Washington University

3:45 – 5:30 PANEL B: A FAIR AND IMPARTIAL JUDICIARY (A Continuation of the Morning Panel)
Centennial 1-2

3:45 – 5:00 ETHICS ADDRESS

JOHN REIF, Vice-Chief Justice, Oklahoma Supreme Court
ALISON CAVE, Vice-President, Oklahoma Attorneys Mutual Insurance Company, President, The Sovereignty Symposium Inc.

3:45 – 5:30 PANEL C: TRUTH AND RECONCILIATION
Grand Ballroom A

MODERATOR: NOMA GURICH, Justice, Oklahoma Supreme Court
ROBERT E. HAYES, JR., Bishop, United Methodist Conference of Oklahoma
DAVID WILSON, (*Choctaw*), Reverend, United Methodist Conference Superintendent, Oklahoma Indian Missionary Conference
GORDON YELLOWMAN, (*Cheyenne*), Chief, Council of the 44, Director, Cheyenne and Arapaho Tribes Language Program
C. BLUE CLARK, (*Mvscogee Creek*), Native American Legal Research Center, College of Law, Oklahoma City University
HARVEY PRATT, (*Cheyenne*), Chief, Council of the 44, Oklahoma State Bureau of Investigation
BARBARA SMITH, (*Chickasaw*), Justice, Chickasaw Nation Supreme Court

6:30 – 8:30 ART OF THE JUDICIAL CENTER
Book Signing Reception
Oklahoma Judicial Center, 2100 North Lincoln Boulevard

Thursday Morning
4.5 CLE credits / 1 ethics included
7:30 – 4:30 Registration Honors Lounge
8:00 – 8:30 Complimentary Continental Breakfast
10:30 – 10:45 Morning Coffee / Tea Break

8:30 – 10:30 PANEL A: THE ICWA AND OTHER CHILDREN'S ISSUES
Grand Ballroom D-E

MODERATOR: JOHN FISCHER, Judge, Oklahoma Court of Civil Appeals
STEVEN HAGER, Director of Litigation, Oklahoma Indian Legal Services
SUE TATE, Court Improvement Project Coordinator, Oklahoma Administrative Office of The Courts
RITA HART, (*Choctaw/Jicarilla Apache*), Tribal Program Manager, Oklahoma Department of Human Services
DIANE HAMMONS, (*Cherokee*), Assistant Professor, Northeastern State University
TSINENA BRUNO-THOMPSON, (*Cherokee*), President & CEO, Oklahoma Lawyers for Children

10:45 - 12:30 PANEL A: GAMING (This Panel Continues from 1:30 - 5:30
Grand Ballroom D-E

MODERATORS: MATTHEW MORGAN, (*Chickasaw*), Director of Gaming Affairs, Division of Commerce, Chickasaw Nation
NANCY GREEN, (*Choctaw*), Green Law Firm

OPENING REMARKS

JONODEV OSCEOLA CHAUDHURI, (*Mvscogee Creek*), Acting Chairman, National Indian Gaming Commission
DANIEL LITTLE, Associate Commissioner, National Indian Gaming Commission
ERNEST L. STEVENS, JR., (*Oneida*), Executive Director, National Indian Gaming Association
JASON GILES, (*Mvscogee Creek*), Executive Director, National Indian Gaming Association

8:30 – 10:30 PANEL B: CRIMINAL LAW
Centennial 1-2

MODERATORS: CLANCY SMITH, Vice-Presiding Judge, Court of Criminal Appeals
SANFORD C. COATS, United States Attorney, Western District of Oklahoma
BARBARA ANNE SMITH, (*Chickasaw*), Justice, Chickasaw Nation Supreme Court
ARVO MIKKANEN, (*Kiowa/Comanche*), Assistant U.S. Attorney, Western District of Oklahoma
DARREN A. CRUZAN, (*Miami*), Deputy Director, Office of Justice Services, Bureau of Indian Affairs
ROBERT DON GIFFORD, (*Cherokee*), Assistant U.S. Attorney, Western District of Oklahoma
TRENT SHORES, (*Choctaw*), Assistant U.S. Attorney, Northern District of Oklahoma, Chief Judge, Kaw Nation District Court
SHANNON COZZONI, Assistant U.S. Attorney, Northern District of Oklahoma

10:45 - 12:30 RESTORATIVE JUSTICE AND HEALING THE COMMUNITY THROUGH PEACE MAKING

MICHAEL COLBERT SMITH, (*Chickasaw*), Smith & Smith Attorneys at Law
BRETT TAYLOR, Deputy Director, Technical Assistance, Center for Court Innovation
ERIKA SASSON, Peacemaking Program Director, Tribal Justice Exchange, Center for Court Innovation
BRETT LEE SHELTON, Staff Attorney, Native American Rights Fund

8:30 – 12:30 PANEL C: THE ASIAN CONNECTION (This Panel Continues From 1:30 - 5:30)
Grand Ballroom A

MODERATOR: ENOCH KELLY HANEY, (*Seminole*), Master Artist, Former Principal Chief, Seminole Nation of Oklahoma, Former State Senator, Oklahoma Senate
KAI (KENNETH) ZHENNAN, CEO, Creativity Group
CHEN JIGUO, President, Shanghai Coal Chemical Group
TANG PEIYUN, Vice-President, Shanghai Nanpu Food Group
WANG CHUNFENG, President, Shanghai Xin Trade Co. Ltd.
TANG ZHUANGQUN, CEO, Shanghai Zhe Jia Real Estate Co. Ltd.

8:30 – 12:30 PANEL D: INDIGENOUS PEOPLES' RIGHT TO SELF-DETERMINATION
Grand Ballroom B

MODERATORS: JERRY GOODMAN, Judge, Oklahoma Court of Civil Appeals
ALEX SKIBINE, (*Osage*), S.J. Quinney Professor of Law, College of Law, University of Utah
KRISTEN CARPENTER, Associate Professor and Co-Director, American Indian Law Program, School of Law, University of Colorado
ANGELA R. RILEY, (*Potawatomi*), Professor, School of Law, UCLA, Director, American Indian Studies Center/American Indian Studies Joint JD/MA Degree Program
ROBERT J. MILLER, (*Eastern Shawnee*), Professor, Sandra Day O'Connor College of Law, Arizona State University

8:30 – 12:30 PANEL E: SOVEREIGNTY, OKLAHOMA TRIBES, AND COMPACTING
Grand Ballroom C

MODERATORS: W. KEITH RAPP, Judge, Court of Civil Appeals
JACQUE SECONDINE-HENSLEY, (*Kaw*), Native American Liaison, Office of the Governor, State of Oklahoma
C. BLUE CLARK, (*Mvscogee Creek*), Native American Legal Research Center, College of Law, Oklahoma City University
TAIWAGI HELTON, Professor, College of Law, University of Oklahoma, Special Justice, Cheyenne and Arapaho Tribes Supreme Court
CASEY ROSS-PETHERICK, (*Cherokee*), Associate Professor, College of Law, Oklahoma City University
SUSAN WORK, (*Choctaw*), Hobbs, Straus, Dean & Walker, LLP
COLLINE WAHKINNEY-KEELY, (*Comanche*), Director, Oklahoma Indian Legal Services
STEPHEN GREETHAM, General Counsel, Chickasaw Nation Commerce Department, Chickasaw Nation Executive Department

Thursday Afternoon
4.5 CLE credits / 0 ethics included
3:30 – 3:45 Tea / Cookie Break for all Panels

1:30 – 5:30 PANEL A: GAMING (A Continuation of the Morning Panel)
Grand Ballroom D-E

MODERATORS: MATTHEW MORGAN, (*Chickasaw*), Director of Gaming Affairs, Division of Commerce, Chickasaw Nation
NANCY GREEN, (*Choctaw*), Green Law Firm

DISCUSSION ON THE CURRENT AND FUTURE STATE OF INTERNET GAMING

KIM ARNOLD, COO, The Innovation Group
DEAN LUTHEY, Gable Gotwals, General Counsel, Oklahoma Indian Gaming Association
JASON GILES, (*Mvscogee Creek*), Executive Director, National Indian Gaming Association
JAMES MAIDA, CEO, GLI Gaming Laboratories International
SHEILA MORAGO, (*Gila River*), Executive Director, Oklahoma Indian Gaming Association

IMPACT OF RECENT COURT CASES ON TRIBAL IMMUNITY AND LAND INTO TRUST

WILLIAM NORMAN, (*Mvscogee Creek*), Hobbs, Straus, Dean and Walker
DEAN LUTHEY, Gable Gotwals, General Counsel, Oklahoma Indian Gaming Association
ALAN P. MEISTER, Principal Economist, Nathan Associates
D. MICHAEL MCBRIDE, III, Crowe Dunlevy
ELIZABETH HOMER, (*Osage*), Homer Law

1:30 – 5:00 PANEL B: MULTIFACETED EDUCATIONAL PROGRAMS
Grand Ballroom B

MODERATOR: JOHN ROBERT HARGRAVE, President, East Central University
ROBERT HENRY, President, Oklahoma City University
GLEN D. JOHNSON, Chancellor, Oklahoma State Regents for Higher Education
SUSAN PADDACK, State Senator, Oklahoma State Senate
HENRIETTA MANN, (*Cheyenne*), President, Cheyenne and Arapaho Tribal College
ROBERT SOMMERS, Oklahoma Secrectary of Education and Workforce Development, Director, Oklahoma Department of Career and Technology Education
MATT LITTERELL, Interim Business and Industry Services Director, Tulsa Technology Center
DIANE HAMMONS, (*Cherokee*), Assistant Professor, Criminal Justice, Northeastern State University
ANASTASIA PITTMAN, (*Seminole*), Representative, District 99, Oklahoma House of Representatives
JERRY MCPEAK, (*Mvscogee Creek*), Representative, District 13, Oklahoma House of Representatives

1:30 – 5:30 PANEL C: THE ASIAN CONNECTION (A Continuation of the Morning Panel)
Grand Ballroom A

MODERATOR: ENOCH KELLY HANEY, (*Seminole*), Master Artist, Former Principal Chief, Seminole Nation of Oklahoma, Former State Senator, Oklahoma Senate
KAI (KENNETH) ZHENNAN, CEO, Creativity Group
CHEN JIGUO, President, Shanghai Coal Chemical Group
TANG PEIYUN, Vice-President, Shanghai Nanpu Food Group
WANG CHUNFENG, President, Shanghai Xin Trade Co. Ltd.
TANG ZHUANGQUN, CEO, Shanghai Zhe Jia Real Estate Co. Ltd.

1:30 – 5:30 PANEL D: TRIBAL LANGUAGE PRESERVATION IN THE TWENTY-FIRST CENTURY
Centennial 1-2

MODERATOR: DEBORAH B. BARNES, Chief Judge, Division II, Court of Civil Appeals
GUS PALMER, JR., (*Kiowa*), Associate Professor, Anthropology, Interim Director, Native American Studies, University of Oklahoma
BLAKE WADE, Chief Executive Officer, American Indian Cultural Center and Museum, President, Oklahoma Business Roundtable
JEROD IMPICHCHAACHAAHA' TATE, (*Chickasaw*), Composer, Composer-in-Residence for the Chickasaw Summer Arts Academy
GORDON YELLOWMAN, (*Cheyenne*), Chief, Council of the 44, Director, Cheyenne and Arapaho Tribes Language Program
ROY BONEY, JR., (*Cherokee*), Cherokee Nation Language Program
BUNKY ECHO-HAWK, (*Pawnee/Yakama*), Artist
ANASTASIA PITTMAN, (*Seminole*), Representative, District 99, Oklahoma House of Representatives

TRIBAL NATIONS — GLOBAL IMPACT

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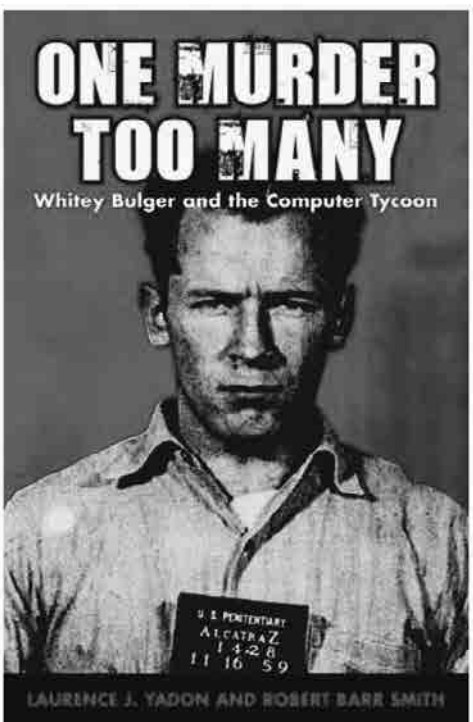
One Murder Too Many

By Laurence J. Yadon and Robert Barr Smith

Reviewed by Judge Allen Welch



248 PAGES * HARDCOVER
$24.95
ISBN: 978-1455618194
PELICAN PUBLISHING

Roger Wheeler and Whitey Bulger were both born in Boston, three years and 14 miles apart. Their two lives intersected tragically in the parking lot of Southern Hills Country Club in Tulsa, Okla., on May 27, 1981. This story is about Wheeler's murder, one murder too many.

The authors painstakingly detail a fascinating history of "the Irish Mafia" in south Boston, a history replete with random and horrific acts of violence. Whitey Bulger, a petty thief, became the undisputed boss of the south Boston mafia, largely by attrition after his colleagues and competitors were killed. He "liked to hurt people and watch them cringe in fear." When a presidential commission on organized crime described him as a "bank robber, drug trafficker and murderer," Bulger complained to associates "I'm no drug trafficker."

Roger Wheeler moved to Tulsa in 1948, to take a job with Standard Oil Co. By 1965, he was the chairman, CEO and sole shareholder of Telex. He owned a 4,500 square foot house in Nantucket and an 11,000 acre ranch in Wyoming. His personal wealth was estimated at $60 million.

One story within this story regards Telex' civil action against IBM, which employed a team of 300 and 50 lawyers, in that case. In a 222-page opinion, a federal judge awarded Telex $353 million, and awarded a judgment to IBM for their counterclaim in the amount of $22.9 million. The 10th Circuit Court of Appeals reversed the trial court's judgment on behalf of Telex — but not the judgment for IBM. The two sides eventually settled in a "walk away," without any money exchanging hands.

Wheeler turned to the World Jai Alai league, as an investment. He soon learned that organized crime was skimming profits — and that organized crime knew that he knew. Wheeler's pilot inspected his plane for bombs. Wheeler bought a gun. His fears were warranted. "This guy won't take our money," one henchman told Bulger, "we need to get rid of him."

The two shooters had murdered at least 18 people before they shot Wheeler. They tracked him down at his regular Wednesday afternoon golf game at Southern Hills. Referring to his golf buddies at the conclusion of his outing, Wheeler

turned to another friend and said "These guys are killing me." Those were evidently his last words. Wheeler was shot in the head shortly after starting his car.

Bulger and his girlfriend avoided capture for 20 years, and went undercover at a modest apartment in Santa Monica, Calif. A former neighbor in Iceland saw a story about Bulger and his girlfriend on CNN, and recognized her neighbors who had fondly taken care of her cat. "A cat got me captured," Bulger later said. The police cornered Bulger in his garage. In his apartment, police found 30 shotguns, rifles and pistols, and $822,198 in cash.

Bulger was convicted on 31 counts, including 11 murders. The associate who testified against him and admitted to 20 murders was sentenced to 12 years.

Several OBA members are mentioned in the book, including Tim Harris and Joel Wohlegemuth. The authors are also members of the Oklahoma Bar Association. Robert Barr Smith was a professor for many years at the OU College of Law.

Readers will relish tales about the civil trial and the criminal trial, the breathtaking audacity of Whitey Bulger and "the Boston Irish mafia," and the tragic event in the parking lot of Southern Hills Country Club.

Judge Welch is a special judge in Oklahoma County and serves on the OBA Board of Editors.

Why Every Vote Matters

By John Morris Williams

"Why Every Vote Matters" was the ABA theme for Law Day this year. It is fitting that voting was the subject for this year. In our democracy, votes matter. There are many different kinds of votes. There are votes for political office; there are votes in the Legislature. There are votes even at the nation's highest court. At times even the highest courts vote to determine if a popular election was properly conducted, and the votes properly counted. Even the anchor of our justice system, juries cast votes.

As most of you are aware, Oklahoma Bar Association members vote for six members of the Judicial Nominating Commission. The ability to maintain your right to vote on those elections was put into question this spring. Thankfully, the effort to take away this important balance in judicial selection failed. The lawyer members of the JNC are much like jurors. They see the evidence firsthand of what makes a great judge. Lawyers who regularly appear before judges, regardless of who they are representing, best know the demeanor, lack of bias and respect for the rule of law of sitting judges.

The world envies our country for our legal system. It is not our executive or legislative branches that garner such admiration. Although they are important and should be much respected, it is our courts and legal system that differentiate us from the rest of the world. Dictatorships have an executive leader. Even harsh totalitarian systems have some sort of legislative body. It is that wonderful and magnificent document called the Constitution and its application by the court that has served us well to preserve our democracy.

> **"It is our job to ensure our system of government maintains credibility."**

Sometimes courts (and even voters) get it wrong, but over the long haul as long as lawyers stand in the ready to make every vote count, we have a strong chance of hanging on to our democracy. It is our job to make the votes of the unpopular, the minority and the downtrodden just as important and count just the same as the votes of the popular, the majority and the affluent.

It is our job to ensure our system of government maintains credibility. Governors, courts and legislatures sometimes get it wrong on an issue. History has shown people will keep faith with an imperfect system as long as it strives for perfection. On the other hand, a system where the result is obtained by bribery or corruption alienates and encourages people to mistrust a system of government. In short, it is not credible.

No one wants to vote in an election in which the result is preordained. No one wants to participate in a judicial system in which the result is preordained. Most everyone on a ballot or who is a party to a legal action wants to win. But, at what price? It is the role of lawyers to make sure that the zeal for victory does not overpower the rule of law.

I can think of no higher calling than to ensure the votes of citizens in our democracy are cast without fear of dishonesty and are not counted based on the color of the hand that cast them. The men and women in uniform for our country everyday stand to pay the ultimate prices to ensure that our democracy is safe from foreign invaders. It is our job as members of the bar to ensure that politics and political games-

manship do not erode or undo that for which many have given their lives.

Every vote matters. The fate of our nation rests upon this premise. It is the job of lawyers to make sure a vote whether cast in a presidential election or a jury room is freely given and fairly counted. It is our job as public citizens to ensure that all votes cast be done so by an educated electorate who by their own experience know and believe every vote matters.

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

What We Saw at ABA TECHSHOW 2014

By Jim Calloway

ABA TECHSHOW 2014[1] was reported to have had an all-time record number of registered attendees, including at least seven from Oklahoma. There are other legal technology conferences, but ABA TECHSHOW is special. No other conference brings together so many of the people who write and blog about technology, do technology consulting for law firms and are experts in their field. The attendees include some of the sharpest people I have had the pleasure to meet. Of course, I haven't missed an ABA TECHSHOW since my first one in 1999 and I am a former ABA TECHSHOW chair, so I am biased.

In this column, some of us will share our ABA TECHSHOW experiences and readers will also be provided with links to lists of great apps for lawyers and online resources that you can put to use right now. You will not want to skip the endnotes section on this column and you are reminded that we will post this to the Management Assistance Program page at www.okbar.org with live links within the next few weeks.

The formula for ABA TECHSHOW is really simple:

1) Only allow each person to do a couple of presentations, usually paired with a co-presenter, which means a lot of experts are needed to fill the 50–plus sessions,
2) Avoid CLE presentations by vendors in most cases, but allow some clearly identified vendor showcases which are not for CLE credit,
3) Actively recruit new first time speakers, and
4) Truly engage the attendees. What other conference has small group dinners with the speakers that attendees can sign up to attend?

Cheryl Clayton of Noble is vice chair of the OBA Law Office Management and Technology Section and was a first-time attendee at ABA TECHSHOW this year. We stopped to talk in the exhibit hall for a moment, and I knew she was really enjoying TECHSHOW when she said, "I'm sorry. I've got to go. There's just not enough time." and hurried off to see more vendors. So I asked her to share her impressions when we returned to Oklahoma.

"Initially, I felt intimidated by program presenters clearly in the forefront of legal technology," Ms. Clayton said. "But they understood that we were lawyers, first and foremost, and kept it simple."

"The show was fast paced and each hour there were at least two or three sessions I wanted to attend, so instead I had to make hard choices," she said. "There were more software, hardware and service vendors than I expected. They gave me a sense of where legal technology was heading. If there was a buzzword, it was 'the cloud.' There were cloud applications for computing, storage and whole office solutions. At this point, I am not completely sold on cloud computing in large part because I practice in an area where Internet services can be spotty. But it looks like the wave of the future."

"The next buzz word was iPad," Ms. Clayton said. "Lawyers have taken the iPad and made it their own. I know I love mine. Whether for iPad or Android tablets, more and more apps are being developed that are particularly useful to lawyers. And something really special happened at the show. My beloved WordPerfect is not down and out, despite Jim Calloway's predic-

tions to the contrary. Corel announced a new app for the iPad, and you can try it out by going to iTunes and downloading the free trial "WordPerfect X7" iOS app. Granted, it will require a few fixes but as an iPad word processing app, it is a game changer in my opinion."

"I am excited about incorporating what I learned at ABA TECHSHOW into helping to plan a CLE for litigators. But it will just be a small bite of the big apple. Since the Oklahoma Bar Association is an event promoter of the annual ABA TECHSHOW, we need a larger presence there. On top of making a serious dent in MCLE requirements, the show is just plain fun. The speakers are entertaining, the food good and the hotel first class. I want to go back," she concluded.

Steven J. Goetzinger of Oklahoma City also attended the conference. "The ABA TECHSHOW exceeded my expectations," Mr. Goetzinger said. "Until I attended the show, I considered myself fairly tech-savvy and proficient at utilizing web-based legal resources. But after attending seminars on free legal research websites, Word on iPad for lawyers and iPad demonstrative evidence, among many others, I walked away realizing that I had been living in the tech dark ages. Anyone who practices law, whether in a small or large firm, or for a company, will benefit by attending this show and seminars such as these."

Jeffrey Taylor (aka The Droid Lawyer) spoke at ABA TECHSHOW again this year. He posted "ABA TECHSHOW 2014 Round-up and Review" on his blog the day after the show concluded.[2] He also live

Don't Forget – Register for the OBA Solo & Small Firm Conference!

Several additional sponsors have been added for the 2014 OBA Solo & Small Firm Conference. We hope for record conference attendance June 19-21 at the Hard Rock Hotel and Casino in Tulsa. Check out the conference schedule and speakers at www.okbar.net/solo.

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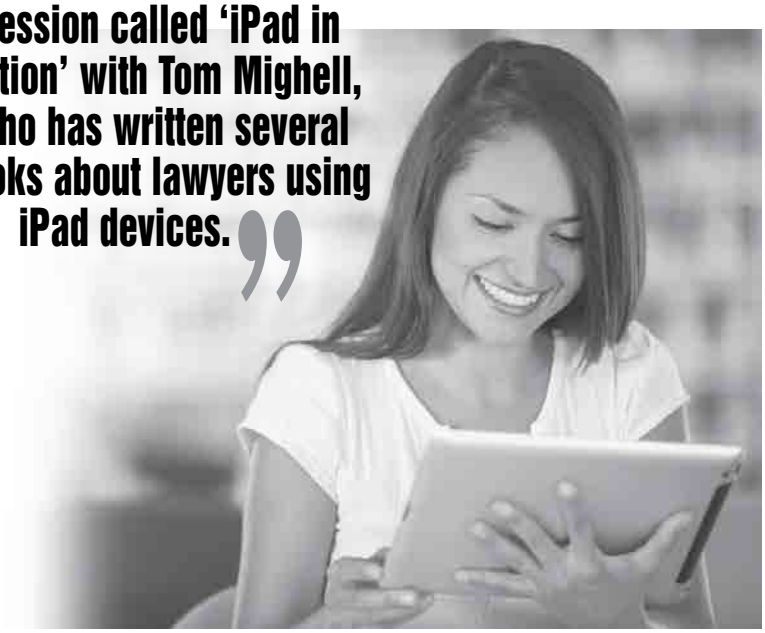
> **"I spoke on 'How to Add Document Assembly into Your Workflow' and a session called 'iPad in Action' with Tom Mighell, who has written several books about lawyers using iPad devices."**



blogged[3] several of the presentations. (Interestingly I could not get the live blog page to open in Internet Explorer, but it worked fine in Chrome.) Needless to say, he appears to have attended or presented at all of the Android sessions. He did one shootout session I wish I could have attended, "Office 365 v. Google Apps." You can download the materials for his Android customization presentation.[4] Many of you will also be interested in downloading the apps he showed off with Dan Siegel in the Saturday morning shootout between mobile devices. Their session was "60 Android Apps and Widgets."[5] Mr. Taylor will be speaking at the OBA Solo & Small Firm Conference this summer on "The Google-Powered Law Office."

I spoke on "How to Add Document Assembly into Your Workflow" and a session called "iPad in Action" with Tom Mighell, who has written several books about lawyers using iPad devices. I'll be speaking about document assembly at the OBA Solo & Small Firm Conference this summer.

ABA TECHSHOW concludes each year with a panel program called 60 Sites in 60 Minutes. After more than two days of a flood of technology information, this program gives the audience a chance for a few laughs as really goofy websites are mixed in with new important websites and web services. The complete list is online on the ABA TECHSHOW website at http://goo.gl/vXhLM4.

I mentioned that one Saturday morning slot was broken down by which mobile device one uses. The largest crowd attended "60 iOS apps in 60 Minutes."[6] It showcased a great collection of apps. Jeff Richardson posted the list of all of the apps profiled at his iPhoneJD blog.[7] The app Cycloramic impressed us all, even though it really has no business purpose for lawyers. You stand your iPhone on end and it uses the ringer vibrator to slowly spin the phone around to take to take 360 degrees pictures.[8] Jeff also posted some pictures he took at ABA TECHSHOW.[9] I would not mention that here except for the fact that vendor MyCase hired an artist to produce live murals during several of the presentations and the results were interesting. You can see a couple of examples at http://goo.gl/xxP5Mr.

Reid Trautz, another former TECHSHOW chair, posted his "Top Ten Takeaways from ABA TECHSHOW 2014" on his blog.[10] Some of you will remember Mr. Trautz from his presentations at past OBA Solo & Small Firm Conferences and the Technology Fair. At the 2011 OBA Annual Meeting, he noted that several of the programs centered on workflow. Mr. Trautz said that a better term than workflow is "business process improvement" and predicts we will all be hearing more about BPI in the future. He highlighted The Form Tool's Doxsera,[11] Wordrake[12] and a newcomer, ITimeKeep Mobile app,[13] as examples of BPI focus.

Of course, writing is not the only way that people share what they learned at ABA TECHSHOW. Tom Mighell and Dennis Kennedy did an "ABA TECHSHOW 2014 Wrapup" podcast on their *Kennedy-Mighell Report*,[14] while Sharon Nelson and I interviewed ABA TECHSHOW 2014 Chair Natalie Kelly for "Headlines from ABA TECHSHOW 2014" on our *Digital Edge: Lawyers and Technology* podcast.[15]

There are a good number of Canadians at ABA TECHSHOW every year and sometimes visitors from other countries. Philippe Doyle Gray, a barrister from Sydney, Australia, attended his third consecutive ABA TECHSHOW and was a speaker this time. He was the first-ever ABA TECHSHOW speaker from Australia. I sat in on his session on Evernote and really need to find the time to put his tips into practice. He has developed a free web resource titled "How to Optimize Your Use of Evernote," with links to his videos, writings and other observations about Evernote. It is online at www.philippedoylegray.com/content/view/55/45/. Here is how he describes Evernote on the site:

"Evernote is software that is a digital extension to your biological memory. Remembering ideas becomes trivial…The intellectual demands on professional life can be overwhelming. Great minds are best deployed to the intractable problems to hand. But life is made up of lots of little things that have to be remembered. Evernote stops you wasting effort on remembering all those little things, and liberates your imagination."

ABA TECHSHOW is also a time when many legal software vendors announce new or updated products. For information on new products and the features of existing products that were showcased there, see Bob Ambrogi's "Top 10 Product Announcements at ABA TECHSHOW"[16] and Kandy Hopkins' "Trending: Legal Technology on the Rise."[17]

The two keynote sessions were very different in subject matter. Rick Klau is a partner at Google Ventures where he helps lead Startup Lab. Rick Klau has attended and spoken at TECHSHOW many times in the past so it was good to see him back. His three lessons for lawyers from his talk were data always beats opinion, sometimes you just need to say no and always think big. While those may sound like something from a fortune cookie, his explanation was actually quite impressive. No matter how smart you are, your opinion is just an educated guess. A survey of the marketplace will give the correct answer. If you are trying to decide which phrase of two contenders works best for marketing on your website, buy a Google AdWord for one on one week and then the other on the next to see which one "sells out" more quickly. Admittedly, that is a very simple example, but a lawyer trying to catch a consumer's attention cannot stop being a lawyer and adopt the consumer's state of mind.

Former White House Counsel John Dean spoke of his insider view of the Watergate scandal. "How in God's name could so many lawyers get involved in something like this?" was the quote we will all remember from his speech. Twenty-one lawyers, including Dean himself, were caught up in Watergate. It was after Watergate, he said that "the American Bar Association made the decision to modify its model rules so that students would be required to take legal ethics in law school, would have to pass a special ethics examination before they could practice law, and would have to take mandatory ethics CLEs in order to keep their licenses."[18]

We hope to see you at ABA TECHSHOW sometime in the future. That is just a peek at this year's event. But if you haven't had enough, a link to 50 more posts about ABA TECHSHOW 2014 may be viewed on the Business of Law Blog at http://goo.gl/kDyVk9. I'm sure you are not surprised that a lot of ABA TECHSHOW attendees write for blogs.

Mr. Calloway is OBA Management Assistance Program director. Need a quick answer to a tech problem or help resolving a management dilemma? Contact him at 405-416-7008, 800-522-8065 or jimc@okbar.org. It's a free member benefit!

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3. http://goo.gl/VmXHEK
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5. http://goo.gl/FLmHEz
6. In a real sign of the times, there were only three people present at the Blackberry session that morning.
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13. See a recent review of iTimeKeep at http://goo.gl/pIV36P
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18. http://goo.gl/cwzAzN

Trust Account Overdraft Reports: Your Duty to Update Trust Account Information

By Gina Hendryx

The Office of the General Counsel, under the supervision of the Professional Responsibility Commission, oversees the Trust Account Overdraft Reporting requirements of Rule 1.15(j) - (m) of the Oklahoma Rules of Professional Conduct (ORPC), 5 O.S. 2011, ch. 1, app. 3-A.

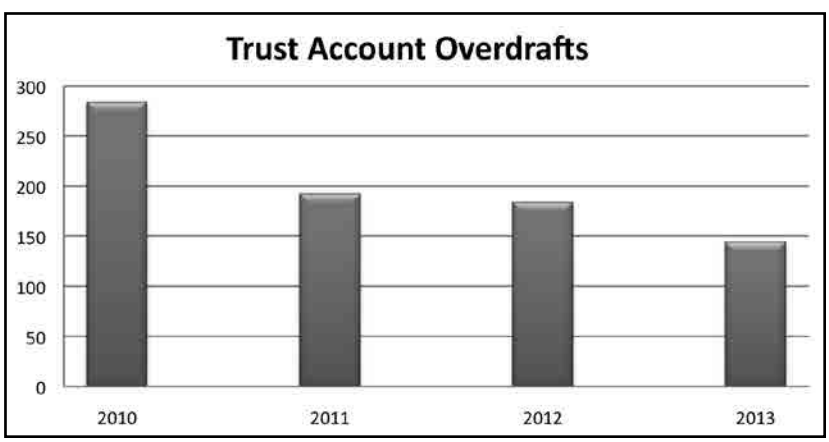
This rule requires lawyer trust accounts to be maintained in financial institutions approved by the Office of the General Counsel. A financial institution attains this approval by agreeing to provide a report to the office in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored.

Trust account overdraft reporting agreements are submitted by depository institutions and the institutions forward reports of insufficient fund overdrafts simultaneously with and within the time provided by law for notice of the dishonor. Notification triggers a general inquiry to the attorney requesting an explanation for the deficient account. Based upon the response, an investigation may be commenced. Repeated overdrafts due to negligent accounting practices have resulted in referral to the Discipline Diversion Program for instruction in proper trust accounting procedures.

In 2013, 144 notices of overdraft of a client trust account were received by the Office of the General Counsel. A review of the bar graph reflects that the reported trust account overdrafts have significantly and steadily decreased over the past four years. This decrease is due, in part, to the successful completion of the Discipline Diversion Program by previously identified attorneys with multiple overdrafts. The recidivism rate for same has been negligible after completion of the program.

Oklahoma licensed attorneys should remember that they have a continuing duty to update trust account information. ORPC 1.15 (g) states:

"Effective January 1, 2009, all members of the Bar who are required under the Oklahoma Rules of Professional Conduct, to maintain a trust account for the deposit of clients' funds entrusted to said lawyer, shall do so and furnish information regarding said account(s) as hereinafter provided. Each member of the Bar shall provide the Oklahoma Bar Association with the name of the bank or banks in which the lawyer carries any trust account, the name under



which the account is carried and the account number. The lawyer or law firm shall provide such information within thirty (30) days from the date that said account is opened, closed, changed, or modified. The Oklahoma Bar Association will provide online access and/or paper forms for members to comply with these reporting requirements. Provision will be made for a response by lawyers who do not maintain a trust account and the reason for not maintaining said account. Information received by the Association as a result of this inquiry shall remain confidential except as provided by the Rules Governing Disciplinary Proceedings. Failure of any lawyer to respond giving the information requested by the Oklahoma Bar Association, Oklahoma Bar Foundation or the Office of the General Counsel of the Oklahoma Bar Association will be grounds for appropriate discipline."

You may check your account reporting status on the OBA website. Go to www.okbar.org and scroll down to login to "my.OKBar.org." This is a password-protected site and will require your OBA number and PIN (number or password) to enter. New lawyers receive their PINs in new attorney materials or all OBA members may obtain a PIN by requesting same from the site, by emailing membership@okbar.org or by calling 405-416-7000 or 800-522-8065.

Once you have entered the my.OKBar section of the OBA website, you may review your roster information, dues and MCLE status, as well as report your trust account information. **All** client trust accounts should be reported on the form. This includes IOLTA accounts and non-IOLTA accounts.

If you do not have Internet access or wish to report changes directly, you may contact Tracy Sanders with the OBA at 405-416-7080 or 800-522-8065 and request a paper form to report your trust account information.

Ms. Hendryx is the OBA general counsel.

Supporting the Advancement of our Legal Profession

By Dietmar K. Caudle

As the charitable arm of the Oklahoma Bar Association, the Oklahoma Bar Foundation reaches out to students through law-related education programs designed to teach about the law, the legal system and the fundamental principles upon which our democracy is based.

Our law student scholarships are designed to capture only the most energetic and devoted lawyers to our grand legal profession. Law Day, largely celebrated on May 1, provides a forum for all Oklahoma counties and their bar associations to celebrate the annual Law Day theme, which was "Democracy and You" this year. OBF sponsors two YMCA Youth in Government programs — the Youth Model Legislative Day and participation in the new ABA National Judicial Competition. The OBF also sponsors the statewide Oklahoma High School Mock Trial Program each year, which allows students to gain an insider's perspective of the legal process and act out their dreams of becoming potential future barristers.

The OBF's mission of "Lawyers Transforming Lives" is accomplished by providing annual support for the promotion of justice, funding of critical legal services and the advancement and better understanding of the law. During 2013, the OBF funded grants to many diverse law-related services organizations and the courts for technology projects in the total amount of $490,575.

The OBF and the OBA have joined forces to ensure the public is able to gain better understanding of the law and improved access to our legal system. Civil legal aid has traditionally been the flagship of OBF grant awards. The OBF is diligent in broadcasting the grant award process and the many successful stories resulting from the awards.

Attending the OBF Court Grants at Work dedication ceremony of the Oklahoma County Courthouse Public Media Center in the Law Library are from left County Commissioner Brian Maughan, Law Library Board Secretary Sarah Schumacher, Law Library President Sheila Stinson, OBF President Dietmar K. Caudle, Oklahoma Supreme Court Justice Noma Gurich, OBF Executive Director Nancy Norsworthy, Judge Barbara Swinton and OBF Trustee Jeffery D. Trevillion Jr.

It is important to note that the OBF's mission cannot occur without the generosity of its donors. These donors consist of approximately 1,600 lawyers who are OBF Fellows at various giving levels. Lawyers who are not Fellows can still help by including OBF in their annual gift planning and give what they feel is appropriate for their personal financial situation. Our generous supporters clearly understand the OBF accomplishes a great deal with the donations received each year.

The second category of donors includes the newly structured Community Fellow program. These donors consist of law firms, OBA sections and committees, IOLTA banks and businesses in the community that recognize the good deeds accomplished by OBF and

choose to partner in this invaluable law-related work.

The third category of OBF funding is derived from statewide *cy pres* awards. The most recent has come from a court-sponsored *cy pres* award from Dewey, Custer and Roger Mills counties. These types of awards are typically issued by the sitting district court judge. *Cy pres* awards are not part of the annual budget and are invaluable donations that have made a critical difference in the OBF's ability to maintain grant funding and make a lasting impact.

The fourth category of OBF funding is derived from the receipt of IOLTA income. The final category of OBF donations comes from estate planning proceeds and gifts from other foundations. It is clear that the OBF cannot succeed in its mission of "Lawyers Transforming Lives" without these annual donations.

The OBF salutes your continued financial support in a mission which benefits every county and every citizen of our great state, and we look forward to accomplishing more with everyone's help.

ABOUT THE AUTHOR

Dietmar K. Caudle practices in Lawton and serves as OBF President. He can be reached at d.caudle@sbcglobal.net.

Give to OBF Today!

The 2014 OBF grant application is currently available on the OBF website. Grant applications are being accepted now through Tuesday, July 1, 2014.

Tributes and Memorials

A simple and meaningful way to honor those who have played an important role in your life or whose accomplishments you would like to recognize. The OBF will notify your tribute or memorial recipient that you made a special remembrance gift in their honor or in memory of a loved one.

Help the OBF meet its ongoing mission - lawyers transforming lives through the advancement of education, citizenship and justice for all.

Make your tribute or memorial gift today at:
www.okbarfoundation.org/make-a-contribution

Or if you prefer, please make checks payable to:

Oklahoma Bar Foundation P. O. Box 53036 Oklahoma City OK 73152-3036
Email: foundation@okbar.org • Phone: 405-416-7070

OKLAHOMA BAR FOUNDATION

2014 OBF Fellow and Community Fellow Enrollment Form

Name, Group name, Firm or other affiliation _____

Mailing and Delivery address _____

City/State/Zip _____

Phone _____ Email _____

FELLOW ENROLLMENT ONLY

❑ Attorney ❑ Non-attorney

___ I want to be an OBF Fellow now – Bill me later

___ Total amount enclosed $1,000

___ New lawyer within 3 years, $50 enclosed and bill annually as stated

___ I want to be recognized at the highest Leadership level of Benefactor Fellow and annually contrbute at least $300 *(initial pledge should be complete)*

___ $100 enclosed and bill annually

___ New lawyer 1st year, $25 enclosed & bill annually as stated

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

___ My charitable contribution to help offset the Grant Program Crisis

COMMUNITY FELLOW ENROLLMENT ONLY

❑ OBA Section or Committee ❑ Law firm/office ❑ County Bar Association ❑ IOLTA Bank
❑ Corporation/Business ❑ Other Group

Choose from three tiers of OBF Community Fellow support to pledge your group's help:

$_____ Patron $2,500 or more per year

$_____ Partner $1,000 - $2,499 per year

$_____ Supporter $250 - $999 per year

Signature and Date _____ OBA Bar # _____

Print Name and Title _____

OBF Sponsor (If applicable) _____

Kindly make checks payable to: Oklahoma Bar Foundation PO Box 53036 Oklahoma City, OK 73152-3036

405-416-7070 • foundation@okbar.org • www.okbarfoundation.org

THANK YOU FOR YOUR GENEROSITY AND SUPPORT!

Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, March 21, 2014.

REPORT OF THE PRESIDENT

President DeMoss reported she attended the Tulsa County Bar Association past presidents' luncheon, Shawnee Education Foundation dinner honoring Justice Combs, Litigation Section meeting/CLE and OETA Festival fundraiser. She made presentations at the Cleveland County Bar Association CLE and Muskogee Rotary Club. She prepared an *Oklahoma Bar Journal* article and participated in planning meetings for the *Oklahoma Bar Journal* publication, 2014 Annual Meeting, town hall in Custer County, April Board of Governors meeting, Day at the Capitol, Appellate Advocacy Seminar and proposed senior section.

REPORT OF THE VICE PRESIDENT

Vice President Shields, unable to attend the meeting, reported via email that she attended the Oklahoma County Bar Association meeting and planning meetings with various informal groups concerning judicial independence issues.

REPORT OF THE PRESIDENT-ELECT

President-Elect Poarch, unable to attend the meeting, reported via email that he attended the Cleveland County Bar Association meeting and ABA Bar Leadership Institute in Chicago. He participated in the OBA Technology Committee meeting and met once in person and once by conference call regarding the contract for a new bar journal printer.

REPORT OF THE PAST PRESIDENT

Past President Stuart reported he attended the February board meeting and Shawnee Educational Foundation banquet at which Justice Doug Combs was presented with the Alumni Award. He also volunteered for the OBA's night to take pledges at the OETA Festival.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the town hall event in El Reno, High School Mock Trial Program championship finals, Technology Committee meeting, Bar Leadership Institute, YLD monthly meeting, OETA Festival fundraising event and MCLE Commission meeting. He spoke to the OBA Leadership Academy. He also reported his assistant, Debbie Brink, will be on medical leave beginning the first week of April and may be out of the office up to one month.

BOARD MEMBER REPORTS

Governor Dexter reported she attended the February Board of Governors meeting, luncheon following the board meeting, Tulsa County Bar Association past presidents luncheon, TCBA Nominations and Awards Committee, and OBA Awards Committee meeting. **Governor Gifford** reported he attended the February board meeting and Oklahoma County Bar Association Board of Directors meeting. He made a presentation to the Central Oklahoma Association of Legal Assistants. **Governor Hays** reported she attended the February Board of Governors meeting and lunch following the meeting, OBA Family Law Section monthly meeting for which she prepared and presented the budget report, Tulsa County Bar Association judicial dinner, OBA FLS practice manual advertising planning session, OBA FLS Trial Advocacy Institute planning session and OBA FLS executive planning session for Annual Meeting. She also provided an OBA board report at the TCBA Board of Directors meeting, communicated with the TCBA Long Range Planning Committee and communicated with the Solo and Small Firm Planning Committee. **Governor Jackson** reported he attended the February Board of Governors meeting, Canadian County Courthouse event and Garfield County Bar Association meeting. He spoke regarding the judiciary to the Kiwanis and to the noon AMBUCS. **Governor Marshall** reported he attended the February board meeting and Shawnee Educational Founda-

tion dinner honoring Justice Combs. **Governor Parrott**, unable to attend the meeting, reported via email that she attended the February board meeting, luncheon following the meeting, OBA Awards Committee meeting and Bench and Bar Committee meeting. **Governor Sain** reported he attended the February board meeting, Idabel Warrior Club meeting, McCurtain Memorial Hospital Foundation meeting and McCurtain County Bar Association meeting. He also read "Green Eggs and Ham" by Dr. Seuss to a class of second graders at Primary South in Idabel. **Governor Smith** reported he attended the February board meeting. He made presentations to the Wagoner County Rotarians and Muskogee County Bar Association. He hosted President DeMoss, who gave a presentation to the Muskogee Rotary. **Governor Stevens** reported he attended the February board meeting and March Cleveland County Bar Association meeting that included a presentation by President DeMoss. He served as a volunteer for an OBA Lawyers for Heroes Yellow Ribbon pre-deployment event. **Governor Thomas**, unable to attend the meeting, reported via email that she attended the February board meeting, town hall event in El Reno and Washington County Bar Association meeting.

YOUNG LAWYERS DIVISION REPORT

Governor Hennigh reported he attended the February board meeting, Pay it Forward YLD Task Force meeting and Garfield County Bar Association meeting. He helped prepare and distribute the bar exam survival kits and chaired the February YLD board meeting. He said that many new lawyers are faced with the challenge of finding employment, and the division will be drafting a proposal to establish a fund that would assist bar members in paying their membership dues. A proposal will be submitted to the Board of Governors for its consideration.

REPORT OF THE SUPREME COURT

Justice Kauger reported the Supreme Court has been busy. Planning is underway for Sovereignty Symposium, which will have a chief justice from Canada as the keynote speaker. She said extra copies of the court's new book are available. The next Movie Night with the Justices CLE will feature the movie, *Chicago.*

COMMITTEE LIAISON REPORTS

Executive Director Williams reported the Bar Association Technology Committee is looking forward to the launch of the new OBA member software in July. The committee is looking at a new product to allow more interaction among members, and videoconferencing options are also being reviewed. Governor Jackson reported the Civil Procedure/Evidence Code Committee has reviewed proposed legislation. President DeMoss reported the Law-related Education Committee is conducting a training session for lawyers in the classroom on April 16, and board members are invited. She also said Legislative Monitoring Committee Chair Duchess Bartmess gave a presentation on legislation to the Litigation Section that was excellent. She recommended Ms. Bartmess as a speaker for other groups.

MEMBER BENEFIT FOR BUSINESS & CORPORATE LAW SECTION

Section Chair Jeanette Timmons described a member benefit called Lexology, which is a web-based daily newswire service for business/corporate lawyers that is free to subscribers. To take advantage of the free service, email addresses would need to be provided, which is against OBA policy. Ms. Timmons said restrictions could be required to prevent Lexology from sharing email addresses and that if the OBA terminates the service, addresses will be deleted. She said the section will share the opportunity with section members and any member who wants to opt-out can do so before email addresses are shared. The board authorized Executive Director Williams to execute the contract.

OBA AWARDS

Governor Dexter reported the Awards Committee recommends that the same awards presented last year be presented in 2014. The board approved the Awards Committee recommendation.

REPORT OF THE GENERAL COUNSEL

Written status reports of the Professional Responsibility Commission and OBA disciplinary matters for February 2014 were submitted for the board's review.

DISTRICT 5 BOARD OF GOVERNORS VACANCY

President DeMoss reported that she and President-Elect Poarch talked to Cleveland County Bar Association members, and a candidate for the District 5 board vacancy was recommended. The board

voted to appoint Rickey J. Knighton, Norman, to the position formerly held by Jim Drummond, who moved to Texas.

OKLAHOMA BAR JOURNAL STATUS

President DeMoss shared the process being used to find a printer to replace long-time bar journal printer, Printing Inc., which is going out of business. She reported four printers submitted bids and selected was Stigler Printing. A task force will be formed to consider whether changes should be made to the 10 theme issues or 24 court issues currently printed. It was announced that Fastcase at the request of the OBA is fast tracking the availability of free monthly advance sheets for the court material in electronic format.

TOWN HALL MEETING REPORT

President DeMoss reported the first meeting held at the Canadian County Courthouse in El Reno was successful. She thanked board members for their participation. Governor Jackson said he spoke to two or three organizations in Enid and took with him former Judicial Nominating Commission member Glenn Devoll to also speak. One speaking engagement resulted in a front page newspaper article. Governor Smith reported the presentation to the Muskogee Rotary was well attended. It was a good program that was well received.

LEGISLATIVE UPDATE

President DeMoss expressed her concern about proposed legislation. She emphasized the importance of OBA Day at the Capitol, which will be March 25.

OETA REPORT

President DeMoss reported the OBA raised more than $7,000 in private donations from OBA members to benefit OETA, Oklahoma's statewide PBS TV station. The donation keeps the OBA in the highest possible donor level. The station co-produces the *Ask A Lawyer* TV show with the OBA every year. Bar members volunteered one evening during the fundraising event to take pledges.

NEXT MEETING

The Board of Governors met on Friday, April 25, 2014, at the Idabel Chamber of Commerce in Idabel. A summary of those actions will be published after the minutes are approved. The next board meeting will be at 10 a.m. Friday, May 23, in Oklahoma City.

Providing Pro Bono Services Earns Multiple Rewards

By Kelly M. Hunt

It takes time, money and effort to become an attorney. Basically, one must get an undergraduate degree, take the LSAT, graduate from law school, pass a bar exam, pass character and fitness inquiries and join state and local bars. Somewhere in there, the brave ones may also choose to do an internship or just try and have a life, with the former being the easier option.

After all of this, one is finally an attorney and licensed to practice law. However, the license doesn't mean that the work is over. New attorneys still have to find a job, which, with today's economy, may not be an easy task. Also, just because one has a law license doesn't mean it's permanent.

After getting a license, attorneys have many requirements for keeping it. On a basic level, we must continually conduct ourselves in ethical and professional ways. Along with that, there are annual fees that must be paid and annual continuing legal education requirements (CLEs) that must be met — and the latter is what this article is really about.

In Oklahoma, an attorney must complete 12 hours of continuing legal education each year.[1] Though there may be varying opinions as to why we have to comply, the general idea is to ensure that attorneys stay on top of the current laws and to enhance our standards of practice. Inherently, in a constantly changing world, keeping current on the law and adhering to high standards of practice are good things. But there can be downsides to classic CLE programs and to ensuring that they are worthwhile ways to spend our time and money.

> **"Volunteering also allows attorneys to expand their networking system and get their names out to others in the legal field."**

One of the biggest downfalls is that most CLE programs aren't free. Programs through the National Business Institute[2] can run hundreds of dollars and conferences can cost thousands. The Oklahoma Bar Association offers classes, but they come at a cost and aren't always available throughout the state.[3] Local bar associations may also offer CLE programs, but those may not be free and may not be in the attorney's field of practice.

Another CLE option is the membership route. This would entail finding a club or association that offers CLE credits as part of the membership and paying the annual fee. One example is the American Inns of Court, which offers monthly meetings that count toward CLE credits.[4] Another is the American Bar Association, which offers discounted CLE programs and free webinars.[5] But, again, costs are involved with these options and the programs may not fit the attorney's field of practice.

The pull for an attorney's time and resources doesn't end at CLE credits either. Oklahoma Model Rule 6.1 states that, "A lawyer should render public interest legal service."[6] Attorneys should provide legal services to those unable to pay. Though the Oklahoma rules don't specify the number of hours each year, the ABA Model Rules promote at least 50 hours.[7]

Attorneys have special skills and knowledge that can help many people in important ways, and although this can be a contested topic, full of constitutional and moral arguments, attorneys should use their skills and knowledge and provide pro bono legal services — if they are able to and if they want to. However, attorneys should not be forced to volunteer and, unfortunately, many don't.

MANY BENEFITS TO VOLUNTEERING

It's too bad, because there really are many benefits to volunteering. To begin with, providing free or inexpensive legal services is a great way to give back to society. Many are in desperate need of legal assistance but can't afford it. To address this need, organizations offer perks to volunteer attorneys, such as free CLE credits, forms databases and experienced staff attorneys to help figure out the nuances of the legal system.[8] Volunteering also allows attorneys to expand their networking system and get their names out to others in the legal field.

Despite these incentives, many attorneys still don't volunteer. As easy as it is to say that attorneys need to make time for it, the reality is that there are just so many things already tugging at our pockets and time. So what, then, is the happy medium between meeting CLE requirements in a meaningful way and providing pro bono services, while still making efficient use of our time and resources? Well, the answer may lie in programs already being offered by 11 different states, which give CLE credit in exchange for pro bono work.[9]

Though the specifics vary from state to state, CLE for pro bono credit programs typically require that the attorney receive the pro bono client via a referral from a court or designated program or institution.[10] These providers include legal aid associations or access to justice-type programs, which help ensure that the services are provided to low-income or indigent clients.

The CLE for pro bono credit programs usually provide for a ratio of one CLE credit for a specific number of hours worked, with an annual maximum to be earned. For example, in Arizona an attorney gets one CLE credit for every five hours of pro bono work, with a maximum of five credits per year.[11] If Oklahoma had a program like Arizona's, an attorney could get five CLE credits by providing 25 hours of pro bono work. If the clients came through Legal Aid Services of Oklahoma,[12] the attorney could obtain more CLE credits via Legal Aid's free CLE courses.[13] Thus, by performing our ethical duty by representing a pro bono client or two and then participating in free CLE courses, attorneys can take care of most, if not all, of the year's CLE requirements, as well as help out those most in need of legal services.

Ultimately, providing CLE credits for pro bono work offers many benefits to both society and attorneys. Low-income and indigent clients get the legal help they need, and attorneys can integrate the work into their normal routine — performing it as their time allows. It is a win-win situation for everyone and definitely something to be considered when looking at the model rules and ways that attorneys can gain CLE credit.

1. Okla. ST CLE Rule 7, reg. 3.6; see also Oklahoma Bar Association, *Rules of the Supreme Court of Oklahoma*, available at www.okbar.org/members/MCLE/MCLErules.aspx.
2. *See* www.nbi-sems.com/.
3. *See* www.okbar.org/members/CLE.aspx; although online CLE offerings are available at any time to all members.
4. *See* http://home.innsofcourt.org.
5. *See* www.americanbar.org/membership/dues_eligibility/dues_aba_membership.html.
6. Okla. Rules of Professional Conduct, rule 6.1, available at www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=73718.
7. ABA Model Rules of Professional Conduct, Rule 6.1, available at http://goo.gl/Di3jtE.
8. *See* Probono.net/ok, *About Our Pro Bono Program*, www.probono.net/ok/pb_projects/item.3049-About_Our_Pro_Bono_Program.
9. *See* American Bar Association, *Continuing Legal Education (CLE)/Pro Bono State Rules*, http://apps.americanbar.org/legalservices/probono/clerules.html.
10. *See* supra.
11. *See* Ariz. R. Sup. Ct. Rule 45(a)(5).
12. *See* Legal Aid Services of Oklahoma Inc., www.legalaidok.org/RTF1.cfm?pagename=Volunteer%20Opportunities.
13. Probono.net/ok, *Watch for upcoming CLE events from Legal Aid Services of Oklahoma*, www.probono.net/ok/cle.

ABOUT THE AUTHOR

Kelly M. Hunt is the owner of Hunt Law PLLC, a small, general practice firm in Broken Arrow. She practices primarily in business, family, oil and gas, and property law. She is also an adjunct professor with the University of Tulsa's new, online Masters in Energy Law program. Originally from Michigan, she graduated *magna cum laude* from Thomas M. Cooley Law School in 2012.

Diversity Within Your Own Law Practice Has Its Benefits

By Kaleb Hennigh

The practice of law is an evolving profession that requires the ability to respond and adapt to new laws, changes to existing laws and variations of interpretations of those laws based on the actions of legislators, administrators, judges and justices. One thing I've learned in my 10 years of practice is that you must always be flexible, willing to continue to learn, adapt and grow, and most importantly to remain humble and courteous at all times when working within this industry. "Diversity in the Law" is the theme for this month's bar journal, and I wanted to touch on something that will make all of us better attorneys.

When the term "diversity" comes up, I'm certain many people think a lot of different things. For example, when addressing our profession one might think of the make-up of attorneys such as what percentage is female or male, what ethnicity is more prominent, or whether the political views of the profession seem to be more conservative or liberal, etc. However, I want you to think about your specific practice and how maintaining a diverse practice will help you become a better advocate for your clients.

> **"As a young lawyer, don't be afraid to take on a new client needing representation in an area that is new to you — accept and embrace the challenge."**

MY OWN EXAMPLE

I began my practice in a small boutique firm focusing on agricultural intellectual property rights serving a clientele in need of protecting their own research and development within the wheat seed industry. While practicing in this area I was introduced to another group of clients in dire need of financial help navigating through the reorganization of their large scale agricultural production practices through bankruptcy reorganization. In serving these needs and returning to northwest Oklahoma, I took my knowledge from assisting those financially stressed clients and began working with large and small agricultural families and operators who were looking to ensure that the family farm and heritage was maintained from generation to generation.

So began my asset protection and estate planning practice. As I assisted these families in this capacity, soon arose the need for additional large scale asset purchases; real estate and mineral transactions; wind and oil and gas lease negotiations; and then litigation involving trust disputes and probate litigation. While serving clients in each of these areas and utilizing the knowledge obtained from assisting those clients, I believe I have become a much better attorney and able to provide sound advice due to the diversity within my practice.

Certainly as laws continue to change, complexities begin to compound and the need to stay abreast of all the evolving issues within each area of our profession grows, it makes sense that attorneys seek to become more and more focused on narrow aspects within a practice area. Mandatory Continuing Legal Education (MCLE) requirements are here to make certain that as a practitioner seeking to maintain a diverse practice, one would get the training and development he or she needs. I do believe there is an opportunity to maintain a diverse

practice to ensure that clients' goals and objectives are accomplished, and I encourage all young lawyers to keep an open mind and to seek ways to maintain diversity within their own practices.

SEEK OUT A MENTOR

MCLE requirements should not be what a practicing attorney relies on to establish or consider themselves well versed in a particular area of law. Young attorneys should set these established requirements as a floor and seek a mentor to assist them as they work to meet the needs of their clients.

Currently, the OBA requires an attorney to complete a minimum of 12 Oklahoma MCLE-approved credits during each calendar year with a minimum of one credit devoted to professional responsibility, legal ethics or legal malpractice prevention. Fellow young lawyers use these classes and courses to gain a better understanding of other areas of practice which can be implemented in your current practice area.

The comprehension of the bankruptcy rules and regulations have aided me greatly throughout my asset protection and succession planning practice, and in my opinion by working in both of these areas I'm able to give my clients a much more thorough representation. This is just one example of how maintaining a diverse practice will assist you in becoming a better attorney.

As a young lawyer, don't be afraid to take on a new client needing representation in an area that is new to you — accept and embrace the challenge. Look to the OBA for a CLE and identify a more versed attorney willing to assist you through the representation. I believe you will not only enjoy the new challenge, but most importantly you will become a better professional! Incorporating diversity within your own practice will benefit you and your client.

ABOUT THE AUTHOR

Kaleb Hennigh practices in Enid and serves as the YLD chairperson. He can be contacted at hennigh@northwestoklaw.com.

May

19 **OBA Litigation Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact David VanMeter 405-228-4949

Licensed Legal Intern Swearing-In Ceremony; 12:45 p.m.; Judicial Center, Oklahoma City; Contact Wanda Reece 405-416-7000

20 **OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Judge David B. Lewis 405-556-9611

OBA Communications Committee meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Doerner Saunders Law Office, 3200 S. Boston Ave., Ste. 500, Tulsa; Contact Dick Pryor 405-740-2944

23 **OBA Board of Governors meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000

26 **OBA Closed** – Memorial Day observed

27 **OBA Women in Law Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and University of Tulsa, Tulsa; Contact Allison Thompson 918-295-3604

28 **OBA Work/Life Balance Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Sarah Schumacher 405-752-5565

June

3 **OBA Government and Administrative Law Practice Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Scott Boughton 405-717-8957

5 **OBA Lawyers Helping Lawyers discussion group meeting;** 6 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; 6 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

6 **OBA Professional Responsibility Commission meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Dieadra Goss 405-416-7063

OBA Alternative Dispute Resolution Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, Tulsa; Contact Jeffrey Love 405-285-9191

10 **OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ruth Addison 918-574-3051

OBA Legal Intern Committee meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Candace Blalock 405-238-0143

13 **OBA Board of Bar Examiners meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Oklahoma Board of Bar Examiners 405-416-7075

OBA Family Law Section meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, Tulsa; Contact M. Shane Henry 918-585-1107

OBA Law-related Education Committee meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Suzanne Heggy 405-556-9612

17 **OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, Tulsa; Contact Judge David Lewis 405-556-9611

19-21 **OBA Solo & Small Firm Conference;** Hard Rock Hotel and Casino, 777 W. Cherokee St., Catoosa; Contact Nickie Day or Jim Calloway 405-416-7000

20 **OBA Board of Governors meeting;** Hard Rock Hotel and Casino, 777 W. Cherokee St., Catoosa; Contact John Williams 405-416-7000.

OBA Access to Justice Committee meeting; 10 a.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, Tulsa; Contact Laurie Jones 405-208-5354

OBA Rules of Professional Conduct Committee meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Paul Middleton 405-235-7600

24 **OBA Women in Law Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and University of Tulsa School of Law, Tulsa; Contact Allison Thompson 918-295-3604

25 **OBA Work/Life Balance Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Sarah Schumacher 405-752-5565

26 **Oklahoma Bar Foundation meeting;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Nancy Norsworthy 405-416-7070

OBA Financial Institutions and Commercial Law Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Eric Johnson 405-602-3812

27 **OBA Juvenile Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Tsinena Thompson 405-232-4453

July

1 **OBA Government and Administrative Law Practice Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Scott Boughton 405-717-8957

4 **OBA Closed** – Independence Day observed

8 **OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ruth Addison 918-574-3051

11 **OBA Law-related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Suzanne Heggy 405-556-9612

15 **OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, Tulsa; Contact Judge David Lewis 405-556-9611

16 **OBA Alternative Dispute Resolution Section meeting** 12 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Jeffrey Love 405-286-9191

OBA Clients' Security Fund Committee meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Micheal Salem 405-366-1234

17 **OBA Women in Law Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and University of Tulsa School of Law, Tulsa; Contact Allison Thompson 918-295-3604

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

Oklahoma Bar Foundation meeting and lunch; 11:30 a.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, Tulsa; Contact Nancy Norsworthy 405-416-7070

19 **OBA Young Lawyers Division meeting;** 10 a.m.; Tulsa County Bar Center, Tulsa; Contact Kaleb Hennigh 580-234-4334

Legislation Impacting OBA Fails Vote in Oklahoma House

With broad bipartisan opposition, the Oklahoma House of Representatives defeated SJR21 with a 31-65 vote on Thursday, April 24. The failure to pass the proposed legislation means that Oklahoma lawyers from across the state will continue to elect six of their colleagues to represent the legal profession as a nonpartisan, minority voice on the state's 15-member Judicial Nominating Commission.

"We'd like to thank all members of the Oklahoma House for their careful consideration of the effects of the proposed measure," said OBA President Renée DeMoss of Tulsa. "We would also like to thank the Oklahoma citizens, lawyers and non-lawyers alike, who contacted their elected officials and asked them to defeat this bill. Fair and impartial courts are important to all Oklahomans, and that is what we will continue to have in our state."

President DeMoss also expressed thanks to those who gathered at the Capitol as the bill was being heard as well as the more than 2,500 Oklahomans who signed a petition urging lawmakers to defeat the bill.

The OBA will now focus efforts on its Courtfacts initiative, seeking to increase public education and understanding of the judicial branch of government. More information is available at www.courtfacts.org.

OBA Women in Law Committee members stuff eggs at the Wilkin McMurray law firm. From left: Cheryl Jackson, Sharon Halowell, Jana Robinson and Elissa Hernandez.

OBA Women in Law Committee/Lawyers Fighting Hunger Team Up for Food Donation Event

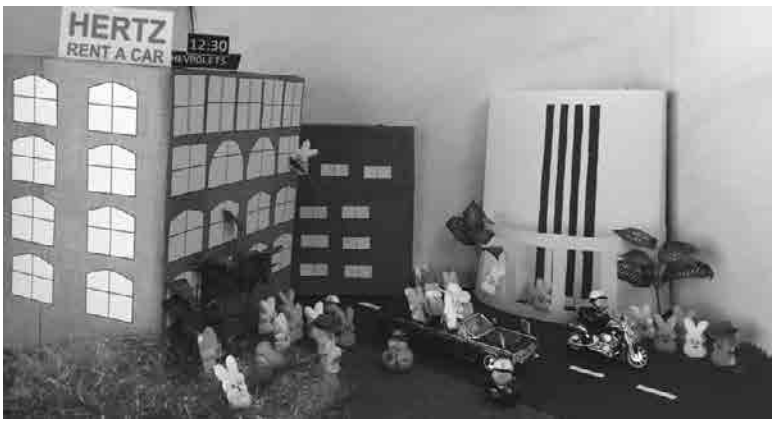
More than 500 Easter hams and other grocery items were distributed to families in need during the recent Live Local Give Local/Celebrate Spring Event in Tulsa. The event was a combined effort between the Community Food Bank of Eastern Oklahoma, Emergency Infant Services, Iron Gate and Lawyers Fighting Hunger, and numerous Tulsa lawyers volunteered their time and resources. OBA Women in Law Committee members stuffed 5,400 Easter eggs with candy and toys to give to families as a festive touch to celebrate the holiday.

The Court of Civil Appeals, Tulsa Division, also hosted members of the OBA Women in Law Committee as they assembled eggs for the event. From left: Sandra Jarvis, Emily Duensing and Judy Parks.

From left: Rhonda Wallace, Allison Thompson, Lora Montross and Tammie Goodell work on plastic egg assembly at the Court of Civil Appeals, Tulsa Division.

Tulsa Lawyer Brings Home 'Three-Peep' in National Contest

Paula J. Quillin's series of dioramas titled "Constitutional Crisis" earned grand prize honors in the *ABA Journal* Sixth Annual "Peeps in Law Contest." Instead of engaging in microwave "Peep wars," legal professionals across the country used the animal-shaped marshmallows to create law-inspired models. Ms. Quillin's entry won with 1,224 votes (37.95 percent of total votes). It marks the third year in a row that Franden Woodard Farris Quillin + Goodnight has won the grand prize.



Ms. Quillin, a partner with the firm, said this year's submission was a total joint effort between her and Barbara Rush, the firm's writing and research specialist. Their diorama was inspired by the 50th anniversary of President John F. Kennedy's assassination. They even incorporated actual photos from Dealey Plaza, the location of the assassination.

View all of this year's entries at www.abajournal.com/gallery/peeps_2014.

New Judges Appointed

Gov. Mary Fallin recently announced appointments to fill judicial vacancies in Texas, Comanche and Choctaw counties. 2009 OBA President **Jon K. Parsley** of Guymon was named Texas County district judge, succeeding Judge Greg Zigler who retired. Before his swearing in, Judge Parsley practiced privately since 2003, focusing on oil and gas, real estate and contracts. He also handled civil and criminal cases. He most recently served on the OBA Professional Responsibility Commission and as chairman of its Mentorship Task Force. In 2003, he received the OBA Outstanding Young Lawyer Award and the OBA President's Award in 2007. He earned a bachelor's degree from UCO and a law degree from the OU College of Law.

Emmit Tayloe of Lawton was named district judge for Comanche County. He succeeds Judge Allen McCall who retired. Judge Tayloe began his private practice in 1986, with a heavy caseload of federal, state and municipal criminal cases as well as a variety of civil cases. He served previously for four years as an assistant district attorney in the Comanche County district attorney's office, from 1982-86. He earned a bachelor's degree from Cameron University and a law degree from the OU College of Law.

Bill Baze of Hugo has been named an associate district judge in Choctaw County. He succeeds Judge James Wolfe, who died recently. Judge Baze previously served as the assistant district attorney in Choctaw County and as an appellate attorney for the Oklahoma Indigent Defense System. He received a bachelor's degree and a law degree from the University of Oklahoma.

Bar Journal Taking a Summer Vacation

The *Oklahoma Bar Journal* theme issues are taking a short break. The next issue, devoted to "Children and the Law" will be published Aug. 9. Deadline for submissions will be July 5. You'll still receive issues containing court material twice a month in June and July. Have a safe and happy summer!

Invite Teachers to Attend This Year's Hatton W. Sumners Teacher Institute

The Hatton W. Sumners Teacher Institute will be held June 9-13 at Oklahoma City University. The institute, aimed at Oklahoma educators, offers programs to help teach citizenship skills necessary for young adults to fulfill their role in society. This year's institute theme is "Using Civics Technology in Our Classrooms." The conference is offered at no charge with all expenses paid for attendees. The application deadline is May 23. Please share this information with your local teachers. More information is available at www.okbar.org/public/LRE/HWSInstitute.aspx.

Free Discussion Groups Available to OBA Members

"The Emotional Challenges of the Solo Practitioner" will be the topic of the June 5 meetings of the Lawyers Helping Lawyers discussion groups in Oklahoma City and Tulsa. Each meeting, always the first Thursday of each month, is facilitated by committee members and a licensed mental health professional. In Tulsa, the meeting time is 6 – 7:30 p.m. at the TU College of Law, John Rogers Hall, 3120 E. 4th Place, Room 206. In Oklahoma City, the group meets from 6 – 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th Street. There is no cost to attend and snacks will be provided. RSVPs to Kim Reber, kimreber@cabainc.com, are encouraged to ensure there is food for all.

LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM

Important Dates to Keep in Mind

Don't forget! The Oklahoma Bar Center will be closed Monday, May 26 and Friday, July 4 in observance of the Memorial Day and Independence Day holidays. Remember to register and join us for the 2014 Solo & Small Firm Conference in Tulsa June 19-21, and be sure to docket the OBA Annual Meeting to be held in Tulsa Nov. 13-14.

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.

OBA Member Reinstatement

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

Bradley Joseph Noland
OBA No. 21767
5152 State Highway 199
Ardmore, OK 73401

Connect With the OBA Through Social Media

Have you checked out the OBA Facebook page? It's a great way to get updates and information about upcoming events and the Oklahoma legal community. Like our page at www.facebook.com/OklahomaBarAssociation. And be sure to follow @OklahomaBar on Twitter!

Kudos

John R. Woodard III, of Franden Woodard Farris Quillin & Goodnight, was recently selected to be a fellow of the Litigation Counsel of America. The Litigation Counsel of America is an honorary society of American lawyers who are selected by invitation, based upon accomplishments in litigation and ethical reputation.

Kimberly McCullough, of J. Michael Entz Inc., was recently elected to the board of directors for the Oklahoma Chapter of the National Association of Royalty Owners. The mission of OK - NARO is to encourage and promote exploration and production of minerals in Oklahoma while preserving, protecting, advancing and representing the interests and rights of Oklahoma mineral and royalty owners.

Emily Maxwell Herron, assistant district attorney for District 17, received the 2014 Mary Ellen Wilson Award from the Oklahoma State Department of Health's Family Support and Prevention Service. The award is given to a person who demonstrates outstanding commitment to child abuse prevention services.

Trae Gray of Coalgate was recognized as a member of *Oklahoma Magazine's* "40 under 40" class of 2014. The list is comprised of Oklahoma professionals recognized for professional achievements and contributions to their communities.

Adam Childers, of Crowe & Dunlevy, has been named chairman of the Oklahoma City Metro Employer Council. The council is a cooperative educational effort of the Oklahoma Employment Security Commission, Workforce Oklahoma partners and Oklahoma City area human resource professionals.

On The Move

Truman B. Rucker Law Offices announces that **Peter D. (Dan) Rucker** has joined the firm's practice. The firm specializes in civil trial practice with an emphasis in insurance defense. Mr. Rucker is admitted to practice law in Oklahoma and Arkansas.

Donald R. Bradford and **Marc S. Albert** announce a new law partnership, Bradford & Albert. Located in Tulsa, the firm will practice in product liability, personal injury and medical malpractice.

Pignato Cooper Kolker & Roberson PC announces that **Joy Tate** and **C. Dayne Mayes** have joined the firm. Ms. Tate graduated from the OU College of Law in 2013. Mr. Mayes graduated from the OU College of Law in 2007. Both will practice in the area of general insurance defense.

Daugherty Fowler Peregrin Haught & Jenson has named **Mark J. Peregrin** as partner at the firm. Mr. Peregrin has been a special Federal Aviation Administration counsel with the firm since 2007. His practice is focused on structuring and closing aircraft transactions and filing transaction documents with the FAA.

Blaney & Tweedy PLLC announces that **Trey Tipton** and **Ward Hobson** have joined the firm as attorneys. Mr. Tipton graduated from the OU College of Law in 2005. He joined the firm as an associate in 2013. His practice focuses on business, commercial and real estate law. Mr. Hobson graduated from the OU College of Law in 2007. His practice includes intellectual property, business and commercial law and civil litigation.

Hall Estill announces that **Tyler D. Leonard, Vaden F. Bales** and **Gregory W. Alberty** have joined the firm's Tulsa office. Mr. Leonard graduated from the TU College of Law in 2003. Mr. Bales graduated from the Washburn University School of Law in 1975. Mr. Alberty graduated from the TU College of Law in 1997.

Legal Aid Services of Oklahoma announces **Douglas Bragg** has joined its Oklahoma City office. Mr. Bragg

graduated from the OU College of Law in 2009. He will be working as an embedded attorney with the Education & Employment Ministry in Oklahoma City.

Andrew Adams III has founded Hogen Adams PLLC, an Indian law firm in St. Paul, Minn. The firm practices in all aspects of Indian law. Mr. Adams serves as a judge of several tribal courts, including as chief justice of the Muscogee (Creek) Nation Supreme Court.

Richards & Connor announces that **Lawrence R. Murphy Jr.** has become of counsel with the firm. The firm announces that **Mariann Atkins, Christopher Brecht, Anthony Mann, Adam Wilson, Colby Pearce** and **Nicole Herron** have joined the firm as associates. Their practice will include insurance coverage, bad faith litigation, general civil litigation, criminal defense and family law.

At The Podium

Eric L. Johnson, of the Oklahoma City office of Hudson Cook LLP, moderated a panel discussion on Bitcoins at the ABA Business Law Section's Consumer Financial Services Committee meeting in Los Angeles. Eric also spoke at two "Ask the Counselor" sessions and on an "Experts Panel" at the Leedom Group's Buy Here Pay Here World Convention in Las Vegas.

E. Vance Winningham, of Winningham Stein & Basey, spoke to OU College of Public Health students and faculty concerning the U.S. immigration system, with emphasis on employment related visas for health professionals and pathways to obtaining lawful permanent residence status.

Robyn Assaf of Oklahoma City recently presented "Medical Liability Law – USA Experience" to the Private Hospitals Association in Jordan, where she was invited to speak about pending changes to Jordanian medical liability law.

TU College of Law professor **Vicki J. Limas** presented "Employment Law in Indian Country: A Case of Competing Sovereigns" at the Tribal Employment Rights & Law Conference in Prior Lake, Minn.

Matthew C. Kane, of Ryan Whaley Coldiron Shandy PLLC, recently presented "Twenty Years of Litigating the 'Rwandan Genocide' in U.S. Courts" at the Rwanda 20 Years After: Memory, Justice and Recovery in the Shadow of Genocide Conference at Weber State University in Ogden, Utah.

Erin Donovan, of Erin Donovan & Associates, recently spoke at the American College of Trust and Estate counsel's annual meeting.

Jan Dumont, of Riggs Abney, presented "Health Care Reform – Pay or Play" to the Oklahoma Association of Health Underwriters at its spring continuing education event in Oklahoma City.

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:

Lori Rasmussen
Communications Dept.
Oklahoma Bar Association
405-416-7017
barbriefs@okbar.org

Articles for the Aug. 9 issue must be received by July 5.

IN MEMORIAM

Charles Perry Ames of Oklahoma City died April 28, 2014. He was born March 22, 1924, in Oklahoma City. He earned his undergraduate degree from Princeton University and his J.D. from the OU College of Law in 1952. He practiced law at the Ames Law Firm, started by his grandfather. **He served as a lieutenant in the U.S. Army, receiving a Bronze Star for his service in World War II and a Purple Heart after being wounded by machine gun fire.** He enjoyed traveling with his wife, spending time with his family and pets and attending OU football games.

Forrest Lee Frueh of Norman died March 4, 2014. He was born Jan. 26, 1939, in Perry. He earned his bachelor's degree in accounting from OU in 1962 and his J.D. from the OU College of Law in 1970. His 40-year career at OU included work as a professor, director of undergraduate programs, associate dean and professor emeritus. He was a member, faculty advisor and former president of Sigma Phi Epsilon fraternity. In addition to his work at OU he was a practicing certified public accountant for more than 40 years.

Tina Marie Crow Halcomb of Jefferson City, Mo., died March 31, 2014. She was born May 28, 1967, in Mooreland. She earned her bachelor's degree from OU in 1989 and her J.D. from the OU College of Law in 1992. In 1988 she was a delegate for OU at the Democratic National Convention in Atlanta. She began her career with Legal Aid of Western Oklahoma. She also clerked for Judge Theodore McMillian in St. Louis and worked at the office of the Missouri attorney general before going into private practice. In 2012 she received the President's Award for excellence in her field from the Missouri Bar. Memorial contributions may be made to the Cole and Kaelyn Halcomb Fund at Jefferson Bank, 700 Southwest Blvd., Jefferson City, MO, 65109.

Judge William J. Holloway, Jr. of Oklahoma City died April 25, 2014. He was born June 23, 1923, in Hugo. **He served in the U.S. Army during World War II**. He received his undergraduate degree from OU in 1947 and his J.D. from Harvard Law School in 1950. After receiving his law degree, he briefly worked as an attorney for the U.S. Department of Justice. He practiced privately in Oklahoma City from 1952-1968. He was nominated by President Lyndon B. Johnson in 1968 to serve on the 10th U.S. Circuit Court of Appeals, serving as its chief judge from 1984-1991. He was the court's longest-serving judge, serving until his death, although he took senior status in 1992. He received the OBA's President's Award for 20 years of judicial service in 1988. In 2006, the Oklahoma City Federal Bar Association introduced the William J. Holloway Jr. Lecture Series in his honor. Judge Holloway was a member of St. Luke's United Methodist Church in Oklahoma City, Phi Gamma Delta fraternity and the American Law Institute. Memorial donations may be made to Doctors without Borders.

Earlene Reeves Mitchell of Oklahoma City died March 31, 2014. She was born August 19, 1949, in Chickasha. She earned her J.D. from OCU in 1997. Prior to becoming an attorney, she worked as a legal assistant for probate and general practice attorneys. As an attorney her practice included estate, family and bankruptcy law. She loved bowling, often traveling around the country for tournaments.

Wilbur P. Patton of Oklahoma City died March 29, 2014. He was born Jan. 3, 1920, in Morehead, Ky. **He served in the U.S. Navy, working on a minesweeper during World War II**. He earned his J.D. from the OU College of Law in 1948. He retired as an attorney from Fireman's Fund Insurance Company. He loved fishing and riding his motorcycles.

William Amis "Bill" Pipkin of Purcell died April 7, 2014. He was born June 25, 1934, and received his J.D. from Samford University in 1957. He practiced as a lawyer in Moore.

Bertha Faye Teague of Hulbert died March 17, 2014. She was born April 27, 1939, in Chelsea. She received her bachelor's and master's degree in education from Northeastern State University. After retiring from teaching at Hulbert High School, she returned to law school, earning her J.D. from the TU College of Law in 1994. She then served as an assistant district attorney. She loved spending time with her family and traveling with her husband. Her other favorite pastimes included listening to Elvis, collecting Elvis memorabilia and taking her annual trip to Graceland.

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BUSY SOCIAL SECURITY DISABILITY LAW FIRM seeks experienced legal assistant. The right candidate will be able to maintain deadlines, supervise support staff in conjunction with attorneys and interact with clients. We offer competitive pay, health, dental and vision insurance, as well as a matching 401k plan. Please send résumé to "Box H," Oklahoma Bar Association, P.O. Box 53036; Oklahoma City OK 73152.

POSITIONS AVAILABLE

RIGGS ABNEY NEAL TURPEN ORBISON & LEWIS an AV-rated, regional full-service firm, seeks associate with 2+ years experience for a full-time position involving family law and general civil litigation for its Tulsa office. Applicants should submit résumé and cover letter via email to careers@riggsabney.com, regular mail to 502 West 6th Street, Tulsa, OK 74119, or via www.riggsabney.com. Salary is commensurate with experience. All applications are confidential. EOE.

THE LEFLORE COUNTY DISTRICT ATTORNEY'S OFFICE is seeking an Assistant District Attorney for the Poteau Office. Primary responsibilities include the criminal prosecution of all domestic violence and sexual assault offenses, felony and misdemeanor, provide training and advice to local law enforcement on cases involving domestic violence and sexual assault, and perform other duties as assigned. Salary DOE. Applicant must have a J.D. from an accredited law school; legal experience in criminal law and prior courtroom experience preferred. Must be a member of good standing with the Oklahoma State Bar. Applicants may submit a résumé, postmarked no later than June 9, 2014 to the following address: District Attorney's Office, 100 S. Broadway, Room 300, Poteau, OK 74953, 918-647-2245, Fax: 918-647-3209.

NORTHWEST OKLAHOMA LAW FIRM has an immediate opportunity for an associate attorney with 0-5 years of experience. Candidates must be motivated, willing to work in a variety of capacities, detail and task oriented and play nice with others. If your goal is to live and work in God's Country, legally defined as the territory North of Hwy 51 and West of Hwy 81 we are interested in visiting with you. Our firm is looking for a candidate seeking gainful employment with an interest in living and working in Northwest Oklahoma with practice desires and/or experience in oil and gas title work, family law, legal research and writing and litigation. In addition to a great work atmosphere the firm provides benefits. Contact us at: ewbank@northwestoklaw.com.

SMALL NORTH OKC AV RATED FIRM seeks attorney with a minimum of 5 years of experience in civil litigation. Submit résumé and writing sample to "Box A," Oklahoma Bar Association. P.O. Box 53036, Oklahoma City, OK 73152.

FOR SALE

SUCCESSFUL SOLE PRACTITIONER LAW PRACTICE in OKC metro. Focus on estate planning, asset protection, collections, bankruptcy, general business law. Seller will work with buyer for smooth transition of repeat clients. Revenues over $230k in 2013 with strong net margin. Seller financing with appropriate down payment. For more information, contact representative at 405-826-8166.

LOST WILL

LOOKING FOR A WILL AND/OR LIVING TRUST: Family is looking for the attorney who assisted in the legal affairs of Kiowana C. Lamkin who passed away on the 21st day of March, 2014. Possibly in the Tulsa area. If you have information, please contact Bruce G. Straub, 918-286-8001.

CLASSIFIED INFORMATION

CLASSIFIED RATES: $1 per word with $35 minimum per insertion. Additional $15 for blind box. Blind box word count must include "Box ___, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152." Display classified ads with bold headline and border are $50 per inch. See www.okbar.org for issue dates and display rates.

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DO NOT STAPLE BLIND BOX APPLICATIONS

Buffalo Shield

By Linda Burkett-O'Hern

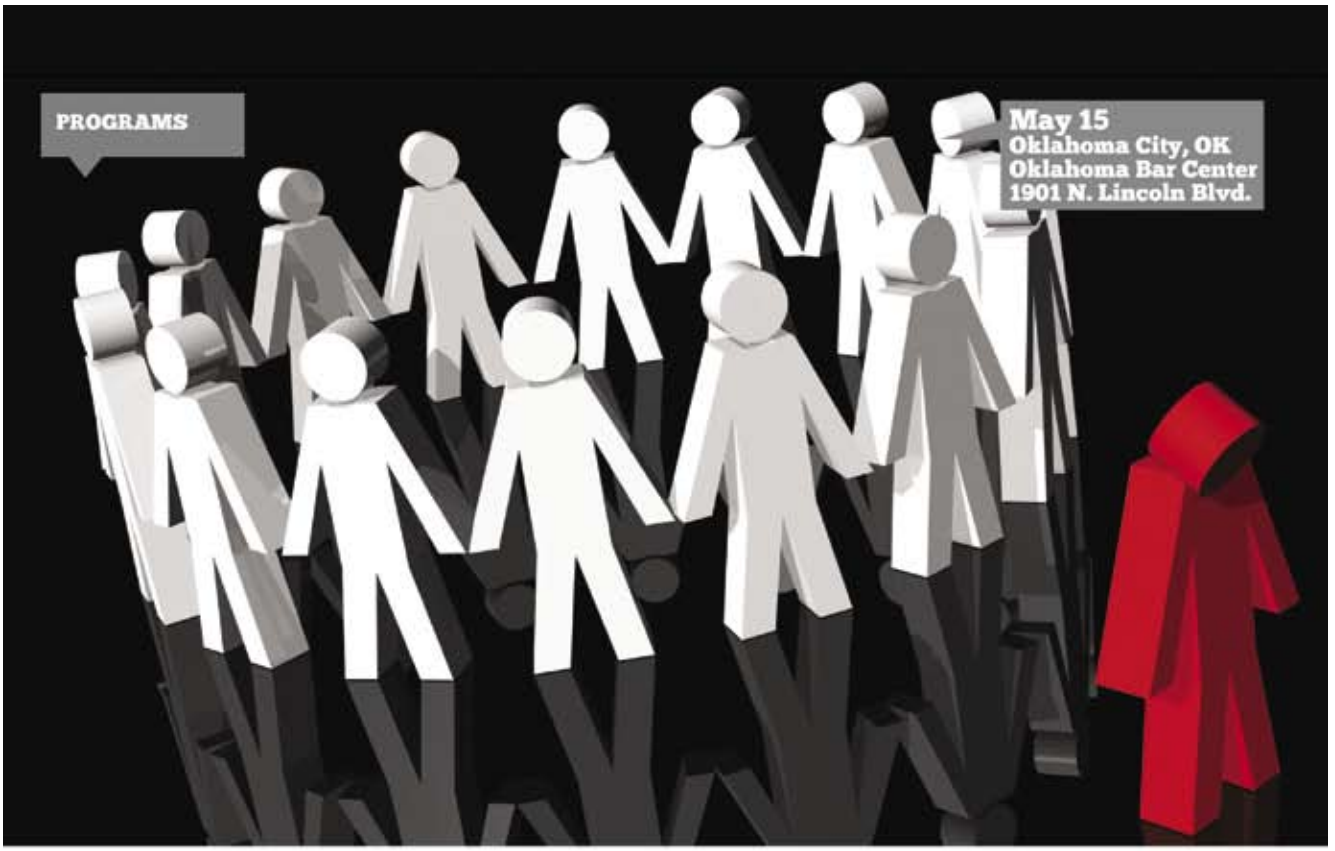
In Oklahoma, a Choctaw word
for "land of the red men,"
an Oklahoma legislator,
offended at all the English/Spanish signs
wanted to make English the official language.

Ghosts of the dead Algonquin, Apache, Assiniboine, Arapaho, Aztec,
Blackfoot, Cayuga, Cherokee, Chickasaw, Choctaw, Cheyenne,
Comanche, Crow, Delaware, Hopi, Huron, Iowa, Kansas, Kickapoo,
Kiowa, Klamath, Maya, Miami, Mohawk, Muskogee Creek, Natchez,
Navajo, Nez Perce, Ojibwa, Omaha, Oneida, Onondaga, Osage,
Ottawa, Paiute, Potawatomi, Sac and Fox, Seminole, Seneca,
Shawnee, Shoshoni, Sioux, Tarahumara, Tonkawa, Tuscarora, Wichita,
Wyandot and Yaqui
got up and danced to the drum beat, laughing,
and their pure and mixed blood
descendants smiled,
some cloaked in European and other genes
and wearing English and native names.

They know we're all related
and some understand the healing plan
of the one-half dark and one-half white buffalo
painted by the medicine shield man.

An old fire alarm sign
set in metal on the north entryway wall
of the federal courthouse in Oklahoma City
reads *Fire* in English and *Feuer* in German.
Germans and Americans both taught their enemies how to speak that
word of their languages and together at Nuremberg, after the
firestorm at Dresden, and Camp Gruber here in Oklahoma,
they taught each other how to speak peace.

Linda Burkett-O'Hern is a lawyer who lives in Tulsa.



The Essential §1983 Litigation Seminar

Program Planner/Moderator:
David W. Lee, Lee Law Center, P.C., Oklahoma City

Topics Covered

1. History, Background, and Recent Developments in §1983 Litigation: §1983 from Years 1871-2014
2. Substantive and Procedural Due Process: Fourteenth Amendment Cases and Principles
3. The First Amendment and §1983: Retaliation and Current Issues
4. Section 1983 Law Enforcement Litigation: Issues in §1983 That Affect Law Enforcement
5. Jail and Prison Litigation Under §1983: Current Issues Involving §1983 and Incarceration
6. Recent Developments in §1983 Litigation (continued): Recent Cases in Federal Courts

The seminar starts at 9:00 a.m. and adjourns at 2:50 p.m.
For program details, log on to:
www.okbar.org/members/cle

This program will be webcast. For details, visit **oba.peachnewmedia.com**
Note: Tuition for webcast varies from live program tuition.

Approved for 6 hours MCLE / 0 Ethics. 5 hours TXMCLE/0 ethics
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