

THE OKLAHOMA BAR JOURNAL

Volume 86 ♦ No. 14 ♦ May 16, 2015

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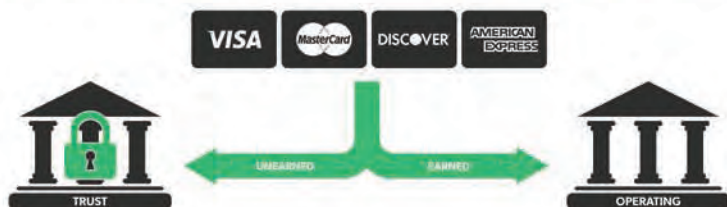


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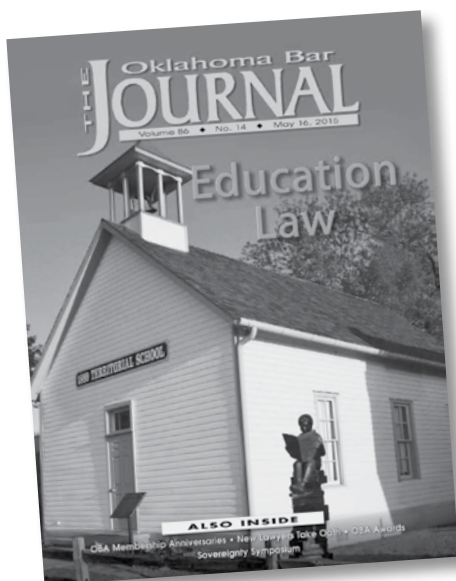


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Why Lawyers Carry the Duty to Perform Public Service

By David Poarch

Pro bono publico (English: for the public good; usually shortened to *pro bono*) is a Latin phrase for professional work undertaken voluntarily and without payment or at a reduced fee as a public service. But what is it about lawyers that they have taken on this commitment to voluntarily act for the public good? Why us? And more to the point — other than by simply representing the less fortunate at no cost or paying someone else to do so, how might we fulfill this commitment? When I was recently asked to speak to a group of law students being recognized for their pro bono service, I found myself asking these questions. The answer, as it turns out, can be found in the unique role we play in society in promoting and preserving the rule of law.

Trained in the technicalities of the law and its historical origins, as lawyers we have specialized knowledge uniquely qualifying us to identify and pursue the common good. At its core, ours is training to think beyond ourselves, ethically, above financial self-interest, to protect life, liberty and property for the greater good — for both the ruled and the ruler. As lawyers, we are exceptional members of society with a perspective that is unique, an informed viewpoint that can offer much to our fellow citizens. And lest we feel our specialized knowledge carries no burden or obligation to contribute to the common

good but merely the opportunity to work hard and live well, focused solely on our own self-interest, what would we think of our fellow professional, the doctor, who refused to respond to a contagion all around her?

Rule 6.1 of the Oklahoma Rules of Professional Conduct reminds us that lawyers “should render public interest legal services,” including, among other things, providing free or low cost professional services to individuals or charitable organizations, donating time or money to organizations that promote or support public interest activities that improve the law, the legal system or the legal profession, or contribute to organizations that provide legal services to the underserved.

From the beginning, lawyers have played a central role in the formation and development of our American way of life. Of the 56 signers of the

Declaration of Independence, 25 were lawyers. Of the 55 framers of the Constitution, 32 were lawyers. Since the beginning, lawyers have been members of America’s governing class. Likewise, lawyers have been at the center of our country’s evolution in promoting and defending against challenges to our civil and criminal rights, as well as the many liberties guaranteed to us by the Constitution. All of this is in the interest of advancing the public good by preserving the rule of law.

As I have said before in this column, the rule of law did not create itself, nor can it implement itself. But by offering to serve in public positions, as lawyers we can help to implement the rule of law, and at the same time meet our obligation to serve the public good. Service in the legislative or executive branch of state govern-

ment is certainly an option, but the larger list of opportunities for service to the public is endless, most of them in our own communities. And all of these groups, organizations and government bodies can benefit from the specialized knowledge we, as lawyers, bring to the conversation. If you haven’t thought about how you can help promote and preserve the rule of law while at the same time meeting your pro bono obligations, I challenge you to consider the many opportunities available and the impact you can have if you step forward. If you have already taken action, *thank you for your selfless service to the public and to our profession!*

From the beginning, lawyers have played a central role in the formation and development of our American way of life.



[Signature]

President Poarch
practices in Norman.
dpoarch@baileyandpoarch.com
405-329-6600

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JOURNAL STAFF

JOHN MORRIS WILLIAMS,
Editor-in-Chief
johnw@okbar.org

CAROL A. MANNING, Editor
carolm@okbar.org

LORI RASMUSSEN,
Assistant Editor
lorir@okbar.org

EMILY BUCHANAN,
Advertising Manager
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MACKENZIE MCDANIEL,
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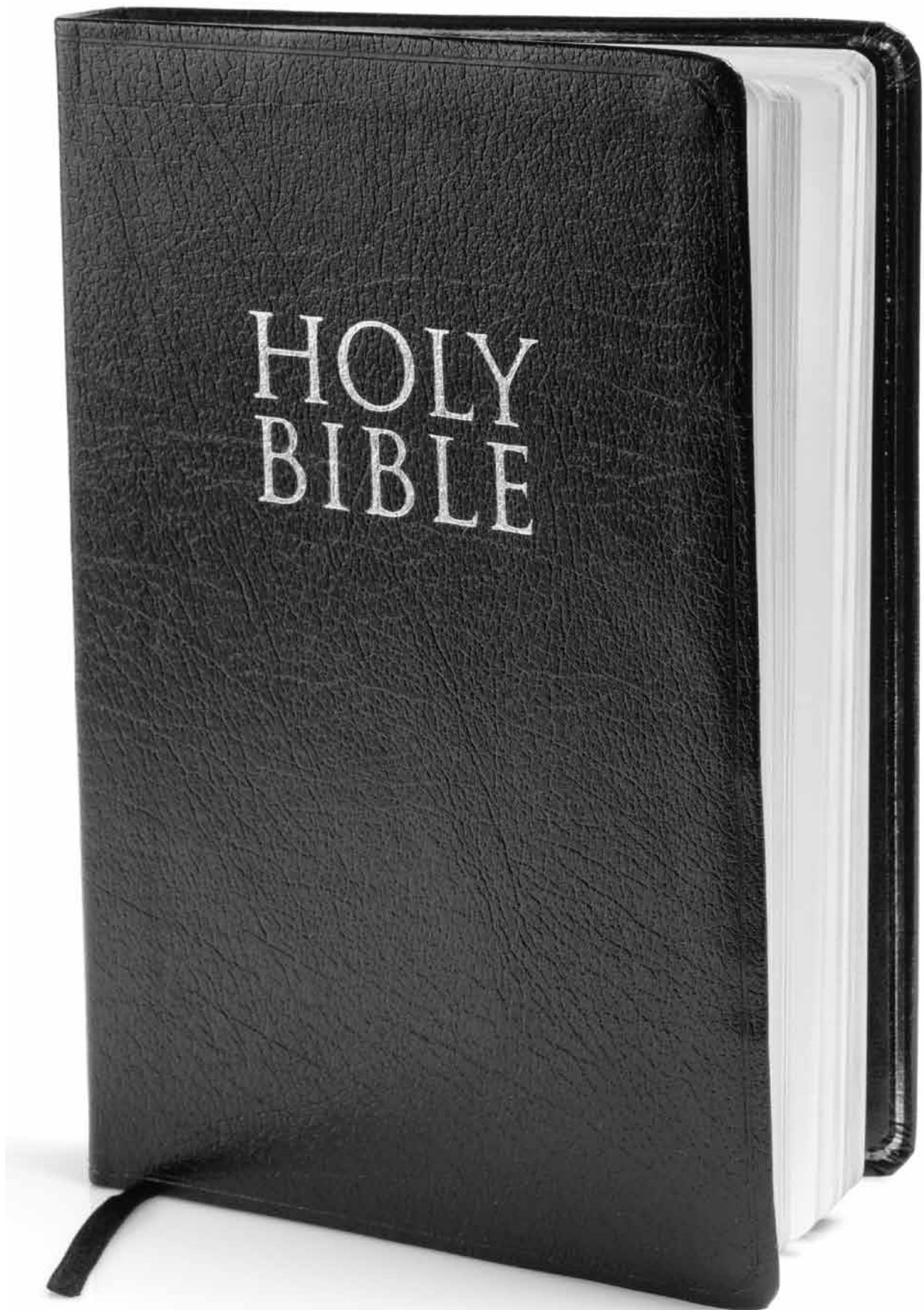
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Bible Distribution in Oklahoma's Public Schools

By Staci L. Roberds

It is not uncommon in the state of Oklahoma, often referred to as part of the “Bible Belt,” for a school district to receive a request from a religious organization to distribute Bibles to its students. For that reason, it is important that the school district community (board of education, administration, teachers, parents and students) be aware of the possible constitutional implications of allowing the distribution of such materials. Several factors determine whether Bible distribution in public schools meets constitutional muster, with the age of the student and the involvement of the religious group and the school district in the distribution process being at the forefront.

This article focuses specifically on Bible distribution in schools, but it is important to note that the constitutional implications and the guidelines discussed herein are applicable to the distribution of any religious or anti-religious materials by any group in a school district.

CONSTITUTIONAL IMPLICATIONS: THE ESTABLISHMENT CLAUSE OF THE FIRST AMENDMENT

In *Lemon v. Kurtzman*, the United States Supreme Court indicated that “[i]n the absence of precisely stated constitutional prohibitions” within the Establishment Clause, it was cloaked with the duty to “draw lines with reference to the three main evils against which the Establishment Clause was intended to afford protection: ‘sponsorship, financial support and active involvement of the sovereign in religious activity.’”¹ With these safeguards in mind, the *Lemon*

Court developed a three-part test to determine whether a particular law, practice or policy violates the Establishment Clause.

Under *Lemon*, a school district must ask whether a particular practice or policy 1) has a legitimate secular purpose; 2) has a primary effect that neither advances nor inhibits religion; and 3) does not foster an excessive entanglement between the school district and religion.² In its later decisions, the court further clarified the second and third prongs of the *Lemon* test by establishing a “coercion” test and an “endorsement” test. In *Lee v. Weisman*, the court noted that “[i]t is beyond dispute that, at a minimum, the Constitution guarantees that government may not coerce anyone to support or participate in religion or its exercise, or otherwise act in a way which ‘establishes a [state] religion or religious faith, or tends to do so.’”³

Thus, in the school context, the “coercion” test asks if students have been coerced, even if only through peer pressure or a desire to please school officials, to affirm a religious belief. The “endorsement” test considers the viewpoint of a reasonable observer aware of the circumstances and whether that reasonable observer would perceive school endorsement of religious speech or activity.⁴

With these standards in mind, courts have upheld the constitutionality of Bible distribution in public schools when the distribution is limited to secondary school students and specific guidelines for distribution are followed by the religious group and the school district.

ELEMENTARY SCHOOL STUDENTS V. SECONDARY SCHOOL STUDENTS

Applying the constitutional tests, courts have determined that distributing Bibles to elementary school students runs afoul of the Establishment Clause. For example, in *Berger v. Rensselaer Central School Corp.*, Bibles were distributed to elementary school students during regular school hours in the classroom or during an assembly in the auditorium or gymnasium. The Bible distribution included a short presentation by the religious group with directions for students to take a Bible from the table or desk after the presentation.⁵ The *Berger* court noted that elementary school students “ha[d] no choice but to sit through the Gideons’ presentation and distribution of Bibles[,]” and that allowing the Gideons to distribute the Bibles during instruction time was paramount “because it [was] likely the [elementary school students] were confused about whether the [school district] endorsed the Gideons’ beliefs.”⁶ The court ultimately held that the distribution of the Bibles to elementary school students had no secular purpose, it clearly advanced religion and excessively entangled government with religion in violation of the Establishment Clause.⁷

However, in *Peck v. Upshur County Board of Education*, the court upheld the distribution of Bibles to secondary school students when certain criteria were followed by the school district and the religious group.⁸ In *Peck*, the circumstances involving the Bible distribution included: 1) the school district set one day a year aside for private religious groups to make Bibles or other religious materials available to students and placed the materials on tables set up in nonclassroom settings; 2) personnel of the

school district were not involved in placing the materials on the tables; 3) the school district took significant steps to communicate to its students that the availability of the materials did not mean the school district endorsed the materials by placing a disclaimer on the tables stating, “These materials are neither sponsored nor endorsed by the [school district], its agents or employees. The views and information contained in the materials do not reflect the approval or disapproval of this board or the school administration[.]” 4) the school district did not distribute any information in classrooms or make it part of any school activity; 5) no one, neither school district personnel nor volunteers from the religious group, stood at the table or encouraged or pressured students to take a Bible; and 6) the administration of the school district ensured strict compliance by personnel and the religious group to comply with the distribution requirements.⁹

The court held “that the state does not violate the Establishment Clause when it permits private entities to passively offer Bibles or other religious material to secondary school students on a single day during the year pursuant to a policy of allowing private religious and nonreligious speech in its public schools.”¹⁰ However, in a footnote, the *Peck* court cautioned that a school district should not assume that its decision also applied to elementary schools, stating that “because [elementary school children] may be unable to fully recognize and appreciate the difference between government and private speech — a difference that lies at the heart of the neutrality principle — the [school district’s] policy could more easily be (mis)perceived as endorsement rather than as neutrality.”¹¹

APPLICATION FOR OKLAHOMA’S PUBLIC SCHOOLS

For purposes of Bible distribution in Oklahoma, secondary and elementary schools are discussed in the Oklahoma statutes. When defining public schools in Oklahoma, the Legislature has stated that “[t]he public schools of Oklahoma shall consist of all free schools supported by public taxation and shall include nurseries, kindergartens, elementary, which may include either K-6 or K-8, secondary schools and technology center schools[.]”¹² Elsewhere in the School Code, secondary schools have been defined as “a public or private school subject to the school laws of Oklahoma engaged in the education of students for any of grades seven through 12.”¹³ Thus, under

“Elsewhere in the School Code, secondary schools have been defined as “a public or private school subject to the school laws of Oklahoma engaged in the education of students for any of grades seven through 12.”

the Oklahoma statutes, sixth grade is always considered part of elementary school, while seventh and eighth grade can be part of elementary school or part of secondary school.

In *Bell v. Little Axe Independent School District No. 70 of Cleveland County*, the 10th Circuit Court of Appeals discussed the dichotomy between elementary and secondary school students with regard to religious meetings being held on the premises of a public elementary school.¹⁴ In determining that it was proper for the district court to enjoin the meetings at the elementary school level, the court noted that “[t]he presence of one secondary grade does not make [an elementary school] a secondary school within the meaning of [Section 1-106].”¹⁵ Thus, based on federal law and Oklahoma law, religious groups should not be allowed to distribute Bibles to elementary school students at any time on school grounds. Bible distribution should be limited to only secondary school students.

CONSIDERATIONS REGARDING BIBLE DISTRIBUTION

Before a school district decides to allow a religious organization to distribute Bibles to secondary school students, there are certain considerations to take into account. As discussed by the court in *Peck*, a school district cannot give “preferential access” to religious groups and cannot apply its policy or standards “in a manner that discriminates in favor of Bibles or against other religious materials or non or anti-religious materials.”¹⁶ This would violate the Establishment Clause.¹⁷ Thus, a school district must consider that if it allows a religious organization to distribute Bibles under the strict distribution guidelines, other religious, nonreligious, or anti-religious groups

may request the opportunity to distribute their materials to students.

SUGGESTED GUIDELINES FOR BIBLE DISTRIBUTION IN PUBLIC SCHOOLS

Although Bible distribution to secondary school students is constitutional under current law, specific guidelines should be imposed to ensure that the Establishment Clause of the First Amendment is not violated. The following procedure for Bible distribution to secondary school students on school grounds has been deemed constitutional:

- A religious group may be allowed one day per school year to distribute Bibles at the school district’s high school and to seventh and eighth-grade students. However, a religious group may not distribute Bibles in any elementary school.¹⁸
- The religious group must arrive prior to the start of school and place Bibles on a table in an area predetermined by the school district. The religious group must be off school grounds at least 30 minutes prior to the start of the school day.
- Bibles may remain on the table for the entire school day. The table should include a sign stating: “Any student may take a free Bible, compliments of the _____” (the religious group distributing the Bibles). The school district will not distribute any information to students in classrooms nor will it announce the Bible distribution to students. Furthermore, no one representing the religious group or the school district should be present at the table and no one should encourage a student to take (or not take) a Bible.
- The religious group must come and remove any remaining Bibles at the end of the school day.

The distribution guidelines should be provided to the religious group prior to the Bible distribution, and the group should be informed that their failure to follow the proper procedure may result in the revocation of the future privilege of distributing Bibles in the school district.¹⁹

CONCLUSION

The *Peck* guidelines provide a constitutional procedure for school districts to follow for Bible distribution to secondary school students on school grounds. School administrators and

boards of education must ensure that the appropriate protocol is followed when allowing for Bible distribution in its schools. School districts should also consider that these same guidelines would apply to other religious materials as well as nonreligious and anti-religious materials. Regardless of the materials, they should not be provided to elementary school students under any circumstances. When questions arise regarding distribution of Bibles or other materials, a school district should exercise caution and consult with a well-qualified attorney regarding the distribution procedure. This will provide the students and the school district with protection by ensuring that any distribution of materials is constitutional.

1. 403 U.S. 602, 612 (1971), quoting *Walz v. Tax Commission*, 397 U.S. 664, 668 (1970).
2. *Id.* at 612-613, citing *Board of Educ. v. Allen*, 392 U.S. 236, 243 (1968) and *Waltz*, 397 U.S. at 674.
3. *Lee v. Weisman*, 505 U.S. 577, 587 (1992), quoting *Lynch v. Donnelly*, 465 U.S. 668, 678 (1984).
4. *Board of Educ. of the Westside Community Schools v. Mergens*, 496 U.S. 226, 251-52 (1990).
5. 982 F.2d 1160, 1164 (7th Cir. 1993).
6. *Id.* at 1167, 1170.
7. *Id.* at 1171.
8. 155 F.3d 274 (4th Cir. 1998).
9. *Id.* at 275-78.
10. *Id.* at 288.
11. *Id.* at 287.
12. Okla. Stat. tit. 70, §1-106.
13. Okla. Stat. tit. 70, §24-131.1.
14. 766 F.2d 1391 (10th Cir. 1985). The case also included an issue with regard to Bible distribution, but the district court determined the issue was moot, so the appeals court did not address the issue in detail only finding there was no abuse of discretion by the trial court. *Id.* at 1407-08.
15. *Id.* at 1407 n.16.
16. *Peck*, 155 F.3d at 284.
17. *Id.*, citing *Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753 (1995).
18. If a school district has requests by more than one group to distribute religious or non-religious materials, they need not allow for multiple distribution days, but they may require that all distributions be made on the designated one day per year.
19. *Peck*, 155 F.3d at 275-78.

ABOUT THE AUTHOR



Staci L. Roberds is an of counsel attorney with Rosenstein, Fist & Ringold in Tulsa. She focuses her practice on legal research and writing, primarily in the areas of constitutional, federal civil rights and education law. Prior to joining Rosenstein, Fist & Ringold, she served as a federal law clerk for eight years. She graduated from TU College of Law in 2000 with honors.

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Title IX – The Basics and Recent Changes

By Mackenzie Wilfong and Brandee Hancock

“No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of or be subjected to discrimination under any education program or activity receiving federal financial assistance.”¹ So reads the simple text of Title IX of the Education Amendments of 1972. Many people think Title IX applies to gender equality in athletics (and it does), but Title IX’s reach is far broader than athletics – it bans all forms of sex based discrimination and applies to recipients of federal financial assistance, including all higher education institutions in Oklahoma. Secondary schools are also subject to Title IX. Sexual harassment, a term that encompasses acts of sexual violence, is a form of sex discrimination prohibited by Title IX.

Title IX enforcement authority lies with the Department of Education’s Office for Civil Rights (OCR).² In recent years, OCR has ramped up its enforcement efforts and expanded the obligations of universities to address issues of sexual violence, beginning with its “Dear Colleague Letter,” published in April 2011.³ The Dear Colleague Letter, a 19-page outline of an institution’s obligations ranging from prevention programs to grievance procedures for incidents of sexual violence, cited a nationwide study for the finding that “about 1 in 5 women are victims of completed or attempted sexual assault while in college.”⁴ In 2014, OCR began investigations on how 55 higher education institutions handled reports of sexual violence. By March 2015, the number of schools under investigation topped more than 100.⁵

At the most basic level, when an educational institution knows, or reasonably should know, of sexual harassment or sexual violence,⁶ the institution is required to take immediate action to 1) investigate what occurred and end the harassment/violence; 2) prevent any recurrence; and 3) remedy the effects of the harassment/violence.⁷

Institutions are required to designate an individual to oversee compliance with Title IX and all Title IX complaints. These individuals are often referred to as the “Title IX coordinator.”⁸ Additionally, Title IX designates as “responsible employees” all individuals who have the authority to redress sexual violence, who have been given reporting duties by the Title IX coordinator or other appropriate school official, and, a much broader category, who a stu-

dent could reasonably believe has the authority or duty.⁹ Institutions of higher education should carefully decide whom to designate as a responsible employee because this person is obligated to report incidents of sexual violence to the Title IX coordinator and must report all relevant details that are shared with him or her.¹⁰ Responsible employees must be properly trained on how to respond to reports of sexual violence and employees involved in the investigation and grievance procedures must also be trained.¹¹ Institutions must make clear to employees and students which individuals are designated as responsible employees.¹²

Title IX also requires institutions to adopt and publish grievance procedures which provide for the “prompt and equitable resolution” of all sexual discrimination complaints.¹³ OCR’s guidance requires institutions to conduct an independent investigation of the facts, regardless of whether law enforcement conducts an investigation.¹⁴ In fact, institutions are specifically instructed that they should not wait for the conclusion of a criminal investigation or other criminal proceedings to conduct the required Title IX investigation.¹⁵

The White House Task Force to Protect Students from Sexual Assault encourages institutions to reach agreements with local law enforcement establishing the roles of each and how the two should communicate with one another to investigate reports of sexual assault.¹⁶ Whether a criminal investigation results in an arrest or conviction has no bearing on the institution’s required investigation. In its “Questions and Answers on Title IX and Sexual Violence,” OCR explains that a Title IX investigation is different from a criminal investigation because Title IX investigations will never result in incarceration and “therefore, the same procedural protections and legal standards are not required.”¹⁷ Differences between the criminal process and the Title IX process include the standard of evidence, the role of advisors and the rules of evidence. In determining whether an investigation was conducted promptly and equitably, OCR evaluates on a case-by-case basis, but OCR advises that investigations, including the

**“Whether
a criminal
investigation results
in an arrest or
conviction has no
bearing on the
institution’s required
investigation.”**

hearing process, are completed within 60 days of receiving the complaint.¹⁸

The standard of evidence used for complaints of sexual harassment is far different than the beyond a reasonable doubt standard utilized in the criminal context. Institutions are mandated to utilize the preponderance of the evidence standard in grievance procedures for complaints of sexual harassment.¹⁹ A preponderance of the evidence standard is used in civil litigation discrimination under Title VII of the Civil Rights Act of 1964. As

OCR explains, because Title VII and Title IX both prohibit discrimination on the basis of sex, OCR uses the same standard of evidence.²⁰

After receiving a complaint of sexual harassment, institutions are required to notify the complaining party of his or her right to receive interim measures, regardless of whether the complaining party pursues recourse in the criminal context.²¹ Interim measures can include accommodations such as changing academic, living or working situations and implementing no contact orders between the complaining party and the alleged perpetrator.²² The complaining party must also be notified of available resources, such as counseling and health services.²³

OCR has several enforcement options at its disposal. When OCR determines that an institution is not in compliance with its Title IX obligations, it can refer the case to the U.S. Department of Justice for litigation.²⁴ OCR’s “big stick” is its ability to initiate proceedings to withdraw federal funding from the institution.²⁵ To date, OCR has not withdrawn federal funding from any institution.²⁶ Federal legislation is pending which, if passed, would allow OCR to implement fines of up to 1 percent of an institution’s operating budget for each Title IX violation.²⁷

Two other areas of federal law significantly impact higher education institutions and, both directly and indirectly, Title IX obligations: the Clery Act and the Violence Against Women Act.²⁸ The Clery Act requires institutions participating in Title IV student financial assistance programs to disclose campus crime statistics and security information.²⁹ Passed in response

to the death of a student on the campus of Lehigh University, the Clery Act requires institutions to issue an annual security report to all employees and students.³⁰ The annual security report must include a number of items, including crime statistics for certain crimes occurring on or near campus and policy statements for a variety of issues, ranging from procedures to be followed in the event a student is missing to sexual assault policies.³¹ Enforcement authority for the Clery Act lies with the Department of Education. Violations of the Clery Act are punishable by fines of up to \$35,000 per violation.³² Legislation is currently pending which, if passed, would increase this fine to up to \$150,000 per violation.³³

The Violence Against Women Act (VAWA) was reauthorized by President Obama on March 7, 2013.³⁴ VAWA, among other things, amended the Clery Act, but did not amend Title IX — at least not on its face. The proposed rules for VAWA specifically provide that nothing in the proposed regulations “alters or changes an institution’s obligations or duties under Title IX as interpreted by OCR.”³⁵ The Department of Education also issued a Dear Colleague Letter on July 14, 2014, reiterating its position that Title IX obligations remain unaffected by VAWA.³⁶ However, the amendments to the Clery Act require an institution to include a number of policy statements in its annual security report that address issues that are, at their heart, Title IX issues. Institutions cannot include policy statements for policies that do not exist — so, despite the Department of Education’s statements, Title IX is effectively altered by VAWA.

Under VAWA and its implementing regulations, institutions are now required to provide educational programs to promote awareness of dating violence, domestic violence, sexual assault and stalking to students and employees.³⁷ Policy statements that must be included in the annual security report include statements regarding the required training (which must include a plethora of specific elements), procedures victims should follow if a crime of dating violence, domestic violence, sexual assault or stalking occurs and a detailed description of the grievance procedure that will be used when complaints of dating violence, domestic violence, sexual assault or stalking occur (again, which must include a plethora of specific elements), among others.³⁸ Additionally, institutions must include crimes

that meet the definitions of dating violence, domestic violence and stalking in their annual crime statistics (sexual violence statistics were required prior to VAWA).³⁹ By implementing these revisions to the Clery Act, Title IX was effectively changed to include crimes of dating violence, domestic violence and stalking because they are considered crimes of gender discrimination.

An often overlooked form of gender discrimination covered by Title IX is pregnancy discrimination. The Title IX implementing regulations specifically prohibit schools from excluding a pregnant student from any part of an educational program.⁴⁰ In June 2013, OCR updated its guidance on pregnant and parenting students for secondary schools.⁴¹ To date, OCR has not issued similar guidance for higher education institutions; however, the guidance for secondary schools can be utilized to address similar issues on college campuses. OCR requires schools to excuse absences for pregnancy or childbirth for as long as the student’s doctor deems necessary and requires students to be returned to the same academic level as before medical leave was taken.⁴² In addition, if accommodations are made for students with temporary medical conditions, those same accommodations must be provided to students who take medical leave for pregnancy or childbirth.⁴³

Understanding these laws and how they work together is just the first step. The real work is creating a dialogue between all interested parties in our campus communities including counseling services, health care providers, law enforcement, victim advocacy organizations, state legislators, faculty, staff and students to develop policies, processes, resources and training to address these issues on our college campuses. Our state institutions of higher education are meeting the challenge head on with the leadership of the Oklahoma State Regents for Higher Education and the Council on Student Affairs, which are sponsoring a state-wide conference in June to provide invaluable resources to staff charged with spearheading Title IX and Clery Act compliance.

1. 20 U.S.C. §681(a).

2. OCR’s enforcement efforts come in two forms – investigation and resolution of complaints filed by individuals alleging Title IX violations or selection of institutions for compliance reviews. For more information about how OCR processes cases, see their Case Processing Manual at www2.ed.gov/about/offices/list/ocr/docs/ocrcpm.pdf. Not all government agencies believe that OCR’s scope of authority is appropriate. Recently, two commissioners from the United States Commission on Civil Rights sent a letter to key congressmen, includ-

ing the Honorable Tom Cole, regarding their concern about OCR's scope of authority. See www.nacua.org/documents/USCommissionCivilRightsLtrOCR.pdf.

3. U.S. Dept. of Education, Office for Civil Rights, Dear Colleague Letter (Apr. 4, 2011), available at www2.ed.gov/about/offices/list/ocr/letters/colleague-201104.html. On April 24, 2015, OCR issued a new Dear Colleague Letter reminding institutions of their obligation to designate a Title IX coordinator; the guidance did not impose any new requirements. The letter is available at <http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201504-title-ix-coordinators.pdf>. OCR also released a "Title IX Resource Guide", available at <https://www2.ed.gov/about/offices/list/ocr/docs/dcl-title-ix-coordinators-guide-201504.pdf>.

4. *Id.*

5. Nick Anderson, *Schools Facing Investigation on Sexual Violence: Now More Than 100*, Washington Post (Mar. 4, 2015) <http://goo.gl/qsoeut>.

6. While much of OCR's guidance focuses on student-on-student sexual harassment, Title IX also applies to sexual harassment by institution employees. Questions and Answers on Title IX and Sexual Violence, U.S. Dept. of Educ., Office for Civil Rights, at 3. Available at <http://goo.gl/48PLZ4>.

7. *Supra* note 3.

8. *Supra* note 3.

9. *Supra* note 6, at 15.

10. *Supra* note 6, at 14, 16.

11. *Supra* note 6, at 39, 41.

12. *Supra* note 6, at 15. Notably, mental health counselors, pastoral counselors, social workers, psychologists, health center employees and any other person with a professional license that requires confidentiality are not obligated to report incidents of sexual assault to the Title IX coordinator if the student does not consent. See QE-3, Questions and Answers on Title IX and Sexual Violence.

13. *Supra* note 3.

14. *Supra* note 3.

15. *Supra* note 3.

16. The White House Task Force to Protect Students from Sexual Assault issued a sample memorandum of understanding, available at <http://goo.gl/j9f5YP>. Institutions are also encouraged to enter into a memorandum of understanding with local rape crisis centers. See www.notalone.gov/assets/mou-rape-crisis-centers.pdf.

17. *Supra* note 6, at 27.

18. *Supra* note 3.

19. *Supra* note 3.

20. *Supra* note 3.

21. *Supra* note 3.

22. *Supra* note 3.

23. *Supra* note 3.

24. *Supra* note 3.

25. *Supra* note 3.

26. Michael Stratford, *OCR in the Hot Seat*, Inside Higher Ed (June 17, 2014), <http://goo.gl/J2nFWc>. Catherine Lhamon, assistant secretary for the Office for Civil Rights, has openly discussed using the threat of removing federal funding to prompt institutions to work with OCR to implement changes.

27. Information about the proposed Campus Accountability and Safety Act (CASA) is available at www.gillibrand.senate.gov/casa-supporters.

28. A table depicting the intersection of Title IX and the Clery Act is available at www.notalone.gov/assets/ferpa-clerychart.pdf.

29. The Clery Act's official name is the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act. 20 U.S.C. §1092(f). Virtually all higher education institutions participate in Title IV programs. For a complete list of participating schools, see <http://goo.gl/dcLkS4>.

30. For more on the history of the Clery Act, see <http://clerycenter.org/our-history>.

31. 20 U.S.C. §1092(f).

32. Adjustment of Civil Monetary Penalties for Inflation, 77 Fed. Reg. 60,047 (Oct. 2, 2012), available at <http://goo.gl/ZB581I>.

33. Information about the proposed Campus Accountability and Safety Act (CASA) is available at www.gillibrand.senate.gov/casa-supporters.

34. Violence Against Women Reauthorization Act, Pub. L. No. 113-4, 127 Stat. 54 (codified at 42 U.S.C. §13701).

35. Violence Against Women Act, 79 Fed. Reg. 119, 35,422 (June 20, 2014), available at <http://goo.gl/oSWMTL>.

36. Office of Postsecondary Education, Dear Colleague Letter, *Implementation of Changes Made to the Clery Act by the Violence Against Women Reauthorization Act of 2013* (July 14, 2014) available at www.ifap.ed.gov/dpclatters/GEN1413.html.

37. 34 C.F.R. §668.46(j).

38. 34 C.F.R. §668.46.

39. 34 C.F.R. §668.46(c).

40. 34 C.F.R. §106.40(b)(1). Discrimination against a student based on pregnancy, childbirth, false pregnancy, termination of pregnancy or recovery from any of these conditions is prohibited.

41. U.S. Dept. of Educ., Office for Civil Rights, *Supporting the Academic Success of Pregnant and Parenting Students* (June 2013), available at www2.ed.gov/about/offices/list/ocr/docs/pregnancy.pdf.

42. 34 C.F.R. §106.40(b)(5).

43. 34 C.F.R. §106.40(b)(4).

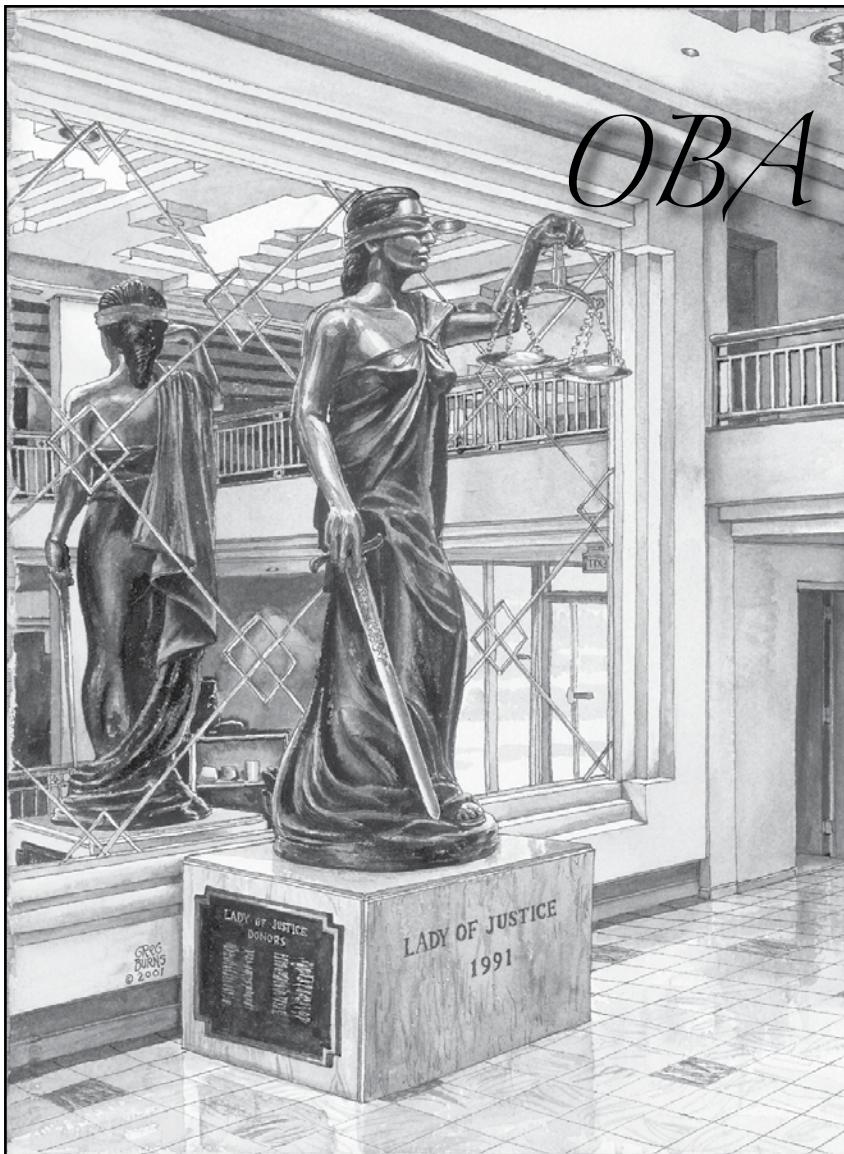
ABOUT THE AUTHORS



Mackenzie Wilfong is the associate general counsel for the Board for Regents for the Oklahoma Agricultural and Mechanical Colleges. She earned her J.D. from Southern Methodist University's Dedman School of Law. Following law school, she practiced litigation at Spencer Fane Britt and Browne, where her focus was in education and employment law. She has also served as an enforcement attorney for the U.S. Department of Education, Office for Civil Rights and as the OSU director of Equal Opportunity and Title IX coordinator.



Brandee R. Hancock received a J.D. with honors from the OU College of Law in 2012, where she was a member of the *Oklahoma Law Review* and the Order of Barristers. After practicing as an associate with Ellis & Ellis in Stillwater, she joined the Office of Legal Counsel for the Board of Regents for the Oklahoma Agricultural and Mechanical Colleges in June 2014. She currently serves as president of the Payne County Bar Association.



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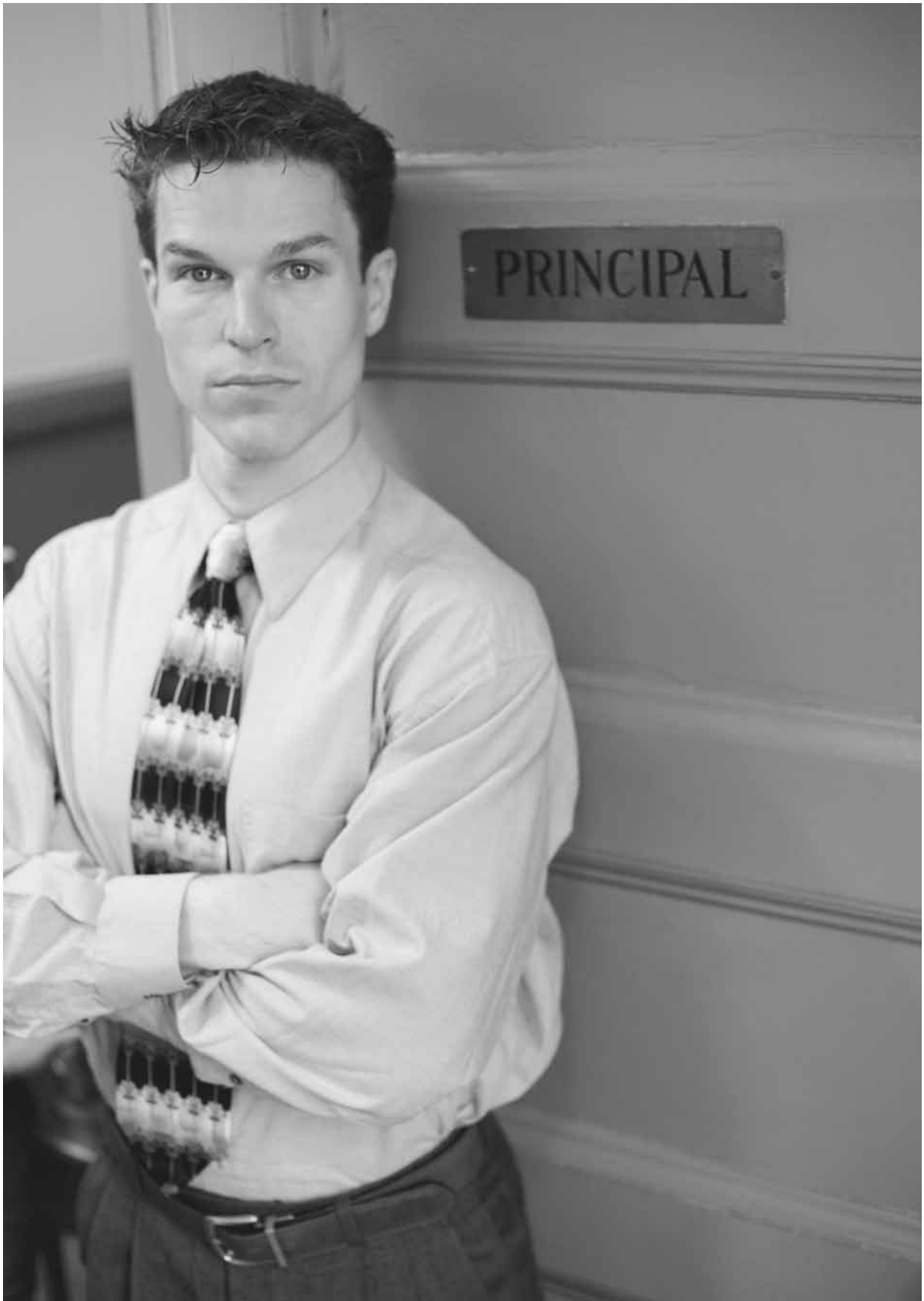
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Discipline of Students

By Stephanie Mather

Each district board of education must adopt a policy for the discipline of all children attending public school in that district, and for the investigation of reported incidents of bullying.¹ Additionally, each school district board of education must adopt a policy with procedures which provide for out-of-school suspension of students. The policy must address the term of the out-of-school suspension and provide an appeals process. It must also provide that before a student is suspended out-of-school, the school or district administration shall consider and apply, if appropriate, alternative in-school placement options that are not to be considered suspension, such as placement in an alternative school setting, reassignment to another classroom, or in-school detention. The policy must address education for students and whether participation in extracurricular activities shall be permitted.² Finally, every school district must have and deliver to each classroom teacher a written policy that such teacher shall follow if they have a student who appears to be under the influence of low-point beer, alcoholic beverages or a controlled dangerous substance in their classroom.³

School district administrators and teachers act *in loco parentis* when the students are at school and at school-related events. This means they have the same right as a parent or guardian to control and discipline a student according to district policies during the time the child is in attendance or in transit to or from the school or any other school function authorized by the school district or classroom presided over by the teacher.⁴ While students most certainly do not shed their constitutional rights at the schoolhouse door, it has been repeatedly recognized that these rights are diminished at school, and student speech and expression and

conduct may be curtailed to ensure a proper and secure learning environment.⁵

If a teacher or administrator or security personnel at the school believe an infraction has occurred, they may — and should — conduct a proper investigation with the nature of the infraction as a guide. The investigation could warrant a search of the student, which under Oklahoma law will be limited to a pat-down conducted by a member of the same sex and witnessed by another teacher or administrator (preferably of the same sex). The student may never be asked to remove any article of cloth-

ing other than cold winter outer wear.⁶ The student has no expectation of privacy in the contents of any school district property, including lockers, desks or computers.⁷ If the search turns up drugs, alcohol or weapons, law enforcement must be notified and they will take the contraband.⁸

Whenever it appears to any public school teacher that a student may be under the influence of low-point beer, alcoholic beverages or a controlled dangerous substance, that teacher must report the matter, upon recognition, to the school principal or his or her designee. The principal or designee shall immediately notify the superintendent of schools or designee and a parent or legal guardian of the student of the matter.⁹

ALLOWABLE SUSPENSION

Oklahoma law allows out of school suspension of students for: 1) violation of a school regulation; 2) possession of an intoxicating beverage, low-point beer, or missing or stolen property if the property is reasonably suspected to have been taken from a student, a school employee, or the school during school activities; and 3) possession of a dangerous weapon or a controlled dangerous substance while on or within 2,000 feet of public school property, or at a school event.¹⁰

State and federal law require that a student who has possession of a firearm at school must be suspended for a calendar year. This suspension may be modified by the superintendent on a case-by-case basis and with conditions.¹¹

Any other suspension for any offense other than possession of a firearm cannot exceed the remainder of the current semester and the full next consecutive semester.¹² Any student in grades six through 12 found to have assaulted, attempted to cause physical bodily injury or acted in a manner that could reasonably cause bodily injury to a school employee or a person volunteering for a school **must** be suspended for the remainder of the current semester and the next consecutive semester, to be determined by the board of education. The term of the suspension may be modified by the district superintendent on a case-by-case basis.¹³ A stu-

dent who has been suspended for a violent offense which is directed towards a classroom teacher shall not be allowed to return to that teacher's classroom without the approval of that teacher.¹⁴

The school district must provide educational services to students suspended for more than five days for any reason other than possession of firearms or controlled dangerous substances.¹⁵

Any suspension of less than 10 consecutive school days is considered a short term suspension, and the student or his or her parents may appeal to the administration as provided in school district policy, and the decision at that level is final.¹⁶ Any student suspended for 10 days or more is also entitled to further appeal to the board of education or to a hearing officer appointed by the board of education.¹⁷ The board of education, or the hearing officer if appointed, will hear the appeal at an open meeting, but may hear it in executive session if requested by the student or parents.¹⁸

As a final caveat, disciplinary rules with respect to students, including the ability and length of time for suspension of students, may be "trumped" by federal law. Oklahoma law recognizes that "students suspended out-of-school who are on an individualized education plan pursuant to the Individuals with Disabilities Education Act, P.L.

No. 101-476... shall be provided the education and related services in accordance with the student's individualized education plan."¹⁹ This article does not attempt to discuss the rights of disabled students, but school officials, parents and attorneys must be aware that there are strict limitations on discipline that can be imposed on students who are disabled.

“Any other suspension for any offense other than possession of a firearm cannot exceed the remainder of the current semester and the full next consecutive semester.”

1. 70 O.S. §24-100.4(A)

2. 70 O.S. §24-101.3(A)

3. 70 O.S. §24-138(B)

4. 70 O.S. §4-100.4(C)

5. See, generally, *Morse v. Frederick*, 551 U.S. 393 (2007) and *Board of Education of Independent School District No. 92 of Pottawatomie County v. Earls*, 536 U.S. 822 (2002).

6. 70 O.S. §24-102

7. *Id.*

8. 70 O.S. §§24-132 and 24-132.1

9. 70 O.S. §24-138(A)

10. 70 O.S. §24-101.3(C)(1)

11. 70 O.S. §24-101.3(C)(2)
12. 70 O.S. §24-101.3(B)(2)
13. 70 O.S. §24-101.3(C)(3)
14. 70 O.S. §24-101.3(H)
15. 70 O.S. §24-101.3(C)(3)
16. 70 O.S. §24-101.3(B)(1)
17. 70 O.S. §24-101.3(B)(2)
18. 25 O.S. §307(B)(5)
19. 70 O.S. §24-101.3(G)

ABOUT THE AUTHOR



Stephanie J. Mather has practiced law since 1981, exclusively representing the interests of Oklahoma public schools since 1998. She has been an attorney and director of legal information for the Oklahoma State School Boards Association since 2012.

She frequently speaks on legal issues involving public schools to educators and administrators. She is a member of the Oklahoma Council of School Attorneys, National School Boards Association Council of School Attorneys and is a member of the Oklahoma Council on Economic Education Board of Directors.

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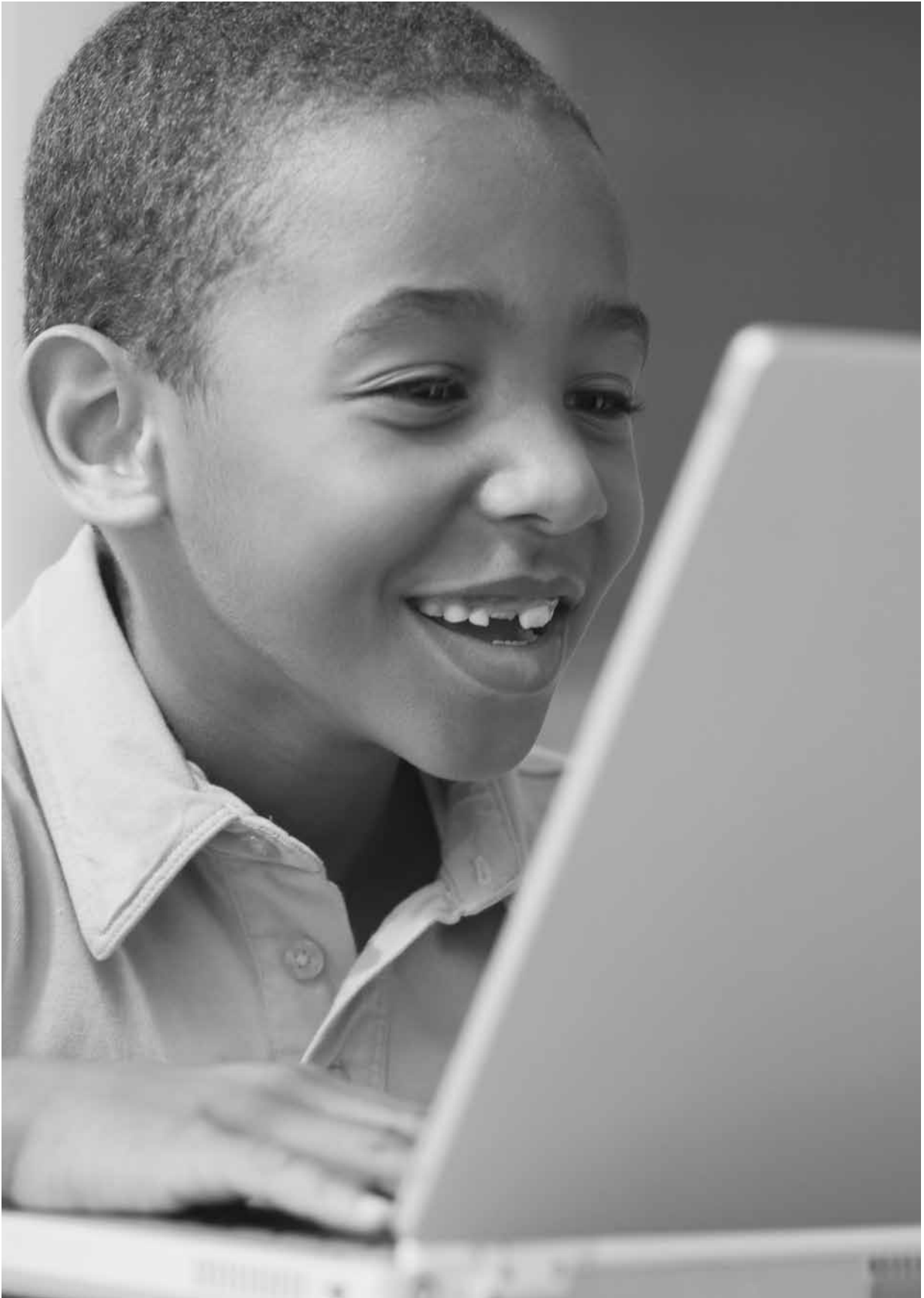
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Solution or Siren Song?

The Lure of Virtual Charter Schools

By Mary Sue Backus and Hayley Jones

What if we could harness the power of technology and the internet to deliver innovative and challenging curriculum to students, who could then access their own individualized program of study from virtually anywhere? What if we could forgo the expense of buildings and buses, cafeterias and custodians and reduce the cost of education but still expand educational access and choice, without sacrificing substance or academic rigor? This rosy vision of virtual education is certainly enticing and may account in part for the rapid expansion of elementary and secondary online learning options across the nation. But there is growing controversy around this relatively new weapon in the arsenal of education reform. Questions surrounding the overall effectiveness of full-time virtual charter schools, funding formulas and the prominence of profit-driven providers suggest that Oklahoma should proceed with caution as it addresses the policy challenges presented by the state's expanding experiment with virtual charter schools.

VIRTUAL EDUCATION IN OKLAHOMA

Virtual education is the delivery of instruction over an electronic network. In 2009, the Oklahoma Task Force on Internet-Based Instruction defined online learning as "using contemporary technologies to offer synchronous and/or asynchronous instruction focusing on the learning needs of all students at any time, place or pace."¹ According to the task force, online learning in Oklahoma has been meeting a diverse set of learner needs, including providing credit recovery, Advanced Placement and specialized courses, college entrance

requirements, expanded course offerings and accommodating students seeking to move ahead at a faster pace as well as those needing more individualized instruction. At the time of the legislative task force report, like many states, Oklahoma's virtual instruction offerings consisted of blended format learning (online curriculum content accessed at a supervised brick-and-mortar school site) used widely in alternative education settings and primarily designed to offer instructional opportunities not offered at a student's regular school.

As technology advanced and the demand for online learning increased however, Oklahoma began to experiment with “virtual schools” — most of which were launched in partnership with local school districts. These early “virtual schools” served as a precursor to today’s supplemental online instruction — in other words, local school districts offered online course content at their brick-and-mortar school sites. By initially developing and offering online learning content exclusively through local school sites, Oklahoma’s public schools were able to closely monitor the substance of the courses, provide appropriate instructional support and thus retain strong local control.

Today our state’s virtual schooling models can be classified as either supplemental online instruction or as full-time cyber schooling, with the former currently accounting for about twice the number of students as the latter. Supplemental online instruction is used by local school districts, often in partnership with face-to-face instruction, to complement a student’s regular brick-and-mortar education program; full-time virtual instruction is provided exclusively via computer to students who may not be located anywhere near the online instructor. Oklahoma currently has four fully online schools (with a fifth scheduled to open August 2015) and two supplemental online programs operating statewide, as well as numerous programs run by local school districts. The Oklahoma Department of Education reports 10,585 unique students took online courses in the 2012-13 school year through 17 approved full-time and supplemental online providers; this number includes credit recovery and alternative education students. Although both supplemental online course programs and full-time cyber schooling utilize online delivery of instruction, there are key differences between the models which raise unique and important regulatory challenges for virtual charter schools.

SUPPLEMENTAL ONLINE COURSES

As a result of legislative action in 2010 and 2011 and the administrative response by the Oklahoma State Department of Education, there is a strong regulatory structure supporting the supplemental online instruction model. Oklahoma now requires all public schools to offer educationally appropriate supplemental online opportunities for all of their students. Through a combination of statutes and administrative rules, Oklahoma has addressed issues

of student access, funding, appropriate curriculum and student accountability in this model of online learning.²

The Oklahoma Legislature passed Senate Bill 2319 in 2010 to establish and provide instruction for supplemental online learning in Oklahoma public schools. Senate Bill 280, passed in 2011, further expanded the directives of SB 2319 by instructing the State Board of Education (SBE) to adopt rules to provide “a process by which students are not denied the opportunity to enroll in educationally appropriate courses by school districts.” In response to this instruction, the SBE created the Oklahoma Supplemental Online Course Program (OSOCP) in June 2012 to establish a framework for school districts to offer supplemental online courses. Under these rules, a student enrolled in an Oklahoma public school is permitted to take up to five hours of supplemental online instruction at no cost to the student; funding is prorated by the student’s local school district through the prior year’s per-pupil expenditure. Senate Bill 419, passed in 2013, further clarified the OSOCP by defining “educationally appropriate” to mean, “any instruction that is not substantially a repeat of a course or portion of a course that the student has successfully completed, regardless of the grade of the student, and regardless of whether a course is similar to or identical to the instruction that is currently offered in the school district.”

Under the Oklahoma Supplemental Online Course Program, the state board has approved 17 providers and seen an increase in unique students taking an online course. The OSOCP allows students to earn one required or elective course credit by demonstrating “mastery of Oklahoma’s PASS and/or CCSS in one-credit courses without specified instructional time.” SBE rules specify that no student may be denied an opportunity to enroll in his or her local district’s supplemental online courses. The state board ultimately defers to local control, however, by allowing each individual school district to adopt its own rules regarding the OSOCP. Local districts are given the final say in choosing a provider from the approved list. Payment to the course provider is “based upon continued course enrollment and subsequent course completion.” The 2014-2015 list of supplemental courses available to students through their school district contains more than 600 offerings including more than three dozen AP courses as well as diverse electives

like “The Mysteries of the Solar System,” “Guitar,” “Automotive Basics,” “Natural Disasters” and even “Bowling.”³

In response to increased school district participation in the Oklahoma Supplemental Online Course Program, SDE updated its OSOCP rules in spring of 2014 to provide additional guidance to school districts and online providers. The SDE placed increased emphasis on course completion, attendance policies, progress reports and special education requirements. The updates require students participating in OSOCP to adhere to the same attendance, end-of-year assessment and course completion policies as the student’s local brick-and-mortar counterpart. Stringent statutory requirements under SB 2319, which originally envisioned monitoring student progress by requiring weekly telephonic communication between teacher and student, and monthly telephonic communication between teacher and parent along with Individualized Learning Plans (ILP) for each student, were dropped by SB 280. Nevertheless, attendance must be monitored through documented student/teacher/course interaction that may include, online chats, emails, posting/submission of lessons and providers are still required to monitor student progress weekly and transmit progress reports to participating school districts at least twice per month. In addition, providers are required to report immediately any change in a student’s status, such as if a student moves or drops the course.

In addition to these monitoring provisions which help ensure accountability, SBE rules enable school districts to retain control of their supplemental online program through a determination of what is “educationally appropriate” for each student. Local districts not only select the online course vendors and the curriculum available to their students but also are empowered to determine if an online instructional delivery method is best suited for an individual student. An online supplemental course is educationally appropriate for a student if it advances the student’s academic standing toward meeting the learning expectations of the district and state graduation requirements.⁴ That determination is in the hands of the local school district.

To ensure broad student access to supplemental online courses, the updated rules stress that local school districts are responsible for providing support to students on an Individu-

alized Education Plan (IEP) or Section 504 Plan. Districts must provide all the same supplementary aids and services, program modifications, personnel and accommodations called for in a student’s IEP in order to enable these students to take supplemental online courses which have been determined to be educationally appropriate. Enrollment in supplemental online coursework does not abdicate, modify or alter the school district’s legal responsibility under the Individuals with Disabilities Act (IDEA).

Norman Public Schools’ “Norman Net” program is typical of a school district’s supplemental online learning approach under the structure of the OSOCP.⁵ As part of Norman’s supplemental online instruction, students in the district have the opportunity to take online courses either during the school day in a computer lab at their home high school, where one-on-one instruction is available, or independently after school. There are approximately 20 courses available, including core courses in English, social studies, science and math along with a handful of electives. With a caution that online learning is not appropriate for every student, Norman characterizes these offerings as “a good way for some students to be remediated in content they have not yet mastered, or a vehicle for others to accelerate their learning and take additional courses.”⁶ Students and families interested in incorporating online learning into their education are encouraged to work with their school counselor to determine if online learning is a good option to meet their academic needs.

While the initial growth in online learning was fueled by providing students opportunities not available in their local schools, more recently the growth of K-12 online learning, both here in Oklahoma and nationwide, has been due to the increase in the number of students attending full-time virtual schools. The National Education Policy Center identified 338 full-time virtual schools, enrolling 243,000 students, in the 2012-13 academic year. That represents a 22 percent rise in the number of students served in full-time cyber schools over the previous year.⁷

FULL-TIME ONLINE EDUCATION

Oklahoma is one of 42 states that have authorized charter schools as part of efforts to reform and improve education in the state. Charter schools are independent, publicly

funded schools that are intended to foster innovation in education and provide a vehicle for school choice. Under an agreement, or charter, with a sponsoring school district or other authorized sponsor, a charter school is exempt from certain state or local rules and regulations. In return for that flexibility and autonomy, the charter school must meet the accountability standards stated in its charter. In Oklahoma, a school's charter is granted for not more than five years and must be reviewed at the end of that period before a decision to renew is made. Charters can be revoked if a charter school fails to meet student performance requirements, standards of fiscal management or for other good cause. Because charter schools are publicly funded, but have nearly complete flexibility in curricular and program design, proponents of online learning increasingly have been using the charter school mechanism to offer full-time online learning as a K-12 schooling option.

Operating as a charter school, authorized and funded under a state charter statute, virtual charter schools are able to offer full-time online learning at no charge to the individual student. Although the growth of virtual charter schools is challenging to track, the steady growth of virtual charter enrollment is undeniable, with one report forecasting that as many as 4.8 million students may be enrolled in virtual charter schools by 2016.¹⁸ Virtual schooling has become the fastest growing alternative to K-12 public education in the United States, fueled in part by the entry of for-profit companies into the arena.⁹

With the creation of the Oklahoma Statewide Virtual Charter School Board in 2012,¹⁰ Oklahoma joined 34 other states in allowing virtual charter schools.¹¹ Senate Bill 1816, later modified by SB 267, designated the Virtual Charter School Board as the "sole authority to authorize and sponsor statewide virtual charter schools in this state." The board provides oversight of all virtual charter school operations in Oklahoma and is responsible for establishing policies and procedures for accepting, approving, disapproving and renewing statewide vir-

tual charter school applications. State virtual school laws provide that "the geographic boundaries of each statewide virtual charter school shall be the borders of the state." Although the Oklahoma Statewide Virtual Charter School Board is the sole authority of statewide virtual charters, individual school districts are still able, under the general charter schools statute, to sponsor virtual charters of their own, provided that enrollment is limited to their own district boundaries. For example, Tulsa Public Schools offers the Tulsa Learning Academy — a full-time virtual school — to its 6th-12th grade students. To ensure that oversight and funding provided by the state remains in-state to serve the needs of Oklahoma students, Senate Bill 267 — passed in 2013 — bans districts from providing full-time virtual instruction to nonresident students.

Generally speaking, in order to receive a charter from the Oklahoma Statewide Virtual Charter School Board, successful applicants must provide a description of the program and demonstrate the ability to serve the targeted student audience. The application must detail a student admissions policy, a plan for fiscal management (subject to OCAS and school audit law), student achievement measurement and adherence to applicable federal, state and tribal laws and regulations. Oklahoma currently has four fully online charter schools operating under the approval of the Oklahoma Statewide Virtual Charter School Board: Oklahoma

Virtual Charter Academy (OVCA), Epic Charter Schools (which includes Oklahoma Virtual High School), Oklahoma Connections Academy and Insight School of Oklahoma. During the 2012-13 school year, OVCA served 2,782 enrollments; Epic served 2,241 enrollments; Oklahoma Connections Academy served 510 enrollments.¹² A fifth full-time virtual charter school, the ABLE Charter School, has also recently been approved and is currently accepting enrollments, with classes scheduled to begin in August 2015.

FY 2015 Costs

Oklahoma's virtual charter schools receive state appropriations as governed by the Oklahoma Charter Schools Act. The State Board of

“With the creation of the Oklahoma Statewide Virtual Charter School Board in 2012, Oklahoma joined 34 other states in allowing virtual charter schools.”

Education distributes state aid allocation to each charter school, but the Oklahoma Statewide Virtual Charter School Board as the school sponsor may retain a fee of not more than 5 percent of the allocation for administrative services. The SBE has promulgated rules for payments to ensure that virtual charter schools do not receive funding until they produce financial records for the previous fiscal year and meet certain other reporting requirements.

In 2015, it is estimated that Oklahoma will spend \$38,586,077.29 in total allocations to virtual charter schools. Of the total estimated allocation for FY 2015, approximately \$30,000,000 was initially allocated to four virtual charters: Epic One received an initial allocation of \$15,514,047; the Oklahoma Virtual Academy was allocated \$10,667,190; the Oklahoma Connections Academy received \$3,306,558; and the Insight School of Oklahoma was granted \$1,080,277. These numbers are based on a statutory state aid formula that factors a weighted average daily membership (ADM), which “shall be determined by multiplying the actual enrollment of students as of Aug. 1 by 1.333.” At midyear, the allocation for each full-time virtual school is adjusted by using the first quarter weighted ADM — calculated by looking at each school’s actual enrollment and attendance numbers. The State Department of Education projects the midterm adjustment will provide another \$8,018,005.29 of allocated funds to virtual charters, bringing the total estimated allocation for FY 2015 to \$38,586,077.29.

Although the number of students currently served by virtual charters is not large as compared to the overall enrollment in Oklahoma public schools and the amount of funds expended may be small relative to overall spending on education, these are not insubstantial numbers. And, given national enrollment trends in virtual charter schools, sparked in part by aggressive marketing campaigns of the for-profit providers, we can expect these numbers to grow. Before investing more resources in full-time virtual charter schools, Oklahoma policymakers should carefully weigh the emerging concerns about this method of instruction.

EMERGING CONCERNS

Currently, virtual charter schools operate in about 30 states (although 34 states have authorized them).¹³ Proponents of online education argue that full-time, publically funded K-12

virtual charter schools can revolutionize teaching and learning while dramatically reducing the cost and increasing the availability of high-quality education. Although the rapid spread of virtual charter schools suggests that policymakers are embracing this vision, researchers have identified a number of serious concerns about their effectiveness, inclusiveness, funding and the prominence of for-profit entities.

Effectiveness of Virtual K-12 Education

There currently exists no evidence from research that full-time virtual schooling at the K-12 level is an adequate replacement for traditional face-to-face learning.¹⁴ Proponents of full-time cyber schools often point to a 2009 U.S. Department of Education study that found programs that blended online and face-to-face programs fared better than conventional learning as evidence that online learning is highly effective. That report, however, found this effect only for undergraduate and older students, not elementary or secondary learners. Of the 55 studies reviewed for the report, only five concerned K-12 education and none of those compared full-time online schooling to traditional face-to-face instruction, but rather considered blended models that supplement or support online learning with face-to-face instruction. Because of the limited availability of K-12 studies and the lack of studies utilizing full-time online education, it is impossible to extrapolate the modest positive impact found for post-secondary students in online environments to elementary and secondary students.

If the lack of empirical evidence of the effectiveness of full-time online instruction doesn’t convince policymakers to proceed with caution in embracing full-time virtual charter schools, there are plenty of reports and studies that raise serious concerns about the effectiveness of this mode of instruction:

- A study by researchers at Western Michigan University found that only 27.7 percent of the full-time virtual schools run by the nation’s largest online education company, K12 Inc., met federally mandated Adequate Yearly Progress goals, compared to 52 percent of public schools.
- That same study found that 36 of the 48 full-time virtual schools operated by K12 were assigned school performance ratings by state education authorities in 2010-11, and just seven schools (19.4 percent of those rated) had ratings that indicated satisfactory

progress status. The average performance on state math and reading assessments of K12-operated virtual schools consistently lags behind performance levels of the states from which the schools draw their students.

- A Stanford University study of Pennsylvania charter schools found that all eight virtual charters in the study performed significantly worse in reading and math than their traditional school counterparts in terms of student gains. The study covered the period 2007-2010 (CREDO, 2011).
- A 2011 Minnesota state evaluation found that their students' completion rates in online courses were decreasing. They also found that full-time online students were more likely to drop out than their peers. Full-time online students in grades four through eight made half the progress on the state math test as their traditional counterparts: 39 percent of full-time online students showed low growth compared to 26 percent of their peers in traditional schools. Reading results, however, were mixed (Minnesota Office of the Legislative Evaluator, 2011).
- Following a 10-month-long investigation, a Colorado news organization reported that the state's virtual charter schools experience high student turnover, and produce significantly higher dropout rates and lower test scores than brick-and-mortar schools. Half of Colorado's online students end up leaving within a year to return to their neighborhood schools and post lower scores when they do. In 2010, online schools produced three times more dropouts than graduates. Over a four-year period, online students' scores averaged 14 to 26 percentage points below the state average in reading, writing and math (Hubbard and Mitchell, 2011).
- Between 2006-07 and 2010-11, 66 percent of students who enrolled in Florida Virtual School courses withdrew in the first month. (Catalanello and Sokol, 2012).
- Of Ohio's 27 virtual schools, only three were rated "effective" or "excellent" on the state's accountability scale in 2010. The two largest virtual schools enrolled more than half the approximate number of 30,000 online students statewide, and were rated as "continuous improvement." Moreover, their on-time graduation rates were well

under 50 percent (Tucker et al., 2011, OH Department of Education, 2011).

Researchers agree that there are serious gaps in the research on the effectiveness of K-12 full-time online learning, but these reports raise troubling questions about whether full-time virtual charter schools can meet the needs of Oklahoma elementary and secondary students. Because the growth of online learning appears to have outpaced the availability of reliable and valid research, policymakers should demand more information before expanding virtual charters and carefully track Oklahoma students' online experience to determine what is effective.

Prominence of For-Profit Providers

Another facet of virtual charter schools that deserves scrutiny is the prominence of for-profit providers. Of the 338 full-time virtual schools identified by the National Education Policy Center, 44 percent were operated by private "education management" companies, and those schools account for 72 percent of all students served. Two companies dominate the virtual education market in the United States, K12 Inc. and Connections Academy. K12 Inc., based in Herndon, Virginia, remains the largest for-profit provider of full-time virtual schools programs, serving about 86,000 students in 2011-12 with charter schools in more than 30 states. Traded on Wall Street, the company (NYSE:LRN) reported \$708 million in revenue in 2012, with 84 percent earned from running public schools, according to the company's 2012 annual report. In the 2013-14 school year, 25 Connections Academy virtual public schools operated in 23 states and expected to serve more than 50,000 students from across the U.S.¹⁵ All four active Oklahoma virtual charter schools have a relationship with one of these for-profit companies.

Private corporations have recognized an enormous potential market in virtual schooling. Even setting aside the questions raised about the effectiveness of the product these corporations are selling, policymakers should not overlook the complications that can arise from profit-driven motives in education. Corporations have an obligation to cater to their shareholders and return profits to their investors, thus management decisions are understandably driven by those considerations rather than what's best for students. Since its IPO in 2007, K12 has widely been valued by Wall Street for its rapid

and consistent growth. Beginning in 2008, K12's reported revenues skyrocketed over a five-year period, increasing by approximately 35 percent annually. In early 2014, however, shareholders filed a class-action lawsuit against K12, claiming that the company had manipulated its stock price by concealing information about high student attrition and poor academic performance. Anonymous "confidential witnesses" who were described as former employees claimed that "K12-managed schools aggressively recruited children who were ill-suited for the company's model of online education... then manipulated enrollment, attendance and performance data to maximize tax-subsidized per-pupil funding."¹⁶

In addition to a preoccupation with generating profits to please shareholders and investors, full-time virtual schools have to devote money to advertise and recruit students, a significant expense that regular district schools don't have since they already have students assigned to them. Because students attracted to virtual schools are often highly mobile with high rates of attrition, there is an even greater need for spending on recruitment of students in order to replace those who leave within and between school years. In 2012 a *USA Today* analysis of ad buys and media rates estimated that 10 of the largest for-profit operators of online schools spent an estimated \$94.4 million on ads to attract new students over a five-year period.¹⁷ That's \$94.4 million of public funds that did not go to student instruction or support.

Beyond marketing and recruitment, for-profit providers spend considerable resources on lobbying legislators and administrators to ensure political support for virtual charter schools in order to facilitate the expansion of opportunities into new states and markets. In Idaho, for instance, according to an investigation by *The Idaho Statesman*, K12 donated \$44,000 to the re-election of the state's top education official who pushed through requirements that students take online classes to graduate. A recent investment analysis of K12 noted that "K12's success in working closely with state policymakers and school districts to enable the expansion of virtual schools into new states or districts" as a key asset. "The company has years of experience in successfully lobbying to get legislation passed to allow virtual schools to operate."¹⁸ Indeed, K12 Inc.'s spectacular growth may not have been possible without the extraordinary amount the company spends

on lobbying, as well as on marketing and advertising. Although state by state lobbying figures are difficult to access, K12 noted in an SEC filing of its own that "We have incurred significant lobbying costs in several states."¹⁹ There is no doubt that these expenditures of taxpayer dollars benefit the shareholders of the for-profit providers, but it is less clear how the use of public education funds on advertising and lobbying serve the students enrolled in virtual charter schools. In short, public dollars are flowing through virtual charter schools to corporations that are ultimately accountable to their stockholders, not to taxpayers or students.

Funding

Another persistent fiscal question about virtual charter schools is what funding formula makes sense. One would expect that, as compared to traditional brick-and-mortar schools, full-time virtual schools would have significant inherent cost advantages when it comes to facilities, operations, transportation and food services. Virtual schools might also benefit from cost advantages associated with providing relatively fewer supplemental programs and student support services such as expenditures for extra-curricular activities, athletics, social work, student accounting, counseling, medical, psychological and speech services ordinarily paid for by public schools. Of course, full-time virtual schools have to spend more on computers and the development of online curriculum and learning platforms than their traditional counterparts.

If virtual charter schools cost less to operate than traditional brick-and-mortar schools, then perhaps the level of funding should reflect the actual cost of educating a students in a virtual setting and the per-pupil funding should be reduced accordingly. Currently, Georgia, Pennsylvania, Colorado and Ohio all pay virtual charter schools a lower per-pupil amount than brick-and-mortar schools.²⁰ Even if there is a general consensus that it must be less expensive to operate a virtual school, there is another gap in the research as no studies pinpoint the exact differences in cost between operating a brick-and-mortar school and operating a virtual school. To ensure accountability, funding models must be based on the actual cost of educating a student in a virtual learning model, which may require greater transparency of financial data by for-profit providers.

RECOMMENDATIONS FOR POLICYMAKERS

Charter schools are a permanent feature of the education landscape, and, where they are working well, offer choice and educational quality to students and parents. Virtual charter schools are poised to establish their online instructional model as a permanent feature of the charter educational landscape as well. To ensure that Oklahoma's virtual charter schools fulfill their promise, policymakers should implement safeguards to demand accountability and control of full-time virtual charter schools — just as we do with brick-and-mortar schools and just as we have with supplemental online instruction. The following recommendations are aimed at the policy challenges presented by the state's expanding experiment with virtual charter schools.

Student Enrollment and Accountability

- Virtual programs should be required to verify and document student residency in the state of Oklahoma and student transfers should be subject to the Oklahoma Education Open Transfer Act in order to track funding and have accurate data about students enrolled in virtual charter schools.
- Just as Oklahoma public schools, including charters, take daily attendance (ADA) and provide that information to the State Department of Education, virtual schools are able to track student engagement in real time and report accordingly to the Oklahoma SDE. Accordingly, student logs must show that the student was online on the pupil enrollment count day or, if absent — there must be login prior to the pupil enrollment count day and within 30 days following the pupil enrollment count day. Documentation must specifically verify individual student login, date, time, course content and student work.
- Virtual schools should test at least 95 percent of students in accordance with federal law. The Statewide Virtual Charter School Board should be required to contract with a third-party evaluator to provide formative and summative feedback on virtual charter performance.

Effectiveness

- Policymakers should slow or put a moratorium on the growth of full-time virtual schools until there is a better understand-

ing of why the performance of virtual schools often suffers and how it can be improved. Full-time virtual education should not be further expanded until there is solid evidence of its effectiveness.

- Virtual educators should be required to have specific training in virtual instructional methodology prior to teaching students in an online setting. Virtual schools should verify this training for each teacher delivering virtual education to students.
- Virtual educators should be highly qualified and limited to manageable class sizes that allow for personalized instruction.
- Current State Board of Education rules limit virtual student and teacher contact to three days per week, three hours per day. Because blended models of online learning with face-to-face contact are more effective, charters should encourage and incorporate more blended approaches.

Local Governance and Control

- Virtual schools should have local school boards similar to brick-and-mortar charters whose mission is to serve the educational needs of the students. The governing board should meet monthly and most board members should be residents of Oklahoma. Corporate representatives should be prohibited from board membership. All virtual school administrators and teachers should be employees of the local board and should be required to complete a national criminal history record check.

Funding

- The Statewide Virtual Charter School Board or the State Department of Education should determine the true cost of educating a student in a virtual environment and adjust the funding formula accordingly.
- In order to receive funding, virtual charters should verify and document student residency in the state of Oklahoma. Virtual charters should also be required to document active participation and engagement in online sequential education program(s). Documentation of individual student attendance in the online program is also necessary, especially during the pupil enrollment count window.

CONCLUSION

The lure of the virtual charter school is irresistible. It is impossible to ignore the promise of an innovative and effective platform for individualized learning which could help students reach their full potential and achieve educational excellence. But as responsible educators, Oklahoma policymakers must be cautious in rushing to embrace the potential benefits of full-time virtual charter schools without first fully understanding and controlling for the potential peril. Given the persistent questions surrounding the overall effectiveness of full-time virtual charter schools, funding formulas and the prominence of profit-driven providers, Oklahoma should proceed with caution and establish a strong regulatory structure to address the policy challenges presented by the state's expanding experiment with virtual charter schools.

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ABOUT THE AUTHORS



Mary Sue Backus is a professor of law at the OU College of Law. She teaches criminal law, evidence and education law. She serves on the OBA Civil Procedure and Evidence Code Committee and the Court of Criminal Appeals Committee for Uniform Jury Instructions. Prior to beginning her legal career, Backus taught high school social studies for nearly a decade.



Hayley Jones earned a J.D. from the OU College of Law in May 2015. She works for the Cooperative Council for Oklahoma School Administration and the United Suburban Schools Association. Prior to attending law school, she taught in Oklahoma's public school system for five years.

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- A Half Century After Gideon: Prof. Jonathan Rapping, *Gideon's Promise*, Atlanta
- Electronic Media and the 4th Amendment: Prof Stephen Henderson- OU
- Addiction, Intoxication and Effects of Legitimate & Illicit Drugs: Wilkie Wilson PhD, Duke U
- The OBN Prescript Drug Monitoring System: Agent Alina Istrate, OBN
- Other Sessions Include: Appellate Practice; The Mens Rea of Intoxication; The Client with State/Fed cases; Motions Practice; Immigration Issues and Criminal Defense

FRIDAY, JUNE 26, 2015

- Forensic Victimology & Crime Scene Investigation: Brent Turvey, Alaska
- Ethics: Honesty in the Courtroom: Garvin Isaacs, President –Elect OBA
- Conviction: It's more than a matter of time: Tim Laughlin, OIDS
- Case Update: Jim Hankins, OKC

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- | | | |
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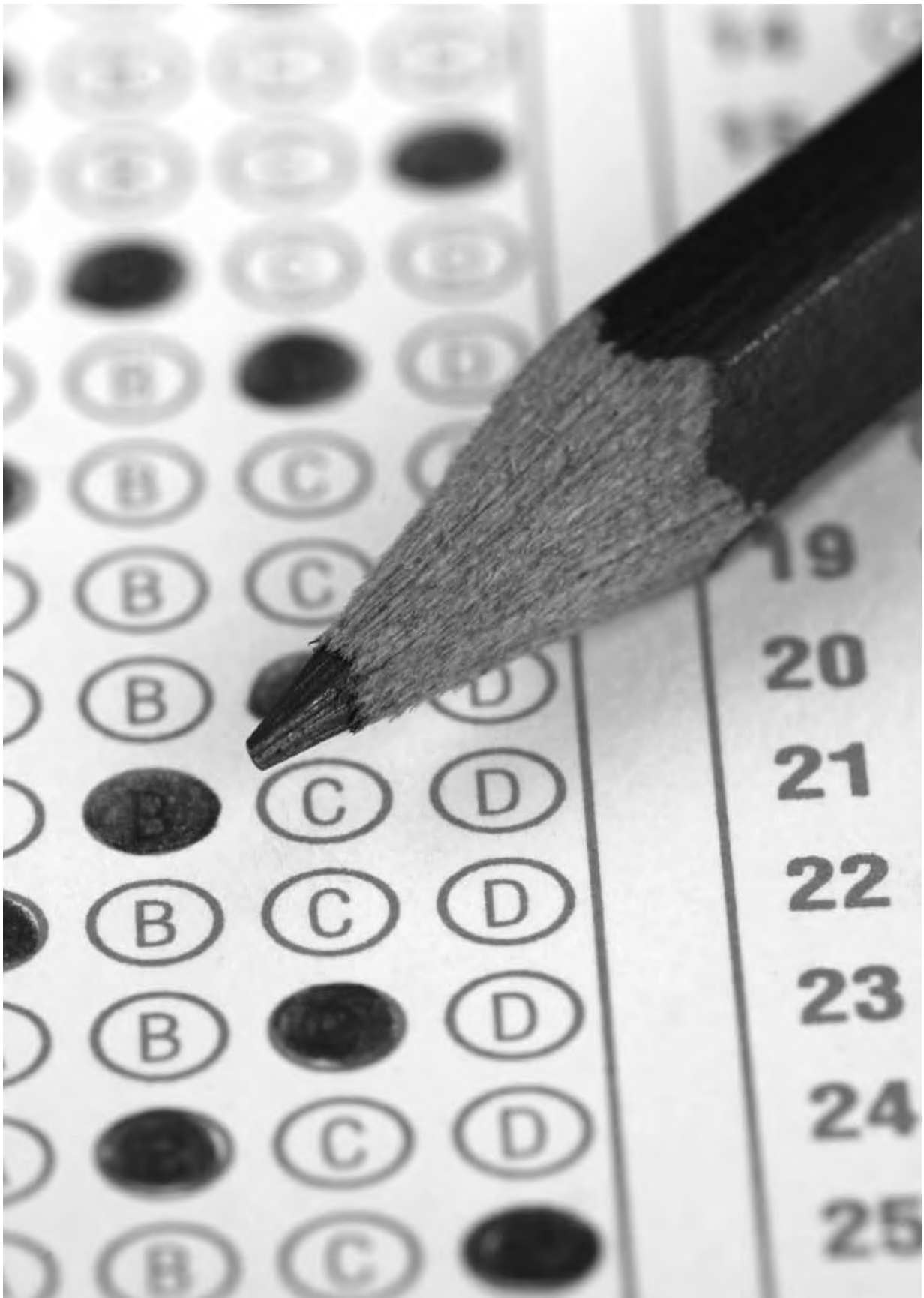
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Pack v. State Answers – and Raises – Important Constitutional Questions in Education Law and Beyond

By Michael Furlong

On July 15, 2014, the Supreme Court of Oklahoma released its decision in *Pack v. State* — an original jurisdiction action challenging the constitutionality of the Oklahoma Legislature’s wide-ranging overhaul of Oklahoma’s public education academic standards earlier that year.¹ The court’s two-paragraph memorandum opinion, released just hours after oral argument was heard in the case, was remarkable both for its conciseness and for its status as the most significant constitutional decision in Oklahoma education in some time.

The court’s straightforward holding — without elaboration or discussion — that “HB 3399 does not violate art. 13, §5 or art. 4, §1 of the Oklahoma Constitution,” was a somewhat anticlimactic resolution to a serious and high-profile challenge to legislative primacy over education policymaking in Oklahoma.² On the one hand, the succinctness of the *Pack* opinion left the door open for a future argument that it should be limited to its own facts. On the other hand, the *Pack* opinion represents a notable affirmation and extension of the court’s long-standing recognition of the Legislature’s essential and primary role in setting education policy in Oklahoma. Going a step further, the *Pack* opinion could be said to constitute a significant expansion of legislative power more broadly, especially with respect to legislative oversight of administrative rulemaking. Attorneys on all

sides of future challenges to legislative action in education and beyond will do well to keep the *Pack* opinion in mind.

In spite of its potentially enormous importance, the *Pack* opinion’s brevity could leave practitioners unacquainted with its facts scratching their heads regarding the details and significance of the questions and arguments presented to and considered by the court. The purpose of this article is to flesh out additional aspects of the *Pack* case that may be of the greatest interest and utility to members of the bar. These include: 1) the historical background giving rise to the *Pack* case, 2) a detailed look at the legal issues raised in the case and 3) brief comments on the potential significance and application of the *Pack* case in future litigation.

A BRIEF HISTORY OF ACADEMIC STANDARDS IN OKLAHOMA: LEGISLATIVE OVERSIGHT OR FEDERAL OVERREACH?

At the heart of the *Pack* case was a challenge to the constitutionality of HB 3399, a 2014 bill that revoked Oklahoma's adoption of the Common Core State Standards (Common Core) and mandated new academic standards subject to legislative approval. In the most basic sense, HB 3399 was simply the latest instance of legislative involvement in Oklahoma's academic standards over many years. Although the Legislature has never hesitated to influence academic standards, the constitutionality of such legislative oversight was not seriously challenged until HB 3399.

The concept of academic standards as such was first widely promoted in the Reagan administration's 1983 education policy survey, *A Nation at Risk*. In line with the national trend in favor of standards-based education, the Oklahoma Legislature adopted the initial version of Oklahoma's current academic standards statutes in its historic 1990 overhaul of Oklahoma education policy: HB 1017.³ At the time, the new law simply mandated the implementation of a "core curriculum" of new academic standards by the 1993-1994 school year, thus granting the State Board of Education a great deal of discretion. The resulting standards became the Priority Academic Student Standards (PASS) which remain the backbone of Oklahoma academic standards to this day.⁴ Many revisions followed, including almost 20 legislative amendments to the academic standards statute over the last 25 years.

The standards-based education movement coincided with greater *federal* oversight of education standards as well. Since the early 1990s, a series of federal programs and mandates have placed increasing emphasis on outcomes-based education — the popular but controversial theory that tougher standards in education ultimately lead to higher performance by students and teachers. President Clinton's The Goals 2000: Educate America Act was a notable first step in the effort to nationalize academic standards.⁵ President Bush's No Child Left Behind Act of 2001 tied federal funding for education to student achievement under "challenging academic content standards."⁶ While raising the stakes associated with academic standards, No Child Left Behind left the actual determination of such standards to individual

states. In 2009, the Obama administration, acting in part on the belief that the stiff penalties associated with No Child Left Behind had created a perverse incentive for states to lower their academic standards, launched the Race to the Top program. Race to the Top rewarded states with competitive grants totaling \$4.35 billion for innovative approaches to education policymaking.⁷ Eligibility for grants was based, in part, on adoption of rigorous "high college- and career-ready standards."

Meanwhile, a consortium including the National Governors Association and the Council of Chief State School Officers launched an independent effort to develop national college- and career-ready standards.⁸ In June 2010, Common Core, a comprehensive set of "college- and career-ready standards for kindergarten through 12th grade in English language arts/literacy and mathematics" were released.⁹ A month earlier, the Oklahoma Legislature adopted Common Core for the express reason of "support[ing] Oklahoma's application for the second round of federal Race to the Top funding."¹⁰ The adoption of Common Core mandated a comprehensive system of out-of-state standards and represented a complete legislative occupation of the field of academic standards. Unlike HB 3399, however, the adoption of Common Core was not the subject of a constitutional challenge.

Oklahoma was not selected as a Race to the Top grant recipient. In 2011, however, the Obama administration announced a new opportunity for states to obtain relief from No Child Left Behind: ESEA (Elementary and Secondary Education Act) Flexibility.¹¹ Oklahoma's application for ESEA Flexibility required the adoption of three major principles: 1) college- and career-ready expectations for all students; 2) state-developed differentiated recognition, accountability and support; and 3) supporting effective instruction and leadership.¹² The second and third of these principles were satisfied by Oklahoma's implementation of A-F school letter grades and the teacher and leader effectiveness evaluation system, respectively. The first principle, however, offered two options for compliance:

Option A: The State has adopted college- and career-ready standards in at least reading/language arts and mathematics that are common to a significant number of States, consistent with part (1) of the defini-

tion of college- and career-ready standards.
...

Option B: The State has adopted college- and career-ready standards in at least reading/language arts and mathematics that have been approved and certified by a State network of institutions of higher education (IHEs), consistent with part (2) of the definition of college- and career-ready standards.¹³

Because Common Core is the only set of academic standards that satisfies option A, Oklahoma chose that option in applying for ESEA flexibility. Oklahoma's application was successful, seemingly "locking in" Common Core as Oklahoma's academic standards choice.

Oklahoma's decision to retain Common Core in support of its ESEA Flexibility waiver application was not without detractors. But with full implementation of Common Core scheduled for the 2014-2015 school year, efforts to repeal Common Core became more intense during the 2014 legislative session. HB 3399 thus became the vehicle for a number of reforms to Oklahoma's curriculum standards statute, including the following:

- 1) Revocation of the Common Core State Standards;
- 2) Provision that academic standards were subject to legislative approval;
- 3) Requirement that new "college- and career-ready standards" be developed by Aug. 1, 2016, by the State Board of Education, State Regents for Higher Education, State Board of Career and Technology Education and the Oklahoma Department of Commerce with extensive public input;
- 4) Requirement that the existing PASS standards remain in effect until new standards could be adopted;
- 5) Requirement that current PASS standards be submitted to the State Regents for Higher Education for certification that they are "college- and career-ready";

6) Requirement that new assessments be developed in line with the new standards;

7) Prohibition on the State Board of Education from ceding control over Oklahoma academic standards to any outside entity; and

8) Reaffirmation that local districts have exclusive authority over "instruction, curriculum, reading lists and instructional materials and textbooks."¹⁴

“HB 3399 also contained a detailed legislative oversight provision that provided that all new academic standards and revisions are ‘subject to legislative review.’”

The sharp-eyed reader will readily note that HB 3399 was nothing less than a legislatively-mandated switch in Oklahoma's ESEA flexibility waiver from option A to option B. In addition, HB 3399 signaled disapproval for the way in which the adoption of Common Core had ceded control over certain academic standards to the Common Core State Standards Initiative, a private body not subject to the control or oversight of the State Board of Education, the Oklahoma Legislature or any other state governmental entity.

HB 3399 also contained a detailed legislative oversight provision that provided that all new academic standards and revisions are "subject to legislative review."¹⁵ Under HB 3399, when new standards are adopted by the State Board of Education, the Legislature may:

approve the standards, disapprove the standards in whole or in part, amend the standards in whole or in part or disapprove the standards in whole or in part with instructions to the State Board of Education[.]¹⁶

If the Legislature fails to adopt a joint resolution to this effect or if such resolution is vetoed by the governor, the standards are deemed approved. If the standards are disapproved in whole, the State Board of Education may adopt new standards and submit them for review or allow the prior standards to remain in effect. If the standards are not disapproved in whole, then the State Board of Education may revise the standards in accordance with any legislative changes and may then implement the standards without additional legislative approval. HB 3399's legislative review process expressly

supersedes and expands upon the process delineated in Article I (rulemaking) of the Oklahoma Administrative Procedures Act, itself amended in 2013 to give the Legislature greatly increased oversight of the rulemaking process.¹⁷

A strong possibility existed that HB 3399 could cause Oklahoma to lose its federal ESEA flexibility waiver. Under HB 3399's scheme, Oklahoma's ability to keep the waiver hinged entirely on whether the State Regents for Higher Education certified Oklahoma's existing PASS standards as college- and career-ready. Although the PASS standards were ultimately certified on Oct. 16, 2014, this was too late to satisfy United States Department of Education officials and Oklahoma's waiver was in fact revoked, making Oklahoma only the second state to lose its ESEA flexibility waiver.¹⁸ Oklahoma's waiver was eventually reinstated on Nov. 24, 2014. It may be the case, however, that *Pack's* challenge to HB 3399 was at least partly based on fears over losing the waiver.

PACK V. STATE: A TALE OF TWO CONSTITUTIONAL BRANCHES

Regardless of their motives, the *Pack* petitioners sought original jurisdiction review of the constitutionality of HB 3399 by the Supreme Court of Oklahoma less than three weeks after it was signed by the governor. Petitioners included a number of Oklahoma educators and parents as well as four members of the State Board of Education. Respondents were a number of state entities, including the Oklahoma State Department of Education. Interestingly, this alignment of parties left the attorney general, which represented respondents, in the unique position of defending a government entity against its own board members. A number of amici, including the organization which employs the author, also filed briefs in support of respondents.

Petitioners raised two major constitutional challenges to HB 3399, both focused on the legislative oversight provisions of the bill:

- 1) Does HB 3399 violate art. XIII, §5 of the Oklahoma Constitution by allowing the Legislature to infringe on the Constitutional authority of the Board?
- 2) Does HB 3399 violate art. IV, §1 of the Oklahoma Constitution by giving the Legislature excessive, controlling influence over the executive power of the Board?¹⁹

Petitioners also raised the issue of severability of the offending portions of HB 3399, but this issue was rendered moot by the court's decision and will not be discussed in this article.

Petitioners' first argument referenced article XIII, §5 of the Oklahoma Constitution:

The supervision of public instruction in the public schools shall be vested in a Board of Education, whose powers and duties shall be prescribed by law. The Superintendent of Public Instruction shall be President of the Board. Until otherwise provided by law, the Governor, Secretary of State, and Attorney General shall be ex-officio members, and with the Superintendent, compose said Board of Education.

Petitioners argued that this provision is a broad grant of power to the State Board of Education, independent of legislative oversight. In support, petitioners cited the 1981 case of *Board of Regents v. Baker*, itself a significant constitutional case, which held that "article XIII, §8 of the Oklahoma Constitution establishes the Board of Regents of the university of Oklahoma as an independent body charged with the power to govern the University."²⁰ Petitioners asserted that "[j]ust as art. XIII, §8 protects the universities from excessive legislative interference, art. XIII, §5 protects the board from excessive legislative interference."²¹

The *Pack* petitioners' reliance on *Baker* was challenged by respondents and amici on two grounds. First, *Baker* stands for more than the protection of constitutionally-established Oklahoma universities "from excessive legislative interference." It essentially protects them from any legislative interference *at all*. This has been reaffirmed in post-*Baker* cases and especially in a large number of attorney general's opinions. For example, a 1995 AG's opinion drew the distinction that legislatively-created higher education institutions can be subject to legislative oversight only because they are not creatures of the Constitution itself.²² The constitutional provisions establishing boards of regents for higher education expressly vest the "government" of higher education in those bodies.²³ In contrast, article XIII, §5 of the Constitution vests only the "supervision" of public education in the State Board of Education.

Second, the court has repeatedly and carefully circumscribed the extent of the State Board of Education's "supervisory" power.

After all, most of article XIII of the Oklahoma Constitution consists of commands *to the Legislature* to “establish and maintain a system of free public schools wherein all the children of the state may be educated.”²⁴ In a 1908 original jurisdiction action, the court held that the regents of the University of Oklahoma (not yet a constitutionally-established body) were independent of oversight by the State Board of Education in spite of a contention by the State Board of Education that its constitutionally-granted “supervisory” power extended to *all* institutions of public education:

The first paragraph of this section [i.e., article 13, §5], that “the supervision of instruction in the public schools shall be vested in a Board of Education whose powers and duties shall be prescribed by law,” makes it doubtful whether this board, in advance of legislation, possesses any power whatever.²⁵

In 1931, the court went further, expressly concluding that “[t]he providing of an education is purely a legislative function.”²⁶ In 1938, the court again took a broad view of the Legislature’s power over education policymaking: “The Legislature is by mandate charged with the duty of establishing a public school system. The method employed by it to discharge the burden thus imposed is largely within its discretion.”²⁷

In 1947, the court had occasion to consider directly the allocation of power between the Legislature and the State Board of Education in *School District No. 25 v. Hodge*. The school district plaintiff in *Hodge* questioned the authority of the Legislature to delegate any of its powers over education to the State Board of Education that arguably went beyond the mere “supervisory” power granted to the State Board of Education in the Constitution. The court’s detailed discussion is instructive on a number of points:

¶ 26 It is our view that the matter of legislative conference of additional power upon the board, relating to the free public school system of the state, but extending beyond the supervision of instruction, constituted a rightful subject of legislation. The additional powers conferred upon the Board of Education by the statute were not inconsistent with the power and authority that had been conferred upon the board by constitutional provision, and since therefore within contemplation of section 36, art. 5, Constitution, *supra*, the prior constitutional grant

of power does not exclude, by statutory provision, the conference of additional powers upon the board, the contention is untenable and such additional powers, legislatively conferred by article 2 of the act, are fairly within the legislative discretion, and so, valid and constitutional.

¶ 27 The power to determine the policy of the law is primarily legislative, and cannot be delegated, but an examination of the provisions of House Bill No. 85 will disclose that the Legislature has prescribed the policy and fixed the standards to be followed by the State Board of Education in performance of the duties imposed upon it by this act. It is presumed that the standards fixed will be adhered to strictly by the board.²⁸

The *Hodge* court made the following points clear: 1) the sole constitutional grant of power to the State Board of Education is “supervision” of the public schools; 2) all other powers are vested in the Legislature unless and until the Legislature confers such power on the State Board of Education; 3) the Legislature is therefore the font of nearly all of the State Board of Education’s powers; 4) the Legislature may constitutionally delegate such powers to the State Board of Education; and 5) the State Board of Education is expected to strictly adhere to legislative commands and is not constitutionally authorized to act independently of legislative directives and oversight. A 1968 original jurisdiction case again acknowledged “the Legislature’s plenary power, to delegate authority to the board to determine facts and enact rules within prescribed legislative standards.”²⁹ Simply put, the Legislature’s power, properly delegated, is a necessary precondition to the State Board of Education’s ability to act.

Petitioners’ second argument was based on article IV, §1 of the Oklahoma Constitution:

The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others.

Petitioners pointed to the separation of powers analysis adopted by the court in *In re*

ODOT, which embraced the following four-part test:

The [Kansas Supreme] court considered a non-exclusive set of four criteria in deciding separation of powers issues. The first criterium required the court to consider the “essential nature of the power being exercised. Is the power exclusively executive or legislative or is it a blend of the two?” The second criterium asked what degree of control is the legislature trying to exercise. Is the influence coercive or cooperative? The third criterium sought to discover the legislature’s objective. “Is it the intent of the legislature to cooperate with the executive by furnishing some special expertise of one or more of its members or is the objective of the legislature obviously one of establishing its superiority over the executive department in an area essentially executive in nature?” The fourth criterium asked what is the “practical result of the blending of powers as shown by actual experience over a period of time where such evidence is available.”³⁰

With respect to the first *ODOT* factor, the *Pack* petitioners argued that the highly-detailed nature of drafting academic standards automatically rendered such activity an executive function. But as the cases cited above make quite clear: “The providing of an education is purely a legislative function.”³¹ In addition, the administrative rule-making process which provides the vehicle for the adoption of academic standards is also a primarily legislative function and one over which the Legislature has expressly reserved extensive and plenary oversight.³²

With respect to the remaining *ODOT* factors, petitioners emphasized that while some legislative oversight of rule-making may pass constitutional muster, HB 3399’s scheme simply entails too much legislative entanglement with executive agency action. Respondents countered that the *ODOT* factors have never been used to shield agency rule-making from legislative oversight. While HB 3399’s oversight scheme is undeniably more extensive than the Oklahoma Administrative Procedures Act, the power to designate the process for rule review is retained by the Legislature: no “one size fits all” scheme is constitutionally required.

THE *PACK* OPINION: IMPLICATIONS FOR EDUCATION LAW AND BEYOND

The *Pack* case opened the door for the court to pass upon two significant constitutional separation of powers issues in Oklahoma education law. First, the court was asked to expound upon the contours of the Board of Education’s “supervisory” power over education. Second, the court was asked to define the precise extent of the Legislature’s power to supervise executive agency rule-making by the State Board of Education.

The *Pack* opinion handed a decisive victory to respondents on both of petitioners’ primary arguments. Thus, in spite of *Pack*’s perfunctory approach, it may come to occupy an important place in Oklahoma constitutional law. Far more than simply upholding HB 3399, the *Pack* opinion reaffirmed the court’s support for legislative primacy in and oversight of education policymaking in Oklahoma. In addition, the *Pack* opinion placed a seal of approval on perhaps the most extensive legislative oversight of administrative rule-making found in Oklahoma law.

The court’s decision to omit a detailed analysis may be construed as a signal that the *Pack* opinion is not intended to have broad significance. One could respond, of course, that the *Pack* opinion’s length may be more a factor of the haste with which it was released rather than of the court’s view of its importance. But even if the *Pack* opinion is limited to its facts, it is certainly clearer now than ever before that legislative primacy over academic standards — themselves the bedrock of a huge swath of education policymaking — is undeniably secure.

Still, a number of important questions remain in the wake of the *Pack* decision, to which *Pack* itself may at least point the way toward an answer. First, the exact parameters of the State Board of Education’s “supervisory” power remain undefined. Does the State Board of Education possess no power whatsoever without legislative grant, as the 1908 *Regents* case seems to conclude? Or does the State Board of Education possess inherent power separate and distinct from the Legislature, to which the Legislature may add but from which it may not subtract, as the 1947 *Hodge* case suggests? If so, what does such inherent “supervisory” power consist of?

Pack at least clarifies that such “supervision” does not encompass final say over academic

standards. Given the central role that academic standards play in today's education system, *Pack* could be read as tacitly recognizing legislative primacy in all similar core aspects of educational policymaking. One thing is certain: questions and challenges regarding the extent of the Legislature's power over education policymaking will arise again, especially given the increasingly high stakes and continued pressure from the federal government.

Second, the exact extent of the Legislature's supervisory role with respect to administrative rule-making remains uncertain. Here, the *Pack* case's significance should not be underestimated and will be felt well beyond the education law context. In *Pack*, the court upheld perhaps the most comprehensive and wide-ranging administrative rulemaking oversight scheme ever devised by the Legislature. Does the *Pack* decision grant an imprimatur to future legislative efforts to impose similar oversight procedures on other state agencies? Or does the State Board of Education occupy a unique position with respect to legislative oversight? Does the *Pack* case represent the upper limit of the Legislature's oversight authority, beyond which the court will be unwilling to go? Or is the Legislature's oversight power essentially unfettered?

These and other questions — whether they arise in the education law context or elsewhere — may be answered in part by considering the *Pack* decision in light of its unique history and the arguments raised and disposed of in the case. Armed with a better understanding of this vital background information, practitioners may well find the *Pack* case has broad utility as the court considers important separation of powers questions in the years to come.

1. 2014 OK 66.

2. *Id.*, ¶ 1.

3. 70 Okla. Stat. §§11-103.6 – 11-103.6a, 1989 1st Extr. Sess. HB 1017, §§6-7.

4. See <http://ok.gov/sde/oklahoma-academic-standards>.

5. Pub. L. No. 103-227 (1994).

6. Pub. L. No. 107-110, §1111 (2001).

7. *Setting the Pace: Expanding Opportunity for America's Students Under Race to the Top*, The White House, March 2014, p. 2.

8. See www.corestandards.org/about-the-standards/development-process.

9. See www.corestandards.org/about-the-standards/frequently-asked-questions.

10. 2010 SB 2033, §1.

11. See <http://www2.ed.gov/policy/elsec/guid/esea-flexibility/index.html>.

12. *Oklahoma will be C³ by 2020: All children will graduate from high school College, Career, and Citizen Ready by 2020*, Oklahoma State Department of Education, July 27, 2012, p. 1.

13. *Id.*, p. 15.

14. 2014 HB 3399, §§3-4.

15. *Id.* §4.

16. *Id.* §4(C).

17. 75 Okla. Stat. §§750 *et seq.*, amended by 2013 HB 2055.

18. "Oklahoma loses ability to use federal funding as state sees fit," *The Oklahoman*, August 28, 2014.

19. Pet'r's. Br. in Support of App. to Assume Orig. Jurisd. & Pet. for Writ & Declaratory Relief, Okla. Sup. Ct. Case No. O-112974, June 25, 2014, p. 2.

20. 1981 OK 160, ¶ 19.

21. Pet'r's. Br. in Support of Application to Assume Original Jurisdiction & Pet. for Writ & Declaratory Relief, Okla. Sup. Ct. Case No. O-112974, June 25, 2014, pp. 6-7.

22. 1995 OK AG 12.

23. Okla. Const. art. XIII, §8; art. XIII-A-XIIIB.

24. Okla. Const. art. XIII, §1.

25. *Regents of University v. Board of Education*, 1908 OK 67, ¶ 6.

26. *Robinson v. Thorpe*, 1931 OK 22, ¶ 15.

27. *Musick v. State ex rel. Miles*, 1938 OK 603, ¶ 15 (internal citation omitted).

28. 1947 OK 220, ¶¶ 26-27 (emphasis added).

29. *Oklahoma Farm Bureau v. State Board of Education*, 1968 OK 98, ¶ 22 (emphasis added).

30. *In re ODOT*, 2002 OK 74, ¶ 13 (internal citations omitted).

31. *Robinson v. Thorpe*, 1931 OK 22, ¶ 15.

32. 75 Okla. Stat. §250.2.

ABOUT THE AUTHOR



Michael Furlong is an associate general counsel at Professional Oklahoma Educators, a 501(c)(6) organization representing educators from across the state. He authored an amicus brief on behalf of Professional Oklahoma Educators in the *Pack* case. He is a 2012 Order of the Coif graduate of the University of Oklahoma College of Law where he was editor-in-chief of the *Oklahoma Law Review*. He practices in education law, employment law and government relations.

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Rights of the Transgender Youth in the Public School System

By Cheryl A. Dixon

Recently, we received a call from a school district client that had been informed by the parent of an elementary male student that the student intended to attend school the next year as a transgender female. School districts and other entities across the country are increasingly facing similar situations.

“Transgender” describes people whose gender identity is different from their gender assigned at birth. Issues related to transgender students are complex and emergent. The rights of transgender individuals are an unsettled area of law that is slowly being defined by state laws, court decisions and administrative rulings. At the state level, several states have some form of protection for transgender persons on the basis of gender identity, expression or sexual orientation, in state anti-discrimination laws. Oklahoma, however, is not among those states. Oklahoma’s anti-discrimination statutes provide protection only “for individuals alleging discrimination in employment on the basis of race, color, national origin, sex, religion, creed, age, disability or genetic information.”¹ It is also unlawful to deny “an individual the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of a ‘place of public accommodation’ because of race, color, religion, sex, national origin, age or disability.”² Oklahoma statutes are silent as to gender identity, expression or sexual orientation, as a class protected from discrimination.

At the federal level, there are no explicit legal protections for transgender individuals. The U.S. Supreme Court has not yet determined whether transgender individuals are protected under federal anti-discrimination laws. Furthermore, there is a split in decisions from courts that have considered the issue — some circuit courts of appeal have found some form of protection exists, while others have held there are no protected rights on the basis of being a transgender individual under federal anti-discrimination laws.

STUDENTS GENERALLY HAVE THE RIGHT TO WEAR CLOTHING OF CHOICE AND TO BE PROTECTED FROM BULLYING AND HARASSMENT

The transgender student’s appearance, which often does not conform to gender norms or to a school’s dress code, is typically the first issue at school for a transgender student. Claims under the First Amendment, as well as the Due Process Clause and Equal Protection Clause of the Fourteenth Amendment, have been raised in cases involving an individual’s gender identity. Generally, a student has a First Amendment right to dress in conformity with their gender

identity at school. In regard to student dress codes, specifically gender specific dress codes, the Massachusetts Superior Court held that a transgender student had the First Amendment right to wear clothes consistent with her gender identity and a due process interest in her personal appearance.³ Although a student may dress in conformity with their gender identity while at school, the student is still required to comply with the dress code provisions for that gender such as skirt length, etc.

Additionally, and particularly applicable in our client's situation since the student had previously attended school in the district as a male, several courts have held that harassment and discrimination against lesbian, gay, bisexual and transgender students is prohibited by the Equal Protection Clause, which places a duty on the schools to protect transgender students from harassment on an equal basis with other students.⁴ Additionally, Oklahoma's School Safety and Bullying Prevention Act, would apply and require a school district to investigate and address any bullying or harassment regardless of the reason or whether the target is transgender.⁵ Indeed, studies show that transgender students are subject to high rates of discrimination and harassment, and are also subject to physical assaults and sexual violence.⁶

ANTI-DISCRIMINATION LAWS⁷

The most applicable anti-discrimination law on the issue of transgender students in school is Title IX of the Education Amendments of 1972 (Title IX).⁸ Title IX and its implementing regulations prohibit discrimination on the basis of sex in education programs and activities operated by recipients of federal financial assistance.⁹ Title IX has been interpreted to prohibit; 1) discrimination or harassment based on an individual's sex and 2) discrimination or harassment based on an individual's failure to act in conformity with their gender. Courts have generally assessed Title IX discrimination claims under the same legal analysis as Title VII employment discrimination claims.¹⁰

Discrimination Based on Sex

There is disagreement among the circuit courts of appeal whether discrimination of transgender individuals is protected on the basis of the individual's "sex," and as stated previously, the U.S. Supreme Court has not yet resolved the conflict. Significantly, the 10th Circuit Court of Appeals has expressly held that "discrimination against a transsexual based on the person's status as a transsexual is not discrimination because of sex under Title VII."¹¹ Therefore, in the 10th Circuit, "transsexuals are not a protected class under Title VII."¹²

The 10th Circuit Court of Appeals has also declined to extend Title VII's protection to discrimination based on a person's sexual orientation.¹³ Indeed, a number of courts have held that sexual orientation, or perceived sexual orientation, is not a protected class under Title IX or, similarly, under Title VII. Thus, harassment or discrimination based on sexual orientation, or perceived sexual orientation, is not prohibited under either Title IX or Title VII.¹⁴

However, in 2010, the United States Department of Education's Office for Civil Rights (OCR), the entity responsible for ensuring school districts provide students equal access to education through vigorous enforcement of civil rights and laws that prohibit discrimination, explicitly stated in a Dear Colleague Letter that Title IX protects transgender students from sex discrimination.¹⁵ Additionally, in recent years the

United States Equal Employment Opportunity Commission (EEOC) has held that, "intentional discrimination against a transgender individual because that person is transgender is, by definition, discrimination 'based on ... sex,' and such discrimination therefore violated Title VII."¹⁶

Discrimination Based on an Individual's Failure to Act in Conformity with Their Gender

Generally, in regard to a claim based on discrimination for an individual's failure to act in conformity with their gender, the individual is

“ Title IX and its implementing regulations prohibit discrimination on the basis of sex in education programs and activities operated by recipients of federal financial assistance. ”

discriminated against or harassed because they are “not feminine enough” if they are a woman or “not masculine enough” if they are a male. This issue was before the U.S. Supreme Court in *Price Waterhouse v. Hopkins*.¹⁷ The court held that Title VII protected a woman who failed to conform to social expectations concerning how a woman should look and behave and established that Title VII’s reference to “sex” encompassed both the biological differences between men and women and discrimination based on a failure to conform to stereotypical gender norms.

In deciding that transgender is not a protected class under Title VII, the 10th Circuit Court of Appeals acknowledged that a number of courts have expressly recognized a Title VII cause of action for discrimination based on an employee’s failure to conform to stereotypical gender norms, but did not reach a conclusion on whether such a claim would extend Title VII protection to transsexuals who act and appear as a member of the opposite sex.¹⁸ Presumably, if such a claim was before the 10th Circuit, it would follow the holding of *Price Waterhouse* and find that protection exists for an individual’s failure to conform to gender stereotypes. Therefore, it is likely that a discrimination claim under Title IX in Oklahoma, for discriminating against a student because she doesn’t act like a boy (or vice versa), whether such a claim is based on the direct actions of a school district or in failing to address harassment or discrimination by other students, could potentially be a viable claim.

USE OF RESTROOM AND LOCKER ROOM FACILITIES

The most intense area of debate and litigation surrounding transgender students and anti-discrimination laws seems to be in regard to which restroom and/or locker room the transgender student is to use. Specifically, whether a school district is required to allow a transgender student access to the facility that corresponds to the student’s gender identity or expression. Again, this is an unsettled area and decisions on the issue are split. Some cases require that the student be allowed to use the restroom that coincides with their gender identity or expression based on state law protections.¹⁹ Other courts say there is no right to use a specific restroom and it is permissible to make a unisex bathroom available.²⁰ What does appear clear from case law is that the transgender student cannot be forced to use the restroom that corresponds to the gender assigned

to them at birth and which does not correspond with their appearance (i.e., a transgender female student cannot be required to use the boys restroom). Additionally, requiring a student who appears female to enter and use the male restroom would likely cause extreme disruption in the school setting and subject the student to harassment and bullying by other students.

Most recently, the United States Department of Justice and the OCR [collectively the Departments] entered into a resolution agreement with the Arcadia Unified School District of Arcadia, California. In that case, a transgender male student brought complaints against the district related to access to restrooms and locker room facilities and access to facilities on an overnight field trip. The student was prohibited from using the restroom that corresponds to his gender identity, and instead, was required to use a restroom in the health office, which was quite a distance from his classes and was often times found locked. In the Departments’ closing letter to the district, the Departments assert that “[a]ll students, including transgender students and students who do not conform to sex stereotypes, are protected from sex-based discrimination under Title IX.”²¹ However, the authority cited by the Departments in making such a broad assertion that transgender students are protected under Title IX is from court opinions outside the 10th Circuit — and only includes decisions from circuits that have found protections exist for transgender individuals on the basis of sex or for nonconformity with sex stereotypes.

Presumably, based on the current state of the law in the 10th Circuit and Oklahoma, school districts will not be required to allow a transgender student to use the restroom or locker room corresponding to their gender identity.²² Instead, school districts could require a transgender student to use a reasonable alternative restroom such as a single stall “unisex” restroom or a staff restroom. Importantly, it should not be burdensome for the student to get to the restroom and it must be unlocked.

STUDENT RECORDS

Whether schools are required to change names and other information in a student’s education records is largely uncovered by statutes or case law. Under The Family Educational Rights and Privacy Act (FERPA),²³ parents or eligible students have the right to

review education records and request that the school change inaccurate or misleading records. In 1991, the Family Policy Compliance Office (FPCO) issued an opinion letter concluding that FERPA did not apply to a transgender former student's request to change the name and gender in his or her records.²⁴ According to FPCO, FERPA does not prevent nor compel school districts to change student records.

Many schools will allow a transgender student to indicate a "preferred name" on his or her student records and school personnel will refer to the student by that name. Unless and until a school district is provided legal documentation such as a birth certificate or court order indicating that the student's legal name and/or sex has been changed, schools are not required to change the student's legal name and/or sex on the school district's records.

CONCLUSION

A school district should be notified that a student will be attending school as a transgender student and should request to schedule a meeting with the parent(s) of the student and involve all pertinent school personnel. The parents should provide any information and documentation they have that may be helpful in assisting the student with transition as a transgender student. School districts are required to allow the student to attend school dressed and appearing as the gender to which they identify and take appropriate steps to curtail and address any bullying, harassment or intimidation that may occur. Based on the current state of the law in the 10th Circuit and Oklahoma, a school district may lawfully offer a transgender student use of an alternative, unisex restroom and/or locker room facility. School districts cannot require a transgender student to use the restroom or locker room corresponding to the student's assigned sex at birth.

A transgender student may indicate a "preferred name" on his or her school district paperwork and district staff should refer to the student by that name. The school district is not required to change the student's legal name or gender on the student's records until the school district receives a court order changing the student's name and/or sex.

1. Okla. Stat. tit. 25, §1101.

2. Okla. Stat. tit. 25, §1402.

3. *Doe v. Yunits*, No. 001060A, 2000 WL 33162199 (Mass. Super. 2000).

4. *Id.*, *Flores v. Morgan High Sch.*, 324 F.3d 1130 (9th Cir. 2003); *Nabozny v. Podlesny*, 92 F.3d 446 (7th Cir. 1996); *Montgomery v. Indep. Sch. Dist. No. 709*, 109 F. Supp. 2d 1081, 1089-90 (D. Minn. 2000).

5. Okla. Stat. tit. 70, §§24-100.2—24-155; Oklahoma's anti bullying law does not expressly prohibit bullying on the basis of sexual orientation and gender identity, but eighteen other states and the District of Columbia do provide such protection. See Transgender Law Center, *Safe School Laws*, available at <http://transgenderlawcenter.org/equalitymap>.

6. See Grant Bowers and Wendy Lopez, NSBA Council of School Attorneys, *Which Way to the Restroom? Respecting the Rights of Transgender Youth in the School System* (2012), available at <http://goo.gl/jIT7ui>.

7. Oklahoma law is silent as to gender identity or expression, or sexual orientation, as a class protected from discrimination. However, thirteen other states and the District of Columbia have enacted laws that prohibit discrimination in schools on the basis of sexual orientation and gender identity. See Transgender Law Center, *Safe School Laws*, available at <http://goo.gl/kPYQkT>.

8. School Districts are familiar with accommodating disabled students under the Americans with Disabilities Act, 42 U.S.C. §12101 *et seq.*, (the ADA) and/or Section 504 of the Rehabilitation Act, 29 U.S.C. §701 *et seq.*, (Section 504). However, to the extent an argument could be made that the School District would need to accommodate a transgender student on the basis of the student having a disability under either the ADA or Section 504, the term "disability" has expressly been defined as not including, "transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, **gender identity disorders** not resulting from physical impairments, or other sexual behavior disorders." 42 U.S.C. §12211 and 29 U.S.C. §705(20)(f)(i) (emphasis supplied).

9. 34 C.F.R. §106.31; 20 U.S.C. §1681 *et seq.*

10. *Gossett v. Oklahoma ex rel. Bd. of Regents for Langston Univ.*, 245 F.3d 1172, 1176 (10th Cir. 2001); see also *Roberts v. Colorado State Bd. of Agric.*, 998 F.2d 824, 832 (10th Cir. 1993) (Title VII is "the most appropriate analogue when defining Title IX's substantive standards." quoting *Mabry v. State Bd. of Community Colleges*, 813 F.2d 311, 316 n. 6 (10th Cir. 1987)).

11. *Etsitty v. Utah Transit Auth.*, 502 F.3d 1215, 1221 (10th Cir. 2007).

12. *Id.* at 1222.

13. *Id.*, (citing *Medina v. Income Support Div.*, 413 F.3d 1131, 1135 (10th Cir. 2005)).

14. *Tyrrell v. Seaford Union Free Sch. Dist.*, 792 F. Supp. 2d 601, 622-23 (E.D.N.Y. 2011); *Montgomery v. Indep. Sch. Dist. No. 709*, 109 F. Supp. 2d 1081, 1089-90 (D. Minn. 2000); see also *Kiley v. American Society for Prevention of Cruelty to Animals*, 296 Fed. Appx. 107, 109 (2d Cir. 2008) (summary order), *cert. denied*, 558 U.S. 934, 130 S. Ct. 379, 175 L.Ed.2d 236 (2009).

15. Letter from Russlynn Ali, U.S. Dept. of Educ. Ass't Sec'y for Civil Rights, to Colleagues, at 8 (Oct. 26, 2010), available at www2.ed.gov/about/offices/list/ocr/letters/colleague-201010.html. ("Although Title IX does not prohibit discrimination based solely on sexual orientation, Title IX does protect all students, including lesbian, gay, bisexual, and transgender (LGBT) students, from sex discrimination.").

16. *Macy v. Holder*, Appeal No. 0120120821 (EEOC Apr. 20, 2012).

17. *Price Waterhouse v. Hopkins*, 490 U.S. 228, 250 (1989).

18. *Etsitty v. Utah Transit Auth.*, 502 F.3d at 1224.

19. *Doe v. Reg'l Sch. Unit* 26, 2014 ME 11, 86 A.3d 600 (vacating summary judgment previously granted to the school district on the restroom issue in *Doe v. Clenchy*, No. 90-201 (Me. Super. Ct. Apr. 1, 2011)).

20. *Johnston v. Univ. of Pittsburgh of Com. Sys. of Higher Educ.*, No. CIV.A. 3:13-213, 2015 WL 1497753, at *19 (W.D. Pa. Mar. 31, 2015) (finding that the plaintiff, a transgender male, failed to state a plausible claim for relief for discrimination or retaliation under either the Equal Protection Clause or Title IX when the university prohibited him from using sex-segregated locker rooms and restrooms that were designated for men.).

21. Letter from Anurima Bhargava, Chief U.S. Department of Justice, and Arthur Zeidman, Director U.S. Department of Education, to Arcadia Unified School District (July 24, 2013). The student also brought a claim pursuant to Title IV of the Civil Rights Act of 1964, 42 U.S.C. 2000c *et seq.*, ("Title IV"). Title IV is the desegregation law that prohibits discrimination by public schools against students based on race, color, national origin, sex and religion. Presumably, the complainant was making a claim under Title IV on the basis of being required to use a separate restroom and facilities argument based on the "separate is not equal" argument of desegregation. The Department of Justice is charged with investigating complaints related to Title IV and OCR is charged with enforcing Title IX.

22. This, however, does not prohibit school districts from adopting policies that permit transgender students who consistently and uniformly assert a gender identity different from the student's assigned sex at birth from accessing the restroom or locker room that corresponds to their gender identity. Indeed, advocacy groups for transgen-

der individuals assert that when schools maintain separate restroom facilities for male and female students, it is strongly recommended that transgender students have access to the restroom that corresponds to their gender identity exclusively and consistently asserted at school. See Massachusetts Transgender Political Coalition Policy Committee, *Best Practices for Serving Transgender and Gender Non-Conforming Students in School* (Nov. 2012) at p.7, available at <http://goo.gl/vJYDiY>.

23. 20 U.S.C. §1232g; 34 CFR Part 99.

24. Letter from LeRoy S. Rooker, Director, Family Policy Compliance Office, to Karol Johnson, Assistant Superintendent, Great Falls Public Schools (Nov. 13, 1991).

ABOUT THE AUTHOR



Cheryl A. Dixon of Rosenstein, Fist & Ringold focuses her practice on civil litigation, insurance defense, equine law and education law – including special education law. She earned a bachelor's degree, *cum laude*, from Wichita State University and received her J.D. with highest honors from the TU College of Law. While in law school, she was president of the Women's Law Caucus, clerk of Phi Delta Phi honors fraternity, served on the *Energy Law Journal* and was awarded Order of the Curule Chair.

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The Impact of Education in Oklahoma

By Natalie Shirley

It is well settled that education and earning power go hand in hand. The more education you have, the more likely it is that you will earn more than your peers who have less education. It is also known that states with high average per capita incomes have high average educational attainment. When governors and economic development experts discuss the tangible benefits of what education means for a state in financial terms, a powerful and compelling argument is created. But for just a moment, let's consider the value of education in other terms. Let's think about it as a balm for social ills, as a salve for an aching society.

It is no secret that Oklahoma ranks at the bottom of many of the good statistical lists. Education, however, is a proven solution for many of these issues. Unfortunately, Oklahoma is among the lowest in the nation for educational attainment. Indeed, Oklahoma ranks in the bottom decile of the states with residents having a bachelor's degree or higher.¹ Only 23.8 percent of Oklahomans have a college degree.² While a causal link is not suggested, there is a high correlation between Oklahoma's low educational attainment and many of the state's most pressing problems.

For example, Oklahoma is the 10th most violent state in the U.S.³ It is likely that more education would help reduce crime in the state. A study at the University of California at Berkeley found "a one year increase in average years of schooling reduces murder and assault

by almost 30 percent, motor vehicle theft by 20 percent, arson by 13 percent and burglary and larceny by about 6 percent."⁴ The authors suggest that a significant part of the measured effect of education on crime can be attributed to the increase in wages associated with schooling.

In other examples: Oklahoma ranks 46th in the nation for health outcomes.⁵ Yet, annual health-related costs for high school dropouts are nearly \$35,000 compared with only \$15,000 for college graduates due to higher rates of cardiovascular disease, diabetes and other ailments among those who are less educated.⁶ Oklahoma ranks fourth in the overall incarceration rate of people and ranks first in the nation for the rate of women incarcerated.⁷ Moreover, children of female inmates are five times more likely than other children to become

What is Oklahoma's Promise?

By Lori Rasmussen

Oklahoma's Promise is a scholarship program that offers free college tuition to qualifying students. Oklahoma residents may enter the program as early as eighth grade and must meet family income guidelines. Students who stay out of trouble and maintain good grades can attend at no cost any of Oklahoma's public colleges and universities. The OBA, at the suggestion of Justice Tom Colbert, recently got involved in an effort to promote the program in select schools across Oklahoma.

Four middle schools were selected for the pilot project based on traditionally low participation among students. The project involved the development of numerous partnerships. Eighth grade students were asked to attend an in-school assembly where program details were discussed and the benefits of higher education were emphasized. Each student who attended received an officially licensed Oklahoma City Thunder backpack, donated by the Thunder organization. Local county bar associations provided volunteer attorneys to assist parents in completing the paperwork necessary to enroll in the program. Families were promised a \$20 Sonic gift card, donated by Sonic Corp., when their program application was received.

The project highlighted the monetary value of a college degree, stressing that, over their lifetime, those with a bachelor's degree make on average \$1 million more than those who don't.

"We had several students take the next step and sign up for the program after hearing what we had to say," said OBA President David Poarch, who shared with students his own story of being the first in his family to attend college. "Our thought was that even if one student entered the program because of this project, it would have been a success. A college degree makes a fundamental differ-



Eighth grade students at Clinton Middle School were excited to receive OKC Thunder backpacks for attending an assembly promoting the Oklahoma's Promise scholarship program.

incarcerated.⁸ It should be no surprise that nationally 68 percent of state prison inmates do not have a high school diploma.⁹ Last, but not least, Oklahoma ranks 10th in the nation for people living in poverty according to U.S. Census data.¹⁰ As stated earlier, annual income increases for every year of education completed. For Oklahoma graduates, the median difference between a high school diploma and an associate degree is approximately \$9,500 annually, and between a high school diploma and a bachelor's degree is approximately \$16,500 annually.¹¹

So how can Oklahoma take its rightful place at the top of all the good statistical lists? Lawyers can resolve to push their kids harder to get degrees, but that won't be enough! If the children of college-educated adults go to college, that won't change anything. It becomes two smart children replacing two smart adults, which yields the status quo. The only way the trajectory of Oklahoma's future will be changed is if those who society suggests won't get past high school do, in fact, continue their education and receive a degree or certificate from an institution of higher education.

Well educated citizens are a benefit to Oklahoma and the legal community. Education helps drive down costs to taxpayers and allows businesses to find the workers they need. If the legal community and state want better, then the expectation must be set that all Oklahomans will obtain some type of post-secondary degree. The entry points for the legal community to get involved are varied and numerous. Lawyers can get involved by encouraging rig-

orous standards at the common education level, or ensuring that Oklahoma's Promise (see sidebar) stays available to all Oklahoma students. Lawyers can help provide scholarships for books or tuition, or mentor a student. The legal community can help move Oklahoma forward.

In addressing the International Forum on Globalization, Anita Roddick said quite simply, "Let us measure the success of places against how much they enhance human well-being."¹² Let's have Oklahoma take its rightful place at the top of that list.

Author's note: The author appreciates the assistance of Grady Conrad and Erin Baird in the preparation of this article.

1. U.S. Census Bureau, American Community Survey (2013).
2. *Id.*
3. Kevin Rizzo, "America's Safest and Most Dangerous States 2014," *Law Street*, Sept. 12, 2014.
4. Lance Lochner & Enrico Moretti, "The Effect of Education on Crime: Evidence from Prison Inmates, Arrests, and Self-Reports," 94 *American Economic Review* 155, 155-189 (2004).
5. United Health Found., America's Health Rankings Annual Report 8 (25th Ed. 2014).
6. Henry M. Levin, "The Social Cost of Inadequate Education" (Teacher's College Symposium on Educational Equity, New York, New York.), Oct. 24-26, 2005.
7. U.S. Department of Justice, Bureau of Justice Statistics, Prisoners in 2013 (Sept. 2014)
8. Women's Prison and Home Association Inc., "Family to Family Partnerships between Corrections and Child Welfare, Part Two," 8 (2008).
9. U.S. Department of Justice, Bureau of Justice Statistics, Special Report on Education and Correctional Populations (Jan. 2003)
10. U.S. Census Bureau (2014).
11. U.S. Census Bureau, American Community Survey (2013).
12. Anita Roddick, Trading with Principles (International Forum on Globalization, Seattle, Washington.), Nov. 27, 1999.

ABOUT THE AUTHOR



Natalie Shirley concurrently serves as president of OSU-Oklahoma City and as Oklahoma secretary of education and workforce development. She was appointed to the cabinet post by Gov. Mary Fallin in January 2015. As secretary, she assists the governor in implementing the Oklahoma Works program, designed to increase educational attainment for Oklahomans and produce a more educated workforce to support and cultivate the state's economy. With OSU-OKC since 2011, she was the first female to serve as president in the OSU system. Ms. Shirley is a 1982 graduate of the OU College of Law.

ence in a person's life for a variety of reasons, financial and otherwise. Our hope for this program was to change lives."

Assemblies were held throughout the spring at Clinton Middle School, Oklahoma City's Douglass Middle School, Seminole Junior High and Tulsa Central Junior High. Nearly 600 students attended the assemblies, and so far 15 students have enrolled and received Sonic cards. Volunteer attorneys with the Custer, Oklahoma, Seminole and Tulsa county bars assisted many families in completing paperwork, and more enrollments are expected before the end of the school year.

"Several additional county bars have expressed interest in developing their own similar projects," said Mr. Poarch. "Promoting Oklahoma's Promise would make an excellent community service or Law Day project. The legal profession has an interest and duty in promoting higher education, as that is how we can help develop an active and informed citizenry that respects the law and legal system."

More information about the Oklahoma's Promise program may be found at www.okpromise.org. An article discussing the launch of the OBA's promotional project may be found online at www.okbar.org/news/Recent/2015/oklahomaspromise.

Lori Rasmussen is OBA assistant communications director.

THANKS TO YOU.

Another successful Law Day is in the books!



Special thanks to those who partnered with the OBA Law Day Committee to support Law Day in Oklahoma.



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Bar Members Celebrate Significant Membership Anniversaries

The Oklahoma Bar Association congratulates its members who celebrate milestone membership anniversaries in 2015.

60 years

CLEVELAND COUNTY

Charles A. Johnson
Norman

Jack W. Lawter
Norman

Gene Charles Smith
Norman

MAJOR COUNTY

Joe C. Houk
Fairview

OKLAHOMA COUNTY

Robert D. Allen
Oklahoma City

George William Armor
Oklahoma City

Gordon F. Brown
Oklahoma City

Marvin L. Franklin
Oklahoma City

James G. Hamill
Edmond

Richard Frank McDivitt
Oklahoma City

Fred J. McDonald
Oklahoma City

O. Blanchard Renegar
Oklahoma City

William James Robinson
Oklahoma City

OSAGE COUNTY

Cecil Omen Wood Jr.
Pawhuska

SEMINOLE COUNTY

H. W. Wright Jr.
Wewoka

TILLMAN COUNTY

Anthony M. Massad
Frederick

TULSA COUNTY

William M. Brumbaugh
Tulsa

Harold Charney
Owasso

David O. Cordell
Tulsa

John Morley
Tulsa

Anthony F. Ringold
Tulsa

OUT OF STATE

Gerald Gaylord Barton
Monterey, CA

Jo Clough Barton
Monterey, CA

Robert J. Drexler
Oakbrook Terrace, IL

William George Myers
Fayetteville, AR

John Hugh Roff Jr.
Houston, TX

John M. Slater
Strawberry Plains, TN

R. Jane Spahn
Grand Island, NE

News Headlines 60 Years Ago:

- USS Nautilus becomes the first nuclear-powered submarine
- Disneyland opens in California
- Rosa Parks was arrested in Montgomery, Alabama, for refusing to give up her bus seat to a white person
- First pocket transistor radios become available
- Ray Kroc starts the McDonald's fast food chain

50 years

BECKHAM COUNTY

John E. T. Ivester
Sayre

BRYAN COUNTY

Payton L. Phelps
Durant

CANADIAN COUNTY

Richard Meacham Fogg
El Reno

CLEVELAND COUNTY

Ben T. Benedum
Norman

Roger Wade Griffith
Moore

Don R. Nicholson II
Norman

David S. Stratton
Norman

Charles Curtis Yon
Oklahoma City

COMANCHE COUNTY

John Wesley Kinslow
Lawton

Charles Edward Wade Jr.
Lawton

GARFIELD COUNTY

James Richard Cox
Enid

GRADY COUNTY

Robert J. Hays
Chickasha

HUGHES COUNTY

Victor W. Pryor Jr.
Holdenville

KAY COUNTY

William C. Brining
Blackwell

Guy Palmer Clark
Ponca City

LEFLORE COUNTY

Mike Sullivan
Poteau

MUSKOGEE COUNTY

Clifford Kennedy Cate Jr.
Muskogee

OKLAHOMA COUNTY

Jon Michael Belanger
Oklahoma City

John Anthony Claro
Oklahoma City

George W. Dahnke
Oklahoma City

Rollin E. Drew
Oklahoma City

News Headlines 50 Years Ago:

- **War in Vietnam escalates**
- **Space race is in full swing**
- **Rolling Stones were on a world tour**
- **March to Selma leads to the passage of the Voting Rights Act**
- **Muhammad Ali defeats Sonny Liston**

Jerry S. Duncan
Oklahoma City

David W. Edmonds
Oklahoma City

Irving Lee Faught
Oklahoma City

Arlen Eugene Fielden
Oklahoma City

Garwin Kent Fleming
Edmond

Bob Funston
Oklahoma City

Philip Holmes
Edmond

Robert Allen Jackson
Oklahoma City

Artis Visanio Johnson
Oklahoma City

Timothy D. Leonard
Oklahoma City

Donald Ray Lisle
Oklahoma City

Eldon D. Lyon
Bethany

Todd W. Markum
Edmond

K. T. Meade Jr.
Oklahoma City

Robert H. Mitchell
Oklahoma City

Alexander D. Necco
Oklahoma City

William E. Owen
Oklahoma City

James Michael Peters
Oklahoma City

William W. Rodgers Jr.
Nichols Hills

David L. Russell
Oklahoma City

William F. Shdeed Jr.
Oklahoma City

Roland Tague
Oklahoma City

Kenneth W. Turner
Oklahoma City

Roy Edward Williams
Oklahoma City

Richard D. Winzeler
Edmond

Frederick Anthony Zahn
Oklahoma City

PITTSBURG COUNTY

Robt Linthicum Ivester
McAlester

PONTOTOC COUNTY

Kenneth Ray Johnson
Ada

STEPHENS COUNTY

Rick Rodgers
Duncan

TILLMAN COUNTY

Lloyd L. Benson
Frederick

TULSA COUNTY

Andrew B. Allen
Tulsa

Richard D. Amatucci
Tulsa

H. I. Aston
Tulsa

David Lawrence Barry
Jenks

Robert F. Biolchini
Tulsa

Dick A. Blakeley
Tulsa

Douglas Frantz Collins
Tulsa

Marion M. Dyer
Broken Arrow

James Edward Frasier
Tulsa

Phil Frazier
Tulsa

Frederick Peek Gilbert
Tulsa

James O. Goodwin
Tulsa

Robert G. Green
Tulsa

John Bruce Jarboe
Tulsa

Vance R. Kriete
Tulsa

David Walter Phillips
Sand Springs

Charles A. Purser
Tulsa

Jerry C. Reed
Tulsa
Harry Lauderdale Seay III
Tulsa

Stephanie Kulp Seymour
Tulsa

Charles B. Tetrick
Tulsa

John Edgar Walker
Tulsa

Stephen Charles Wolfe
Tulsa

WAGONER COUNTY
James Dudley Williams
Porter

WASHINGTON COUNTY
Charles Edward Daniels
Bartlesville

OUT OF STATE
Billy Stephen Edwards
Spring, TX

Jerry Holman Holland
Carthage, TX

Edward Coleman Hume
Prescott, AZ

Robert Lewis Jackson
Clayton, MO

Wendel Dale Jarvis
Glenwood, AR

Gene G. Livingston Jr.
Sacramento, CA

John J. Martens
Arlington, VA

Quentin P. McColgin Jr.
Ridgeland, MS

Milton D. McKenzie
Dallas, TX

Odie Allen Nance
San Diego, CA

F. David Nelson
Salida, CO

John Barlow Nelson
Chicago, IL

David Leroy Pippenger
Timonium, MD

Charles Harold Purdy
San Antonio, TX

Robert James Reid
Longview, TX

Jack W. Rippey
San Clemente, CA

William B. Thompson
Hillsboro, TX

Walter Wayne Withers
St. Louis, MO



Honor a Colleague with an Award Nomination

It's difficult to embrace an extra project (on top of an already heavy workload), but making the time to write an OBA award nomination is important. What judge or lawyer do you know who gives 110 percent, provides guidance and wisdom or serves as a role model in your community? Has your county bar or OBA committee or section done some exceptional activities this past year?

Look over the award categories. The Awards Committee has made the nomination process as streamlined as possible. Awards will be presented at the OBA Annual Meeting Nov. 4-6 in Oklahoma City.

"It's a significant honor to receive one of these awards, but there's no chance to win unless a nomination is submitted," said Awards Committee Chair Jennifer Castillo. "The nominating process is easy, and all submissions are carefully considered. It's important to recognize and celebrate the high caliber of legal service in our state."

AWARDS UP FOR GRABS

Outstanding County Bar Association Award – for meritorious efforts and activities

2014 Winner: Noble County Bar Association

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

2014 Winner: Pittsburg County Bar Association

Golden Gavel Award – for OBA committees and sections performing with a high degree of excellence

2014 Winner: OBA Family Law Section, M. Shane Henry, Tulsa, chairperson

Liberty Bell Award – for nonlawyers or lay organizations for promoting or publicizing matters regarding the legal system

Not awarded in 2014

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

2014 Winner: Joe Vorndran, Shawnee

Earl Sneed Award – for outstanding continuing legal education contributions

2014 Winners: Michael Ashworth, Tulsa; David McKenzie, Oklahoma City

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

2014 Winner: Judge Thomas S. Landrith, Ada

Helpful Award Info Online

Go to www.okbar.org/news/Recent/2015/OBA Awards.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?)
-

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

2014 Winners: Don G. Holladay, Oklahoma City; James E. Warner III, Oklahoma City

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

2014 Winner: The Goldman Law Office, Oklahoma City

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

2014 Winners: James Bender, Tulsa; Malcolm Savage, Oklahoma City

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

2014 Winner: Gary C. Clark, Stillwater

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

2014 Winner: Perry Hudson, 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

2014 Winner: Dietmar Caudle, Lawton

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

2014 Winner: Don Smitherman, Oklahoma City

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.

2014 Winner: Melvin Combs Jr., Oklahoma City

HOW TO NOMINATE

1 Anyone can submit an award nomination, and anyone nominated can win.

2 The deadline is Friday, Aug. 14, but get your nomination in **EARLY!**

3 Nominations don't have to be long; they can be as short as a one-page letter.

The entire nomination cannot exceed five single-sided, 8 1/2" x 11" pages (including exhibits).

5 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.

7 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.

Session Nears End

By Duchess Bartmess

Other than the constitutionally set deadline for *sine die* adjournment of each legislative session, the last of the deadlines set for completion of business by the Legislature has passed. [Oklahoma Constitution, Article V, Section 26.]

In addition to reporting on pending legislation which may be of concern to OBA members, this report includes references to bills signed, vetoed and awaiting gubernatorial action (as of May 4).

VETOED BY THE GOVERNOR

HB 1046 Addressed restitution in criminal cases.

HB 1149 Addressed in terrorem clause prescribing burden of proof in action to contest a will.

APPROVED BY THE GOVERNOR

The following bills are already the law. Those without specific reference to an effective date or with an emergency attached become effective 90 days after adjournment. [Oklahoma Constitution, Article V, Section 58] They are noted here in order to facilitate familiarization with the language changes or additions by practitioners of possible significance in their practice as soon as possible.

Bills concerning children-related issues of note:

HB 1042 Prohibits parents who participate in shared parenting time from paying increased child support amount.

HB 1078 Makes changes to the Oklahoma Children's Code.



HB 1079 Allows foster parents to submit reports to court for use in hearing.

HB 1320 Termination of parental rights.

HB 1460 Addresses scope of state preemption to include knives under Firearms Act of 1971 and school control of policies regarding knives.

HB 1772 Amends Oklahoma Uniform Transfers to Minors Act regarding custodial property.

HB 1855 Addresses procedures regarding de-ferred sentences.

HB 1918 Relates to custody of presumed father.

HB 1965 Regards cell phone usage while driving. See also Senate Bill 183.

SB 486 Modifies provisions in the Uniform Interstate Family Support Act.

Bills concerning property conveyances including, mortgages and titles:

HB 1120 Addresses mortgage releases.

HB 1123 Addresses mortgage releases.

SB 443 Addresses title insurance.

SB 745 Addresses transfer-on-death deed.

SB 774 Addresses power of alienation of property and trusts to exist in perpetuity.

Other bills of significance:

HB 1263 Addresses criminal record expungement.

HB 1477 Addresses jury management systems including municipal court juries.

HB 1860 Modifies procedures and resulting liability limitations regarding application of minor for a restricted drivers license.

SB 98 Addresses educational programs for judges.

SB 109 Modifies provisions relating to attorney-in-fact authority.

SB 111 Addresses increases in fine, costs, fees and assessments where right to jury granted.

SB 183 Regards cell phone usage while driving.

SB 725 Provides restrictions of right to inherit or profit from estate of vulnerable adult.

SENT TO THE GOVERNOR AWAITING ACTION

While the Legislature is still in session, the governor has five days to act on a submitted item of legislation before it becomes law without a signature. Sundays are excluded from the calculation of the number of days. As of May 2, the following bills sent to the governor had not been acted upon. [Oklahoma Constitution, Article VI, Section 11.]

HB 1574 Addresses increase in penalty for drug trafficking.

HB 1834 Addresses American Indian lineage when child taken into custody.

SB 180 Addresses child welfare records issues.

SB 269 Addresses authority of community intervention centers.

SB 292 Addresses Oklahoma Children's Code failure to protect provisions.

Much of the business that will be conducted by the Legislature for the remainder of the current session will focus on the work of conference committees and consideration of amendments from the opposite house.

The following bills are considered still active for further consideration and are on the calendars of each house for the purpose of consideration of amendments from the opposite house.

HB 1681 Addresses tort liability of the state.

HB 1902 Granting of civil liability in cases involving removing child from motor vehicle.

HB 1920 Addresses civil procedures including interrogatory and appointment of discovery master requirements.

HB 2165 Addresses court costs and fees and party demanding jury trial. See also SB 111.

SB 412 Modifies language regarding violent crimes.

SB 456 Addresses fees for courthouse security.

SB 459 Addresses fees relating to Council on Judicial Complaints Revolving Fund and State Judicial Revolving Fund.

SB 460 Addresses divorce educational programs.

SB 548 Addresses salaries of judges.

SB 789 Addresses admissibility of medical bills.

The following are significant bills that a conference has been requested or are in conference.

HB 1773 Addresses secured transactions under the Uniform Commercial Code.

HB 1964 Addresses receiver liability.

SB 356 Addresses costs and fees in litigation subject to Energy Litigation Reform Act.

SB 410 Addresses children between 13 and 17 regarding status as youthful offender in first degree murder cases.

SB 457 Addresses child competency proceedings.

This monthly report is intended to provide information to OBA members regarding changes and additions to the law that have an affect on their practice and service to their clients. OBA members are encouraged to ask questions or provide suggestions to the Legislative Monitoring Committee regarding legislation or matters relating to the monthly report to make it more helpful in understanding the legislative process.

More information can be found online at www.okbar.org/members/Legislative.

ABOUT THE AUTHOR



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

New Lawyers Sworn In

Board of Bar Examiners Chairperson Scott E. Williams announces that 69 applicants who took the Oklahoma Bar Examination on Feb. 24-25, 2015, were admitted to the Oklahoma Bar Association on Tuesday, April 21, 2015, or by proxy at a later date. Oklahoma Supreme Court Chief Justice John Reif administered the Oath of Attorney to the candidates at a swearing-in ceremony at the Oklahoma Capitol. A total of 107 applicants took the examination.

Other members of the Oklahoma Board of Bar Examiners are Vice-Chairperson Monte Brown, McAlester; Stephanie Parker Jones, Clinton; 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:

Stephen Adam Bender

Anthony Allen Blair

Jason Randall Brooks

Brooks Nichol Casey

John Peter Chay

Justin Cecil Cliburn

Jarrad Michael Cormier

Mitchell Hastings Craft

Nicholas Andrew Elliott

Lindsey Marie Everett

Kevin Naveed Ferdowsian

Jared Ray Ford

Elizabeth Denise Franks

Ian Edward Fullington

Christina Marie Gelona-Hendricks

William Henry Gill IV

Krystal J. Godines Camarillo

Robert Eugene Goins

Adam Haskell Goll

Nichole LaHaven Harless

Casey Stephen Hartle

Darrah Vandever Haworth

Amanda Utterback Hayworth

Matthew Glen Hicks

Julie Lane Hildebrand

Luke Alan Homen

Renner Thayne Jantz

Ashley Noelle Klinck

Kendra Celeste Kuehn

Ryan Andrew Kuzmic

John Paul Lauinger

Natalie Kathryn Lester

James Joseph Linhardt



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

Joshua D. Keown

Corey E Kilburn

Matthew Lightner Lyons

Charles Caldwell Mashek



Students from TU College of Law take the oath to become lawyers.

Karissa Gandolph McKinney

Lynn Arashiro Mihandoost

Nicholas Eid Moorad II

Antonio Morales

Christa Barber Moss

Jonathan Patrick Nation

Samuel Douglas Newton

Derek Ray Osborn

Kathryn Helen Otto

Blair Elizabeth Pepper

Joseph Daniel Pierce

Julie Armendia Pittman

Adrian Nicole Reents

Teri-Lee Rhoades

Alex Steban Rivera

Grant Jonathan Rogers

Stephanie Anne Rogers

Caleb Matthew Salmon

Natalie Suzanne Sears

Clinton Blake Sloan

James Warren Stout

Tori Danielle Strecker

Matt Adam Thomas

Marshall Joel Turvey

Stephen Phillip Tyler

Benjamin David Wadley

Page Michael Walters

Kendra Jean Westmoland

Clinton Alfred Wilson

Daniel Ray Wilson

Din-Jon John Wu

Dayrah Michelle Yellowfish-
Elizondo

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THE SOVEREIGNTY SYMPOSIUM XXVIII EVERYTHING IS INTERCONNECTED

JUNE 3 - 4, 2015

SKIRVIN HOTEL ♦ OKLAHOMA CITY, OKLAHOMA

PRESENTED BY

THE OKLAHOMA SUPREME COURT

THE INDIAN LAW SECTION OF THE OKLAHOMA BAR ASSOCIATION

THE UNIVERSITY OF TULSA COLLEGE OF LAW

THE UNIVERSITY OF OKLAHOMA COLLEGE OF LAW

OKLAHOMA CITY UNIVERSITY SCHOOL OF LAW

AND

THE SOVEREIGNTY SYMPOSIUM, INC.



17 hours of CLE credit for lawyers will be awarded, including 1 hour of ethics.

NOTE: Please be aware that each state has its own rules and regulations, including the definition of "CLE;" therefore, certain portions of the program may not receive credit in some states.

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, June 3, 2015

a.m. 4.5 CLE credits / 0 ethics included

p.m. 4.5 CLE credits / 0 ethics included

Wednesday Morning

7:30 – 4:30 Registration (Honors Lounge)

8:00 – 8:30 Complimentary Continental Breakfast

10:30 – 10:45 Cookie Break

12:00 – 1:15 Lunch on your own

8:30 – 12:30 PANEL A: ECONOMIC DEVELOPMENT

(THIS PANEL CONTINUES FROM 2:45- 5:30)

CRYSTAL ROOM

MODERATORS:

BRIAN GOREE, Judge, Oklahoma Court of Civil Appeals

DR. JAMES C. COLLARD, Director of Planning and

Economic Development, Citizen Potawatomi Nation

KEN MILLER, Oklahoma State Treasurer

CHRIS BENGE, Oklahoma Secretary of State

BILL LANCE (*Chickasaw*), Secretary of Commerce, Chickasaw Nation

JON CHIAPPE, Director, Research & Economic Analysis, Oklahoma

Department of Commerce

DON CHAPMAN (*Côqayohômuvôk*), President,

Unicas Consulting Services, LLC

DAVID NIMMO, Chief Executive Officer/President,

Chickasaw Nation Industries

8:30 – 12:00 PANEL B: HISTORY MATTERS- AN EXAMINATION OF LEGAL

HISTORY FROM THE INDIAN LAW PERSPECTIVE

MODERATOR: W. KEITH RAPP, Judge, Oklahoma Court of Civil Appeals

C. BLUE CLARK (*Muscogee/Creek*), Professor of Law,

Oklahoma City University School of Law

TAIAWAGI HELTON, Professor of Law, University of Oklahoma

College of Law

CASEY ROSS-PETHERICK (*Cherokee*), Director, American Indian Law and

Sovereignty Center, Clinical Professor of Law, Oklahoma City University

School of Law

L. SUSAN WORK (*Choctaw*), Of Counsel, Hobbs, Straus,

Dean & Walker, LLP

8:30 – 12:00 PANEL C: TRUTH AND RECONCILIATION —
BOARDING SCHOOLS

MODERATOR: HONORABLE NOMA GURICH,

Justice, Oklahoma Supreme Court

SUZAN SHOWN HARJO (*Cheyenne & Hodulgee Muscogee*), President,

The Morning Star Institute

BISHOP ROBERT E. HAYES, JR., Methodist Bishop of Oklahoma

REVEREND DR. DAVID WILSON (*Choctaw*) Conference Superintendent,

Oklahoma Indian Missionary Conference

GORDON YELLOWMAN (*Cheyenne*), Chief, Council of the 44, Director,

Cheyenne and Arapaho Tribes Language Program

C. BLUE CLARK (*Muscogee/Creek*), Professor of Law,

Oklahoma City University School of Law

HARVEY PRATT (*Cheyenne*), Chief, Council of the 44,

Oklahoma State Bureau of Investigation

BRETT LEE SHELTON (*Oglala Sioux*), Staff Attorney,

Native American Rights Fund

KRIS LADUSAU, Reverend of the Dharma Center

8:30 – 12:00 PANEL D: I AM A NEW LANDOWNER, NOW WHAT?
FEDERAL AGENCY INTER-RELATIONSHIPS IN THE MANAGEMENT OF
INDIVIDUALLY OWNED INDIAN LANDS

MODERATORS: LEAH HARJO WARE, Shawnee, Oklahoma

HONORABLE CHARLES JOHNSON, Judge, Oklahoma Court of Criminal

Appeals, (retired)

VINCENT LOGAN (*Osage*), Special Trustee for American Indians,

"Opening Remarks"

SHARLENE ROUNDFACE (*Sioux*), Division Chief, Real Estate Services,

Bureau of Indian Affairs, "Department of Interior Management of Trust

Lands and Minerals"

JIM JAMES (*Ohkay Owingeh*), Deputy Director of Field Operations, Office

of Special Trustee for American Indians, "Your Individual Indian Money

Account, Opportunity for Landowner Managed Trusts and Option to Sell"

DAVID KEEL (*Chickasaw*), Office of Natural Resources Revenue,

"Mineral Royalty Computation, Accounting and Auditing"

DAVID SMITH, Kilpatrick, Townsend, Washington, D.C.,

"Lingering Cobell Issues"

CRIS STAINBROOK (*Oglala Sioux*), President, Indian Land Tenure

Foundation, Little Canada, MN, "The Beneficiary's Perspective"

STEVE TRYON, Bureau of Land Management, Field Manager, Tulsa, "Oil

and Gas Communitization Agreement, Enforcement and Production

Accountability"

ALAN WOODCOCK, Field Solicitor, Tulsa Field Office,
"Surface and Mineral Leasing for Five Tribes and Osage Citizens"
PATRICK MILANO, Manager, State and Indian Outreach, Office of
Natural Resources, Revenues, Denver, Colorado, "Mineral Royalty
Computation, Accounting and Auditing"

Wednesday Afternoon

1:15 – 2:30 OPENING CEREMONY AND KEYNOTE ADDRESS GRAND BALLROOMS D-F

MASTER OF CEREMONIES – HONORABLE STEVEN TAYLOR,
Justice, Supreme Court of Oklahoma
PRESENTATION OF FLAGS.
HONOR GUARDS: Kiowa Black Leggings
SINGERS: SOUTHERN NATION
CAMP CALL: GORDON YELLOWMAN (*Cheyenne*), Director,
Cheyenne and Arapaho Tribes Language Program
INVOCATION: BISHOP ROBERT E. HAYES, Jr., Methodist Bishop
of Oklahoma.
WELCOME: HONORABLE MARY FALLIN, Governor of Oklahoma
WELCOME: RENÉE DEMOSS, Former President,
Oklahoma Bar Association
WELCOME : HONORABLE JOHN REIF, Chief Justice,
Supreme Court of Oklahoma
INTRODUCTION OF THE KEYNOTE SPEAKER: ROBERT HENRY,
President, Oklahoma City University
KEYNOTE: THE RIGHT HONOURABLE BARONESS NICHOLSON OF
WINTERBOURNE, House of Lords, United Kingdom of Great Britain
and Northern Ireland
PRESENTATION OF AWARDS, HONORABLE YVONNE KAUGER, Justice,
Supreme Court of Oklahoma
HONOR AND MEMORIAL SONGS: SOUTHERN NATION
CLOSING PRAYER: GORDON YELLOWMAN

2:30 – 2:45 Cookie Break for all Panels

2:45 – 3:30 PANEL A: ECONOMIC DEVELOPMENT- A CONTINUATION OF THE MORNING PANEL

MODERATORS:
HONORABLE BRIAN GOREE, Judge, Oklahoma Court of Civil Appeals
DR. JAMES C. COLLARD, Director of Planning and Economic
Development, Citizen Potawatomi Nation
ROBERT B. ANDREW, United States Department Diplomat in Residence,
University of Oklahoma
DAWN JOURDAN, Associate Professor and Director,
College of Architecture, Division of Regional and City Planning,
University of Oklahoma
DR. TERRY NEESE, The Institute for Economic Empowerment
of Women
GAVIN CLARKSON, Associate Professor, College of Business,
New Mexico State University

3:30 – 5:30 PANEL A: ECONOMIC DEVELOPMENT NEW MARKETS TAX CREDIT PROGRAM IN INDIAN COUNTRY

MODERATORS: HOLLY EASTERLING, Treasurer, Chickasaw Nation
DAKOTA COLE, Undersecretary of the Treasury, Chickasaw Nation
NEAL McCALEB (*Chickasaw*), Board Member, Chickasaw Nation
Industries

2:45 – 5:30 PANEL B: NEW EFFORTS IN HEALTHCARE

MODERATOR: ELLIOTT MILHOLLIN, Hobbs, Straus,
Dean & Walker, LLP
MELANIE FOURKILLER, Policy Advisor, Cherokee Nation
Health Authority
JUDY GOFORTH PARKER, Secretary, Chickasaw Nation
Department of Health

2:45 – 5:30 PANEL C: REPATRIATION AND LEGISLATING RESPECT IN THE LAW

MODERATOR: SUZAN SHOWN HARJO (*Cheyenne & Hodulgee
Muscogee*), President, The Morning Star Institute
JOHN E. ECHOHAWK (*Pawnee*), Native American Rights Fund, (Invited)
KEVIN GOVER (*Pawnee*), Director, National Museum of the American
Indian, (Invited)
SANDRA MASSEY (*Sac and Fox*), Historic Preservation Officer, Sac and
Fox Nation
GEORGE THURMAN (*Sac and Fox*), Principal Chief, Sac and Fox Nation

2:45- 5:30 PANEL D: CRIMINAL LAW

MODERATOR: CLANCY SMITH, Presiding Judge, Oklahoma Court of
Criminal Appeals
ARVO MIKKANEN (*Kiowa/Comanche*), Assistant U.S. Attorney, Western
District of Oklahoma, Oklahoma City, Oklahoma
BOBBY CLEVELAND, Representative for District Twenty, Oklahoma
House of Representatives
TRICIA A. TINGLE (*Choctaw*), Associate Director - Tribal Justice
Support, Office of Justices Services, Bureau of Indian Affairs,
"Assessing the Needs of Tribal CFR Courts & Enhancing
Judicial Infrastructure"
BRIAN HENDRIX, State-Tribal Crime Victim Liaison
Oklahoma District Attorneys Council
RACHEL ROGERS (*Choctaw/Creek*), Oklahoma Department
of Corrections
OSCAR J. FLORES, Chief Prosecutor, Pascua-Yaqui Trial Court,
Tucson, Arizona

6:15 OKLAHOMA JUDICIAL CENTER, 2100 North Lincoln Boulevard STAGED READING OF "MY FATHER'S BONES"

6:45 RECEPTION: OKLAHOMA JUDICIAL CENTER

Thursday June 4, 2015

a.m. 4 CLE credits / 1 ethics included

p.m. 4 CLE credits / 0 ethics included

Thursday Morning

7:30 – 4:30 Registration

8:00 – 8:30 Complimentary Continental Breakfast

10:30 – 10:45 Cookie Break

12:00 – 1:30 Lunch on your own

8:30 – 11:30 PANEL A: TRIBAL COURTS IN THE TWENTY-FIRST CENTURY (This panel continues from 1:30- 5:00)

Concept: Examine challenges that will face tribal courts, including
the CFR Courts, as tribes expand their business enterprises and the
services they offer to citizens. With that expansion as a background, the
various panels will discuss how courts must evolve to meet the needs
of the tribes. This will include a discussion of tribal business courts

MODERATORS:
HONORABLE PHILIP LUJAN (*Kiowa/Taos-Pueblo*), Presiding Judge, Cit-
izen Potawatomi Nation Tribal Court
HONORABLE THOMAS S. WALKER (*Wyandotte/Cherokee*), Appellate
Magistrate for the CFR Court for the Southern Plains Region of Tribes,
District Judge (retired), Brigadier General, (retired), Army of the
United States

8:30 – 9:30 ETHICS

HONORABLE JOHN REIF, Chief Justice, Supreme Court of Oklahoma

9:30 THE FUTURE OF TRIBAL BUSINESSES AND SERVICES

MODERATOR: DR. JAMES C. COLLARD, Director of Planning and
Economic Development, Citizen Potawatomi Nation
ROCKY BARRETT, Chairman, Citizen Potawatomi Nation, (Invited)
JOHN BERRY, Chairman, Quapaw Tribe of Oklahoma, (Invited)
CONCERNS IN THE JUDICIAL SELECTION PROCESS
WILLIAM P. BOWDEN, Major General (Retired), United States Air Force,
Baker Commission Member
THE IMPACT ON THE JUDICIARY OF THE EXPANSION OF TRIBAL
BUSINESS ENTERPRISES AND SERVICES TO TRIBAL MEMBERS
A discussion of increased burden on tribal courts as the result of the
expansion of tribal businesses and services to citizens. Topics of dis-
cussion will include the need for more judges, additional educational
opportunities for judges, and the selection and retention of judges.
GREG BIGLER, District Judge, Muscogee (Creek) Nation, (Invited)
RYLAND RIVAS, Attorney
DARRELL DOWTY (*Cherokee*), Chief Judge, Sac and Fox Tribal Court
JILL TOMPKINS (*Penobscot*), President, National American Indian
Court Judges Association, (Invited)
JAMES R. WEBB, Executive Vice President-General Counsel,
Chesapeake Energy Cooperation
CONCERNS OF STATE AND TRIBAL JUDGES
DARRELL DOWTY (*Cherokee*), Chief Judge, Sac and Fox Tribal Court
L. ELIZABETH BROWN (*Cherokee*), Associate District Judge,
Adair County Oklahoma

11:30 - 1:00 STATE-TRIBAL-FEDERAL JUDGES MEETING

8:30 – 12:00 PANEL B: GAMING

(This panel continues from 1:30- 5:30)

CO - MODERATORS:

MATTHEW MORGAN, Director of Gaming Affairs, Chickasaw Nation
Division of Commerce.

NANCY GREEN, The Green Law Firm

REMARKS

JONODEV CHAUDHURI (*Muscogee/Creek*), Chairman, National Indian
Gaming Commission

ERNIE STEVENS (*Oneida*), Chairman, National Indian
Gaming Association

TRIBAL COMPACTS WITH THE STATE OF OKLAHOMA

DEAN LUTHEY, Gable Gotwals

ELIZABETH HOMER (*Osage*), Homer Law Firm

WILLIAM NORMAN (*Muscogee/Creek*), Hobbs, Straus, Dean & Walker, LLP

D. MICHAEL MCBRIDE, III, Crowe and Dunlevy

TEN YEARS UNDER THE OKLAHOMA TRIBAL STATE GAMING

COMPACT: A RETROSPECTIVE

BEFORE THE COMPACT: THE RISE OF CLASS II GAMING

LEGAL HISTORY OF CLASS II GAMING: AN OVERVIEW

CLASS II GAMING: A LOOK AT KEY CASES:

United States v. 162 MegaMania Gambling Devices, 231 F.3d 713
(10th Cir. 2000)

*Seneca-Cayuga Tribe of Oklahoma v. National Indian Gaming
Commission*, 327 F.3d 1019 (10th Cir. 2003)

United States v. Santee Sioux Tribe of Nebraska, 324 F.3d 607
(8th Cir. 2003)

THE OKLAHOMA TRIBAL-GAMING COMPACT:

Compact Negotiation Process

Key Terms of the Compact

Sorting out the Issues: Jurisdiction, Vendor Licensing,

and Secretarial Approval

Roles and Responsibilities under the Compact

Compacted Games: Technical Standards under the Compact

ALAN MEISTER, Principal Economist, Gaming Associates,

"The Impact of Gaming in Oklahoma" (Invited)

**8:30 – 12:00 PANEL C: TRIBAL LANGUAGE AND CULTURAL
PRESERVATION IN THE TWENTY-FIRST CENTURY**

MODERATOR: GAYLEEN RABAKUKK, Author, *Art of the Oklahoma*
Judicial Center

SUZAN SHOWN HARJO (*Cheyenne & Hodulgee Muscogee*), President,
The Morning Star Institute

MATT BEARDEN (*Potawatomi*) Artist

TRACEY SATEPAHOODLE-MIKKANEN (*Kiowa*), Executive Director of
Jacobson House Native Art Center

BLAKE WADE, Chief Executive Officer, The American Indian Cultural
Center and Museum

JEROD TATE (*Chickasaw*), Composer

GORDON YELLOWMAN (*Cheyenne*), Director, Cheyenne and Arapaho
Tribes Language Program

GUS PALMER, JR. (*Kiowa*), Associate Professor, University of Oklahoma

8:30 – 12:00 PANEL D: JUVENILE JUSTICE ISSUES

MODERATORS:

HONORABLE JOHN FISCHER, Judge, Oklahoma Court of Civil Appeals
SUE TATE, Court Improvement Project Coordinator, Oklahoma

Administrative Office of The Courts

Revisiting the ICWA Through the New BIA Guidelines

WILLIAM A. THORNE, JR., Utah Court of Appeals, (retired)

MARK MOORE, Associate District Judge, Blaine County, Oklahoma

F. PAT VERSTEEG, Associate District Judge, Roger Mills County,
Oklahoma

C. STEVEN HAGER, Director of Litigation, Oklahoma Indian Legal
Services

JACQUE SECONDINE HENSLEY, Oklahoma Department of Human
Services

LOU STRETCH, Cherokee Nation Children, Youth and Family Services,
Oklahoma Indian Child Welfare Association



Thursday Afternoon

3:30 – 3:45 Cookie Break for all Panels

1:30 – 5:00 PANEL A: TRIBAL COURTS IN THE TWENTY-FIRST CENTURY

1:30 – 5:00 PANEL B: JUVENILE JUSTICE ISSUES

MODERATORS:

HONORABLE JOHN FISCHER, Judge, Oklahoma Court of Civil Appeals
SUE TATE, Court Improvement Project Coordinator, Oklahoma

Administrative Office of The Courts

BARBARA SMITH (*Chickasaw*), Justice, Chickasaw Nation Supreme
Court, Smith and Smith Attorneys at Law

MICHAEL COLBERT SMITH (*Chickasaw*), Smith and Smith,
Attorneys at Law

L. ELIZABETH BROWN (*Cherokee*), Associate District Judge
Adair County Oklahoma

KAROL MASON, Assistant Attorney General, Office of Justice Programs,
United States Department of Justice

1:30 – 5:00 PANEL C: SOVEREIGNTY AND EDUCATION

MODERATORS:

DEBORAH BARNES, Judge, Oklahoma Court of Civil Appeals

QUINTON ROMAN NOSE, Executive Director, Tribal Education
Departments National Assembly, Co.

ANASTASIA A. PITTMAN (*Seminole*), Senator for District Forty-Eight,
Oklahoma State Senate

JERRY MCPEAK (*Muskogee*), Representative for District Thirteen,
Oklahoma House of Representatives

MELODY MCCOY, Attorney, Native American Rights Fund

DWIGHT M. PICKERING, State Indian Education Director,
Oklahoma Department of Education

WAYNE JOHNSON, Tribal Education Director,

Muskogee/Creek Nation

JOYCE SILVERTHORN, Office of Indian Education, United States
Department of Education

MICHAEL M. VENDIOLA, Program Supervisor, Washington State Office
of Native Education

WILLIAM MENDOZA, United States Department of Education

JIM PARRISH (*Choctaw*), Executive Education Director of School
Programs, Choctaw Nation

1:30 – 5:00 PANEL D: INDIAN LAW AND THE WORLD

MODERATORS: JERRY GOODMAN, Vice Chief Judge, Oklahoma Court
of Civil Appeals

LINDSAY G. ROBERTSON, Professor of Law,

University of Oklahoma College of Law,

Faculty Director, Center for the Study of American Indian Law
and Policy

BRADFORD MORSE, Dean of Law of the Faculty of Law,
Thompson Rivers University, Canada

ALVARO BACA, Adjunct Professor, International Human Rights Law
Clinic, University of Oklahoma College of Law

SHURA WELCOME CRAWFORD, Judge, South Caribbean Coast,
Nicaragua

SARA ESPINOSA, Judge, North Caribbean Coast, Nicaragua

KELBIE KENNEDY, University of Oklahoma College of Law

EVERYTHING IS INTERCONNECTED THE SOVEREIGNTY SYMPOSIUM XXVIII

**JUNE 3-4, 2015
OKLAHOMA CITY**

REGISTRATION FORM

Name: _____ Occupation: _____

Address: _____

City _____ State _____ Zip Code _____

Billing Address if different from above:

City _____ State _____ Zip Code _____

Nametag should read: _____ Other: _____

Email Address *and/or* website: _____

Telephone: Office: _____ Cell: _____ Fax: _____

Tribal Affiliation (if applicable) _____

If Bar Association Member: Bar# _____ State _____

# of Persons		Registration Fee	Amount Enclosed
	\$250.00	(\$275.00 if postmarked after May 18, 2015)	
	\$150.00	June 4, 2015 Only (no one-day registration for June 3)	
		Total Amount	

We ask that you register online at www.thesovereigntysymposium.com. This site also provides hotel registration information and a detailed agenda. For hotel registration please contact the Skirvin-Hilton Hotel at 1-405-272-3040. If you wish to register by paper, please mail this form to:

THE SOVEREIGNTY SYMPOSIUM, INC.

**THE OKLAHOMA JUDICIAL CENTER SUITE 1
2100 NORTH LINCOLN BOULEVARD
OKLAHOMA CITY, OKLAHOMA 73105-4914**

WWW.THESOVEREIGNTYSYMPOSIUM.COM

Remembering Winfrey Houston

By John Morris Williams

In tribute to a good friend and a lawyer I loved dearly, I asked the OBJ staff to re-run my article from October 2003, in remembrance of 1969 OBA President Winfrey Houston.

In my last article I lamented that the history channel would not cover our centennial. I am not giving up on media coverage of giant proportions. However until the camera crew arrives, I have decided to do some digging on my own. Fortune has smiled on me, and I had an opportunity to spend a few hours with Winfrey Houston. There is no way in the short amount of space allotted to even pretend to scrape the surface on the life of this remarkable man. In the succession of surviving OBA presidents, Mr. Houston is the earliest serving bar president. Thirty-four years ago he served as our president. He became president in 1969 by virtue of a very close election against the beloved Dr. Maurice Merrill of the OU law school. I know of no better way to describe Mr. Houston but as a good and decent man.

When I told him I wanted to get some historical information on the bar association from him, he brought me a notebook filled with information from his year as president. It was from this information that I learned of the scholarly study undertaken in his year as president that was published in the



Winfrey Houston

ABA Journal and saw letters to and from then yet-to-be OBA presidents Jim Gassaway and Judge Brett. You cannot image how honored I was that he let me take it back to the office to read. In the notebook was all the information from the 1969 bar convention agenda. The announcement for one event ended with "BEER SERVED THROUGHOUT THE EVENING." There was an obvious camaraderie of dedicated professionals who did not take themselves too seriously.

I hope the same can be said of us when the history channel shows up 34 years from now. When asked to pontificate a bit about the future and give advice to younger lawyers, Mr. Houston was reluctant. After careful thought, he suggested that young lawyers might be best served by finding work they love

and are stimulated by — and then give it the highest priority. In looking back, Mr. Houston acknowledges that technology has changed dramatically in his 53 years of practice. He recalled when photocopying was a wet process that required a huge machine and great expense. While appreciating many of the conveniences of technology, Mr. Houston fears a certain disconnect has happened as a result of the digital age. This is evidenced by his reply when I asked him what he hoped the bar association would look like 100 years from now. He said, "I hope we have more personal contacts with each other and the community. Deal with issues on a more human basis."

Mr. Houston is a man who loves his family, his profession, his community and his nation. The walls of his office are a testament to a man who has many personal contacts and has for 53 years dealt with issues with great humanity. It is my hope 100 years from now that the OBA will have another president like him.

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

Care and Feeding of the Law Firm Client

By Jim Calloway

A lawyer isn't a practicing lawyer without clients — at least that is the case for lawyers in private practice. The purpose of law firms is to advise clients, attempt to solve clients' legal problems and represent the clients' interests.

At our recent Opening Your Law Practice program, I spent a great deal of time discussing client communication and improving client satisfaction. The need for these skills should be obvious. We work hard to solve our clients' problems and give them advice, and our goal is that they be satisfied with their legal services. A satisfied client will return for future legal services and/or refer others to the attorney. A dissatisfied client may just disappear but can also make derogatory comments about the attorney in their community, on the Internet and/or perhaps even transmit these comments to the OBA General Counsel's office.

Clients often will not be "happy" about the results of their legal matter. In litigation, there are winners and losers. And in marriage dissolutions, notwithstanding the most advantageous settlement or judgment, the party's lives going forward necessarily means less financial resources

and less time spent with their children.

The lawyer should strive for clients who are satisfied that the lawyer exercised his or her best efforts, communicated well and kept the client informed during all stages of the representation and whose advice

and predictions proved to be accurate.

So, let's spend some time examining several aspects of the attorney-client relationship. These principles are applicable to every type of private practice from solo lawyer to large firm.

The 10 Commandments of Good Client Relationships

1. Clients are the most important people in our practice — in person, by mail or by phone.
2. Clients are not dependent on us. We are dependent on them.
3. Clients are not an interruption of our work. They are the purpose of it.
4. Clients do us a favor when they call. We are not doing them a favor by serving them.
5. Clients are a part of our business. Do not treat them as outsiders.
6. Clients are not "statistics." They are flesh-and-blood human beings with feelings and emotions like our own.
7. Clients are not people to argue with or match wits. Nobody ever won an argument with a client.
8. Clients are people who bring us their wants. It is our job to meet those wants.
9. Clients are the lifeblood of this practice.
10. Clients are deserving of the most courteous and attentive treatment we can give them.

Furnished by the Oklahoma Bar Association Management Assistance Program. Originally prepared by Queensland Law Society of Australia.

THE ATTORNEY-CLIENT AGREEMENT

Whether it is called an engagement letter, a contract or fee agreement, all of your new client relationships should be initiated by the execution of a fee agreement. While the Oklahoma Rules of Professional Conduct only require the execution of a written fee agreement in a limited number of matters, good business practices require the execution of a fee agreement in almost every, if not every, attorney-client relationship.

However, the standard attorney-client agreement could often be made a little more “user-friendly.” One could use bold, highlighting and graphic tools to direct focus to the most important provisions and include the matters that the client is most concerned about on the front page of the contract, such as fees and costs. Standard “one size fits all” provisions can be moved toward the back. And if there is one critical or potentially problematic aspect to the contract or a choice the client is making, do not hesitate to leave a location for them to initial that they understand that specific provision.

I was discussing with a defense lawyer that many of his DUI clients opt not to have him represent them on the driver’s license revocation proceeding. That is a decision that some may come to regret later. My advice was that he could better cover his own interests and communicate with his clients by having a completely separate DUI defense contract that noted the consequences of the revocation process and let them initial whether or not they wanted help in that area.

Many small law firms have one attorney-client contract form for criminal and one for civil. They might be better off with several different form contracts.

Larger firms representing corporate clients may present them very lengthy attorney-client contracts. There may have been a time when that impressed the client with the lawyer’s attention to detail, but that is long past. Today’s client will appreciate a shorter and more easy-to-read agreement.

THE INITIAL CLIENT INTERVIEW

There is no need to spend your valuable time hearing a lot of information that you do not need to know if a conflict of interest will keep you from representing the client. The best situation is to find out who the opposing parties are and do a conflict of interest check before scheduling the initial interview. Some clients may be reluctant to provide that detail over the phone, and the next opportunity is for a staff member to take them to a private area when they arrive for their appointment and obtain that information to do the conflict check. If neither of those opportunities work, then the first part of the initial interview with the lawyer will involve getting enough information to do the initial conflicts check.

This means that law firms need to have a formal conflict of interest checking system that can be done automatically on the computer network and doesn’t involve sending around paper memos for all of the lawyers to review and sign off on. This is not to say that is a bad idea for a secondary check. But instant checking before the ini-

Related Online Reading Materials

Download link for The 10 Commandments of Good Client Relationships: <http://jimcalloway.typepad.com/TenCommandmentsClientRelations.pdf>

“The Client Seat,” Adam Smith Esq. blog
www.adamsmithesq.com/2015/04/the-client-seat
(April 30, 2015)

“The Value Add” - my column in the March/April 2015 issue of *Law Practice Magazine* on how one can deliver added value for clients during representation www.lawpracticemagazine.com/lawpracticemagazine/march_april_2015#pg78

“Form Letters You and Your Clients Will Love” by Jim Calloway. A classic from 1998 that includes my “rules” for a file closing letter www.okbar.org/members/MAP/MAPArticles/ClientRelations/FormLetters

tial interview will save you time and maybe aggravation over the long run.

MANAGING EXPECTATIONS

Perhaps the greatest variable about whether a client will be satisfied with the representation relates to their expectations. Clients are going to be pleased when their expectations are met and generally frustrated when things do not proceed according to their expectations. While a lawyer

may not be able to control the ultimate disposition of a contested matter, the lawyer should certainly set expectations about the client communication and client service, as well as the time frames (aka slowness) of the process.

For example, here is a sample statement that I pass on at the Opening Your Law Practice program: "Some lawyers are criticized for not returning phone calls quickly enough. I am at the courthouse often and sometimes get a lot of phone calls in the same day. Our law firm policy is to attempt to return phone calls within 48 hours." [Insert your own time frame there.]

This helps the client understand that you may not always be able to return calls as quickly as you would like and sometimes it will not be the same day that they called, even though you will attempt to do that. You should also instruct your staff that if you are unexpectedly detained they can return calls for you to let your clients know it may be a little longer and inquire if there is anything they can do to help.

If you are representing a client in litigation and it may take more than a year to actually have the matter heard, you

should let the client know in the initial interview and explain that is one reason why you will always be pursuing settlement even as you prepare for trial.

Another sentence I pass along at Opening Your Law Practice is, "The instant answer is not always the best answer." As a lawyer, you appreciate that even though you know the law, you always want to check for changes in the law or interpretation before issuing a definitive statement. Your clients do not know that, unless you tell them. Let them know that "I'll have to get back to you on that" means you are acting in their best interest and not that you are stalling or ignorant.

DURING THE REPRESENTATION

Make the effort to keep the client informed during the representation. Normally this means sending the client copies of all documents generated or received regarding their matter. It also means taking note of periods of inactivity and giving the client brief status reports to let them know how the matter is progressing and when they should expect the next step to occur.

LISTEN

Focus on listening when your client is discussing their legal

matter with you. Lawyers should be good listeners. Summarize and repeat back what the client told you to make sure you have it right. You would be surprised at the number of client complaints that center on the lawyer not following client's directions or understanding what the client's true goals were. Don't be that lawyer. Document every conversation with the client in the client file or in your practice management solution.

I distributed the 10 commandments of good client relationships to our members in 2005, so it is certainly time to do it again. It is a good set of reminders in the often busy and stressful practice of law. You will find a link in the side bar to download this in PDF form, which will allow you to print it and post in the break room or pass it along to your staff and lawyers. Feel free to customize this for your needs.

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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OKLAHOMA BAR ASSOCIATION

Office of Ethics Counsel Provides Important Member Benefit

By Joe Balkenbush

I have served as ethics counsel now for two months, and man, has time flown! Every day I learn something new.

ABOUT ETHICS COUNSEL

The position of ethics counsel was created in 2002 when OBA leadership (Supreme Court justices, Board of Governors and the Executive Director John Morris Williams) saw there was a need for bar members to have access to a resource that could answer ethical questions in a timely manner. Leadership believed that by being proactive, many of the issues attorneys faced through their interaction with clients, third parties and/or other attorneys could be avoided. Prior to 2002, the Office of the General Counsel answered all of the ethics questions posed by members.

Most of my time is spent answering ethical questions from bar members. Some days I might receive up to 20 phone calls. All communication with the Office of Ethics Counsel is confidential and privileged. A record is kept of all calls by name and member number, along with a brief synopsis of the facts presented and the advice given. If a grievance is filed, the attorney can inform the Office of the General Counsel that ethics counsel was con-

sulted regarding the matter, which can be a mitigating factor when determining what to do with the grievance filed.

The Office of Ethics Counsel is only a resource for OBA members, not the general public.

“Most of my time is spent answering ethical questions from bar members. Some days I might receive up to 20 phone calls.”

Gina Hendryx, OBA general counsel, was the first ethics counsel. She served as ethics counsel from 2002 to 2008, when she was selected for the position of general counsel, replacing Dan Murdock.

Travis Pickens was selected to serve as the next ethics counsel. He served from 2008 to February 2015. The most common



Joe Balkenbush

question I have answered over the last month is “where is Travis Pickens?” He has returned to private practice, but I would like to take this opportunity to thank him for his generous service to the OBA. Travis, many, many thanks to you from all of us!

It is my honor to be the third ethics counsel for the OBA. When I learned Mr. Pickens was leaving the position, I decided to apply and was notified that I was one of the finalists and was informed of the date and time of my interview with the hiring committee. It occurred to me then that it would be a good idea to review the Rules of Professional Conduct and Rules Governing Disciplinary Proceedings. Honestly, it had probably been since law school that I had read them.

As I am sure all of you know, the Rules of Professional Conduct and Rules Governing Disciplinary Proceedings are statutory. They can be found in Title 5 of the Oklahoma Statutes. You'll find the Rules of Professional Conduct in Appendix 3-A and the Rules Governing Disciplinary Proceedings in Appendix 1-A. Online find Title 5 at <http://goo.gl/8oZsUl>.

WORDS TO THE WISE

As I was reviewing the preamble to the Rules of Professional Conduct, I was reminded of why I became an attorney. I

imagine it was for the same reasons most of you did, to help and be of service to others.

I encourage you to take a few minutes, re-read the preamble and remind yourself of why you became a lawyer.

Here are some "words to the wise":

- All client funds must be deposited in your trust account. Fees must be earned before they are transferred from your trust account to your operating account.

- Remove the word "nonrefundable" from your fee agreements. There is no such thing as a "nonrefundable" retainer. *See OBA v. Weigel*, 2014 OK 4, 321 P.3d 168 (Okla. 2014)

Mr. Balkenbush is OBA Ethics Counsel. Have an ethics question? It's a member benefit and all inquiries are confidential. Contact Mr. Balkenbush at joeb@okbar.org or 405-416-7055; 800-522-8065.

OKLAHOMA BAR JOURNAL EDITORIAL CALENDAR

2015 Issues

- August
Opening a Law Office
Editor: Dietmar Caudle
d.caudle@sbcglobal.net
Deadline: May 1, 2015
- September
Bar Convention
Editor: Carol Manning
- October
Family Law
Editor: Leslie Taylor
leslietaylorjd@gmail.com
Deadline: May 1, 2015
- November
President's Topic
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2015
- December
Ethics & Professional Responsibility
Editor: Shannon L. Prescott
shanlpres@yahoo.com
Deadline: Aug. 1, 2015

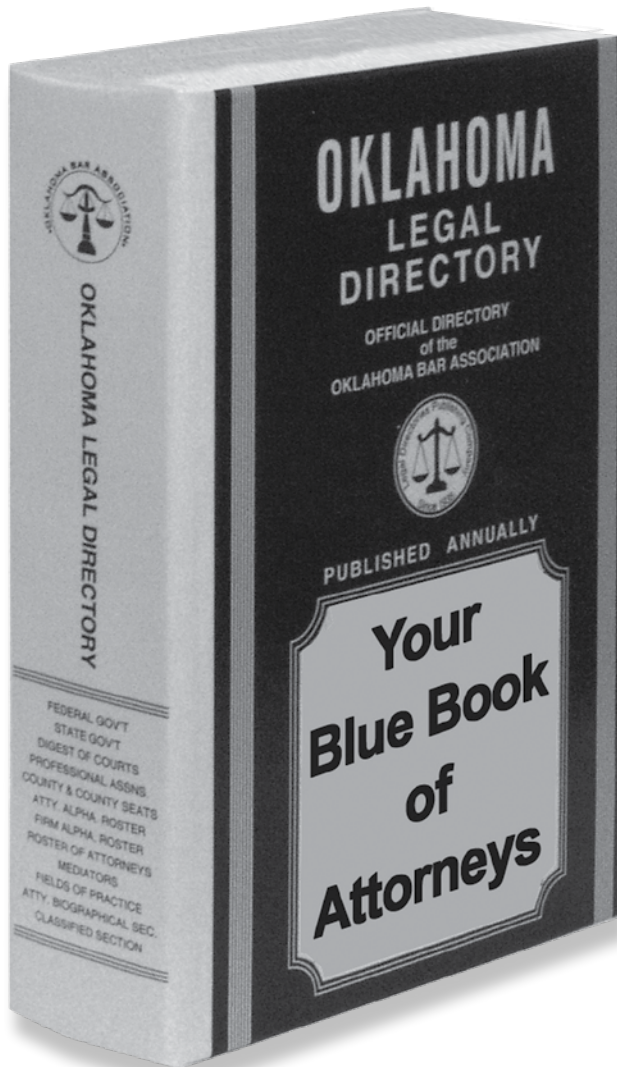
2016 Issues

- January
Meet Your OBA
Editor: Carol Manning
- February
Probate
Editor: Judge Allen Welch
allen.welch@oscn.net
Deadline: Oct. 1, 2015
- March
Criminal Law
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Oct. 1, 2015
- April
Law Day
Editor: Carol Manning
- May
Indian Law
Editor: Leslie Taylor
leslietaylorjd@gmail.com
Deadline: Jan. 1, 2016
- August
Bankruptcy
Editor: Amanda Grant
Amanda@spiro-law.com
Deadline: May 1, 2016
- September
Bar Convention
Editor: Carol Manning
- October
Real Property
Editor: Shannon Prescott
shanlpres@yahoo.com
Deadline: May 1, 2016
- November
President's Topic
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2016
- December
Ethics & Professional Responsibility
Editor: Renée DeMoss
rdemoss@gablelaw.com
Deadline: Aug. 1, 2016

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

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**LAWYERS HELPING LAWYERS
ASSISTANCE PROGRAM**

Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Association on March 23, 2015.

APPOINTMENT TO THE BOARD OF GOVERNORS

The board approved the appointment of James R. Hicks, Tulsa, to the board to fill the unexpired term of at-large board member Deirdre O'Neal Dexter, who resigned to accept an administrative law judge position. The term will expire Dec. 31, 2016.

NEW ETHICS COUNSEL

Executive Director Williams introduced Joe Balkenbush, Oklahoma City, as the new OBA ethics counsel and said he greatly appreciated former OBA Assistant General Counsel Mike Speegle stepping in to handle ethics inquiries following the resignation of Travis Pickens, who returned to private practice.

REPORT OF THE PRESIDENT

President Poarch reported he attended the Cleveland County Bar Association luncheon, OBA High School Mock Trial Program finals at OU Law, OBA fundraising night at OETA public television, Order of the Owl awards dinner at OU Law and the Access to Justice Commission meeting at the Supreme Court. He spoke at the Oklahoma's Promise program presentation at

Douglass Mid-High School in Oklahoma City.

REPORT OF THE PRESIDENT-ELECT

President-Elect Isaacs reported he presented a program to the Luther Bohanon Inn of Court with District Judge Roger Stuart on the topic, "Candor With the Court." He attended the ABA Bar Leadership Institute in Chicago and the new Board of Governors orientation.

REPORT OF THE PAST PRESIDENT

Past President DeMoss, unable to attend the meeting, reported via email that she participated in planning meetings for the Litigation Section, Master Lawyers Section and Law Schools Committee.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended a meeting on Emerson Hall audio-visual needs, Bar Leadership Development Institute in Chicago, meeting with Avectra regarding association management software, Oklahoma's Promise program presentations to students at Seminole Middle School and Douglass Mid-High School, Douglass Mid-High School parent night, Oklahoma Supreme Court Access to Justice Commission meeting and new Board of Governors orientation.

BOARD MEMBER REPORTS

Governor Gifford reported he served as a judge for the OBA High School Mock Trial Program and attended the Oklahoma County Bar Association board of directors meeting. He was appointed chairperson of the OBA Military Assistance Committee to replace the chairperson who resigned. **Governor Gotwals** reported he worked on the Tulsa County Bar Association "Before" Party/Open House for the new Tulsa County Bar Center construction project. He attended the swearing in of the new 14th Judicial District judges, Brown Bag CLE regarding the new Domestic Violence Court, Quality Assurance Panel for the Tulsa County family court meeting, Riverfield Country Day School fundraising auction, Fur Ball benefit dinner for the Oklahoma Alliance for Animals, "Bricks & Beer" ceremonial demolition beginning the remodeling of the Tulsa County Bar Center, TCBA board of directors meeting and TCBA Family Law Section meeting. **Governor Jackson** reported he attended the Garfield County Bar Association meeting and is following civil procedure legislation for the OBA Civil Procedure and Evidence Code Committee. **Governor Knighton** reported he attended the March Cleveland County Bar Association meeting and a planning session for a Law

Day event for gifted and talented middle school students. **Governor Marshall** reported he attended the new board member orientation at the bar center. **Governor Porter** reported she attended the OBA orientation for new members and parent night at the Douglass Mid-High School as a volunteer to assist parents signing up their children for the Oklahoma's Promise program. She served as a judge three times for the OBA High School Mock Trial Program. **Governor Sain** reported he attended the McCurtain County Bar Association luncheon, McCurtain Memorial Hospital Foundation board meeting and Warrior Club meeting. **Governor Stevens** reported he attended the March Cleveland County Bar Association meeting, Rules of Professional Conduct Committee meeting and volunteered at OETA Festival. **Governor Tucker** reported he attended the Muskogee County Bar Association meeting and two OBA Law Day Committee meetings. **Governor Weedn** reported he attended the orientation for new board members and Ottawa County Bar Association meeting. He contributed to the OETA donation made on behalf of the OBA.

YOUNG LAWYERS DIVISION REPORT

Governor McGill reported she chaired the YLD February board meeting and participated in the assembling of bar exam survival kits to give to those taking the exam. She also participated in conference calls to discuss Oklahoma City hosting an ABA YLD confer-

ence, Kick it Forward Committee meeting, YLD membership event at Fassler Hall and OETA Festival phone bank.

BOARD LIAISON REPORTS

Executive Director Williams reported he attended the Section Leaders Council meeting and visited with them about the OBA waiting until after the February dues payment deadline to remove names of section members who have not renewed their section memberships. Governor Stevens reported the Rules of Professional Conduct Committee met and approved amendments and comments that will be submitted to the Board of Governors. Governor Gotwals reported the Awards Committee met and will present a recommendation to the board at this meeting.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported a written report of Professional Responsibility Commission actions and OBA disciplinary matters for February was submitted to the board for its review. She said the OBA is currently not a party to any litigation.

AWARDS COMMITTEE RECOMMENDATION

Awards Committee Chair Jennifer Castillo reported the committee met and discussed the OBA awards previously presented. She said the committee recommends no changes to the awards this year. The board approved the Awards Committee's recommendation to present the same OBA

awards this year as were presented in 2014.

JUDICIAL NOMINATING COMMISSION ELECTION PROCEDURE

Executive Director Williams reviewed the procedure used in the past for conducting Judicial Nominating Commission elections. The board approved the procedure for the 2015 elections.

ASSOCIATION MANAGEMENT SOFTWARE

Executive Director Williams reported four Abila representatives were at the bar center for two days of training/meetings. A soft launch of the new membership data system is projected for July. He said representatives for Abila, which acquired the software company the OBA entered into an agreement with, were attentive to OBA concerns. He said a team from Pennsylvania is coming to the bar center soon to evaluate whether their MCLE software would be a good fit to replace the OBA's current software.

DAY AT THE CAPITOL

Executive Director Williams reviewed the agenda planned for OBA Day at the Capitol on Tuesday, March 24.

NEXT MEETING

The Board of Governors met April 24, 2015, in Enid. A summary of those actions will be published after the minutes are approved. The next board meeting will be Friday, May 29, 2015, in Bartlesville.

OBF Grants Support Law-Related Education

By Jack L. Brown

Ahh Summer vacation — the long anticipated three months of lazy, lingering days. Free of responsibility, homework, teachers and school. While the summer months are not usually spent reflecting on the importance of a good education, at the OBF it's at the forefront of our minds. One of the OBF's central goals is to transform lives through the advancement of education for all. To reach that goal in 2014, the OBF gave more than \$100,000 in grants to law-related educational programs.

Law-related education provides young people with the fundamental principles and skills needed to become responsible participant citizens. Last year, the OBF provided funds to the OBA-YLD Oklahoma High School Mock Trial Program where hundreds of attorneys trained high school students about the legal system. We also provided funding for the YMCA statewide Youth in Government program which gives high school students around Oklahoma the opportunity to author legislation and debate

it in the chambers of the Oklahoma House of Representatives. Last year, the YMCA-ABA Judicial Competition program was added where students travel to Chicago to participate in programs sponsored by the American Bar Association. OBF funding of law-related educational programs empowers students and citizens with a better understanding of our democratic system and the rule of law.

The OBF also provided grants for law student programs which provide crucial law-related services in the areas of

immigrant rights, American Indian land and estate issues and elder law. The TU Boesche Legal Clinic Immigrants Rights Project, the OCU School of Law American Indian Wills Clinic and the Senior Law Resource Center elder law educational/outreach program provide law school students with amazing educational and professional development opportunities, while providing valuable services to Oklahoma residents. In addition, the OBF provides scholarships for law students at all three of the law schools in Oklahoma.



Oklahoma Bar Foundation officers, trustees and staff journeyed to the beautiful Postoak Lodge located northwest of downtown Tulsa in the rolling Osage hills for a two-day intensive planning retreat.

The OBF Board of Trustees recently held a retreat to re-examine its fundraising initiatives not only for educational grants but for all OBF-funded programs. OBF consultant Dennis Dorgan organized the retreat into focus groups of trustees to discuss in detail the components of OBF fundraising. The focus groups were 1) making grantees the centerpiece, 2) donor recognition, 3) increasing visibility of the OBF, 4) marketing the OBF, 5) young lawyers, 6) master (older) lawyers, 7) corporate counsel strategy and 8) *cy pres* strategy.

The focus group sessions were very productive with strong participation from the trustees along with staff members. The topics and focus group discussions will serve as the foundation for a revised and updated fundraising plan of action. With increased funding, the OBF can provide more grant assistance to law-related education programs and others.

Nelson Mandela once said, "Education is the most powerful weapon which you can use to change the world." The OBF understands the importance of a good education and is committed to promoting access to

legal education by promoting programs for a wide range of students. One of the best ways to assist the OBF in its educational efforts is to become an OBF Fellow, which is as easy as going to the OBF website at www.okbarfoundation.org or calling the OBF at 405-416-7070.

ABOUT THE AUTHOR



Jack L. Brown practices in Tulsa and serves as OBF president.

He can be reached at jbrown@jonesgotcher.com.



The retreat themed "New Beginnings" divided participants into groups to concentrate on areas of focus for the new OBF Development Plan that will be implemented over the next three to five years. Jeff Trevillion leads group discussion with Mike Torrone, Bret Smith and G. Patrick O'Hara Jr.



Brandon Long and Briana Ross discuss children and families helped with law-related services across the state.

Kara Smith, Jennifer Castillo, Stephen Beam, John Williams and D.W. Boyd take part in discussions about increasing the visibility of the OBF so that more will be aware of the important work being accomplished on behalf of Oklahoma attorneys.



OBF Retreat Participants:

President Jack L. Brown
 President Elect Millie Otey
 Secretary/Treasurer Alan Souter
 Steven L. Barghols
 A. Gabriel Bass
 Stephen D. Beam
 D.W. Boyd
 Brett Cable
 Jennifer M. Castillo
 Gary W. Farabough
 Amber Peckio Garrett
 Deanna Hartley Kelso
 Brandon P. Long
 G. Patrick O'Hara Jr.
 Briana J. Ross
 Bret Allan Smith
 Kara I. Smith
 Jeffrey D. Trevillion Jr.
 Michael T. Torrone Jr.
 John Morris Williams
 Executive Director Nancy Norsworthy
 Development Director Candice Jones
 Executive Assistant Jessi Hesami
 IOLTA & OBF rep. Deb Holt
 Consultant Dennis Dorgan

Expert fundraising consultant Dennis Dorgan of St. Paul, Minnesota, assists OBF President Jack L. Brown and the new Development and Communications Director Candice Jones with facilitation of the retreat.



Amber Peckio Garrett, Jennifer Castillo, Deanna Kelso, Deb Holt, Jeff Trevillion, Brett Cable and Alan Souter discuss more OBF grantee involvement, while Steve Barghols, Deanna Kelso, Nancy Norsworthy and Gabe Bass brainstorm on marketing of the OBF.



Projects Keeping Committees Busy

By LeAnne McGill

Now that we are a few months into our YLD year, I wanted to give you an update on some of our committee projects.

You read last month about our Kick It Forward Kickball Tournament, which is scheduled for Aug. 29. The **Kick It Forward Committee** is still hard at work designing t-shirts, creating registration packets and contacting potential food and drink vendors. This event will be open to all attorneys as well as the general public and promises to be an entertaining day. If you would like to be a sponsor for this event, form a team, join a team or volunteer with the committee, please do not hesitate to email me.



In March, the **Diversity Committee** participated in Carl Albert High School's career fair in Oklahoma City. Committee Chair April Moaning recruited several members of her committee as well as other YLD members to assist. Students at the fair had the opportunity to



YLD members volunteering at Shared Blessings in McAlester were (from left) April Moaning, Maureen Johnson, Blake Lynch, Paul Northcutt, Eric Grantham, Rob Volsey, Jessica Volsey, Bryon Will, Raye Mickle and Matt Mickle.

visit tables with employers and representatives from different career fields to find out more about life beyond high school. Young Lawyers Division members were available to answer students' questions about what it is like to practice law and the process it takes to become a lawyer. The YLD provided candy and tickets for prizes to the students. Our table was a big hit.

The **Membership Committee** has also been hard at work. They hosted a social event at Fassler Hall in downtown Oklahoma City on March 6 and a community service project at Shared Blessings coupled with a tour of Choc Brewery in McAlester on April 18. Both events were well attended,

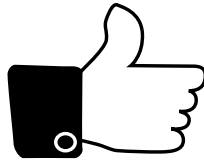
with frequent YLD event attendees as well as some brand new members. We enjoyed appetizers, cold beverages and great conversation. We have already had young lawyers ask when the next event will be held.

These are just a few highlights of our YLD year so far. Our other committees include Community Service, Continuing Legal Education, Hospitality and New Attorney Orientation, which all work on various projects throughout the year. We still have lots of events planned and will keep you updated through bar journal articles as well as through email. If you are a young lawyer and do not receive the occasional YLD email, please

contact me. That is our best way to keep everyone updated.

You can also connect with us on Facebook at www.facebook.com/OBAYLD, and you'll find more YLD details online at www.okbar.org/members/YLD.

If you have any questions about joining a YLD committee, please contact me. We would love to see you at our next event!



Like OBA/YLD on Facebook
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ABOUT THE AUTHOR



LeAnne McGill practices in Edmond and serves as the YLD chairperson. She may be contacted at leanne@mcgillrodgers.com.

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May

- 16 OBA Real Property Section and Title Exam Standards committee joint meeting;** 9:30 a.m.; Tulsa County Bar Center, Tulsa; Contact Lucas Munson 405-513-7707
- 19 Oklahoma Bar Foundation Grants and Awards meeting;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Nancy Norsworthy 405-416-7048
- 20 OBA Indian Law Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Trisha Archer 918-619-9191



- 22 Professional Responsibility Commission meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Gina Hendryx 405-416-7007
- OBA Lawyers Helping Lawyers Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Jeanne Snider 405-366-5423
- 25 OBA Closed** - Memorial Day observed
- 26 OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact David Swank 405-325-5254
- Licensed Legal Intern Swearing In;** 1:30 p.m.; Oklahoma Judicial Center, Oklahoma City; Contact Debra Jenkins 405-416-7000

- 28 OBA Professionalism Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Tulsa; Contact Patricia Podolec 405-760-3358
- 29 OBA Board of Governors meeting;** 9 a.m.; Bartlesville; Contact John Morris Williams 405-416-7000
- 30 OBA Young Lawyers Division board meeting;** University of Central Oklahoma, Edmond; Contact LeAnne McGill 405-285-8048

June

- 2 OBA Government and Administration Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact John Miley 405-557-7146
- 4 Lawyers Helping Lawyers discussion group meeting;** 6 p.m.; 701 NW 13th St., Office of Tom Cummings; RSVP to Kim Reber kimreber@cabainc.com
- 5 OBA Alternative Dispute Resolution Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Ken Stoner 405-705-2910
- OBA Board of Editors meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City; contact Carol Manning 405-416-7016
- 9 OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Tiece Dempsey 405-524-6395
- OBA Legal Intern Committee meeting;** 3 p.m., OCU Law School, Oklahoma City; Contact Candace Blalock 405-238-0143
- 10 OBA Financial Institutions and Commercial Law Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Eric Johnson 405-602-3812
- OBA Women in Law Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Kimberly Hays 918-592-2800

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

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

16 OBA Bench and Bar Committee meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with telecon-ference; Contact Judge David B. Lewis 405-556-9611

17 OBA Indian Law Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with telecon-ference; Contact Trisha Archer 918-619-9191

18-20 OBA Solo & Small Firm Conference; Hard Rock Hotel and Casino, 777 W Cherokee St., Catoosa; Contact Nickie Day or Jim Calloway 405-416-7000

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

OBA Young Lawyers Division board meeting; Hard Rock Hotel and Casino, 777 W Cherokee St., Catoosa; Contact LeAnne McGill 405-285-8048

20 OBA Real Property Section and Title Exam Standards Committee joint meeting; 9:30 a.m.; Stroud Conference Center, Stroud; Contact Lucas J. Munson 405-513-7707

25 OBA Professionalism Committee meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Patricia Podolec 405-760-3358

30 Oklahoma Bar Foundation Grants and Awards meeting; Oklahoma Bar Center, Oklahoma City; Contact Nancy Norsworthy 405-416-7048



July

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

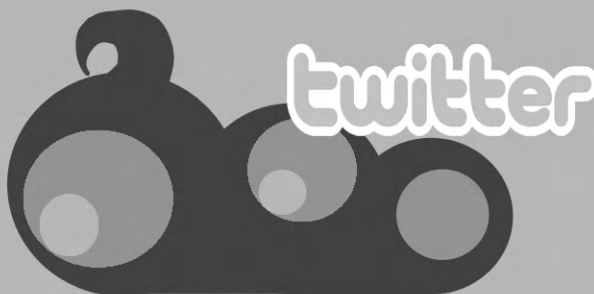
3 OBA Closed - Independence Day observed

7 OBA Government and Administrative Law Section meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact John Miley 405-557-7146

8 OBA Women in Law Committee meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Kimberly Hays 918-592-2800

10 Oklahoma Bar Foundation meeting; 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Nancy Norsworthy 405-416-7048

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



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Oklahoma Lawyers Feed Hundreds

Oklahoma lawyers recently spearheaded a large-scale effort to provide Easter dinners and other important items to 500 families in need in the Tulsa area.



Many OBA members were among the volunteers staffing the Celebrate Spring event in Tulsa, where 500 families received Easter hams, candy eggs, groceries, diapers and other donated items.

The “Celebrate Spring” distribution of hams and other groceries was coordinated by Lawyers Fighting Hunger. This year, statewide, more than 50 lawyers, businesses, doctors, churches and individuals helped contribute, including the OBA Women in Law Committee, who collected and distributed more than 5,000 Easter eggs filled with candy to families attending the event.

“This is a way we can

give back to our community and state, and show that lawyers really care while addressing a very serious need in our state,” said Hugh Robert, co-founder of Lawyers Fighting Hunger and attorney at Sherwood, McCormick & Robert. “While we all do a good amount of pro bono work and serve on various boards, it is not something that the public generally sees. This program is a way for our respective communities to see our contribution first hand.”



A young child participates in fun activities planned for kids during the Lawyers Fighting Hunger Celebrate Spring event.

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

The Hatton W. Sumners Teacher Institute will be held June 15-19 in Tulsa. 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 focus is using technology to teach civics. The conference is offered at no charge with all expenses paid for attendees. The application deadline is May 22.

Please share this information with your local teachers. More information is available at www.okbar.org/public/LRE/HWSInstitute.

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of The Science of Self-Government*

LHL Discussion Group Hosts Upcoming Meeting

"Ego and the Practice of Law" will be the topic of the June 4 meeting of the Lawyers Helping Lawyers monthly discussion group. Each meeting, always the first Thursday of the month, is facilitated by committee members and a licensed mental health professional. The group meets from 6 – 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th St., Oklahoma City. 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.

- *Interested in forming a discussion group in Tulsa?*
Contact Hugh Hood: 918-747-4357

LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM

Call 24/7 — 800-364-7886

Important Upcoming Dates

Don't forget! The Oklahoma Bar Center will be closed Monday, May 25, and Friday, July 3, in observance of the Memorial Day and Independence Day holidays. Remember to register and join us for the 2015 Solo & Small Firm Conference in Tulsa June 18-20, and be sure to docket the OBA Annual Meeting to be held in Oklahoma City Nov. 4-6.



Bar Journal Takes Summer Break

The *Oklahoma Bar Journal* theme issues are taking a short break. The next issue, devoted to "Opening a Law Office" will be published Aug. 15. Deadline for submissions will be July 13. You'll still receive issues containing court material twice a month in June and July. Have a safe and happy summer!



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!



OBA Member Resignations

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

James D. Boardman OBA No. 901 2517 N. Via Serena Circle Mesa, AZ 85207-1543	Carl James Franklin Jr. OBA No. 13978 3853 W. 1425 N. Cedar City, UT 84721	Francis M. Munchinski OBA No. 11447 5960 W. Parker Rd., #278-111 Plano, TX 75093	Jamie Virginia Smith OBA No. 22305 6360 Moccasin Pass Ct. Colorado Springs, CO 80919
Michael Pedrick Briggs OBA No. 15195 4711 E. 104th Street Tulsa, OK 74137	Michele Yvette Garza OBA No. 16446 9535 Forest Lane, Ste. 111A Dallas, TX 75243	Jamette Lee Pruett OBA No. 17334 780283 South 3470 Road Cushing, OK 74023	Richard Frank Vliet OBA No. 9242 4-38-4-404 Kinuta Setagaya-ku Tokyo, FO 157-0073
Vincent Scott Chaffee OBA No. 15538 3532 S. Urbana Avenue Tulsa, OK 74135	Mark Andrew Grim OBA No. 16503 2729 Kerry Lane The Village, OK 73120-2816	Darin Chardin Savage OBA No. 20830 288 Animas View Dr., #17 Durango, CO 81301	Sheryl Newberry Young OBA No. 14183 617 NW 39th Street Oklahoma City, OK 73118
Mark Allen Derryberry OBA No. 15896 11952 S. 1st Street Jenks, OK 74037			

Kudos

Judge Lisa Davis received the Howard K. Berry Sr. Award from the Oklahoma County Bar Association. The award is given to an Oklahoma County resident or a charitable organization located in Oklahoma County to honor outstanding achievement or contributions to justice or the justice system. She graduated from OU College of Law in 1984.

Brandon Hale, an assistant U.S. attorney in Oklahoma City and a lieutenant commander in the Navy Reserve Judge Advocate General's Corps, was selected as this year's recipient of the Rear Admiral Hugh H. Howell Jr., Award of Excellence. Howell Awards are presented to judge advocates, legalmen, and reserve units demonstrating outstanding support of the Navy and Navy Reserve, and to active-duty commands demonstrating outstanding support of the Reserve Law Program. He graduated from the OU College of Law in 2003.

Frank Hill, an attorney who helped establish the Oklahoma City National Memorial Museum and assisted in construction of the Oklahoma City Museum of Art, was presented with the 2015 Dean A. McGee Award at the annual Dean A. McGee

Awards hosted by Downtown Oklahoma City Inc.

The Federal Bar Association Indian Law Section has awarded Crowe & Dunlevy attorney **Walter R. Echo-Hawk Jr.** the 2015 Lawrence R. Baca Lifetime Achievement Award. This award is bestowed upon those who show excellence in Indian law, are held in high esteem in their professional arena and have made significant contributions to the field of Indian law through litigation, development of legislation, scholarship or development of Indian law students or through tribal leadership. He graduated from the University of New Mexico School of Law in 1973.

Susan Jordan of Jordan Law PLLC, with offices in Oklahoma and Austin, has been selected to the 2015 list as a member of the Nation's Top One Percent by the National Association of Distinguished Counsel. NADC is an organization dedicated to promoting the highest standards of legal excellence. Its mission is to objectively recognize the attorneys who elevate the standards of the bar and provide a benchmark for other lawyers to emulate. She graduated from Southern Methodist University Dedman School of Law in 1995.

During the Oklahoma County Law Day luncheon, *Journal Record* Leadership in Law Awards were presented to **Judge Lisa Davis**, **Cherish Ralls** (Devon

Energy), **Jim Sharrock** (McAfee & Taft), **Christopher Staine** (Crowe & Dunlevy) and **Russ Woody** (Hartzog, Conger, Cason & Neville). These awards recognize attorneys who are busy in their legal careers, but who are also involved in community service. **D. Kent Meyers**, co-founder of Oklahoma Lawyers for Children, a nonprofit organization representing children in the Oklahoma County juvenile court system, was presented with the *Journal Record* Award. This award is given to an attorney who has spent his or her career doing outstanding professional and community work.

Shelly A. Perkins has been appointed to the Oklahoma County Board of Adjustment, a three-member board that hears and decides appeals concerning the granting of variances to county zoning regulations, applications for requests for special exceptions and appeals alleging an error of law concerning zoning enforcement. She graduated from the OCU School of Law in 2007.

Ted Sherwood of Sherwood, McCormick & Robert in Tulsa was recently inducted into the International Academy of Trial Lawyers at its annual meeting in March. The academy limits membership to 500 fellows from the U.S. Its general purposes are to cultivate the science of jurisprudence, promote reforms in the law, facilitate the administration

of justice and elevate the standards of integrity, honor and courtesy in the legal profession.



The shareholders of Fenton, Fenton, Smith, Reneau & Moon elected **C. William Threlkeld** to serve as the law firm's president. He continues to practice in the areas of insurance, construction litigation, complex litigation, media law, products liability and toxic torts. He joined the firm in 1979. He graduated from the OU College of Law in 1976.

The law firm of Mahaffey & Gore PC announced that **John Paul Albert** has joined the firm as an associate. His primary focus will be on oil and gas litigation, business transactions and creditors' and debtors' rights, with a secondary focus on probate and heirship matters. He received his J.D. from the OU College of Law in 2014.

Crooks Stanford announces the addition of **Gavin Caldwell** and **Jade Caldwell** as associate lawyers to the firm. Mr. Caldwell has experience in intellectual property law, civil litigation, general business law, employment law and real estate and construction law. Ms. Caldwell has experience in estate planning, intellectual property law, family law, general business law, real estate and construction law and employment law. She is currently focusing her practice on estate planning and business

transaction matters. They are both graduates of the OU College of Law.

The law firm of Triplett, Woolf & Garretson LLC announced that **Derek S. Casey** has become a member in the firm. He has been in private practice in Wichita since 1991 and has been associated with TWG since July 2012. He has broad experience in investigating, defending and prosecuting complex civil matters, including personal injury and wrongful death claims, employment discrimination and wrongful discharge claims, non-compete litigation, insurance claims, estate claims, ERISA litigation, contract interference, and class action litigation. He graduated with his J.D. from the OU College of Law in 1991.

Sonic Drive-In has announced **Derek B. Ensimer** has been named associate general counsel for employment law. He will provide legal advice and counsel on a broad range of employment-related issues for the corporate office and for company drive-ins located in multiple states. He graduated *summa cum laude* with a J.D. from the OCU School of law in 2009.

Tucker Ellis LLP announced **Sharla Frost** as a partner in the firm's Mass Tort & Product Liability Practice Group. She enjoys defending clients in high-risk mass tort, commercial and product liability cases in state and federal courts across the country. She has served as first-chair trial counsel in more than 40 jury trials. She received her J.D. from Baylor Law School in 1987.

Robert W. Gray of Ada announces his return to full-time practice of law effective May 1. For the past three years, he has served the Chickasaw Nation Child Support Services as legal counsel. Prior to that, he maintained a private practice consisting of criminal law, family law, bankruptcy and personal injury. He is returning to assist clients in the areas of family law, including complex paternity and child support issues, criminal law, personal injury and general civil litigation in both state and federal courts. The firm will be located in the Sugg Clinic building located at 100 E 13th, Suite 207 in Ada. He may be reached at 580-436-1114.

The Bethany Law Center LLP announced that **Sarah E. Hance** has joined the firm. Her focus is on civil disputes and business transactions. She earned her J.D. from OCU School of Law in 2013.

Crowe & Dunlevy has named attorneys **James W. Larimore** and **Jeffrey T. Hills** to the 2015 Executive Committee. The five-member committee is responsible for overseeing the firm's activities and conducting long-range planning to meet the needs of the firm, among other responsibilities. Mr. Larimore serves as a director in the firm's Oklahoma City office and his practice includes multiple aspects of business, commercial and oil and gas industry transactions. He also has experience representing both public and private clients in joint ventures, acquisitions, divestitures, security offerings and more. Mr. Hills is a director in the

firm's Tulsa office. He is an experienced business, aviation and finance attorney and his practice focuses on aviation transactions and regulatory matters, business planning and formation, joint ventures, mergers and acquisitions, capital raising and restructuring, debt and equity transactions, intellectual property licensing and development transactions, taxation and complex commercial litigation.

Prinkle & Pringle has announced that **Cheryl P. Hunter** has joined the firm as partner. The firm, which will continue the practice of law as Pringle & Pringle & Hunter, also named **Miles T. Pringle** as a partner. OBA President **David A. Poarch Jr.** has joined the firm as special counsel. Ms. Hunter's practice includes commercial litigation and all aspects of commercial real estate development. Mr. Poarch has represented individuals, businesses, and lending institutions in a broad range of civil and criminal matters. He has served as general counsel and chief operating officer for a privately held bank services company and assistant dean at the OU College of Law. He is actively working on litigation and estate and business planning for the firm's clients. Mr. Pringle received his J.D. from the University of Missouri – Kansas City School of Law where he clerked for the Country Club Trust Company in Kansas City and the United States Attorney's Office for the Western District of Missouri. He is also licensed to practice in Missouri. He is engaged in both the firm's litigation practice and its transactional practice, emphasizing

financial institution and small business representation.

The Oklahoma City law firm, Lytle Soule & Curlee has announced the addition of **Stanley Koop** as an associate. He received his J.D. from the OU College of Law in 1996. He is admitted to practice in the U. S. District Court for the Western District of Oklahoma. With more than 17 years of experience, he will continue to focus on civil litigation with an emphasis on personal injury, insurance, products liability and employment law.

Rachel M. Lee has been named a partner with Rhodes, Hieronymus, Jones, Tucker and Gable. She has been an associate lawyer with the firm since 2009. Her areas of emphasis include civil litigation and insurance defense. She received her J.D. in 2009 from the TU College of Law.

Riggs Abney is proud to announce two new shareholders in its Tulsa office, **Kiemonn Jones** and **Ashley R. Webb**. Ms. Jones has been with Riggs Abney Law Firm for more than 13 years and practices primarily in criminal law, employment and labor law and transportation law. She also serves as an associate judge for the city of Tulsa. She graduated from the OU College of Law in 2001. Mr. Webb joined Riggs Abney Law Firm in 2009, following almost five years of service in the Office of the Tulsa County Public Defender. He is an involved participant within the Tulsa community, bringing an ever-expanding mix of talent and connections to the firm. His primary practice areas include criminal defense, restaurant liabilities, immigration, construction liti-

gation, nonprofit and artist representation. He graduated from Washington University School of Law in 2003.

Chrissi Ross Nimmo, Assistant attorney general for Cherokee Nation, has been appointed as special judge for the Kaw Nation Domestic Violence Court. The specialty court is designed to handle both civil and criminal aspects of domestic violence matters. She graduated from the TU College of Law in 2008.

Christensen Law Group announced that **Blaine Peterson** and **Jeff Tate** have joined the firm in its Oklahoma City office. Mr. Peterson will practice estate planning and taxation law. He has been a presenter for more than 40 seminars and education programs focusing on estate planning and taxation. He received his J.D. from the OU College of Law in 1999. Mr. Tate will practice bankruptcy, collection, litigation and transactional law. He has written numerous legal and scholarly articles and is a frequent lecturer on bankruptcy, real estate, commercial litigation, collection, and debtor-creditor matters. He is a graduate of the OU College of Law.

Riggs Abney announced the addition of **Damario Solomon-Simmons** as of counsel in their Tulsa office. He brings more than 11 years of experience to the firm in his areas of practice, which include sports and entertainment, government, community relations, politics, business and commercial, diversity and inclusion, employment, civil rights and personal injury. In addition to practicing law, he is a licensed contract

lobbyist and a legislative liaison for the Oklahoma Policy Institute. He graduated from the OU College of Law in 2004.

Dennis Smith recently opened the Dennis A. Smith Law Office PLLC in Clinton. He recently retired as the District II district attorney for Custer, Beckham, Washita, Roger Mills and Ellis counties in western Oklahoma. His practice will be in several areas including criminal law, probate and estate planning, personal injury and property law. His office is located at 505 Frisco in Clinton and he can be reached at 580-323-3777. He received his J.D. from the OCU School of Law in 1986.

Sarah Stewart announces the opening of her new practice, Sarah Stewart Legal Group, at 929 N.W. 164 St. in Edmond. She will continue to focus on adoptions, guardianships, probates and estate planning. Her new number is 405-548-5763.

Fenton, Fenton, Smith, Reneau & Moon announced that **James B. Wilcox** has joined the firm as an associate. He received his J.D. from the OCU School of Law in 2014. While at OCU, he interned at the U.S. Attorney's Office for the Eastern District of Oklahoma, the El Paso County District Attorney's Office in Colorado Springs, Colorado, and the

Oklahoma Court of Appeals under Judge Kenneth Buehner. He was admitted to practice in Oklahoma in 2014. He will practice in the firm's litigation department.

West & Associates announced that **Robert N. Ylla Jr.** and **William A. Gosney** have been named partners and the firm's name has changed to West, Ylla, Gosney. Mr. Ylla has experience representing insurance companies and injured Oklahomans. He graduated from the OU College of Law in 1997. Mr. Gosney has been with the firm since 2007. He graduated from the OU College of Law in 2009. They also announced that Andrew D. Schwartz has joined the firm as an associate. The firm's office has moved to 8 SW 89th St, Suite 200, Oklahoma City. They may be reached at 405-378-8132.

At The Podium

Chris A. Paul of Tulsa gave a presentation on "Regulatory Motivators for Implementing Integrated Pipeline Integrity Programs, Corrosion and Punishment Forum" in a panel at the NACE 2015 Cor-

rosion Conference in Dallas, Texas.

UCO Professor Marty Ludlum recently spoke to the Southern Academy of Legal Studies in Business in San Antonio, Texas. His presentations were "Marijuana Sales on Tribal Lands" and "New Marijuana Legalization in New York."

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:

Mackenzie McDaniel
Communications Dept.
Oklahoma Bar Association
405-416-7084
barbriefs@okbar.org

Articles for the Aug. 15 issue must be received by July 13.

Loretha Mae Barnett of Inola died on April 1. She was born Nov. 5, 1971, and graduated from Morris High School in 1990. She attended Northeastern State University and graduated with a degree in social work and one year later received a master's degree in Social Work from OU. In 2000, she received her J.D. from the OU College of Law. She used her law degree to work for state and federal judges. Her passions were reading and travelling and she loved meeting new people and experiencing new places.

Gary Briggs of Norman died on April 29. He was born on Sept. 3, 1957, and received his J.D. from OCU School of Law in 1986. He practiced in the areas of housing law, foreclosure and domestic violence, but above all, he simply enjoyed helping others solve problems. He was an active member in the Democratic Party, where he was a delegate to the state Democratic convention in LeFlore County. He enjoyed cooking, music and was an avid fan of the OKC Thunder.

C. Wayne Falkenstein of Hennessey died May 4. He was born May 6, 1934, and served in the U.S. Army in Grafenwoehr, Germany. He received his J.D. from the OU College of Law in 1960. He served as county attorney and judge of Kingfisher County,

special municipal judge of the city of Oklahoma City, U.S. administrative law judge and completed oil and gas title work for Energy Title Corporation. He was a Mason and a Shriner and also served as honorary Mexican consul for the state of Oklahoma. Memorial contributions may be made to Disabled American Veterans Charitable Service Trust or Central Oklahoma Humane Society.

William H. "Bill" Mattingly of Pawhuska died on April 15. He was born June 20, 1930, and graduated from high school at Pembroke Country-Day School in Kansas City, Missouri, in 1948. He attended OSU, graduating in 1952 with a Bachelor of Arts degree. **Following college he served two years active duty in the U.S. Army during the Korean Conflict and was in the Active Army Reserve for 12 more years.** After military service, he received his J.D. from the OU College of Law in 1958, where he was a member of the Phi Alpha Delta legal fraternity. He practiced law in Hominy in the Holt and Mattingly firm, was assistant county attorney and county attorney for Osage County and district attorney and assistant district attorney in Osage and Pawnee Counties for 26 years. He practiced law in the Kane, Kane, Wilson and Mattingly Law Firm in

Pawhuska from 1969 to 1986, when he was appointed special district judge of Osage County until Aug. 9, 1989, when Gov. Henry Bellmon appointed him associate district judge of Osage County, a position he held until Jan. 1, 2003, after he chose not to file for the office and to retire from the bench. He then practiced in the Kane Law Offices, the Harvey Payne Law Office and his office in the First National Bank Building in Pawhuska. In 1982, he was selected Most Outstanding Assistant District Attorney for the State of Oklahoma by the Oklahoma District Attorney Association. He was a lifelong member of St. Thomas Episcopal Church, serving as acolyte, Sunday School teacher, Vestry member and layreader.

Clarke Lewis Randall of Oklahoma City died March 21. He was born July 30, 1948. He graduated from Wentworth Military Academy in 1968, received his bachelor's degree from the University of Indiana, his J.D. from the OU College of Law in 1976 and his LL.M degree in taxation law from Southern Methodist University. He was a partner with the law firm of Kornfeld, Franklin & Phillips. His friends, family and co-workers will remember him for his intelligence, wit, kindness, zest for good times and contagious laugh.

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LIPPERT LAND SERVICES - 35 years inhouse landman experience – newly started consulting company – for help, please contact **Becky Lippert** at **Becky@LippertLandServices.com** or 40-341-6242.

OFFICE SPACE

OFFICE SPACE FOR LEASE IN ESTABLISHED FIRM. Space located in Boulder Towers at 1437 S. Boulder Ave, Suite 1080, Tulsa, OK. Space includes two conference rooms, kitchen, reception area, security and free parking. \$1,000 per month. Contact **Robert Williams** at 918-749-5566 or rwilliams@trsvlaw.com.

OFFICE SPACE FOR LEASE: Large office space located at 5929 N. May Ave., Ste. 300, OKC. Internet, wi-fi, phone, copier, kitchen and conference room included. \$530 per month. To inquire, call **Shawn** or **Kacey** 405-463-6800.

OFFICE AVAILABLE FOR SOLE PRACTITIONER. Includes office space and overhead costs such as phone, copier, fax, conference room use and receptionist services. This can be paid for by handling limited court appearances for the law firm. Some paid legal research and writing work may also be available. Some case referrals are also a possibility. Send résumé to “Box F,” Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

THE OKLAHOMA BAR ASSOCIATION HEROES program is looking for several volunteer attorneys. The need for **FAMILY LAW ATTORNEYS** is critical, but attorneys from all practice areas are needed. All ages, all counties. Gain invaluable experience, or mentor a young attorney, while helping someone in need. For more information or to sign up, contact **Gisele Perryman**, 405-416-7086 or heroes@okbar.org.

AV RATED DOWNTOWN TULSA LAW FIRM seeks attorney with a passion for research and writing. The position requires someone who can handle multiple projects at any given time and has experience in all phases of litigation, both federal and state. Compensation commensurate with experience. Full employee benefit package available; including health, life insurance, disability and excellent retirement plan. Please send résumé, writing samples and references to “Box Q,” Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

LAW FIRM SEEKING EXPERIENCED LEGAL ADMINISTRATOR with no less than 5 years of experience managing the day-to-day operations of a mid-sized firm. Job includes reporting to the managing partner, participating in management meetings. In addition to general responsibility for financial planning and controls, personnel administration, and systems and physical facilities, the legal administrator identifies and plans for the changing needs of the organization, shares responsibility with the appropriate partners for strategic planning, practice management and marketing, and contributes to cost-effective management throughout the organization. Salary is based on experience. Send résumé to "Box O," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

NORMAN LAW FIRM IS SEEKING sharp, motivated attorneys for fast-paced transactional work. Members of our growing firm enjoy a team atmosphere and an energetic environment. Attorneys will be part of a creative process in solving tax cases, handle an assigned caseload, and will be assisted by an experienced support staff. Our firm offers health insurance benefits, paid vacation, paid personal days, and a 401K matching program. Applicants need to be admitted to practice law in Oklahoma. No tax experience necessary. Submit cover letter and résumé to Justin@irshelpok.com.

TDW LEGAL & CONTRACT COUNSEL - UNITED STATES & CANADA, T.D. Williamson, Inc. - Tulsa, Oklahoma. Degreed lawyer admitted to practice in at least one United States jurisdiction. 5 to 10 years of "hands on" legal, contract and commercial experience with a multinational company or major international law firm. Other international legal, contract and business experience a plus. Strong, broad based practical understanding of business contracts with expert drafting skills. Fluent in English, proficient in the Spanish language a plus. Good organization skills and strong interpersonal and communication skills to be effective within a multicultural environment. Personal presence and presentation skills that will inspire confidence in business partners. A commercial, solution-oriented mind coupled with a strong commitment to professional ethics. Contact jay.dalton@tdwilliamson.com. Telephone: 918-447-5021.

ESTABLISHED TULSA FIRM SEEKS ASSOCIATE ATTORNEY for civil litigation. The candidate must have 1-3 years' experience. Salary commensurate with experience. Litigation experience not required. Send résumé to MSteele@lws-law.com or BWandres@lws-law.com.

ESTABLISHED OKLAHOMA CITY LAW FIRM seeking attorney(s) with personal injury and employment law experience. Self-starters with great problem solving and writing skills, please apply. Compensation and benefits negotiable based on experience and existing business. Please submit cover letter, résumé and writing sample to "Box G," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

TDW LEGAL COUNSEL AND WORLDWIDE COMPLIANCE OFFICER, T.D. Williamson, Inc. - Tulsa, Oklahoma. Design, develop, implement, maintain, and manage good corporate governance and compliance best practices throughout TDW's global operating organization. Develop TDW's annual compliance work program targeted toward eliminating the highest risks. Develop programs that encourage TDW personnel to report suspected improprieties. Develop, coordinate and implement an educational compliance training program worldwide. Always be mindful of the importance of protecting TDW's reputation. Extensive travel. Contact jay.dalton@tdwilliamson.com. Telephone: 918-447-5021.

DEPUTY COUNTY ATTORNEY - Gunnison County, Colorado - Salary: \$110,875. The Deputy County Attorney works under the direct supervision of the County Attorney and under the policy direction of the Board of County Commissioners. The Deputy Attorney provides legal counsel and also serves as the Operations Manager for the County Attorney's Office. For complete job description and to apply online, visit Prothman at <http://www.prothman.com/> and click on "Current Searches." For questions, call 206-368-0050. First review: May 31, 2015 (open until filled).

AV RATED OKC/TULSA insurance defense firm seeks associate with 3 to 10 years litigation experience in bad faith/civil litigation for OKC office. Salary and benefits commensurate with experience. Send résumé to Wilson, Cain & Acquaviva, 300 N.W. 13th Street, Suite 100, Oklahoma City, OK 73103.

OKC LITIGATION FIRM SEEKS PARALEGAL with a minimum of three years' experience. Must be a graduate of an ABA approved paralegal program. College degree would be preferred. Salary commensurate with the experience of the candidate. Submit résumé to Cathcart & Dooley, 2807 Classen Blvd., Oklahoma City, OK 73106.

DOWNTOWN OKC AV-RATED FIRM needs attorney with 5-15 years of experience in oil and gas law, including drilling, pipeline, and pollution litigation. Salary commensurate with experience. Please send résumé to "Box H," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

MIDTOWN OKC AV-RATED FIRM SEEKS 5-10 year lawyer with experience in business transactional work, including real estate acquisitions, sale and leasing; entity formation and maintenance; and, some commercial litigation. Please send résumé including writing sample to "Box A," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

ASSOCIATE POSITION AVAILABLE for research and writing position in litigation firm practicing in both state and federal courts. English or Composition major preferred. Submit résumé, law school transcript, writing sample, and references to Richards & Connor, 525 S. Main St., Suite 1200, Tulsa, OK 74103, or aphillips@richardsconnor.com.

POSITIONS AVAILABLE

MCAFEE & TAFT is seeking an associate attorney with 3-5 years' experience to join its Litigation Practice Group in its Tulsa office. Ideal candidates will have experience in research and writing, hearings, depositions, and case evaluation, and will be highly motivated and able to manage a diverse caseload of civil litigation matters. All inquiries will be treated confidentially. Top academic performance, strong writing and analytical skills, interpersonal skills, and the ability to work in a team environment are required. Please submit résumé and law school transcript to Craig Buchan at McAfee & Taft A Professional Corporation, 1717 S. Boulder, Suite 900, Tulsa, OK 74119. No e-mails or phone calls, please.

OKLAHOMA-BASED, MULTI-STATE FIRM seeks associates for Oklahoma office, Norman area. Emphasis on Family Law, Child Support Enforcement, and Native American law. Strong work ethic and self motivation skills required. All replies considered confidential. Send résumé and salary requirements to: "Box B," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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Aren't You A Survivor?

By L. Michelle Sutton



"Aren't you a survivor?" he asked as he pulled up a chair.

The question caught me off guard. I could feel the puzzled look on my face.

A kaleidoscope of memories ran through my mind. The memory of being jumped from behind while unlocking my front door; getting car jacked and my arm broken in broad daylight in downtown Tulsa; my Mom committing suicide on my birthday; and

oh yes, the day I was diagnosed with breast cancer.

May 14, 2015, marked the two-year anniversary of my diagnosis. I was diagnosed with cancer from a routine mammogram. Fortunately, it was Stage 1 and a nonaggressive, small cancer. I had a lumpectomy in July followed by radiation. I currently have a clean bill of health and an excellent prognosis for a long and healthy life.

However, I'm still not used to that word "survivor." Aren't we all survivors? We've all had trials and tribulations in our lives, endured suffering and experienced loss.

So this article is for all of you who get up and face the world each day, who take on the demons, who face down life's bullies — and SURVIVE.

Ms. Sutton owns a lobbying firm and also speaks on "surviving life."

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All litigators should have studied this discipline’s dozens of rules while still in law school and, later on, should have observed their law firms’ experienced litigators effectively employing those rules in every adverse deposition.

But no law school and few, if any, law firms recognize that deposition-taking is indeed an intellectually rigorous discipline ... if done right. Therefore, sadly, the vast majority of litigators practice for an entire career without ever truly understanding this crucial syllogism:

**Trial is argument.
Deposition is trial.
Thus, deposition is argument.**

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