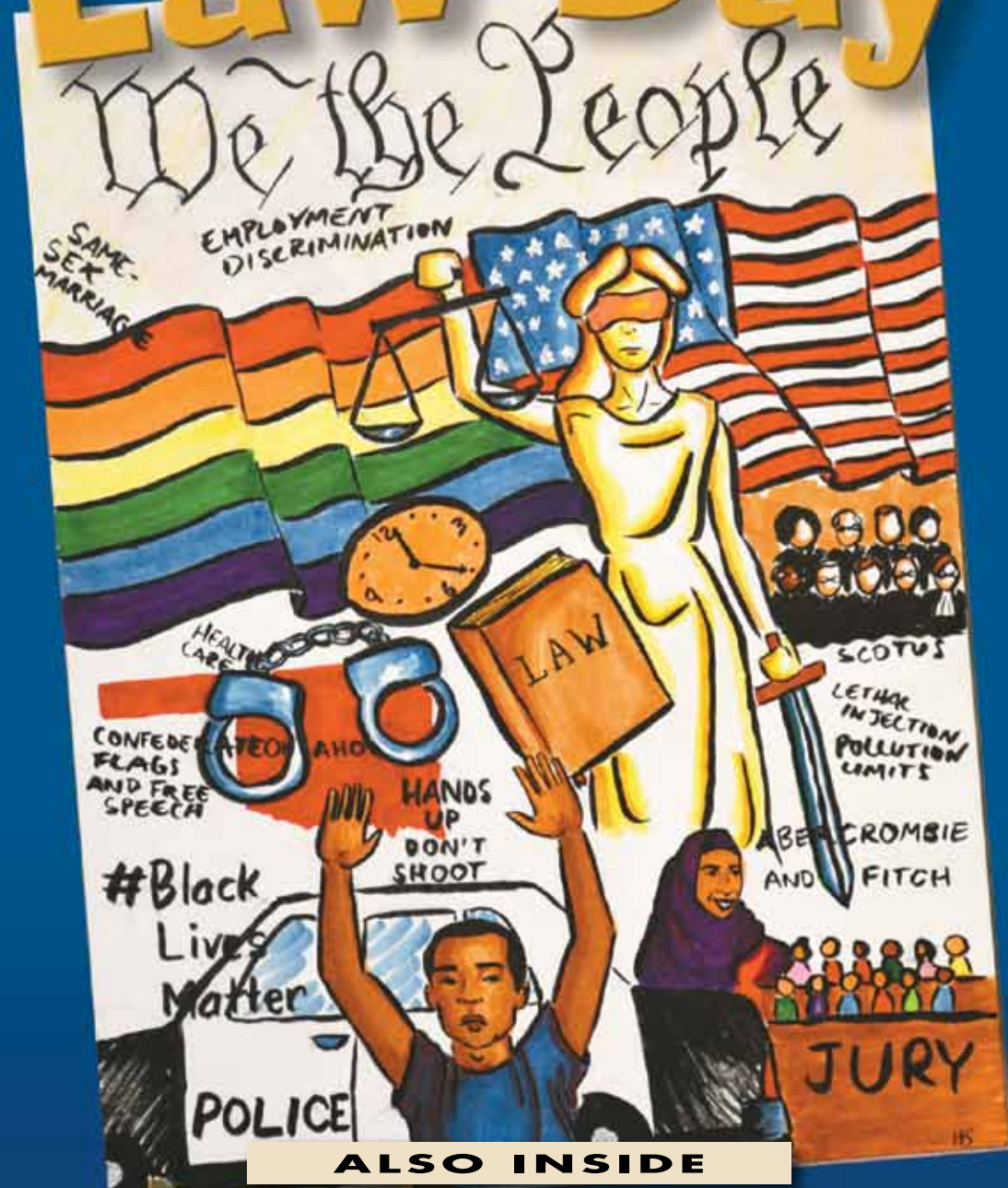


WITH Oklahoma Bar JOURNAL

Volume 87 ♦ No. 11 ♦ April 16, 2016

Law Day



ALSO INSIDE

Protecting Nonprofessional Mineral Owners • Business Courts
Understanding Data Breach Liability



THE RAPIDLY EVOLVING FIELD OF TRANSGENDER LAW

April 22, 2016, 9-3 p.m.

OKLAHOMA BAR CENTER, OKC

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A Practical Introduction

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EI, according to recent research and commentary, has importance for lawyers, their team members, external/internal business partners, organizations, and clients. EI can have a positive impact on a person's life, profession, and career. Since emotions can assist or derail attorneys in their work, those who make a long term commitment to developing their EI will position themselves for more opportunities to provide greater service and to achieve success in their practice and business. Their organizations should benefit too.

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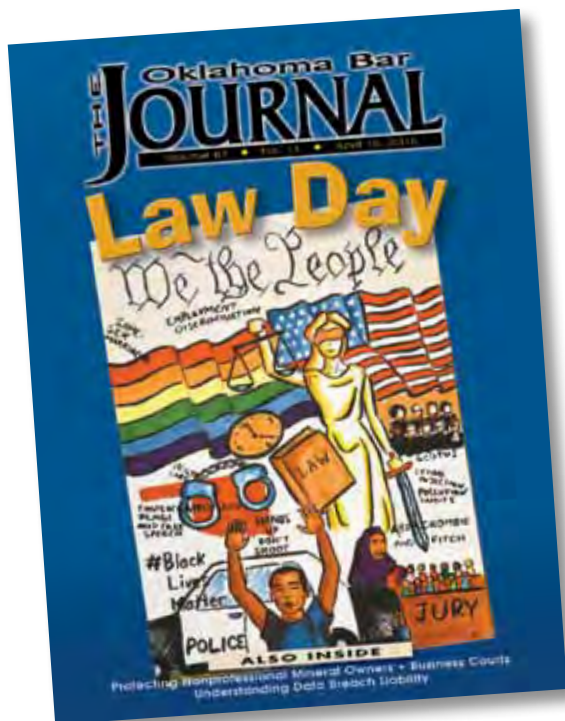


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THEME:
LAW DAY
EDITOR: CAROL MANNING

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Helena Singleton, ninth grade,
Booker T. Washington High School, Tulsa

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UNDERSTANDING
DATA BREACH
LIABILITY

On Law Day Let Us Celebrate Trial by Jury

By Garvin A. Isaacs

On Aug. 14, 1670, in London, William Penn and a fellow Quaker, William Meade, spoke out against the king of England. Penn and his co-defendant, Meade, were tried for sedition and inciting rebellion.¹ After hearing the evidence and arguments, the jury retired to deliberate. When the jury returned to open court and announced that it was unable to reach a verdict, one of the court officers threatened juror Edward Bushel.² Two threats were reported, one in which the court officer said to Edward Bushel, "You deserve to be indicted more than any man that hath been brought to the bar of this day" and another court officer threatened Bushel with branding.³

According to historians, the jury was sent back to reconsider its verdict and, upon return to open court, found that William Penn was "guilty of speaking in Grace Church street." Not being the verdict sought by the judges, the jurors were threatened again. At this point in the proceeding, the 27-year-old William Penn courageously stood and replied, "The agreement of twelve men is a verdict in law, and such a one being given by the jury, I require the Clerk of the Peace to record it . . . and if the jury bring in another verdict contrary to this, I affirm they are perjured men in law.

You are Englishmen. Mind your privilege. Give not away your right."⁴

The next morning, upon returning into open court, one of the judges threatened to cut juror Edward Bushel's throat. Again, Penn responded with words that would empower common people to stand up for the right to trial by jury. "If not guilty be not a verdict, then you make the jury and the Magna Charta a mere nose of wax. . . What hope is there ever of having justice done, when juries are threatened and their verdicts rejected."⁵ After being locked up for another night, the jury

returned to open court and found Penn not guilty. Penn demanded his liberty, but was taken to jail. The jurors were fined, which they refused to pay, and they were sent to prison. Later, Penn and his co-defendant obtained their freedom when Penn's father paid a fine.

Eight of the jurors paid their fines and were freed, but Edward Bushel did not. He and three other jurors hired a lawyer to argue *habeas corpus* in what has become known as Bushel's Case. An appellate court, later in the year, ruled that the imprisonment of the Penn jury was illegal and declared in its opinion that no jury can be punished for its verdict.⁶

The ruling in Bushel's Case became known in England and America. The common man

of England and America embraced the proposition that a jury was free to render verdicts without fear from the wealthy, the powerful and the government. As one writer observed, "The Jury of one's peers that the barons had provided had at last become what the barons never wanted it to be, a democratic parliament of twelve."⁷

And so it was in colonial days of America that trial by jury became a part of our country's history as a protection of the people.



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Events Across the State Emphasize the Importance of Law Day

By Albert Hoch and Richard Vreeland

Law Day celebrates the idea that everyone is entitled to justice, which is one of the fundamental notions of what America is all about. The Preamble to the Constitution of the United States of America states, “We the People of the United States, in Order to form a more Perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”

The idea of justice and particularly the rights of those suspected or accused of a crime are prominent in our history and begin in Article III of the Constitution with the right to trial by jury. The importance of protecting the rights of the accused is further illustrated



Mary Bishop and Sharon Baldwin discuss the legal process of landmark marriage equality case during production of the Ask A Lawyer TV show.

in that four of the first 10 amendments to the Constitution are dedicated to protecting the rights of the accused. These rights are fought for by lawyers in our judicial system, which demands impartiality from members of the judiciary and zealous representation from attorneys on both sides in order to allow a person to confront his accusers while at the same time providing victims and witnesses a forum to have their day in court as well.

Law Day is a great opportunity to highlight and celebrate the work that lawyers do in our communities. Whether from zealous advocacy for our clients, to giving of our time to service organizations and pro bono representation, what lawyers do makes a difference. The tradition of Law Day has a long history of more than 60 years and began here in Oklahoma. Wewoka attorney and OBA Past President Hicks Epton conceived the idea for Law Day

Ask A Lawyer

Thursday, April 28

7-8 p.m.



FEATURING SEGMENTS ON:

- ☆ Female incarceration and alternative programs
- ☆ Importance of jury trials and jury service
- ☆ Marriage equality and today's new families

Hosted and
Moderated by
Dick Pryor

Special Guest:
Oklahoma Supreme Court
Chief Justice John Reif



in the late 1950s, and it has evolved into a national celebration. Oklahomans will observe Law Day (officially May 1) with activities and events taking place over several weeks throughout the state.

Again this year we held our annual art and writing contests for students in pre-kindergarten through 12th grade. The contest focused on the Law Day theme: "Judges, Juries and Justice: The Constitution and the Rights of the Accused." We also put together an informative television show, highlighting important topics and the impact lawyers make on the lives of individuals and the law. Additionally, with the help of all our attorney volunteers, we will again offer 12 hours of nonstop free legal advice. This is the 38th year the OBA has offered the *Ask A Lawyer* TV show and free legal advice community service event.

ASK A LAWYER TV SHOW

The *Ask A Lawyer* television show is set to air Thursday, April 28, at 7 p.m. across the state on OETA. This year's show covers a wide range of topics of interest to Oklahomans.

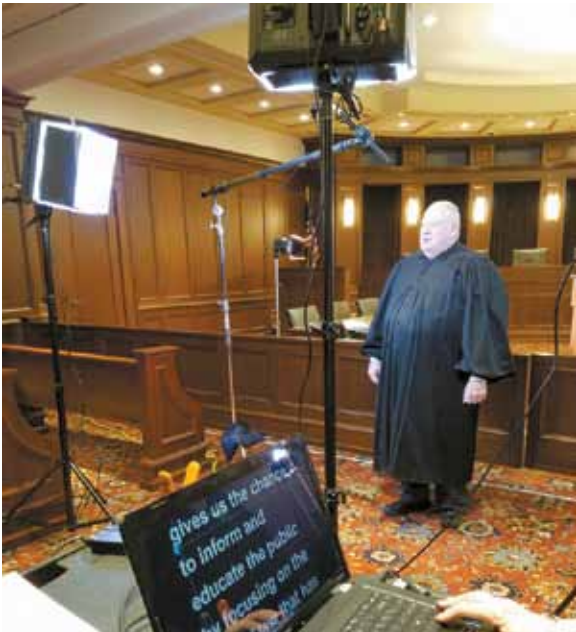


Brittany, a single mom facing incarceration after a drug arrest, turned her life around with the help of a program aimed at reducing the number of women in Oklahoma's prisons.

The show will examine the high rate of female incarceration. We will hear from a young, single mother who was arrested and threatened with long-term incarceration and the loss of her child. Through a program offering alternatives to prison, she was able to get her life back on track.

You'll meet the Oklahoma litigants and some of the legal team

members in a landmark U.S. Supreme Court case, who will talk about how their case helped pave the way to legalizing same-sex marriage across the U.S. and affected other dynamics of family law, including estate planning and probate, child custody and adoption.



Viewers of the Ask A Lawyer TV show will hear Oklahoma Supreme Court Chief Justice John Reif discuss the Law Day theme and introduce contest winners.

Included on the show are some of Oklahoma's legal practitioners who talk about the importance of jury service and why they appreciate those who serve as jurors. OBA President Garvin A. Isaacs shares with viewers why he has made juror appreciation a key component of his presidential year.

Supreme Court Chief Justice John Reif also joins in the celebration of Law Day. Chief Justice Reif shares his thoughts on judges, juries and justice and recognizes the student contest winners and their winning artwork.

CONTESTS AND ACTIVITIES

Nearly 700 students from across the state submitted entries centered on this year's theme, "Judges, Juries and Justice: The Constitution and the Rights of the Accused." We asked first thru 12th-grade students to share what they've learned about the various aspects of the Law Day theme through grade appropriate writing prompts and artwork. Pre-K and kindergarten students had a choice of coloring pages related to the theme to submit as entries, allowing them to show off their budding creative abilities. Oklahoma's students submitted hundreds of displays demonstrating an excellent understanding of the subject matter. The high quality of work made the judges' decisions for selecting the top

awards a difficult task! The winners have been announced, and their winning entries can be viewed at www.okbar.org and in this issue.

FREE LEGAL ADVICE

Many county bar associations are part of the statewide Ask A Lawyer community service project to take place on Thursday, April 28, when the public can call in for free legal advice for 12 nonstop hours. After a successful initial test last year, we are expanding promotion of the option to email a legal question instead of calling. Two email addresses were created — AskALawyer@okbar.org and PregunteAUnAbogado@okbar.org for Spanish-speaking Oklahomans. Participating in Ask A Lawyer is a great way for all Oklahoma lawyers to celebrate Law Day. This annual event gives us the opportunity to provide a much valued community service while promoting a positive public image of attorneys and the OBA.

The OBA Law Day Committee works with each county's Law Day chairperson in setting up a network of local phone numbers people can call during the broadcast. Volunteer attorneys in each participating county staff the phones and answer questions for a predetermined time period. Oklahoma and Tulsa County attorneys work together to staff the toll-free, statewide telephone number from 9 a.m. – 9 p.m.



OBA President Garvin Isaacs appears in the Ask A Lawyer TV show to share his thoughts about jury appreciation.

Your help is needed to make this community service project a success. It takes a total of 30 attorneys for each two-hour shift to fully staff the statewide number. That effort, combined with the local county bars and the emailed questions creates a huge need for attorneys to step forward. Activities planned in each county are described in a separate story. To volunteer, contact your local county Law Day chairperson.



Oklahoma Supreme Court Chief Justice John Reif welcomes Law Day contest first-place winners to a recognition ceremony at the state Capitol. Also attending were OBA Executive Director John Morris Williams and Law Day Committee Co-Chair Richard Vreeland.

The Law Day Committee is continuing to reach out to the Latino community by offering free legal advice in Spanish. This year Spanish-speaking callers will be asked to call the statewide toll free number from 3 to 9 p.m. If you speak Spanish or know nonattorneys who would volunteer to translate, we need your help!

DIRECTIVE AND PROCLAMATION

Chief Justice John Reif is continuing the OBA Law Day tradition of issuing a Law Day Directive, encouraging courts to host Law Day events or to visit schools speaking on the role of the judiciary. The court's website, www.oscn.net, includes a list of those Law Day activities and event ideas. Gov. Mary Fallin has again this year signed a proclamation designating May 1, 2016, as Law Day in Oklahoma.

GET INVOLVED

As we prepare to celebrate Law Day, the OBA Law Day Committee will soon begin planning for next year's Law Day activities. Contest promotion begins at the end of the summer. If you have ideas for next year's Law Day or just want to be involved, then join us on this fun, yet hardworking committee. If you would like to be a part of this team, you can contact Richard Vreeland, 405-488-6821, richard.vreeland@laok.org; or Al Hoch, 405-521-1155, al4notglty@aol.com.

Whether it is volunteering to provide free legal advice in your county or making a presentation to a local school group or organization, we hope that you will participate in Law Day. With OBA Law Day Committee members, county Law Day chairpersons, their committee members and volunteers across the state, this year's Law Day celebration will be another success.

ABOUT THE AUTHORS



Albert (Al) Hoch is president of the Oklahoma Criminal Defense Lawyers Association and a member of the National Association of Criminal Defense Lawyers. He serves as OBA Law Day Committee co-chair. He is a graduate of the OCU School of Law and has been practicing primarily in the area of criminal defense for 29 years.



Richard Vreeland is the assistant deputy director of Legal Aid Services of Oklahoma. He serves as co-chair of the OBA Law Day Committee. He is a 2006 graduate of the OU College of Law.

Help us celebrate **2016 LAW DAY**

Volunteer lawyers needed!

Ask A Lawyer Statewide Free Legal Advice Thursday, April 28

Phone banks located at OETA studios in Oklahoma City and Tulsa. Staffed 9 a.m. – 9 p.m. Volunteers will also answer legal questions submitted by email.



SIGN UP TODAY!

Oklahoma City:
Connie Resar
405-236-8421
connie@okcbar.org
www.okcckbar.org/events

Tulsa:
Dan Crawford
539-664-4289
LawDayTulsa@okbar.org

Other Counties:
Contact your Law Day
chairperson for details.

Law Day 2016

Judges, Juries & Justice

**The Constitution and
the Rights of the Accused**

Contest Winners

The OBA Law Day Committee would like to thank Oklahoma educators, students and their families for participating in the 2016 Law Day Contest.

This year's theme was "Judges, Juries and Justice: The Constitution and the Rights of the Accused." The theme recognized the importance of our judicial system and the role judges and juries play in the lives of every citizen. Contest participants were encouraged to think critically about these issues and reflect their importance in their entries.

As with previous years, pre-kindergarteners and kindergarteners entered the coloring contest, while students in first through 12th grade entered either the writing or art category.

Writing prompts were created for each grade and were tailored to incorporate the 2016 Law Day theme and align with the Oklahoma State Department of Education social studies standards. The art contest drew very diverse student entries, including mixed media artwork, poetry, photography and collages.

★ Grand Prize Contest Winner ★

Seneca Smith

Seventh Grade

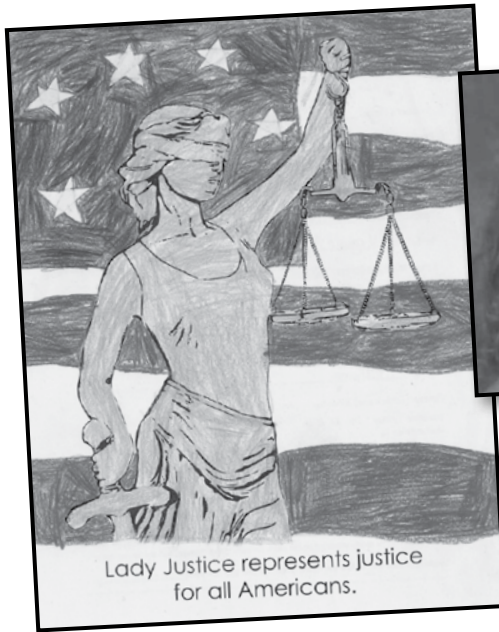
Covenant Community School, Stillwater

Teacher: Kelly Carman



Pop-up book depicting the history of judicial systems

★ Coloring Contest Winners ★



**First Place
Pre-Kindergarten**

Sophie Buchanan

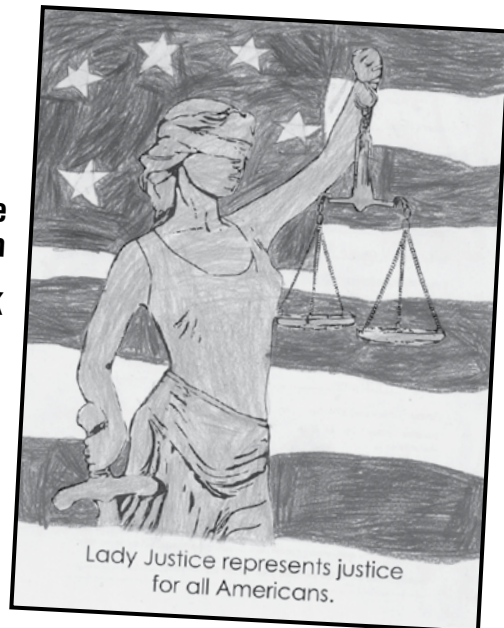
Virginia Smith Elementary, Harrah
Teacher: Tara Lowber



**Second Place
Pre-Kindergarten**

Olivia Black

Ada Early Childhood Center, Ada
Teacher: Mrs. Winter



**First Place
Kindergarten**

Kaylee Nauss

Seiling Elementary, Seiling
Teacher: Vanessa Unwin

★ Coloring Contest Winners ★

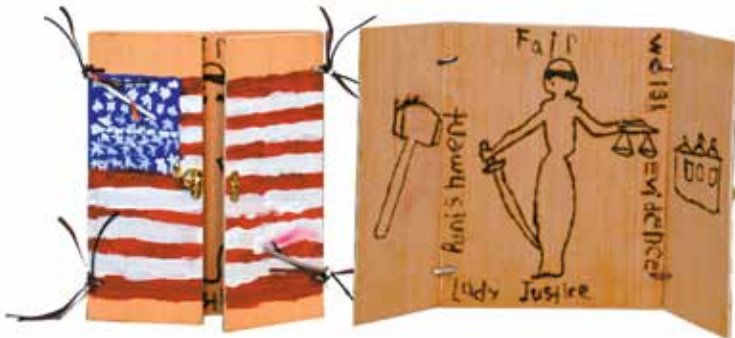
**Second Place
Kindergarten**

Elizabeth Kwok

Nichols Hills Elementary,
Oklahoma City
Teacher: Ms. Sinclair



★ Art Contest Winners ★



**First Place
First Grade**

Paetyn Gilliam

Covenant Community
School, Stillwater
Teacher: Susan Schaefer



**First Place
Second Grade**

Rae Hermann

Covenant Community School,
Stillwater
Teacher: Tabatha Watkins



★ Art Contest Winners ★



**Second Place
Second Grade**

Eden Stromski

Covenant Community School,
Stillwater

Teacher: Tabatha Watkins



**First Place
Third Grade**

Noah Gosney

Covenant Community School,
Stillwater

Teacher: Tabatha Watkins



**Second Place
Third Grade**

Trevor Grace

Covenant Community School,
Stillwater

Teacher: Tabatha Watkins



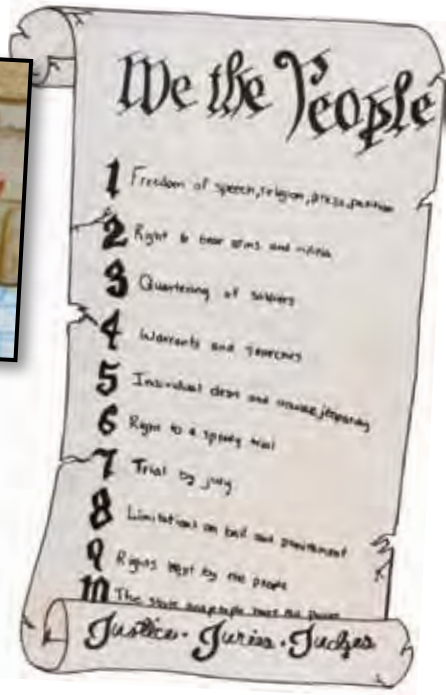
★ Art Contest Winners ★

**First Place
Fourth Grade**

Connor Watkins

Covenant Community School,
Stillwater

Teacher: Ashlee McDaniel



**Second Place
Fourth Grade**

Kennedie Sanders

Covenant Community School,
Stillwater

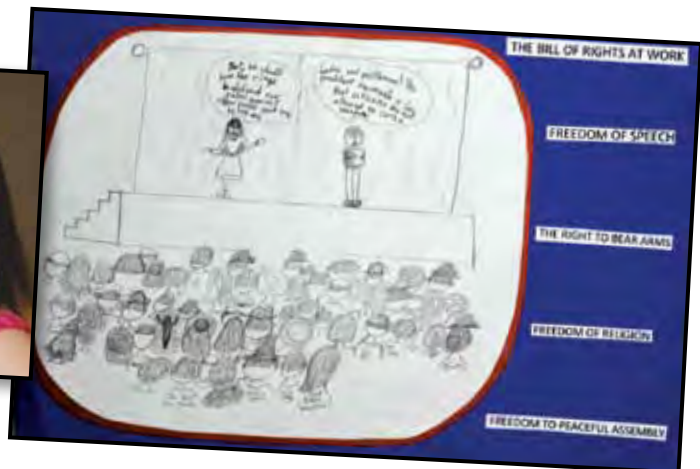
Teacher: Ashlee McDaniel



**First Place
Fifth Grade**

Ella Beall

Hope Christian Academy,
Skiatook
Teacher: Colton Engleman



★ Art Contest Winners ★

We are thankful for Liberty, for Freedom of Rights
For Justice, equality and the chance to fight
For laws which give us peaceful Lives
And Rules to help our Country thrive.
The Bill of Rights gives us Freedom of Speech,
Of Religion and gathering, to say our Beliefs.
We're Thankful for these, And the men who Wrote them.
Thinking ahead from the start to the End.

**Second Place
Fifth Grade**

Cherish Tattershall

Hope Christian Academy,
Skiatook

Teacher: Colton Engleman



**First Place
Sixth Grade**

Bailee Walters

Covenant Community School,
Stillwater

Teacher: Kelly Carman



**Second Place
Sixth Grade**

Sarah Zelenske

Hope Christian Academy,
Skiatook

Teacher: Michelle Starr

★ Art Contest Winners ★

First Place Seventh Grade Madee Kuehl

Covenant Community School,
Stillwater
Teacher: Kelly Carman



Judge, Jury, Justice

There is a dream that justice is given to all
With the constitution justice will not fall
And now with the judge and jury
Justice is given to all
Let freedom ring
America stood strong



Second Place Seventh Grade

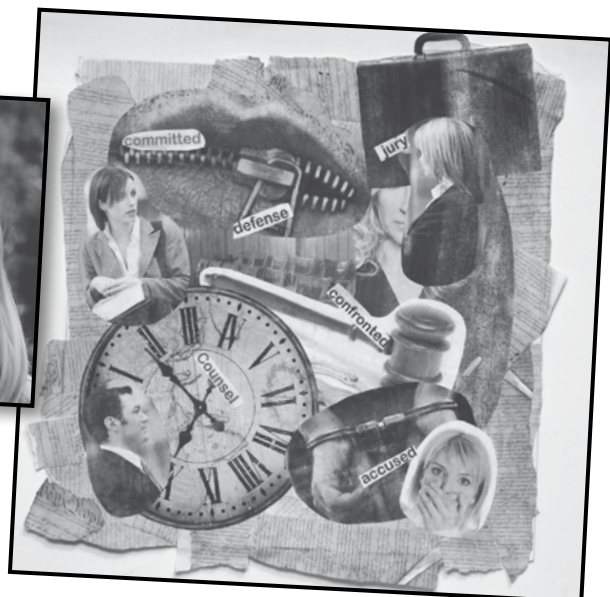
Faith Beagley

Oklahoma Bible Academy, Enid
Teacher: Charlotte Williams



First Place Eighth Grade Jordan Betz

Oklahoma Bible Academy,
Enid
Teacher: Charlotte Williams



★ Art Contest Winners ★

A Judge's Day

In a courthouse in the month of May
A judge was ready to begin his day.
He donned his robe of black
And prepared to give his gavel a whack.

As he entered the bailiff said "All rise"
The giver of justice had just arrived.
As he listened to the lawyers
And the evidence piled up,
It seemed everything was
Going amuck.

He was smart, he was clever,
He knew the law
And left everyone in awe.
As the day ended the verdict
Was handed down.
He had done his duty to
Serve his town.

Second Place Eighth Grade

Austin Banfield

Covenant Community School,
Stillwater

Teacher: Kelly Carman



First Place Ninth Grade

Helena Singleton

Booker T. Washington High School,
Tulsa

Teacher: Jeffrey Mosburg



Second Place Ninth Grade

Jenny Hopkins

Oklahoma Bible Academy, Enid
Teacher: Charlotte Williams



★ Art Contest Winners ★

**First Place
Tenth Grade**

Olivia Anderson

Plainview High School,
Ardmore

Teacher: Alexa Healey



**Second Place
Tenth Grade**

Impeng Sengular

Oklahoma Bible Academy, Enid

Teacher: Charlotte Williams



**First Place
Eleventh Grade**

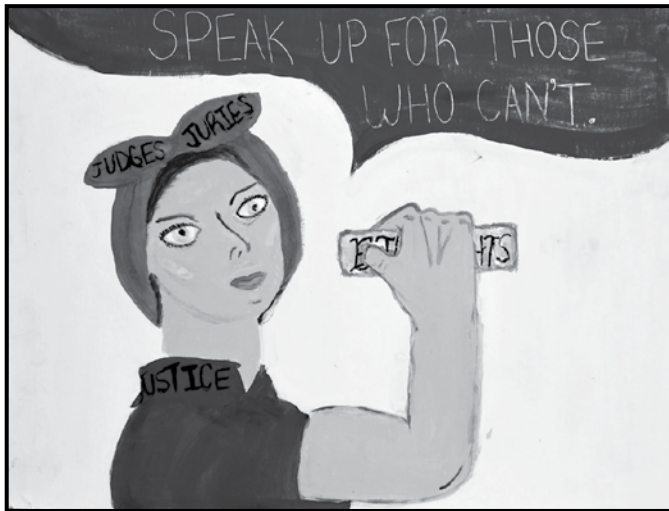
Jessica Johnson

Oklahoma Bible Academy, Enid

Teacher: Charlotte Williams



★ Art Contest Winners ★



**Second Place
Eleventh Grade**

Lauren Anderson

Oklahoma Bible Academy, Enid
Teacher: Charlotte Williams



**First Place
Twelfth Grade**

Claudia Baxter

Covenant Community School,
Stillwater
Teacher: Elizabeth Albright



**Second Place
Twelfth Grade**

Tara Kelley

Oklahoma Bible Academy, Enid
Teacher: Charlotte Williams



★ Writing Contest Winners ★

American Hero: Pocahontas

Pocahontas is nice.
Pocahontas is brave.
Pocahontas is a friend to everyone.
Pocahontas likes animals.
She teaches us that women are strong like men.
She is kind and fair to everyone.



**First Place
First Grade**

Londyn Watkins

Covenant Community School,
Stillwater
Teacher: Susan Schaefer

**First Place
Second Grade**

Jaxson Boyer

Wilson Elementary, Seminole
Teacher: Jeri Stafford



Justice

Justice means you treat someone how you want them to treat you.

Justice means being fair with the other people, we also have respect for others and listen to grownups.

Justice means to have friendship, if you do something on accident then you need to apologize.

Justice means following the rules and laws, you need to have good behavior.

If you call someone names or hit them, Justice means you have to pay the consequences.

Second Place • Second Grade

Bruce Edgel

Wilson Elementary, Seminole
Teacher: Jeri Stafford

To read Bruce's entry, go to www.okbar.org

**First Place
Third Grade**

Lilly Cadenhead

Wilson Elementary, Seminole
Teacher: Erica Dean



What Our State's Government Means To Me

We live in the State of Oklahoma. Oklahoma is one of the fifty states that make America. Each state has its own government. Oklahoma has a government. We have a governor and we have a group of people who make our laws. We also have judges that are part of our government. Our State's government is important to me because it makes laws that protect me. Our State's government makes schools happen so I can learn about the laws. It is also important to me because the government makes sure people are treated fairly and allows people to go wherever they want. Our State's government makes sure people are treated fairly even when they are accused of breaking the laws that the government makes.

Read the rest of Lilly's entry at www.okbar.org

Second Place • Third Grade

Zane Prawl

Covenant Community School, Stillwater
Teacher: Tabatha Watkins

To read Zane's entry, go to www.okbar.org

★ Writing Contest Winners ★

Why the Accused Have Rights in Our Nation

The accused have rights because they are all humans and so they need to be treated fairly. In some other countries they don't have rights like we do in the United States. Whenever people in those countries are accused of a crime they might be imprisoned for something they didn't do or given a cruel and unusual punishment. In the United States we have many rights for the accused like the right to a lawyer or protection from unreasonable searches and seizures, which means that the police can't go into your house without a warrant. But I'm going to tell you about the rights that I think are the most important.

Read the rest of Callen's entry at www.okbar.org



**First Place
Fourth Grade**

Callen Villagrana

Horace Mann Elementary,
Duncan

Teacher: Angelia Smith

Second Place • Fourth Grade

Mina Loghry

Nichols Elementary, Miami

Teacher: Jenny Machado

To read Mina's entry, go to www.okbar.org

U.S. Constitution

The U.S. Constitution played a big role in creating our government. Before the Constitution, the Articles of Confederation governed our country. The Constitutional Convention was the meeting in which the new Constitution was planned and written. The three branches of government play an important role in our government.

The Articles of Confederation were approved by Congress in 1777. The Articles of Confederation were purposely made weak because people were afraid a strong or central government would threaten their freedom.

Read the rest of Lexi's entry at www.okbar.org



**First Place
Fifth Grade**

Lexi Zimmer

Nichols Elementary, Miami

Teacher: Jenny Machado

Second Place • Fifth Grade

Karson Jinks

Nichols Elementary, Miami

Teacher: Jenny Machado

To read Karson's entry, go to www.okbar.org

**First Place
Sixth Grade**

Wyatt Hood

Oklahoma Christian Academy,
Edmond

Teacher: Mrs. Finley



Second Place • Sixth Grade

Ryan Palk

Whittier Middle School, Norman

Teacher: Cindy Castell

To read Ryan's entry, go to www.okbar.org

Where did laws and equal rights come from? Where did law come from? Many scholars would point toward the 13th century. Kings and queens have been in power from the start of history. However, the idea that people should have some say was the thought that developed in 1215 which became known as Magna Carta. The barons in England wanted to stop a king, King John, from abusing his power with the people of England suffering, hence the Magna Carta was written. The bigger question, how did the Magna Carta influence the creation of the United States Constitution?

Read the rest of Wyatt's entry at www.okbar.org

★ Writing Contest Winners ★

**First Place
Seventh Grade**

Daniel Allen

St. John's Episcopal School,
Oklahoma City

Teacher: Mr. Marshall



A Comparison of the United States and Israeli Judicial Systems

Did you know that Israel has had a long standing relationship with the United States which has helped Israel develop a judicial system similar to that of the United States? Currently, with all the conflict going on in the Middle East, Israel remains one of the few countries in the region with a judicial system similar to the United States.

America's founding fathers set up the judiciary system when they wrote the Constitution of the United States and the Bill of Rights. They set up three levels of courts which were; the United States District Courts, the United States Courts of Appeals and the Supreme Court of the United States.

Read the rest of Daniel's entry at www.okbar.org

Second Place • Seventh Grade

Robert Dobbins

Hope Christian Academy, Skiatook

Teacher: Michelle Starr

To read Robert's entry, go to www.okbar.org

Judicial Review Explained: A Great Constitutional Concept... Or Is It?

The three branches of government are essential to our nation's system of law and order. But what happens when Congress or even the president goes too far and disobeys the Constitution? Or what if one of those branches is following a law, but the law is unconstitutional? The Supreme Court has the power to stop it. It is able to review and, if necessary, nullify the Executive and Legislative branches' actions. This concept is called judicial review.

Read the rest of Katie's entry at www.okbar.org



**First Place
Eighth Grade**

Katie McQuay

Hope Christian Academy,
Skiatook

Teacher: Michelle Starr

Second Place • Eighth Grade

Jenny Chapman

Hope Christian Academy, Skiatook

Teacher: Michelle Starr

To read Jenny's entry, go to www.okbar.org

**First Place
Ninth Grade**

Karina Feng

Norman North
High School,
Norman



Chief Justice John Marshall once said "The very essence of civil liberty ... consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." His words illustrate the complex system the United States has today to protect individual rights. The US Constitution, the supreme law of the land, created a system to share power between federal and state governments. The judiciary system in the US is divided into federal and state court systems. However, it is not this simple. Each and every state has their own judicial structure, and varies widely from the federal court system.

Read the rest of Karina's entry at www.okbar.org



★ Writing Contest Winners ★

The Rights of the Accused

On a warm, sunny afternoon in 2015, my parents gathered around the television in our family room to watch the Saudi news. As Saudi nationals, they liked to keep up with the news in their home town. What was routine for them was rare for me. I joined them that day out of boredom. I remember one news story in particular. A blogger by the name Raif Badawi was arrested for creating a website called Free Saudi Liberals in 2012. The news story was talking about the harsh punishment Badawi had been sentenced to; 1,000 lashes and ten years in prison plus a fine. Hearing about the harsh punishment was shocking to me. It made me realize how different the rights of the accused in Saudi Arabia were compared to the United States. What Americans considered basic rights are unheard of in Saudi Arabia.

One of the basic rights in the United States is the freedom of speech. What Badawi did was exercise that right in a country that does not recognize it.

Read the rest of Abeer's entry at www.okbar.org



**First Place
Tenth Grade**

Abeer Shahid

Lawton High School, Lawton
Teacher: Terrance Freeman

**Second Place
Tenth Grade**

Kheri Marable

Lawton High School, Lawton
Teacher: Terrance Freeman
To read Kheri's entry, go to www.okbar.org



**First Place
Eleventh Grade**

Chrystal Fannin

Lawton High School, Lawton
Teacher: Terrance Freeman

**Second Place
Eleventh Grade**

Jazmyne Woodson

Lawton High School, Lawton
Teacher: Terrance Freeman
To read Jazmyne's entry, go to www.okbar.org



Speaking Freedom

Being a teen in this day of age is hard. Especially when we as people, do not feel like we've been heard. This leads to many teens rebelling against the schools, the justice system, and even our own parents. Sometimes it gets out of hand, and leads to nothing but pure chaos. It is the beginning of 2016, and already many controversies have surfaced up from the previous years. Giving many teens, and their parents, very strong opinions on several different objectives. This is okay. Having opinions is okay. At least that's what the First Amendment tells us. It gives everyone freedom of speech. However, just like everything else led by rebellious feelings, our opinions may also come out as unconstitutional. For example, *Tinker V. Des Moines Independent School District*. This hearing took place in 1969, when only four years prior, a couple of teens were wearing expressive clothing that the school deemed "inappropriate." The teens were suspended, and in retaliation the parents sued under the First Amendment. This case is just one of many that example how people take different views of the First Amendment.

Read the rest of Chrystal's entry at www.okbar.org

★ Writing Contest Winners ★

**First Place
Twelfth Grade**

Aaron Carmichael

Edmond Memorial High School,
Edmond

Teacher: Greg Oppel



**Second Place
Twelfth Grade**

Matthew O'Connor

Edmond Memorial High School,
Edmond

Teacher: Greg Oppel

To read Matthew's entry, go to
www.okbar.org

On the Evolution of the Rights of the Accused

The "rights of the accused" has become a buzz term on modern police TV shows. In popular shows such as *CSI*, *Law & Order*, or *NCIS*, the rights of the accused are commonly used as plot devices to add complexity and twist. However, if these shows took place fifty or more years ago, then they could not be used as a plot device simply because the rights of the accused were large gray areas in the law. Over the past century, several court cases have occurred that have shaped the rights of the accused that we know today. One of these monumental cases was *Gideon V. Wainwright* in 1963.

In 1961, Clarence Earl Gideon was arrested for breaking and entering into a pool hall and stealing money from the hall's vending machines. Gideon was unable to afford a lawyer, and the state of Florida informed him that it would only provide lawyers to indigent defendants that might be facing the death penalty.

Read the rest of Aaron's entry at www.okbar.org

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Appellate Practice

Upcoming speakers:

11:30 AM

April 18th

Referee Barbara Swimley

Procedural pitfalls in appellate practice.
(1/0)

May 16th

D. Kent Meyers, Esq.

Regarding the Initiative Petition in 2016
OK 1 (1/0)

Our monthly meetings are held in both OBA's Room 131, and in the Room 2205 of the Main Classroom Building, OSU/Tulsa, by simulcast.

Lunch provided to Section Members.

Non-members are charged \$10 for lunch.

Mark T. Koss, chair

mark-okc@msn.com

RSVP

Law Day 2016

Judges, Juries & Justice

**The Constitution and
the Rights of the Accused**

County Law Day Chairpersons

Adair

Kathryn Morton
918-696-7956

Beaver

Todd Trippet
580-625-4597

Blaine

Judge Mark Moore
580-623-5025

Bryan

Richard Long
580-924-1874

Canadian

Curtis Chandler
405-354-5276

Carter

Justin R. Landgraf
580-226-6277

Choctaw

John Frank Wolf III
580-326-6427

Cimarron

George H. Leach
580-544-3624

Cleveland

Don G. Pope
405-360-7555

Comanche

Tyler Johnson
580-248-4675

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Carissa King
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Lee Griffin
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Hammontree
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David L. Cummins
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580-318-8829

Johnston

Dustin Rowe
580-371-9561

Kay

Ben Lundquist
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Kingfisher

Judge Robert Davis
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Latimer

Chris Henry
918-465-3451

LeFlore

Jolyn Belk
918-647-8681
and
Amanda Grant
918-962-2436

Lincoln

Gregory Upton
405-258-1334

McClain

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McCurtain

Emily Herron
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Roy D. Tucker
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Shane Leach
580-336-2039

Okfuskee

Don McFarland
918-623-2717

Oklahoma

Amber Martin
405-236-8888

Ottawa

Matt Whalen
918-540-2199

Payne

Steve Ruby
918-606-6886

Pittsburg

Mark E. Fields
918-423-4611

Pontotoc

Dale Rex
580-332-7200

Pushmataha

Charlie M. Rowland
580-298-2525

Seminole

Judge Tim Olsen
405-257-3386
and
Jack Cadenhead
405-382-6341

Sequoyah

Kent Ghahremani
918-775-5900

Stephens

Carl J. Buckholts
580-252-3240

Texas

Nathan McCaffrey
580-338-8764

Tulsa

Kara Pratt
918-599-7755

Wagoner

Richard Loy Gray Jr.
918-485-2889

Washington

Jim Elias
918-336-4132

Washita

Brooke Gatlin
580-832-3144

Woodward

Erin N. Kirksey
580-256-9000

Is your county missing from this list? Please submit the name of your Law Day chairperson as soon as possible to OBA Law Day Coordinator Carol Manning, 405-416-7016, carolm@okbar.org.

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Dustin E. Conner Named Senior Attorney



Dustin E. Conner

Dustin Conner joined the Firm in 2011 as an associate attorney. A native of Garber, he graduated from Oklahoma State University with a B.S. degree in Agribusiness and Oklahoma City University School of Law where he received his Juris Doctor with Honors.

Dustin has been involved in Oklahoma 4-H most of his life. He serves as a Garfield County 4-H Foundation Board Member and is a coach for the Garfield County 4-H Shotgun Sports team. He is also on the Board of Directors of the Enid A.M. AMBUCS and is a member of St. Paul's Lutheran Church where he serves on the school board. He is on the Board of Directors of Loaves & Fishes of Northwest Oklahoma. He enjoys spending time with his family, hunting, trapshooting, and attending OSU sporting events.



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AGENDA

8:30 a.m.	Registration
9:00 - 9:50	"What to Do When Your Client's Wages and Bank Account Are Garnished for Civil Judgments" Laura Frossard, Legal Aid Services
9:50-10:05	BREAK
10:05-10:55	"What Practitioners Need to Know About Veterans Law" Nichole Harden and Lauren Truitt, Legal Aid Services
10:55 - 11:10	BREAK
11:10 – 12:00	"Beyond Basic Landlord-Tenant Law: Understanding Federally Subsidized, Public Housing and HUD" Kimberly Moore-Waite and Eric Hallett, Legal Aid Services
12.00 – 1:00	LUNCH (on your own)
1:00 – 1:50	"Bankruptcy Law for Family Law Attorneys" Victor Hunt, Legal Aid Services
1:50 – 2:00	BREAK
2:00 – 2:50	"Hot Topics in Child Support" Amy Page, Child Support Enforcement Division, Department of Human Services
2:50-3:00	BREAK
3:00 – 4:00	"What I Should Have Known Before I Appeared Before the Bench" Judges David Smith (Special Judge, Rogers County), Stephen R. Clark (Special Judge, Tulsa County), and Theresa Dreiling (Special Judge, Tulsa County) - Moderated by Julie Goree, Legal Aid Services

Judges, Juries & Justice

The Constitution and the Rights of the Accused

★ Beaver County Bar Association

The Beaver County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone from 7-8 p.m.

★ Blaine County Bar Association

Blaine County Bar Association will celebrate Law Day with Judge Moore and local attorneys making presentations at county schools about Law Day, the legal profession and the importance of juries and serving on them. The Blaine County drug court will also join in celebrating Law Day by having an essay and poster contest centered around the Law Day theme "Judges, Juries and Justice: The Constitution and the Rights of the Accused."

★ Canadian County Bar Association

The Canadian County Bar Association will participate in the Ask A Lawyer event in coordination with the Oklahoma Bar Association from 6-8 p.m. They will also hold a coloring competition for first-grade students on "What does the USA mean to you?"

★ Carter County Bar Association

The Carter County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone from 7-8 p.m.

★ Choctaw County Bar Association

On the evening of April 30, the Choctaw County Bar Association will host a Law Day Banquet in conjunction with the McCurtain and Pushmataha County Bar Associations. The guest speaker for the banquet will be Oklahoma Court of Criminal Appeals Presiding Judge Clancy Smith.

★ Cimarron County Bar Association

The Cimarron County Bar Association will partner with the Texas County Bar Association to participate in the Ask A Lawyer program in

County Bar Association Activities

conjunction with the statewide program to answer questions by phone from 7-8 p.m.

★ Cleveland County Bar Association

The Cleveland County Bar Association will make presentations regarding topics related to the constitution and the importance of juries to all local schools who request same. The association is selling T-shirts with the Law Day theme as a design and will host a mock trial. The association will also participate in the Ask A Lawyer event in coordination with the Oklahoma Bar Association. This will be on April 28 from 6:30-8 p.m.

★ Comanche County Bar Association

The Comanche County Bar Association will hold its Annual Law Day Luncheon May 4 at 11 a.m at the Hilton Garden Inn and Convention Center. The keynote speaker will be Southern Methodist University School of Law Professor Joshua Tate, who will be speaking about the role of grand juries and the rights of the accused. Cost will be \$25 per person.

They will also host an Ask A Lawyer event from 6-8 p.m. on May 4 where members of the Comanche County Bar Association will be answering legal questions. Anybody who wishes to ask an attorney about a legal issue should call 580-248-4675.

On May 6, the Comanche County Bar Association will host their annual Comanche County Bar Association Golf Tournament at the Lawton Country Club. For more information about the golf tournament, please contact Monty Hightower at 580-355-8920, who is the chairman of the golf tournament.

★ Craig County Bar Association

The Craig County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone from 6-8 p.m.

★ Custer County Bar Association

The Custer County Bar Association hosted a Law Day dinner at Lucille's Roadhouse on April 13. Tenth Circuit Judge Jerome Holmes was the featured speaker.

★ Delaware County Bar Association

The Delaware County Bar Association will partner with the Ottawa County Bar Association to participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone from 7-8 p.m.

★ Garfield County Bar Association

The Garfield County Bar Association has many activities planned for the 2016 celebration of Law Day and will keep its members active throughout the day. The day will begin with Lawyers in the Classroom, where lawyers from the GCBA will speak to middle school students throughout Garfield County about various legal topics. The members of the GCBA will also announce the winners for the Law Day coloring and art contests on this day. The coloring and art contests feature many students throughout Garfield County, and will be judged by the Garfield County district judges. The GCBA will also be participating in the Ask A Lawyer program, in conjunction with the statewide campaign to answer legal questions by phone from 6-8 p.m.

★ Grant County Bar Association

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

★ Jackson County Bar Association

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

★ Johnston County Bar Association

The Johnston County Bar Association will host an essay contest for third-grade students on "What the Constitution means to me." Four winners will be selected and awarded \$50.

★ Kay County Bar Association

To celebrate Law Day, the Kay County Bar Association will host "Cookout at the Courthouse" and will be grilling and serving food to the public, as well as court staff, on April 28.

★ Latimer County Bar Association

The Latimer County Bar Association is partnering with the Pittsburg County Bar Association to host Ask A Lawyer on Wednesday, April 27, between 6-9 p.m. at Pat Layden Law Firm. They are also participating in the Law Day Banquet being held at Pete's Place in Krebs with Administrative Director of the Courts Jari Askins as the featured speaker. There will also be a golf tournament for members of our local Southeastern Oklahoma County Bar Associations beginning at 1 p.m. Saturday, April 29, at the McAlester Country Club.

Also, on Friday, April 22, between 3-4:30 p.m., the district attorney's office located in the Latimer County Courthouse will be open to the public to answer any questions concerning our local county government or justice system as it pertains to Southeastern Oklahoma.

★ LeFlore County Bar Association

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

The next event will occur on May 5 and will be a courthouse tour for fifth-grade students attending schools in LeFlore County. In conjunction with the courthouse tour, Judge Fry will preside over mock trials wherein the students will participate as jurors and also as the attorneys. Members of the bar will be witnesses and help the students with their parts in the Mock Trials. At the conclusion, members of the bar will answer questions about the legal system. Highway patrol officers and sheriff's deputies will also be present to allow the children to look through their patrol vehicles.

★ Lincoln County Bar Association

The Lincoln County Bar Association will host its annual Law Day Picnic on May 6 at 6 p.m. at the Chandler Senior Citizens Center.

★ McClain County Bar Association

The McClain County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide effort to answer questions by phone from 5-8 p.m. Also being planned is an essay contest for 11th and 12th graders.

★ **McCurtain County Bar Association**

On the evening of April 30, the McCurtain County Bar Association will host a Law Day Banquet in conjunction with the Choctaw and Pushmataha County Bar Associations. The guest speaker for the banquet will be Oklahoma Court of Criminal Appeals Presiding Judge Clancy Smith. Additionally, that morning, the bar will host an Ask A Lawyer radio show with a local radio station. The public will have the opportunity to call and ask legal questions that will be broadcasted live. Members of the bar will also speak to schools throughout the county about Law Day.

★ **Muskogee County Bar Association**

The Muskogee County Bar Association will have a banquet on April 28 in celebration of Law Day and will honor its members of 50 years or more by distributing their 50-year pins. Additionally, a "Lawyers in the Classroom" event will take place throughout the month with lawyers speaking about legal careers to both local high schools and middle schools, Hilldale Public, Muskogee Public and St. Joseph Catholic School.

★ **Noble County Bar Association**

The Noble County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone from 6-8 p.m. on April 28.

★ **Okfuskee County Bar Association**

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

★ **Oklahoma County Bar Association**

The Oklahoma County Bar Association will host the 2016 Law Day luncheon which takes place on Friday, April 29, at 12 p.m. in the Skirvin Grand Ballroom. The featured speaker this year will be Judge Timothy D. DeGiusti. The *Journal Record* Award, Leadership in Law Awards, Liberty Bell Award and the Howard K. Berry Sr. Award will be presented at the luncheon. Tickets are \$35 each, with tables of 10 available for \$350. You may purchase tickets by going to www.okcbar.org or calling the bar office at 405-236-8421.

The Ask A Lawyer Program will take place on Thursday, April 28, at the OETA Studios from 9 a.m. to 9 p.m. This community service event allows attorneys to assist the public through free legal advice over the telephone or online. To sign up for this event, go to the website at www.okcbar.org or call Connie Resar at 405-236-8421.

★ **Ottawa County Bar Association**

The Ottawa County Bar Association will partner with the Delaware County Bar Association to participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone from 7-8 p.m.

★ **Payne County Bar Association**

• *Lawyers in the Library*

A pro bono legal advice clinic organized by the PCBA will be held at the Stillwater Public Library on April 29 from 8 a.m. until noon. This clinic will be staffed by members of the PCBA who will give consultations to community members on a walk-in basis. Additionally, PCBA will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7-8 p.m. on April 28.

• *Law Day Banquet*

A banquet for PCBA members and honored guests will be held at The Ranchers Club inside OSU's Atherton Hotel on May 2. The featured speaker will be Oklahoma Supreme Court Vice Chief Justice Douglas Combs on the importance of an independent judiciary.

• *Bowling Tournament*

The PCBA will host a bowling tournament at Frontier Lanes on May 3 to benefit Legal Aid Services.

• *Courthouse Appreciation-Lunch on the Lawn*

An appreciation lunch will be hosted by the PCBA on May 4 for the many people who work in the courthouse. Local attorney James Murray will prepare a barbeque lunch on the courthouse lawn and bar members will be on hand to serve food to everyone who works in the courthouse, including judges, bailiffs, the district attorney, court clerk, the sheriff's department and all related staff members.

• *Honor Docket*

The PCBA will hold an Honor Docket on May 5. This docket will allow local attorneys to present awards and prizes to the winners of

the youth art and essay contests. The Hert Scholarship will be presented to an outstanding high school senior to assist with college and the Liberty Bell Award will be given to a member of the community for outstanding civic leadership. Additionally, three members will receive pins honoring their 50 years of service in the legal profession, Charles Drake, J. Stewart Arthurs and Joe Wiley Fowler. They will be briefly recognized at the Honor Docket and then the PCBA will host a gala to allow their colleagues, family and friends to celebrate their half-century dedication to the legal profession.

- *Art and Essay Contests*

The PCBA will host a coloring contest for the county's first and second graders, a free-form art contest for the county's third through fifth graders and an essay contest for high school students. Winners will receive cash prizes and will be presented their awards at the Law Day Honor Docket on May 5.

- *Courthouse and Jail Tours*

A class of seventh graders at the Stillwater Middle School will receive tours of the Payne County Jail and Courthouse on May 6. These tours will include presentations by a judge, assistant district attorney and the court clerk. The students will also watch a drug dog demonstration by the Payne County Sheriff's Department.

- ★ **Pittsburg County Bar Association**

The Pittsburg County Bar Association will speak to the eighth-grade class at Frink-Chambers Public School and two other schools about the legal profession. They will partner with the Pittsburg County Bar Association to host Ask A Lawyer on Wednesday, April 27, between 6-9 p.m. at Pat Layden Law Firm. They are also participating in the Law Day Banquet being held at Pete's Place in Krebs with Administrative Director of the Courts Jari Askins as the featured speaker. There will also be a golf tournament for members of the local Southeastern Oklahoma County Bar Associations beginning at 1 p.m. Saturday, April 29, at the McAlester Country Club.

- ★ **Pushmataha County Bar Association**

On the evening of April 30, the Pushmataha County Bar Association will host a Law Day Banquet in conjunction with the Choctaw and McCurtain County Bar Associations. The guest speaker for the banquet will be Oklaho-

ma Court of Criminal Appeals Presiding Judge Clancy Smith. They will also participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone from 6-8:30 p.m. One lawyer will speak to a civics class at Antlers Public Schools about the legal profession.

- ★ **Seminole County Bar Association**

As its birthplace, Law Day has always been special in Seminole County, and this year will be no different. Below is a summary of the many activities that will take place this year.

- *School Presentations*

To open the Law Week celebrations, Seminole County's young lawyers will speak to county junior high school students about the legal profession and the rights of the accused in conjunction with this year's theme. Every junior high school in the county will host a presentation by one of our young lawyers.

- *Essay Contests*

The association will host two essay contests open to all county junior high school students and all county high school seniors who plan on attending Seminole State College. The association will award a \$500 scholarship to Seminole State College to the winning senior essay contestant and a gift certificate to the winning junior high school essay contestant.

- *Law Day CLE – April 27, Seminole County Courthouse*

The association will hold its annual Law Day activities on April 27. There will be CLE beginning at 8:30 a.m. in the Seminole County Courthouse in Wewoka. Speakers include Oklahoma Supreme Court Chief Justice John Reif and David Moran, co-founder of the Michigan Innocence Clinic.

- *Law Day Luncheon – April 27, Rudolph Hargrave Community Center*

At noon, a Law Day luncheon will be held at the Rudolph Hargrave Community Center. Supreme Court justices are expected to attend. OBA President Garvin Isaacs will be the featured speaker. The association will also recognize Seminole County attorney Bill Huser for his 50 years as a member of the bar and attorney David Moran.

• *Ask A Lawyer – April 28*

The Seminole County Bar Association will also participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone. Local attorneys will be handling phone calls from 7-8 p.m.

★ **Sequoyah County Bar Association**

The Sequoyah County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide effort to answer questions by phone from 6-8 p.m.

★ **Stephens County Bar Association**

The Stephens County Bar Association will host its annual Law Day luncheon on April 29 at noon at the Duncan Golf and Tennis Club. The guest speaker will be OBA President Garvin Isaacs. The annual James Patterson Memorial Golf Tournament will follow the luncheon at 2 p.m. at the Territory Golf and Country Club.

★ **Texas County Bar Association**

The Texas County Bar Association will partner with the Cimarron County Bar Association to participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone from 7-8 p.m.

★ **Tulsa County Bar Association**

The Tulsa County Bar Association Law Day luncheon will be held on Friday, April 29, at the Hyatt Regency in downtown Tulsa. The speaker this year is Laura Nirider, who is featured on the Netflix series *Making a Murderer*. Ms. Nirider is the post-conviction appellate attorney for Brendan Dassey. She is a professor at Northwestern in Chicago and works with the Center for Wrongful Convictions of Youth. The event is already sold to at least 50 percent capacity, and ticket sales will soon open to the general public. Given her notoriety, a reception will also be held for her on Thursday, April 28. She will participate in a meet-and-greet and a Q&A. Anyone who purchases a ticket to the luncheon will be invited to the reception. Those not attending the luncheon will be allowed to purchase a ticket for the reception. An immigration clinic will be held on April 30 at Redemptive Word Church in the Tulsa area. Bar members will also staff a phone bank from 9 a.m. to 9 p.m. as part of the Ask A Lawyer event on April 28 at the

OETA Studio in Tulsa. A naturalization ceremony was held on Wednesday, April 13, at the Page Belcher Federal Courthouse. The TCBA student art and poetry contest is underway and judging was held April 13 and the ceremony for our winners will be held on May 3. During the months of April and May, members of the bar will participate in Civics in the Classroom. Members also participated in the Logos Oklahoma-Homeschool Speech and Debate Club-Green Country Challenge Speech and Debate Tournament held March 2-5 at Friendship Baptist Church in Owasso. Mock trials will be held at Thoreau and Owasso High School and a *Goldilocks and the Three Bears* mock trial with elementary-aged students.

★ **Wagoner County Bar Association**

The Wagoner County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide effort to answer questions by phone from 6-8 p.m.

★ **Washington County Bar Association**

In celebration of Law Day 2016, the Washington County Bar Association will be sponsoring the Ask A Lawyer program to provide free legal advice to the community on Thursday, April 28, between 6:30-8:30 p.m. In recognition of this year's Law Day theme, "Judges, Juries and Justice, the Constitution and the Rights of the Accused," WCBA members have offered to speak to area high school government and history classes about the Law Day theme and the basic rights and responsibilities of becoming a legal adult. The WCBA also hopes to sponsor its annual Law Day golf tournament at the Hillcrest Country Club, participation and weather permitting.

★ **Woodward County Bar Association**

In Woodward County, experienced local attorneys will be available to answer questions regarding criminal law, divorce law and other areas on Thursday, April 28, from 6:30-8 p.m. at 580-254-9181, corresponding with the OBA's annual *Ask A Lawyer* TV show on OETA. The following day, Friday, April 29, local attorneys will speak to the students of Woodward High School about the criminal process and what it means to be charged with a crime, how to file for divorce, the process of probate after the death of a loved one, the pros and cons of filing for bankruptcy and more.

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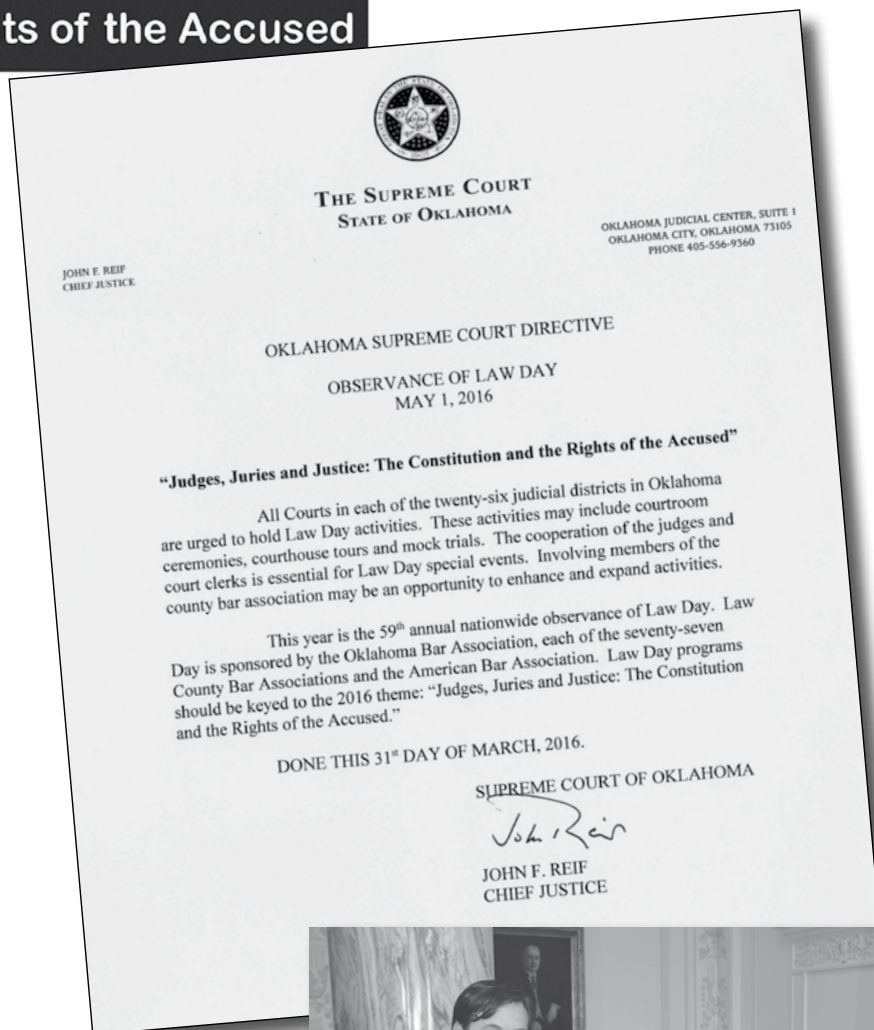
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JUNE 23-25, 2016 | CHOCTAW CASINO RESORT | DURANT, OK

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Law Day 2016

Judges, Juries & Justice

The Constitution and
the Rights of the Accused



Oklahoma Supreme Court Chief Justice John Reif (seated) signs the Law Day Directive before presenting awards to contest winners during the annual ceremony at the state Capitol.

Witnessing were (from left) OBA Law Day Committee Co-Chair Richard Vreeland and OBA Executive Director John Morris Williams.



STATE OF OKLAHOMA



EXECUTIVE DEPARTMENT

Proclamation

Whereas, Law Day is a day of public acknowledgement of our nation's and Oklahoma's heritage of justice, liberty and equality under the law; and

Whereas, the Oklahoma Bar Association has declared the theme for Law Day 2016 as "Judges, Juries and Justice: The Constitution and the Rights of the Accused;" and

Whereas, this year's theme recognizes the significance of our heritage as a free nation; and

Whereas, open and accessible courts safeguard everyone's legal rights; and

Whereas, the stability of American society depends in a large part to our nation's commitment to the rule of law; and

Whereas, Law Day theme, "Judges, Juries and Justice: The Constitution and the Rights of the Accused," encourages all citizens, young and old alike to gain a greater understanding of the role of the judicial system that makes our democracy work and how the courts are the safeguard of our liberty under the Constitution;

Now, Therefore, I, Mary Fallin, Governor, do hereby proclaim Thursday, April 28, 2016, as

"Law Day"

in the state of Oklahoma.

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



ATTEST:

Done at the Capitol, in the City of Oklahoma City, this 29th day of March, in the Year of Our Lord two thousand and sixteen, and of the State of Oklahoma in the one hundred and eighth year.

CR. Benze
SECRETARY OF STATE

Mary Fallin
GOVERNOR

When the Deal's Too Good: Protecting Nonprofessional Mineral Owners in Oklahoma

By Brian J. Stanley

In Oklahoma, buying minerals and acquiring leasehold is big business. And many, if not most, of the buying and leasing transactions concern an oil and gas professional on the mineral buying or lease acquisition side and a nonprofessional on the selling or lease-granting side. It would seem this asymmetry of knowledge in numerous transactions over the last century or so would produce a large number of instances in which the nonprofessional alleges he or she has been taken advantage of by the professional. But the dearth of published cases in Oklahoma alleging misrepresentation, fraud or similar causes of action against professionals indicates otherwise,¹ though we can only speculate as to whether that dearth of cases indicates the professionals' probity, the nonprofessionals' hesitance to litigate, the nonprofessionals' familiarity with leasing and selling minerals, Oklahoma's spacing and pooling statutes or other causes.

But the published cases, though relatively few, are numerous enough and sufficiently consistent in their reasoning and holdings to offer some guidance as to how Oklahoma courts will address alleged overreaching by professionals.² And the most recent case in this area, *Croslin v. Enerlex, Inc.*,³ provided a thorough review of the pertinent cases and therefore serves as an excellent vehicle through which to analyze Oklahoma law on the subject.⁴

In *Croslin*, three siblings, the plaintiffs, inherited a four-acre mineral interest in Seminole County. They did not realize that, in July of 2000, their mineral interest was subject to a forced pooling order, and their father, W.M.

Croslin, who died in 1994, was listed as an unknown or unlocated mineral owner in the pooling. The pooling applicant completed a producing well in the pooled unit.

In 2008, the defendant contacted the plaintiffs and made an unsolicited offer to buy the plaintiffs' mineral interests for a total of \$1,350 for each plaintiff. The defendant did not tell the plaintiffs, though the defendant knew, that the state of Oklahoma held for the benefit of the heirs, successors and assigns of W.M. Croslin, deceased, a sum of \$9,961.71, this being the \$75 per acre bonus and proceeds from the one-eighth royalty due to W.M. Croslin under the pooling order.

In the offer letter to the plaintiffs, the defendant wrote, “we believe you own a mineral interest” in the subject tract, adding that the defendant would pay the plaintiffs the sales proceeds “upon completion of the title examination.”⁵ And, as the court noted, “In making the offer, the defendant did not disclose...the existence of the pooling order or the accrued mineral proceeds held by the State Treasurer.”⁶ The court also pointed out the mineral deed, prepared by the defendant, included language saying that grantors were conveying their mineral interests and their respective interests “in and to **all royalties, accruals and other benefits, if any, from Oil and Gas heretofore or hereafter run....**”⁷ (bold in original). The court later examined the “if any” wording closely and did not care for it in the least.

Soon after executing the deeds to the defendant, the plaintiffs discovered the state held for them the almost \$10,000 in proceeds from the mineral interest that they had just sold for about \$4,100. They filed suit in 2009 contending that the “defendant had a duty to inform them of the pooling order, the accrued mineral proceeds and the production; that defendant’s failure to inform them constituted constructive fraud;⁸ and that defendant’s deceitful and fraudulent actions amount to fraud and justifies rescission, consequential damages, actual damages, and punitive damages.”⁹

The trial court granted the plaintiffs summary judgment on most of the issues, relying largely on *Deardorf v. Rosenbush*¹⁰ and *Uptegraft v. Dome Petroleum Corp.*¹¹ It also found that “the unclaimed property statutes and regulations place additional notice requirements upon one who claims funds in the Mineral Owners Escrow Fund based upon the transfer of a mineral interest.”¹² The Court of Civil Appeals reversed the trial court’s summary judgment, “finding that the defendant made no factual inducement, representation or misrepresentation that gave rise to a duty to disclose the pooled interest or production and that defendant had no duty to disclose the pooled mineral and accrued proceeds to the plaintiffs under the unclaimed property statutes or the pooled mineral interest statutes.”^{13, 14}

The Supreme Court began its opinion by explaining the standard of review applicable, saying that because the trial court’s finding as to the defendant’s duty to disclose the proceeds was a legal finding, the Supreme Court reviewed the legal finding *de novo*, with no

deference to the trial court’s finding.^{15, 16} But the granting of the rescission claim was an equitable matter, and the Supreme Court said an appeals court will not reverse an equitable finding by a lower court “unless it is clearly against the weight of the evidence.”^{17, 18}

Turning to the substantive issues, the court noted that “fraud is a generic term embracing the multifarious means which human ingenuity can devise so one can get advantage over another by false suggestion or suppression of the truth.”¹⁹ (citations omitted). And because fraud is a question of fact, “When fraud is alleged, every fact or circumstance from which a legal inference of fraud may be drawn is admissible,” it added.²⁰ (citations omitted). Further, the court said, “Constructive fraud has the same legal consequences as actual fraud.”²¹ (citations omitted). When the court reviewed the facts, it determined the defendant’s actions did, when taken in the context of the situation, amount to constructive fraud,²² and it granted rescission and a cancellation of the mineral deeds.

The court focused much attention, and much criticism, on the “if any” qualification in the mineral deeds noted above. Finding the plaintiffs had “relied, to their detriment, on the false impression created by the ‘if any’ language [.]” the court concluded that the “‘if any’ language...discouraged, rather than encouraged, the plaintiffs to make an independent investigation into the mineral interest.”²³ And though normally one not in a position of confidence and trust has no duty to speak, there are situations in which partial disclosure creates a duty. As the court put it, the “if any” clause “gave rise to a duty on the part of the defendant to disclose the *whole truth*, including all material facts about the accrual of the mineral proceeds.”²⁴ (emphasis added). Citing *Deardorf*, the court explained that “where defendant is under a duty to say nothing or to tell the whole truth, defendant’s duty to tell the whole truth may arise from partial disclosure” because the concealment of some material facts is “in effect a false representation that what is disclosed is the whole truth.”²⁵

The court also determined that the statutes relating to the state’s holding of unclaimed property and forced pooled mineral interests (see footnote 4) reflected a public policy²⁶ to protect the owners of the proceeds and the owners of unclaimed property. And, the court wrote, “The false impression created by the ‘if

any' language in defendant's mineral deed cannot be ignored in light of this strong statutory policy."²⁷ (footnote omitted).

The essence of the court's opinion is that the defendant had a duty to disclose to the plaintiff mineral owners the existence of the proceeds held for them, because the plaintiffs were not oil and gas professionals and therefore not expected to know to check whether the subject property was producing (or perhaps had wells nearby). The court never specifically said this was a case of a professional taking advantage of a nonprofessional, but that is what the case was about. As the court said in restating the plaintiffs' first proposition in support of their summary judgment at trial court, "plaintiffs argued that the letter and the 'bonus assignment' language in the mineral deed expressed a scheme to capitalize on their **ignorance...**"²⁸ (bold added). The court also noted, in footnote four of its opinion, that the plaintiffs, in 2008, were ages 69, 70 and 77. The ages of the plaintiffs would probably be of little significance if they were all oil and gas professionals.

It's worth noting that the "if any" language referring to production proceeds in mineral deeds is not uncommon. It can sometimes even be viewed as protection for the seller, as without the clause it's possible the buyer could contend that the unqualified wording transferring proceeds demonstrates that proceeds exist, even if there are no proceeds. But here, the court properly determined this common language was in fact misleading to mineral owners not familiar with oil and gas transactions. Further, the statement in the offer letter that "we believe you own" and the statement that the defendant would pay the owner after verifying title all served, when taken in context, to cause the plaintiffs to believe that the defendant knew little about the plaintiffs' interests. And yet, as with the "if any" language in mineral deeds, such statements are very common in offer letters. Often would-be buyers first do a cursory title check to come up with names of possible owners, and they send out offer letters based on this incomplete information, not knowing for certain whether or what interest the possible owners own. The would-be buyer doesn't spend the time and

money on a full title check unless and until a mineral owner agrees to sell. But here again, in the given context, this standard wording could have served to mislead the plaintiffs, making them think the buyers had done little investigation of their ownership. At least, a finder of fact could reasonably have determined, considering all the circumstances that the wording contributed to misleading the plaintiffs.

Even without the "if any" language, it's likely the plaintiffs would have prevailed in this case given the holding in *Deardorf*, *supra*, which the plaintiffs and the court relied on for good reason in *Croslin*.

In *Deardorf*, the plaintiff was a woman who was a long-time employee of the Smithsonian Institute in Washington, D.C., "and was **without knowledge of the oil business.**"²⁹ (bold added). In 1934, she had purchased a one-acre mineral interest in Oklahoma County for \$350. About 10 years later, the defendant wrote the plaintiff and said he "was attempting to clear up the title" to the plaintiff's tract for a client, and that this client "had authorized the writer [defendant] to pay to the addressee [plaintiff] the sum of \$10.00 for a quitclaim deed to the one acre mineral interest."³⁰ The plaintiff, 79 at the time, expressed regret at selling the interest for so little but did so. Unbeknownst to the plaintiff, during her negotiations with the defendant "there was upon the premises one producing well, and two others were being drilled."³¹

The defendants³² "contend 'that they said nothing to mislead her and that she made the sale of her own free will and accord in an arm's length transaction[,]'" the court wrote, quoting the defendants' brief. But the court, with reasoning that would return in *Croslin* 64 years later, refused to accept the defendants' argument, writing, "In the opinion of this court, to confirm as true another's false impression concerning a material fact is no less a false representation of such a fact than if made directly in order to create the false impression. The fact that there was production was the moving cause of defendant's [the court referred to only one defendant here] seeking the conveyance."³³

“It's worth noting that the 'if any' language referring to production proceeds in mineral deeds is not uncommon.”

Then the court continued, addressing the plaintiff's lack of knowledge: "The absence of plaintiff's knowledge of the production was relied on as an inducement to plaintiff's executing the conveyance for a nominal consideration[,] it wrote, continuing: "There is no need to weigh the value of each of the several statements in the letter when it is manifest that the letter as a whole is expressive of a scheme to **capitalize on the ignorance** of another."³⁴ (bold added). The court never addressed whether the plaintiff was to any extent responsible for allowing herself to remain lacking in knowledge, so we can assume the court did not consider that to be the case.

As the *Croslin* court did, the *Deardorf* court looked to *Berry v. Stevens*³⁵ quoting that opinion as follows: "Though one may be under no duty to speak, if he undertakes to do so, he must tell the truth, and not suppress facts within his knowledge or materially qualify those stated."³⁶

The court then found that such a duty to divulge all the material facts, not selected ones, arose "when defendant began the negotiations. And on disclosing in part the pertinent facts such duty would be breached by withholding other pertinent truths."³⁷

After *Deardorf* and before *Croslin*, the court dealt with another case in which professional buyers took advantage of a nonprofessional mineral owner. And again the court held for the mineral owner.

In *Hubbard v. Bryson*,³⁸ the plaintiff was at the time of the subject transaction a 76-year-old widow who, "a year previous to the execution of the agreement...had fallen and broken her hip and four operations had been performed on her..." Further, the subject land was the only land that the plaintiff owned, and she "knew nothing about land and had never bought or sold any land or oil and gas interests..."³⁹ The defendants in the case, the court said, "were men of business experience..."⁴⁰

The plaintiff, the court found, "had not been to the land in about a year and did not know anything about any gas wells being near the farm nor did not know about the completed gas wells in nearby sections..., and [...] defendants never informed her of any gas wells although the defendants knew, at least, that there were some derricks near the land."⁴¹

So again, we have the pattern: a nonprofessional mineral owner does not know about

producing or drilling wells on or near her land, the defendants are experienced in oil and gas or at least in business and do know of such wells and the defendants fail to tell the mineral owner about the wells and then buy the minerals for far below market value.

In this case, the defendants also hurriedly completed the transaction because they feared a certain niece of the plaintiff would warn her not to sell at the offered price. And, in fact, the niece did warn the plaintiff, but the deal was already completed. The niece, whose husband was a banker and experienced businessman, visited the plaintiff one day while the defendants were negotiating with the plaintiff. Fearing the niece would ask her husband about the transaction, the defendants, unable to get their attorney to prepare a contract quickly enough, hastily drafted an agreement and asked the plaintiff to sign it. The plaintiff did sign it but, as the court noted, "Plaintiff's testimony was to the effect that she thought she was signing as a witness and did not intend the instrument to be a deed to the land."⁴²

The trial court heard several experts as to the market value of the property, and all put the value well above the price the plaintiff received from the defendants, primarily because of the existence of the nearby well and drilling activity. And the court, affirming the decision of the trial court, found: "Under all of the evidence, it is conclusive that the defendants intended to and did overreach the plaintiff." And, the court added, "if on account of peculiar circumstances there is a positive duty on the part of one of the parties to a contract to speak and he remains silent to his benefit and to the detriment of the other party, the failure to speak constitutes fraud."⁴³ In this case, the finding was fraud, not constructive fraud. But, "Constructive fraud has the same legal consequences as actual fraud."⁴⁴

The mineral owners don't always win, however, as we see in *Silk v. Phillips Petroleum Company*.⁴⁵ But this case concerned a lease transaction, not a sale.

In *Silk*, a landman for a broker working for defendant Phillips contacted the plaintiff, Silk, by going to the grocery store where the plaintiff worked. After a brief discussion of the bonus, royalty and general terms, the plaintiff agreed to sign an oil and gas lease, and the landman left. A few days later, the landman returned to the grocery store with the lease.

The plaintiff signed the lease and also signed an attachment to the lease that contained an option allowing the lessee to lease the interest again at the end of the primary term for an additional two years on the same terms.⁴⁶

A few years later, the plaintiff discovered she was subject to the option and filed suit, asking for equitable rescission, damages for fraudulent inducement and punitive damages. At trial, the “jury returned a verdict awarding Silk \$18,092 in actual damages and \$3,761,798 in punitive damages.”⁴⁷ The trial court held that the damages compensated the plaintiff and denied rescission.⁴⁸

The Supreme Court reversed the verdict for the plaintiff and upheld the trial court’s denial of rescission. The court wrote, “Silk, a literate adult, had previously executed oil and gas leases, and was generally familiar with their terms. The parties were involved in an arms-length business transaction; a confidential or fiduciary relationship is not alleged, though we recognize that the duty to disclose does not always depend upon the establishment of such relationship.”⁴⁹

In short, it appears the court simply did not believe the plaintiff had been duped. It continued, “We would also point out that the plainly captioned option to renew clause was separately signed, making it difficult for the signing lessor to be unaware of the rider — whether or not it was attached to the printed oil and gas lease.”⁵⁰ So the case turned on the basic rule, stated by the court that, “Although inconsistent with the alleged prior oral contract, the written contract must govern unless its execution was procured by fraud.”⁵¹ Finding no fraud, the court’s decision was simple: the writing governs.

CONCLUSION

What can we take away from this brief review of cases and the cases cited therein?⁵² It’s certainly clear that a professional mineral buyer dealing with a nonprofessional mineral owner better disclose to the owner any production proceeds held for the owner and any drilling or newly completed wells on or near the owner’s property (whatever “newly completed” and “near” mean under the applicable circumstances). We also see that the court won’t rescue a literate, competent mineral owner who fails to read an oil and gas lease (and an incorporated attachment) before signing it. And the *Croslin* case shows that in certain situ-

ations involving nonprofessional mineral owners, even common, almost boilerplate language in an offer letter or deed can be misleading enough, at least when combined with other peculiar circumstances, to contribute to the existence of constructive fraud.

Might we also infer from these cases — many more of which deal with nonprofessional sellers than nonprofessional lessors — that the court views overreaching in sales transactions differently than in leasing transactions? Probably not. The sample size is just too small, and more importantly the court has made no statements to that effect. Further, there is no legal or logical reason to draw a bright line between sales and leases. The issue in both situations is whether the buyer or lessee has taken advantage of the mineral owner’s excusable ignorance by failing to disclose material information that should be disclosed under the circumstances or by actively misleading the owner. Taking unfair advantage of a nonprofessional lessor is no less deserving of judicial opprobrium than is taking unfair advantage of a nonprofessional seller.⁵³

1. There are numerous cases dealing with alleged breach of lease covenants or conditions or implied covenants; but the focus of this paper is on alleged misrepresentation or unfair tactics in the acquisition of minerals or leasehold by professionals, the kind of wrongdoing that goes to the validity of the transaction itself and often leads to claims for rescission.

2. For the noncontroversial proposition that that courts will hold professionals to a higher standard of knowledge, competence and duty to investigate, *see, inter alia*, *Jewell v. Allen*, 109 P.2d 235 (Ok., 1940).

3. 308 P.3d 1041 (Ok., 2013)

4. *Croslin* had a companion case, *Widner v. Enerlex, Inc.*, 313 P.3d 930 (Ok., 2013); but the issues and holdings are the same as in *Croslin*, so this paper will focus only on *Croslin* for the sake of brevity.

5. 308 P.3d, at 1043.

6. *Id.*

7. 308 P.3d, at 1044

8. 15 O.S.A. §59.

9. 308 P.3d, at 1044.

10. 206 P.2d 996 (Ok., 1949).

11. 764 P.2d 1350 (Ok., 1988).

12. 308 P.3d, at 1044.

13. 308 P.3d, at 1044.

14. The statutes referred to were created by three acts: the Unclaimed Pooled Monies Act, 52 O.S.A. §551 *et seq.*; the Uniform Disposition of Unclaimed Property Act, 60 O.S.A. §651 *et seq.*; and the 1984 amendments to the Uniform Act, 60 O.S.A. §§658.2-658.8. *See Croslin*, 308 P.3d, at 1049.

15. 308 P.3d, at 1045.

16. Citing *D-Mil Production, Inc. v. DKMT, Co.*, 260 P.3d 1262 (Ok., 2011).

17. *Id.*

18. Citing *Smith v. Marshall Oil Corp.*, 85 P.3d 830 (Ok., 2004).

19. *Id.*

20. *Id.*

21. 308 P.3d, at 1046.

22. *See court’s conclusion*, 308 P.3d, at 1052.

23. 308 P.3d, at 1051.

24. *Id.*

25. *Id.*

26. *See TXO Production Corporation v. Okla. Corp. Comm’n*, 829 P.2d 964 (Ok., 1992).

27. 308 P.3d, at 1052.

28. 308 P.3d, at 1051.

29. 206 P.2d, at 997.

30. *Id.*
31. 206 P.2d, at 997.
32. The immediate grantee of the mineral deed from plaintiff was also a defendant. The mineral buyer was not himself the grantee.
33. 206 P.2d, at 998.
34. *Id.*
35. 31 P.2d 950 (Okla., 1934).
36. *Id.*, quoting *Stevens*, 31 P.2d, at 951.
37. 206 P.2d, at 998.
38. 474 P.2d 407 (Okla., 1970).
39. 474 P.2d, at 408.
40. *Id.*
41. *Id.*
42. *Id.*
43. 474 P.2d, at 410, citing *Morris v. McLendon*, 27 P.2d 811 (Okla., 1933), and *Barry v. Orahood*, 132 P.2d 645 (Okla., 1942).
44. *Croslin*, P.308P.3d, at 1046, citing *Faulkenberry v. Kansas City Southern Ry. Co.*, 602 P.2d 203 (Okla., 1979), at 206.
45. 760 P.2d 174 (Okla., 1988).
46. 760 P.2d, at 177-78.
47. 760 P.2d, at 175.
48. *Id.*
49. 760 P.2d, at 179, citing *Barry v. Orahood*, 132 P.2d 645 (Okla., 1962).
50. *Id.*
51. 760 P.2d, at 178, citing *Mitchell v. Kimbrough*, 491 P.2d 289 (Okla., 1971).
52. See especially *Uptegraft*, *supra*, at note 11 (Involved oil and gas professionals but shows that circumstances can create duties to disclose even to professionals.); *Barry*, *supra*, at note 43 (Mineral buyer improperly failed to disclose drilling activity to temporarily mentally incapacitated mineral owner, and buyer paid inadequate compensation. Deed was rescinded.); *Berry*, *supra*, at note 35 (Mineral buyers improperly failed to disclose new well near tract sold by mineral owner and deed was rescinded; but here one of the buyers was a real estate agent for the seller and owed a heightened duty to seller.); and *Varn v. Maloney*, 516 P.2d 1328 (Okla., 1973) (Promoter of waterflood deal provided false and misleading information to investors, who relied reasonably and to their detriment on the information. This case does not involve a professional mineral buyer or lessee and a non-professional mineral owner but does provide useful analysis of disclosure duties in oil and gas transactions.).
53. For an excellent overview of issues related to wrongdoing in obtaining leases around the country, see Hall, "Fraud, Misrepresentation, and Related Ethical Issues in Obtaining Leases," 58 RMMLF-Inst. 27-1 (2012)(Rocky Mountain Mineral Law Institute); and for a look at unconscionability as a possible issue in lease acquisition, see Notes and Comments, Burt, "Playing the 'Wild Card' in the High-Stakes Game of Urban Drilling: Unconscionability in the Early Barnett Leases," 15 Tex. Wesleyan L. Rev. 1 (Fall, 2008).

ABOUT THE AUTHOR



Brian Stanley is vice president and general counsel of The Hefner Company Inc., located in Oklahoma City. He also maintains a limited private practice, primarily in the areas of oil and gas, real estate, estate planning and business transactions. He is AV rated by Martindale-Hubbell, is listed in *Marquis Who's Who in American Law* and is a member of Mensa.

In the American colonies, the ruling of Bushel's Case was celebrated as a magnificent event in the history of mankind because it firmly established trial by jury as an institution to protect people from abusive government officials, powerful political influence and renegade unfair judges controlled by the king, politics and ambition, rather than the rule of law.

And so it was in colonial days of America that trial by jury became a part of our country's history as a protection of the people. William Penn came to America, and he brought with him the history of his trial and Bushel's Case.

It was in this historical environment that all 13 American colonies guaranteed the right to trial by jury in civil cases as well as criminal cases.

The American civil jury system is as close to a perfect democracy as any government has ever come to be. We must join together and fight to keep the American civil jury system.

Our Founding Fathers fought for the system of trial by jury in both civil and criminal cases.

Alexander Hamilton said, "The excellence of the trial by jury in civil cases, appears to depend on circumstances foreign to the preservation of liberty. The strongest argument in its favour is, that it is a security against corruption."⁸

Thomas Jefferson said, "I consider trial by jury as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution."⁹

Let us vow to thank the public in May 2016 and declare the month of September 2016 as Juror Appreciation Month. In September every courthouse in Oklahoma will have a jury docket.

To those who have responded to the call of jury service, on behalf of the Oklahoma Bar Association, who as lawyers are officers of the court, we thank you for coming to the courthouses and serving as the third branch of government and rendering justice.

1. Guinther, John, *The Jury in America*. New York: The Roscoe Pound Foundation 1988, 26.

2. *Id.* at 26.

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OBA Real Property Section's 2016 Cleverdon Real Property CLE Roundtable Seminar

Roundtable Topics	Speakers
<i>Update on Oklahoma Real Property Title Authority: Statutes, Regulations, Cases, Attorney General Opinions & Title Examination Standards – Revisions</i>	Kraettli Q. Epperson, Mee Mee Hoge & Epperson
<i>"Cornered at a Cocktail Party" – Top Ten Questions a Lawyer is Likely to Be Asked About Selling or Buying a Home: A Primer for the Family Practitioner</i>	Monica Wittrock, Senior Vice President Central States Region, First American Title Insurance Company
<i>Strategies Operators Are Employing to Buy Time in the Current Oil and Gas Pricing Environment</i>	Lucas J. Munson, Munson & Ritter, P.C., & Kurt Bollenbach, Harrison & Mecklenburg, Inc.
<i>Will Emerging Survey Technology and New Survey Standards Affect Land Titles?</i>	Bruce Pitts, Assistant Director Oklahoma Board of Licensure for Professional Engineers and Land Surveyors
<i>"In the Great Prairie west of the Cross Timber, to the western limits of the United States." – Tribal Hunting and Fishing Rights</i>	Ralph Keen, Keen Law Office
<i>"How Bad It Was, How Good It Is: The Value of an Independent Oklahoma Judiciary" – An Ethical Discussion</i>	Bob Burke, Author and Attorney, Bob Burke Law

The seminar is limited to sixty (60) participants per location in order to encourage discussion. At the event, participants will choose three (3) of the roundtable sessions to attend, but will receive*** the materials for all of the presentations. In Tulsa, following the roundtable sessions, lunch will be provided during the Ethics Discussion. In Oklahoma City, the event will begin with the Ethics Discussion. Registration and Check-in begins at 8:30 A.M. The first session begins at 9:00 A.M.

This seminar is free for members of the Real Property Section and \$25.00 for non-members.

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Business Courts: Specialized Courts for Complex Business Litigation

By Spencer C. Pittman

Business courts are specialized courts reserved for complex business litigation often requiring a statutory minimum amount in dispute. The number of business courts has grown exponentially and advocates have declared them an emphatic success. However, scholars and practitioners criticize business courts citing both readily observable and theoretical issues. Proponents argue business courts provide efficiency, cost-savings and local economic growth while opponents argue business courts are inherently biased, elitist and without data to support implementation. This article discusses a history of business courts in Oklahoma, the purpose and conceptualization of various models and the principal arguments for and against implementation.

It has been argued that the civil trial is nearing extinction. While trial attorneys may abhor this idea, statistics compiled nationwide over the last decades largely support this contention. State court civil trials decreased by 51.84 percent between 1992 and 2005 and, as a percent of total dispositions, the absolute number of federal trials decreased by 61.1 percent between 1991 and 2010.¹ Scholars have debated the cause of this trend, though most agree that increasing costs of litigation and access to alternative and specialized courts are notable reasons.² Specialized courts and alternative programs serve a narrowed purpose with proven positive results, such as decreased administrative expenditures and expedited litigation. The variety of specialized courts continues to expand as court administrators and judges attempt to further reduce costs and increase litigation efficiency. However, there is a new specialized court, the business court, which has been gaining popularity (and notoriety) across the country in the past decades.

HISTORY OF BUSINESS COURTS IN OKLAHOMA

In 2003, Gov. Brad Henry assigned Oklahoma's Economic Development Generating Excellence (EDGE) the task of brainstorming and recommending action plans projected to strengthen Oklahoma's economy and well-being. One subgroup, the EDGE Regulatory Environment Expert Team, conferred and ultimately recommended in their final report for Oklahoma to implement a business and technology court.³ The EDGE Regulatory Environment Expert Team found that the business/commercial court would serve the best interest of all parties by disposing of complex litigation expeditiously, impartially, in conformity with the law and with reasonable expenditures. They also found that the court would provide effective dispute resolution and may allow businesses to strategically pre-plan their affairs to avoid future disputes.⁴ In response to the EDGE findings, the Oklahoma Legislature provided the Supreme Court of Oklahoma with permissive enactment

authority regarding the creation of business courts within the 2004 tort reform law.⁵ The enacted legislation specifically stated Oklahoma was in need of a court specializing in “litigation involving highly technical commercial issues,” primarily in municipalities containing a population of 300,000 or more.⁶

In 2007, Oklahoma House of Representatives Speaker Lance Cargill and Sen. Glenn Coffee re-opened the discussion on business courts in Oklahoma. Despite a positive House interim study and passage of a House bill (87 ayes to 10 nays), the bill failed to make it out of the Senate Judiciary Committee after being tabled for nearly two years.⁷ Though Oklahoma has not rejected the idea of implementation, there has been no further action regarding business courts in the state since that time.⁸

CONCEPTUALIZATION AND BUSINESS COURT MODELS

There are currently 27 states with a business court or a specialized court for complex litigation in America.⁹ Business courts have primarily been “a division of a larger court (typically a trial court) with a jurisdiction limited to some, but not all, kinds of business disputes, presided over by only a few specialist judges, with an emphasis on aggressive case management...”¹⁰ Business courts were founded on the premise of innovation, efficiency and flexibility, specifically tailored to suit that jurisdiction’s needs. For this purpose, no uniform model rules have been recommended or promulgated. Since their inception, the form and function of business courts have been highly varied — similar to a snowflake, no two business courts are exactly alike.¹¹ While some business courts are physically separate entities containing their own exclusive presiding judge, other business courts are integrated into an existing general docket based on prerequisite criteria or at a presiding judge’s discretion as gatekeeper.

The most common variability amongst the business courts includes whether the business court will retain a minimum amount-in-controversy for jurisdictional criteria for inclusion in business court, whether to accept statewide transfers of jurisdiction or if inclusion should be only limited to a specific county. Additionally, jurisdictions adopting a business court must decide if cases should be automatically assigned to the business court solely based on prerequisite criteria or whether a transfer to the business court is contingent upon motion by a

party or recommendation from the presiding judge.¹² Many business court models allow for either option.

The primary consideration when enacting a business court is whether to create a physically separate business court or to integrate the court into an existing generalized docket. The most notable physically separate business court in America is, of course, Delaware’s Court of Chancery, which requires no introduction. North Carolina’s business court also utilizes the physically separate concept in Greensboro, Charlotte and Raleigh. Despite reflecting the same model, the Delaware and North Carolina business courts are vastly different. While the Court of Chancery was designed to hear only matters of equity, North Carolina’s business court was “designed to have a single judge hear business and commercial disputes, at equity or law, from beginning to end.”¹³ Matters in North Carolina can be assigned to the business court if the case falls statutorily within a certain specific category of dispute,¹⁴ based on the complexity of the matter,¹⁵ by party motion or by the judge *ex mero motu* in his or her discretion as gatekeeper.¹⁶ Furthermore, all North Carolina business court judges must provide a written opinion for each case on final disposition.¹⁷

On the other hand, a majority of business court models have chosen to incorporate a complex business litigation docket within an existing generalized docket. This model is favored because it allows existing judges to hear the complex litigation without the need for appointment of exclusive business court judges thereby reducing expenses. For instance, Maine implemented a “Business and Consumer Docket” that provides gatekeeping authority for the assigned judge. This judicial gatekeeper can examine and scrutinize business and consumer law disputes and may singlehandedly accept the case into the specialized docket.¹⁸ A template of criteria is provided to assist the gatekeeper in his/her decision but transfer to the business court can also be made by party application.¹⁹ Proponents of the “add-on” business court further contend this concept comes with funding allocation benefits. Since there would be no need for the creation of a physical “new court,” the salary of a new judge and staff members would be virtually nonexistent. This model’s disadvantage is the potential for a new judicial assignment to the business court docket meaning uniformity of rulings would depend on the assignment of judges.

A similar “add-on” model, implemented in Fulton County (Atlanta), Georgia, retains four judges who set aside time from their general docket for the county’s business court.²⁰ Inclusion into the Fulton County business court can be either through motion or by judicial request.²¹ After objections are heard and overruled, a committee overseeing the business court commences a vote to ensure strict compliance with the criteria for inclusion into the business court. Accepted cases brought by motion require payment of a transfer fee not to exceed \$2,500 (in 2014, 70.37 percent of cases assigned to the Fulton County business court were brought by motion).²² Fulton County has self-proclaimed that their business court model provides expeditious resolution to motions, an early case management conference mandatorily held within 30 days of transfer to the business court from the general docket and purported ready availability to adjudicate issues pertaining to discovery.²³ In further support of their program, the Fulton County business court provides publicly accessible objective data to support its retention.²⁴ Understandably, the business court models are all differentiable, and the benefits to be derived from implementation, if any, will vary according to the specific model of business court adopted in that jurisdiction.

PROPOSERS’ ARGUMENTS FOR BUSINESS COURT

Proponents of business court primarily advocate for implementation due to the potential for judicial expertise and predictability, court administrative and litigation efficiency and the potential for the business court to serve as a vehicle for local business recruitment and economic development.

Exclusive business court judges in the physically separate model can maintain expertise in the business/commercial disputes through prior experience and continual learning in an exclusive business court capacity. The judges’ expertise will simultaneously raise the confidence levels of businesses in the court system through the business court rather than the businesses seeking alternative methods of dispute-resolution, such as arbitration, which may result in inconsistency and exponentially greater risks.²⁵ These designated exclusive judges will also remain in this capacity from the

beginning to the end of a complex dispute. Coupled with mandatory written opinions, this exclusivity provides predictability and uniformity in both the serving judge and his or her rulings within the business court throughout the course of any given business or commercial lawsuit.²⁶ This rationalization also addresses concerns for slow moving dockets with more than one judge handling various aspects of a single dispute. Proponents of this business court model further contend it increases the judge’s actual knowledge and experience in these forms of complex business and commercial disputes rendering higher expertise in the given field.²⁷

**“ Understandably,
the business court
models are all
differentiable... ”**

As the cited original purpose of the business court, proponents also allege the specialized court will improve efficiency, which may in turn provide local and statewide cost-savings as well as more expeditious case resolution.²⁸ The increased resources and staffing availability for a newly founded business court should contemporaneously free the burdened district courts from litigation congestion. Theoretically, since the complex business disputes are removed from the generalized parent docket, the specialized court should improve the administrative efficiency of the court and case management for the other forms of litigation.²⁹ Statistics of cost-savings/expenditures from business courts are nonexistent, and the only publicly accessible data to this regard is the expenditures from North Carolina’s business court. North Carolina’s business court expenditures for their three business courts in fiscal year 2013-2014 totaled \$1,611,005.03, which is not a modest sum.³⁰

Proponents allege business courts may serve as a recruitment incentive for new businesses to establish, expand or move to the location of the business court or may serve to entice current in-state businesses from moving out-of-state. Due to interstate competition, this would provide effective commercial and economic development for the jurisdiction and the state because the business court would establish a trustworthy forum for disputes.³¹ Most scholars refute this argument contending regional establishment, expansion or relocation by a corporation requires methodical consideration of pros and cons along with analyses of the

economic and business climate of that state.³² It was further deduced that it would be “highly unlikely that any business, whether in-state or out-of-state, would make a location decision based on the absence or presence of a specialized business court.”³³ Incidentally, a recent study in North Carolina concluded the number of publicly traded companies and companies incorporated in North Carolina dramatically decreased following its implementation of business court in 1996.³⁴

OPPONENTS’ ARGUMENTS AGAINST BUSINESS COURT

Opponents of business courts contend the different court models may be biased toward large businesses or commercial parties at the detriment to individual litigants or small businesses and may be elitist in nature. In addition, statistics on the long-term success, sustainability and cost-efficiency of business courts is virtually nonexistent.

The most commonly cited argument in opposition to the enactment of business courts is the potential for bias in favor of commercial parties and large corporations to the detriment of individual, small business or nonbusiness litigants. The fear that others may be treated differently under the law in business courts has, in fact, led to the folding of some business courts³⁵ and been addressed orally in business court hearings.³⁶ Scholars have referred to this quandary as a theoretical “two-tiered” justice system, wherein certain litigants, namely commercial parties and large corporations, are favored over others.³⁷ As such, opponents of business courts argue the very notion and conceptualization of the business court favors corporations at the expense of small or non-business and individual litigants.³⁸

All business court models function on the premise of expedited litigation, cost-savings, specialized attention to the litigation and parties and the ready availability for the resolution of disputes. This, in turn, leads to the potential for perceived elitism over other litigation that did not meet the criteria for inclusion into the business court. An example of this implicit form of “elitism” may be the 2014 North Carolina Business Court Modernization Act.³⁹ This act authorizes final judgment decisions and certain interlocutory appeals from the North Carolina business court directly to the North Carolina Supreme Court thereby bypassing the North Carolina Court of Appeals.⁴⁰ Final judg-

ment decisions and certain interlocutory appeals from all other civil district court matters not in the business court must appeal to North Carolina Court of Appeals, which is where the implication of a “two-tiered” justice system may arise.⁴¹ Furthermore, the distribution of additional funding and higher quality judicial, technological or administrative resources to business courts may increase the perception of elitism if other noneligible and underfunded courts or general dockets are overlooked.⁴²

One scholar has posited that group cohesion could result in bias of the business court judges due to the narrowly focused professional group practicing before the business court. He argues consistent members of the corporate/business litigation bar will regularly appear in that particular judge’s business court and this smaller one-dimensional docket would be comprised of a unique and highly experienced group of attorneys. The judge, likely a member of such a bar, would share their narrow interests resulting in favoritism since specialized group members with common interests often associate. This group cohesion may result in professional bias from the business court judge toward the specialized group members thereby compromising the neutrality of the business court. This scholar concludes, “the court might slowly but inexorably be captured by its own specialized bar, resulting in the loss of confidence by the general bar and the public in the court’s independence and objectivity.”⁴³

Finally, business courts are still a relatively new concept. While nearly all business courts across the nation advocate expansion and vocalize their successful aspects of business courts, there is no current long-term data to support business court sustainability, cost-effectiveness or faster case disposition.⁴⁴ The only publicly accessible data on business courts are reports provided by Fulton County⁴⁵ and the North Carolina business court,⁴⁶ as mentioned in detail above. This short-term data is relevant and worthy of consideration. However, it is premature to cite this data containing geographical limitations to support implementation of business courts nationwide. Therefore, longitudinal nationwide data collection and analyses of the impact of business courts are necessary to measure the court’s true success.

CONCLUSION

The implementation and expansion of business courts across the nation are exponential with good reason. The publicly available data, though limited, supports expedited litigation disposition, which may lead to cost-savings for litigants and court administrations. This short-term data cannot be ignored and warrants further exploration, collection and analysis. Overcoming the hurdle of perceived elitism or bias may be a struggle for venues. Also, certain secondary foreseen benefits from business court, such as interstate competition and economic development, remain in question.

For these reasons, most jurisdictions have enacted pilot programs to ascertain the realistic benefits and shortcomings a business court may offer. Implementing a pilot program to include data collection and analysis would provide the critical information needed to fully determine the cost, the effectiveness and the efficiency of a particular jurisdictions' business court model. More importantly, the collected data can and should be publicly released for national consideration, which will ultimately lead to the alleviation of geographically limited data on the business courts.

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4. *Id.* at 3.

5. H.B. 2661, §§16-7, 49th Leg., 2d Sess. (Okla. 2004) (codified at Okla. Stat. tit. 20 §91.7); effective Nov. 1, 2004.

6. Okla. Stat. tit. 20 §91.7, at (A)-(B); as of the 2010 United States Census, municipalities in Oklahoma with a population exceeding 300,000 include Oklahoma City and Tulsa.

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18. See generally State of Maine Supreme Judicial Court: Admin. Order JB-07-1(A. 11-08).

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23. See generally Business Court: 2014 Annual Report, Fulton County Superior Court (2014).

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25. Press Millen, *Why do we have a business court?* Womble Carlyle Sandridge and Rice, PLLC 2-3 (2008), available at www.wcsr.com/resources/pdfs/bl051208.pdf (last visited Jan. 18, 2016).

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39. S. 853, 2013 Gen. Assem. (N.C. 2013) (codified at N.C. GEN. STAT. §7A-27); effective Oct. 1, 2014.

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Understanding Data-Breach Liability: The Basics Every Attorney Should Know

By Peter J. Arant

Imagine two nightmare scenarios an organization might face. In the first scenario, a natural disaster completely destroys the organization's building and all of its physical assets. In the second scenario, the organization suffers a data breach. The breach compromises records containing thousands of individuals' names, social security numbers and financial account numbers. Which one of these two scenarios might be the costlier event? Depending on the circumstances, it could be the data breach.

At first, this is a radical concept to grasp. How did we reach the point where a compromise of sensitive personal data can exceed what even a total physical disaster might cost?

Part of the story has to do with recent technological advancements. Our ability to create, store and access sensitive data continuously increases on an upward trajectory. What most forget, though, is that with this proliferation of data, as well as our increased access to it, the risks of a breach not only grow in number but also in severity.

The other part of the story involves the reasons why certain data can carry with it such risks. According to one study, the average cost of a data breach in the U.S. is \$217 per compromised record.¹

How can a data breach be so costly? In reality, there are a wide range of variables factoring into the overall cost. Examples include forensics and investigation services, the reputational damage suffered by the organization and the loss of existing customers.²

Costs tied to the legal consequences of a breach are also a significant factor. An organi-

zation might have to comply with breach-notification requirements, settle a major lawsuit and pay out regulatory fines — all based on the same event.

Additionally, the organization will expend a sizable sum on legal fees as well as investing in ways to lessen the impact of possible litigation (for example, by offering credit monitoring services as a way of cutting off plaintiffs' damages).

If you understand key laws and legal issues at the heart of a data breach, you can use this knowledge to reduce your liability exposure or that of organizations you advise.

The purpose of this article is to educate practitioners regarding some of these key laws and issues applicable to data breaches. The first part of the article goes over the three main legal consequences an organization can face after a breach.

The second part of the article is intended to provide actionable information on approaches organizations can take both to reduce their chances of suffering a breach and to lessen the impact should one occur.

SCOPE OF THE ARTICLE AND IMPORTANT TERMS

There are various types of sensitive data that, if compromised, could result in legal liability. This article is focused on data commonly referred to as personally identifiable information (PII). PII usually consists of an individual's name along with one or more other identifiers — items like financial account numbers, social security numbers, dates of birth and so on.

A subset of PII also discussed in this article includes health information about an individual. This kind of PII is usually called “protected health information” (PHI).

There are simply too many laws and issues relating to PII to address or even casually mention in a single article. This article highlights some of the more important laws and issues associated with breaches of PII.

THE LEGAL CONSEQUENCES OF A BREACH

Following a breach, there are three main legal consequences an organization might face: 1) breach notification obligations, 2) regulatory enforcement actions and 3) lawsuits. Each of these is discussed below.

Breach Notification Obligations

Following a data breach, an organization might be required to provide notification to those affected.

The obligation to notify could arise by law or contract. At the federal level, notification requirements can be found in HIPAA regulations, Internal Revenue Service regulations and other places.³

Currently, 47 states, the District of Columbia, Guam, Puerto Rico and the Virgin Islands all have breach notification laws.⁴

Generally speaking, these breach notification laws require a person, entity or government agency to notify affected individuals of breaches involving their unencrypted PII.⁵ This obligation to notify is analogous to the common law duty to warn.⁶

Deciding whether notification is required often means wading through breach notification statutes from multiple states. Most of these statutes are outdated, poorly worded and, worst of all, they lack uniformity.⁷

If an organization has customers or clients in multiple states, the legal obligations might vary drastically, depending on which states' laws are triggered.

Given the heterogeneous nature of state breach notification laws, simultaneous compliance with multiple laws can be a logistical nightmare — and an expensive one at that.

Regulatory Enforcement Actions

Many organizations, especially those belonging to a specific sector governed by federal law, face the threat of fines and penalties assessed by regulatory bodies.

HIPAA provides some of the most well-known examples of regulatory fines. For instance, New York and Presbyterian Hospital, along with Columbia University, settled with the Department of Health and Human Services Office for Civil Rights (OCR), for a combined \$4.8 million due to the disclosure of PHI belonging to 6,800 individuals.⁸

Other HIPAA fines include Alaska Department of Health and Human Services (\$1.7 million due to hard drive stolen from vehicle); CVS Pharmacy (\$2.25 million for improper disposal of records in public dumpsters); Cignet Health Center (\$4.3 million for failure to cooperate with OCR investigation and failure to cooperate with records demands).⁹

The Federal Trade Commission (FTC) is another regulatory authority capable of hitting organizations hard in their wallets. Among its many functions, the FTC is tasked with the broad mission of preventing unfair or deceptive business practices.¹⁰ The FTC considers poor data security and privacy measures as constituting such unfair or deceptive practices.

As a result, the FTC sometimes brings enforcement actions following a well-publicized breach. In one enforcement action, ChoicePoint settled with the FTC, agreeing to pay \$10 million in civil penalties and \$5 million for consumer redress.¹¹ Wyndham Resorts and Hotels, which had suffered three separate data breaches, recently settled with the FTC and agreed to implement a comprehensive information security program.¹²

This is just a snapshot of how an organization's data security and privacy practices can be the subject of regulatory scrutiny. If an organization belongs to a specific sector or industry governed by federal law, there is a good chance

a regulatory body could get involved should the organization suffer a breach.

Lawsuits

Class-action Lawsuits. Most high-profile data-breach incidents are immediately met with a barrage of class-action lawsuits. Lawyers now race to the courthouse to file suit even before a breach has been confirmed. For example, Home Depot was hit with a class action just days after merely stating it was investigating “unusual activity.”¹³

Plaintiffs in class-action lawsuits assert a wide variety of claims: negligence, breach of express or implied contract, violation of consumer protection laws, unfair competition, invasion of privacy, emotional distress and bailment.¹⁴

The issue of standing usually takes center stage in these cases. Even if a person’s records are compromised in a breach, does that mean the person has suffered an injury-in-fact sufficient to confer standing? Is the threat of possible identity theft enough? If so, how certain must the impending threat be?

These are the kinds of questions courts weigh in determining whether plaintiffs have standing in consumer data-breach suits.¹⁵ Although courts tend to employ roughly the same analysis, they tend to differ in terms of the importance they place on certain facts. Consequently, two cases with largely the same facts might end up with very different results.

Standing is a highly complex issue in these cases that will not be resolved any time soon, whether by virtue of a U.S. Supreme Court case or otherwise. The takeaway for now is that there is no way to predict, in any reliable manner, how a court might rule on standing in a given data-breach case.

Other Private Suits and Claims. Besides consumer class-action suits, data breaches can also lead to numerous other lawsuits and claims brought by private parties. After all, sometimes one organization’s breach can financially harm a second organization. Further, while one organization might be the public face of the breach, behind the scenes there could be another party partly responsible for the incident’s occurrence.¹⁶

Consider the consequences to financial institutions following a breach at a major retailer. Banks and credit card companies are some-

times forced to issue new cards to their customers. They might also incur thousands or even millions of dollars in fraudulent purchases. To recoup their losses, financial institutions sometimes sue the organization that experienced the breach.¹⁷

The case of *Colorado Casualty Insurance Co. v. Perpetual Storage Inc.*¹⁸ provides another illustration of one organization passing the blame to another. In that case, the University of Utah had given backup tapes containing PHI of 1.7 million individuals to its data-storage company, Perpetual Storage.¹⁹

The backup tapes were later stolen while under Perpetual’s watch.²⁰ As a result, the university expended \$3.3 million in notification costs, credit monitoring services and other services.²¹ The university then demanded Perpetual reimburse it for these amounts.²² Perpetual, in turn, tendered the claim to its carrier, Colorado Casualty.²³ The latter filed a declaratory judgment action alleging there was no coverage for the incident.²⁴

Perpetual Storage never reached trial; however, the case is important because it signals what the future holds for data-breach litigation. Data-breach lawsuits will increasingly involve defendants who are not multibillion-dollar corporations like Target or Home Depot. We should also expect more lawsuits concerning the role of third-party service providers and insurance coverage issues.

PREVENTIVE MAINTENANCE: EXPLORING WAYS ORGANIZATIONS CAN PROTECT THEMSELVES FROM A BREACH

As the examples above illustrate, the impact of a breach can be very damaging, if not fatal, to an organization. What, then, can organizations do to protect themselves from a breach? Because of the many legal issues at play, what roles can attorneys play in that process?

Before looking at some of the ways organizations can protect themselves, keep in mind that formal protocols for safeguarding sensitive information might already be legally required of the organization. At the federal level, HIPAA is an obvious example. Some states also mandate that an organization install certain safeguards if the organization will be using or accessing their residents’ PII.²⁵

Understanding The Big Picture: Breach Prevention Versus Comprehensive Risk Management

The first thing to understand is that it is impossible to be completely immune from a data breach.

This isn't to suggest there's no use even trying to prevent a breach. Rather, the situation requires a shift in mindset. While preventing a breach from occurring is a major piece of the puzzle, it's not the only piece.

We all hear about ways to protect ourselves from cybersecurity incidents. We're told to use encryption, utilize strong passwords, patch software and so on. Though these kinds of measures are all critical, they only make up one component of a larger strategy.

The starting point should be to assume that a breach is not a matter of *if* but *when*. By adopting this mindset, an organization can utilize a more comprehensive approach to dealing with the risks. Instead of just breach prevention, the focus should include how to lessen the impact should an incident occur. For instance, can the organization limit the amount of data on its network by getting rid of old or largely useless data? Could it reduce the number of devices or users capable of accessing the network or certain portions of it? Can the organization purchase insurance to cover the costs of a breach?

By acknowledging the impossibility of being completely immune from a breach, the goal becomes one of managing the risk in the most effective way possible.

The focus should be to eliminate or avoid as many risks as possible. For each remaining risk, the organization will have to decide to what extent it can mitigate the risk, shift it to another party or accept the risk.

Attorneys can provide valuable input in this process, given the various risks that are legal in nature. Attorneys can advise organizations as to the extent of certain risks, as well as strategies for transferring or avoiding risks. There are a host of other legal considerations as well. These include things like deciding how long to retain records based on records retention laws and e-discovery concerns. Other legal consid-

erations include the impact of network monitoring on employees' privacy rights.

Security Standards and Frameworks

There are a lot of moving parts when it comes to managing an organization's information security and privacy risks. Trying to keep track of all of these moving parts — or even knowing what step to take first — can be a daunting challenge. A good first step is to refer to information security standards and frameworks.

Among the most widely used standards and frameworks are those from the National Institute of Standards and Technology (NIST),²⁶ the International Organization for Standardization (ISO)²⁷ and ISACA.²⁸

These standards and frameworks are similar in that the adoption process begins with some sort of risk assessment for identifying security vulnerabilities. The organization then identifies and implements technical, physical and administrative controls to address them.

Contractual agreements now commonly reference these standards and frameworks, especially if the parties' relationship involves the exchange of sensitive personal data.

In summary, security standards and frameworks provide a solid foundation for managing information security and privacy risks.²⁹ After understanding the areas they cover and how they work, an organization can then decide whether it should formally adopt one of these standards and frameworks.

EXAMPLES OF SPECIFIC MEASURES ORGANIZATIONS CAN TAKE

Below is just a sample of the kinds of proactive measures organizations can take to protect themselves from the harm resulting from a breach. Again, these are just pieces of a much larger puzzle.

Encryption

The legal consequences of a data security incident can be dramatically different if the data is encrypted. In fact, the incident might not be considered a "breach" at all or otherwise does not carry with it the same legal obligations. It's not enough to simply be told that the organization is using encryption and leave it at

“The starting point should be to assume that a breach is not a matter of *if* but *when*.”

that. Data can be “in transit” or “at rest,” for example, and the encryption method for each is different. There are also different levels of encryption, meaning not all encryption is created equal.

Breach Preparedness

Organizations should not only develop plans for dealing with a breach, but also test the effectiveness of their plans through simulated exercises.

Some valuable provisions to include in a breach response plan include:

- the individuals within the organization in charge of overseeing the breach response;
- the protocols for containing and remediating the breach, including the use of a cybersecurity firm;
- how evidence of the breach should be collected and preserved;
- how the breach response should be documented;
- when the breach should be reported to an insurance carrier;
- when to retain outside counsel;
- how and when the organization will determine its notification obligations.³⁰

Incorporating the use of an attorney in a breach response plan can be very beneficial. Should a breach occur, an attorney can hire and work with a cybersecurity firm to contain and remediate the breach.

While cybersecurity professionals work on technical aspects relating to the breach, counsel can assist the organization in understanding its legal obligations regarding evidence preservation, notification requirements and internal policy compliance, among other things.

Additionally, the organization’s communications with the attorney and the attorney’s cybersecurity firm could be considered privileged in future litigation.

Contractual Protections

Organizations often hire third-party service providers to use, store or transmit sensitive personal information on their behalf. But what would happen if a service provider is responsible for a breach?

To prepare for that possibility, organizations can protect themselves, at least to some extent, by including certain provisions in their agreements with service providers.

These agreements can contain provisions detailing the consequences of a breach, including:

- indemnification;
- which party must pay breach investigation and remediation costs;
- which party must pay notification costs and credit monitoring services.

Service provider agreements can also outline how the provider is to conduct itself when handling sensitive data. These provisions could include:

- the standard of care required of the service provider;
- the technical safeguards required when handling sensitive data;
- the right to audit the security practices of the service provider;
- how data is to be returned or destroyed upon the agreement’s expiration.

These are just a handful of contractual provisions worth considering.³¹

Cyber Insurance Coverage

Organizations with standard insurance policies such as commercial general liability (CGL), directors and officers (D & O) and errors and omissions (E & O) might find they have little or no coverage for a data-security incident. For instance, a CGL policy might preclude coverage on the basis that there is no physical injury to person or property.³² An E & O policy might be limited based on how it defines the “professional services” covered.³³

To fill in the gaps, there are now policies that address data-security incidents. These are sometimes referred to as “cyber-risk” policies.³⁴ These cyber policies can provide first-party and third-party coverage for a variety of events. For example, cyber policies can cover business interruption, breach-notification costs, credit monitoring for affected individuals, regulatory expenses, assistance from a cybersecurity firm and more.³⁵

When shopping for a policy, organizations should carefully review exclusions, policy limits and how they correspond with other policies. As for exclusions, a policy might deny coverage for acts of dishonest insiders or failure to follow required system-security practices.³⁶

Finally, organizations should bear in mind that following a breach, a cyber policy will often require notifying the carrier as soon as

possible.³⁷ This is especially true if the policy provides coverage for breach investigation and remediation costs. In that scenario, the carrier will want to provide the insured with immediate services from a cybersecurity firm and sometimes legal counsel. Delaying containment and remediation services might result in further damages, which is why coverage could be affected.

Insurers do not have sufficient data to accurately predict their claims activity related to these policies. New types of data breaches are uncovered almost daily, and the scope and nature of damages also continue to change. Consequently, cyber insurance products will continue to evolve in terms of the kinds of events they cover, the limits of liability available and the exclusions they contain.

As the odds of suffering a data breach continue to rise, having proper insurance is critical.

CONCLUSION

As the examples in this article demonstrate, organizations must change how they assign value to sensitive personal data. Just as organizations safeguard tangible assets through security measures and insurance policies, they must do the same with sensitive personal data. Understanding the legal context surrounding this data can help the organization institute the appropriate safeguards.

Editor's Note: This is a modified version of an article originally published in the Montana Lawyer, published by the State Bar of Montana.

1. Ponemon Institute, 2015 Cost of Data Breach: Global Analysis 2, goo.gl/njpEB5 (May 2015).
2. *Id.* at 25-26.
3. Thomas J. Smedinghoff and Ruth Hill Bro, "Lawyers' Legal Obligations to Provide Data Security Arising from Generally Applicable Law," *ABA Cybersecurity Handbook*, 59 (Jill D. Rhodes and Vincent I. Polley eds., ABA 2013) (citing 45 CFR §164.314(a)(2)(1)(C); 45 CFR §164.410; IRS Rev. Proc. 98-25, §8.01).
4. National Conference of State Legislatures, *Security Breach Notification Laws*, goo.gl/uC9pKJ (Oct. 22, 2015).
5. Andrew B. Serwin, Peter F. McLaughlin and John P. Tomaszewski, *Privacy, Security and Information Management: An Overview* 285 (ABA 2011).
6. Smedinghoff and Bro, *supra* n. 3, at 59.
7. Links to state breach notification laws are located at goo.gl/Xaqb89 (accessed Jan. 19, 2015).
8. Department of Health and Human Services, *Data Breach Results in \$4.8 Million HIPAA Settlements*, www.hhs.gov/news/press/2014pres/05/20140507b.html (May 7, 2014).
9. Information on these and other incidents involving HIPAA violations and corresponding penalties can be found at www.hhs.gov/about/news/index.html (accessed Jan. 26, 2016).
10. See *Federal Trade Commission Act*, 15 U.S.C. §45.
11. FTC, *ChoicePoint Settles Data Security Breach Charges; to Pay \$10 Million in Civil Penalties, \$5 Million for Consumer Redress*, goo.gl/bNshM0 (Jan. 26, 2006).

12. FTC, *Wyndham Settles FTC Charges It Unfairly Placed Consumers' Payment Card Information at Risk*, goo.gl/1cvbst (Dec. 9, 2015).
13. Jonathan Randles, "Home Depot Breach Suit Shows Plaintiffs Firms' Jockeying," *Law 360*, goo.gl/sEU6XU (Sept. 5, 2014).
14. John Black, "Developments in Data Security Breach Liability," 69 *Bus. Law* 199, 200 (2013).
15. Examples of data-breach cases taking up the issue of standing include *In re Sony Gaming Networks and Customer Data Security*, 996 F. Supp. 2d 942 (S.D. Cal. 2014); *Remijas v. Neiman Marcus Group, LLC*, 794 F.3d 688 (7th Cir. 2015); *In re Sci. Applications Int'l Corp. (SAIC) Backup Tape Data Theft Litig.*, No. 12-347, 2014 WL 1858458 (D.D.C. May 9, 2014).
16. *E.g.*, in the Target breach it appears hackers gained network access through a third party HVAC company which had done work at several Target locations. Krebs on Security, *Target Hackers Broke in Via HVAC Company*, goo.gl/cqqqLt (Feb. 5, 2014).
17. See *e.g.* *Lone Star Natl. Bank, N.A. v. Heartland Payment Systems, Inc.*, 729 F.3d 421 (5th Cir. 2013).
18. *Colorado Casualty Insurance Co v. Perpetual Storage Inc.*, 2011 WL 1231832 (D. Utah 2011).
19. *Id.* at slip op. 1.
20. *Id.*
21. *Id.*; Jaikumar Vijayan, "Insurer Says It's Not liable for University of Utah's \$3.3M Data Breach," *Computerworld.com*, goo.gl/9FAhQO (June 4, 2010).
22. *Perpetual Storage*, at slip op. 1.
23. *Id.*
24. *Id.*
25. Massachusetts, for example, requires "comprehensive security programs" be put in place if personal information regarding its residents is owned, stored, maintained or licensed. 201 Mass. Code Regs. §17.03.
26. Information regarding NIST standards can be found at www.nist.gov/cyberframework.
27. The ISO publishes various standards regarding information security, including ISO 27001. More information can be found at www.iso.org/iso/home.htm.
28. Information about ISACA's COBIT 5 framework can be found at www.isaca.org/Cobit/pages/default.aspx. ISACA's COBIT 5 is also a paid product.
29. Smaller organizations with minimal information assets, however, might find them to be too overwhelming or even overkill for their own needs.
30. For information on these and other provisions to include in a breach response policy, see Christopher Wolf, Hogan Lovells US LLP, *Introduction to Data Security Breach Preparedness with Model Data Security Breach Preparedness Guide*, goo.gl/5qi6QX (April 2012).
31. For information on these and other provisions in service provider agreements, see Dana B. Rosenfeld and Alysa Zeltzer Hutnik, Kelley Drye and Warren LLP, *Practical Law Company*, goo.gl/GQWxIn (2011) (accessed Jan. 26, 2016).
32. For an example of litigation involving whether a CGL policy covered a data breach, see *Sony Computer Entm't Am. Inc. v. Am. Home Assur. Co.*, 532 F.3d 1007 (9th Cir. 2008).
33. James L. Rhyner and H. Wesley Sunu, "Cyber Liability Insurance for Law Firms and Legal Organizations," *The ABA Cybersecurity Handbook* 193 (Jill D. Rhodes and Vincent Polley eds., ABA 2013).
34. Lorelie S. Masters, "Insurance Protection for Security Breaches," *Data Breach and Encryption Handbook* 280 (Lucy Thompson ed., ABA 2011).
35. Mary Thompson, CNBC, *Why Cyber-Insurance Will Be the Next Big Thing*, www.cnbc.com/id/101804150 (July 1, 2014).
36. Masters, *supra* n. 34, at 280.
37. Masters, *supra* n. 34, at 280.

ABOUT THE AUTHOR



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Volunteers Make High School Mock Trial Program a Success

By Marsha Chojnacki

"Every breath you take, every move you make, every bond you break, every step you take, I'll be watching you." It is common for police to be quoted in trial, but perhaps no one anticipated a quote from the Police. This was the opening line in the plaintiff's statement in the Oklahoma High School Mock Trial finals on March 1. Not to be outdone, the defense answered with a police quote of their own. This time it was Detective Joe Friday's famous phrase, "Just the facts."

If you are a pop culture enthusiast such as myself, these two statements are enough to get your attention. However, there was so much more. Stellar performances were provided by Moore High School and Owasso High School as they met to determine who would be crowned the 2016 Oklahoma High School Mock Trial state champions.

The competition was held in the beautiful Bell Courtroom on the OU College of Law campus. Presiding over the trial was Retired Judge Edward Cunningham. The panel was filled with a virtual "all-star" roster of judges that included Retired Judge Glenn Adams, Retired Judge Kenneth Dickerson, Judge Shon Erwin and Judge Suzanne Mitchell of the United States District Court for the Western District of Oklahoma

and Judge David Lewis of the Oklahoma Court of Criminal Appeals.

After a very close split decision, Moore High School emerged victorious for the second year in a row and will

mittee drafts the case and then sends it to the schools by October of each year. The committee also sets up trial sites around the state by using local, state, federal and tribal courthouses. Each site is filled by attorney volunteers who serve as presid-



Mock Trial Committee members are (from left) Marsha Chojnacki, Andrea Medley, Nathan Richter, Judy Spencer, Kevin Cunningham, Dan Couch, Melissa Peros, Todd Murray, Tai Du, Jennifer Bruner and Michael Nesser.

represent Oklahoma at the National Mock Trial Competition in Boise, Idaho, this May. Out of the 36 teams across the state that began competing in January, the other top finishers were Calera High School in eighth, Ada High School Team White in seventh, Jenks High School in sixth, Clinton High School in fifth, Ada High School Team Red in fourth and Bishop Kelley High School in third.

The OBA High School Mock Trial Committee puts on this annual competition. The com-

ing judges and scoring panelists. These volunteers provide crucial input to the schools that helps the teams prepare for the next round of competition.

Attorneys not only volunteer on the committee and at the sites, but many bar members also serve as attorney coaches to the participating schools. Without these volunteers, the Oklahoma Bar Association, the Oklahoma Bar Foundation and all the parents, teachers, students and supporters, this wonderful program would not be possible. I want to offer a very



Judging the final championship round were (from left) Judge Shon Erwin, Judge David Lewis, Judge Suzanne Mitchell, Retired Judge Glenn Adams, Retired Judge Kenneth Dickerson and Retired Judge Edward Cunningham.

sincere “thank you” to each of these as well as my deep gratitude to committee members Nathan Richter, Todd Murray, Andrea Medley, Michael Nesser, Aaron Bundy, Tai Du, Melissa Peros, Christine Cave, Jennifer Bruner, Joe Carson, Kevin Cunningham, Solola Webb and Dan Couch. I also offer a very special word of appreciation to Mock Trial Coordinator Judy Spencer who works nonstop to keep us all on track and the program going.

For more information regarding the OBA’s High School Mock Trial Program, visit www.okbar.org/public/MockTrial and to sign up as a volunteer, please email mocktrial@okbar.org.

TRIAL SITE COORDINATORS

*denotes hosting qualifying and quarter final rounds

Aaron Bundy*
Joe Carson
Christine Cave
Marsha Chojnacki*
Deresa Clark*
Dan Couch
Kevin Cunningham*
Tai Du
Patrick Layden
April McClure
Andrea Medley*
Regina Meyer*
Anne Mize

Todd Murray
Michael Nesser*
Nathan Richter*
Susie Summers*
Chris Szlichta
Leah Terrill-Nessmith*
Laina Vaughn
Solola Webb
John Young

ATTORNEY COACHES

Ranada Adams
Clifton Baker
Judge James Bland
Judge Daman Cantrell
Eric Cavett
Stephana Colbert
Angie Dean
Chance Deaton
Deidre Dexter
Valery Giebel
Celo Harrel
Clint Hastings
William Hickman
Andrew Hofland
Mike Horn
Michon Hughes
Linda Jaha
Aaron Johnson
Chris Jones
Judge Douglas Kirkley
Brian McLaughlin
Judge Tim Mills
Anthony Moore
Rob Neal
Ellen Quinton
Rob Ridenour
Judge Matt Sheets
Desmond Sides
David Smith
Don Smitherman

Bob Speed
Frank Stout
Ken Underwood
Judge Jill Weedon

PRESIDING JUDGES AND SCORING PANELIST

*denotes rounds judged

Lydia Anderson
BJ Baker
Ana Basora
Gabe Bass
Luke Bateaux
Jeremy Beaver
Howard Bertesen
Branden Bickle
Jenna Brown
George Burnett
Julie Bushyhead
Jeff Byers
Whitney Byrd
Brett Cable
Dan Card
Eric Carpenter
Dietmar Caudle
David Cheek
Jason Christopher*
Guy Clark
Mark Clark
James Cosby
Michael Coulson
John Cramer*
Kymberly Cravatt*
Dan Crawford****
Kari Crawford
Judge Edward Cunningham****
Michael Denton
Ken Dickerson
Charles Dickson
Susan Dobbins*
Bill Doolittle
Susan Eads
Josh Edwards**
Kathleen Egain*
Kyle Endicott
Judge Shon Erwin*****
Joe Fears
Craig Fitzgerald
Amy Fogleman
Marna Franklin
Mykel Fry
Ryan Fulda
Kyan Fuscey
Jodie Gage
Debra Gee
Charles Geister

Are you a former high school mock trial team member?

The Mock Trial Committee would like to create a list of bar members who took part in Oklahoma's program. Please email mocktrial@okbar.org with the name of your high school, how many years you were on the team and what year(s) that took place.

Charles Glidewell
Amber Godfrey
Scott Goode
Stephen Gray
Mark Graziano***
Lori Guevara
David Guten*
John Hadden
Deborah Haelder
Jared Haines
Matthew Haire
Judge Sarah Hall
Alex Handley
Yvette Hart*
Judge Barbara Hatfield
Gaylon Hayes
Brady Henderson
Shane Henry***
Craig Hester
Clay Hiller
Mark Hixon
Megan Holden
Lori Jackson
JoLynn Jeter
Richard Johnson
Debbie Johnson
Melody Jones
Logan Jones

Kindanne Jones
David Jorgenson
David Keglovits
Jennifer Kern
John Kinslow
Laci Klinger
Andrew Koester
Kendra Kuehn
Brian Kuester
Aaron Lancaster
Judge Thomas Landrith
Kent Larason
Tyler Larsen
Paige Lee
Tara Lemmon
Michael Lewis*
Carole Liebendorfer*
Niki Lindsey
Larry Lipe*
Renee Little*
Randy Long
Nicole Longwell
Ben Lundquist
Blake Lynch
Kieran Maye
Paige McLaughlin***
Gayle McNamara
Regina Meyer
Mike Miller
Madison Miller
Jennifer Miller
Bryan Morris
Phillip Morton**
Leslie Myers
Michael Nesser
Steve Newcombe
Brenda Nipp
Paul Northcutt
Jimmy Oliver
Ivan Orndorff*
Jessica Ortiz*
Mark Osby
Shannon Otteson
Susan Otto
Jenna Owens
Amy Page
Kelly Parker
Julie Pittman
Sonja Porter
Robert Redemann***
Robert Redwine
Greg Reilly
Dale Rex
Jacquelin Rhodes
Nathan Richter*
Lorena Rivas*

Robin Rochelle
Charles Rogers
Jake Sandlin
Adam Schorn
Mark Schwebke*****
Micah Sexton
Jeff Shaw
Steven Shreder
Vani Singhal
Kim Slinkard
Karen Smith*
Jared Smith
Angela Smith
Charles Snyder
Tim Sowecke
Sandy Steffen*
Taylor Stein
Luke Stephens
Krista Steuart
Krista Steward
Kelsie Sullivan
Thomas Swafford II
Charles Swartz
Brian Swensen
Leslie Taylor
Scott Thomas
Carolyn Thompson****
Judge Norman Thygesen
Mark Toffoli
Michael Trewitt
Mia Vahlberg
Georgina VanTuyll
Kyle Wadenheim
Brechan Wagner
Richard Warzynski***
John Weedn
Robert Whittaker
Roger Wiley
Betty Williams
*two rounds
**three rounds
***four rounds
****five rounds
*****six rounds
*****seven rounds

ABOUT THE AUTHOR



Marsha Chojnacki practices in Tulsa and serves as chairperson for the High School Mock Trial Committee.

Legislative Activity Increases

By *Duchess Bartmess*

OBA President Garvin Isaacs and Executive Director John Morris Williams have been sharing updates with you on the recent actions taking place with HB 3162, which would change the selection process for appellate judges, and SB 583, which would abolish the Oklahoma Bar Association in its present form. Much is happening on those two bills, and the best way to stay updated is to watch the OBA's website at www.okbar.org.

Even though the 2016-2017 state budget and budget-related issues have grabbed much of the attention of the members of the Legislature, action on other issues has been making its way through the process. The March 10, 2016, deadline for third reading of bills and joint resolutions in the house of origin has passed.

This report provides an update on measures already noted, "Top Ten" measures that are of high interest and current information regarding several other significant issues still considered "active."

Those measures designated as being on general order awaiting a vote by the full house may have been acted upon by the printing date of this article.

BILLS ACTED ON BY THE GOVERNOR

SB 1194 Sent to the governor 3-31-16. Repeals 10A, §1-4-202, requiring written notification of emergency custody hearing.

UPDATED REPORT ON 'TOP TEN' MEASURES NOTED IN FEBRUARY OR MARCH REPORTS

HB 2281 In Senate on general order. Open Records, Internet access.



HB 2349 In Senate on general order. Addresses homestead exemption, veterans disability compensation.

HB 2936 In Senate Judiciary Committee. Condemnation — award of costs and attorney fees.

HB 3098 In Senate Public Safety Committee. Self-Defense Act deleting penalty.

HB 3162 In Senate Rules Committee. Modifying appointing authority for Judicial Nominating Commission.

'TOP TEN' MEASURES STILL CONSIDERED ACTIVE NOT ALREADY REPORTED ON

HB 2275 In Senate Appropriation Committee. DNA samples from those arrested for felony crimes.

HB 2472 In Senate, recommended to the full committee do pass as amended by Appropriation Subcommittee for Public Safety and Judiciary Subcommittee giving DAs discretion regarding filing misdemeanor charges.

HB 2479 In Senate, recommended to the full committee do pass as amended by Appropriation Subcommittee for Public Safety and Judiciary Subcommittee regarding Uniform Dangerous Substances Act penalties.

HB 2553 In Senate Transportation Committee. Relocation permits for outdoor advertising.

HB 2651 In Senate on general order. Creating Oil & Gas Waste Efficiency and Recycling Act.

HB 2864 In Senate Appropriation Committee. Creates Unified Law Enforcement Act of 2016.

HB 2962 In Senate on general order. Requires insurance for autistic disorders.

HB 3098 In Senate Public Safety Committee. Addresses firearms and the Self-Defense Act.

HB 3158 In Senate on general order. Increasing Corporation Commission authority to act without notice and hearing.

SB 1122 In House on general order. Recommendations from Water for 2060 Produced Water Working Group.

SB 1219 In House Environment Committee. Use of aquifers.

SB 1362 In House Appropriations Committee on Public Safety. Repeals noncompliance with REAL ID Act.

SB 1414 In House on general order. Creates Oil & Gas Water Recycling & Reuse Act.

MEASURES DESIGNATED FOR MONITORING THAT HAVE NOT BEEN PREVIOUSLY REPORTED ON

Constitutional Amendments

SJR 45 In House on general order. Increases terms for statewide elected executive officers.

SJR 64 In House Rules Committee. Identification of voters to be able to vote.

SJR 65 In House Rules Committee. Allow appointment of Commission of Labor.

SJR 68 In House Rules Committee. Repeal Article XXVIII — repeal of article regarding alcoholic beverages and enacting new Article XXVIII A regarding alcoholic beverages.

SJR 72 In House Rules Committee. Use of public monies or property for sectarian or religious purposes.

Children — Custody and Guardianship Issues

HB 2391 In Senate Health Committee. Modifies home study requirements regarding grandparents.

HB 2426 In Senate on general order. Grandparent visitation rights.

HB 2431 In Senate on general order. Limiting permanent guardianship.

HB 2483 In Senate on general order. Termination of parental rights, conditions resulting in waiver of jury trial.

HB 2484 In Senate on general order. Conditions resulting in termination of DHS custody and supervision.

SB 902 In Senate, House amendments read. Limiting persons permitted to be guardian.

Civil Procedure Issues

HB 2399 In Senate Judiciary Committee. Jurisdictional requirement for emergency *ex parte* orders.

HB 2670 In Senate Judiciary Committee. Asset forfeitures attorney fees and costs award.

HB 2936 In Senate Judiciary Committee. Condemnation attorney fees and costs award.

SB 1095 In House Insurance Committee. Exemption from liability for volunteers.

SB 1166 In Senate Judiciary Committee. Authorizing DHS to issue subpoenas.

SB 1250 In Senate Judiciary Committee. Notaries electronic signature requirement.

Criminal Law and Procedure Issues

HB 2397 In Senate Judiciary Committee. Expungement categories.

HB 2443 In Senate, do pass recommended to the full committee; as amended Appropriations Public Safety and Judiciary Subcommittee. Increases limitation for sentence modification.

HB 2595 In Senate on general order. Authorizing consideration of post-traumatic stress disorder as mitigating factor for veterans.

HB 2934 In Senate in general order. Authorizing dismissals of prosecutions by district attorneys.

HB 3160 In Senate, do pass recommended to the full committee; as amended Appropriations Public Safety and Judiciary Subcommittee. Reduction of court costs and fees in criminal cases.

SB 941 In House on general order. Modifying restitution requirements.

SB 976 In Senate, referred for enrollment. Multicounty agent bondsmen.

SB 1331 In House on general order. Multicounty agent bondsmen.

SB 1530 In House Criminal Law Committee. Consumer Protection Act unlawful practices.

*Other Measures Determined to be
of Significant Interest*

HB 2276 In Senate Energy Committee. Eminent domain request for judicial location exception.

HB 2303 In Senate Appropriation Committee. Termination date for well plugging fund.

HB 2357 In Senate Energy Committee. Storage tanks and hazardous substances.

HB 2423 In Senate on general order. Oklahoma Savings and Loan Code.

HB 2444 In Senate Energy Committee. Increases civil penalty for pipeline safety rules.

HB 2547 In Senate on general order. Repeals 36 §6804 which requires informed consent for delivery of health care via telemedicine.

HB 3104 In Senate Judiciary Committee. Payment of costs by judgment creditor.

SB 874 In House on general order. Limitation on probate property valuation

SB 885 In House Appropriation committee. Organization sales tax exemption.

SB 944 In House. Recommended do pass of committee substitute Appropriations and Budget General Government Subcommittee. Rental Purchase Act.

SB 990 In House Judiciary Committee. Exemption to jury service.

SB 1016 In House on general order. Voter registration requirements.

SB 1020 In House on general order. Exemptions to burning prohibitions.

SB 1071 In House general order. Landlord and tenant exception to eviction proceedings.

SB 1126 In Senate on motion to reconsider. Eminent domain — modification of procedure and judgment award.

SB 1136 In House Government and Oversight Accountability Committee. New law placing limitations on state agencies in regard to federal rule requirements.

SB 1193 In House on general order. 85-page bill regarding insurance code.

SB 1201 In House County and Municipal Government Committee. Requires certified real estate appraisers in sheriffs' sales.

SB 1246 In House Judiciary Committee. Establishes method for filling vacancies in district judicial office.

SB1283 In House Appropriation Committee. Gross production tax changes.

SB 1329 In House Business Committee. Exempting churches from building codes.

SB 1374 In House on general order. Long-Term Care Insurance Act.

SB 1378 In House Judiciary Committee. Condemnation proceedings return of excess sums.

SB 1408 In House State Government Operations Committee. Changes procedures for determining successors to offices.

SB 1454 In House Appropriation Committee. Organization sales tax exemptions.

SB 1455 In House on general order. Methods for determining evaluation of property for *ad valorem* purposes.

SB 1484 In House Appropriation Committee. Changing sales and use tax rate and base.

At this point in the legislative process, measures can be changed considerably from the introduced version or even the version adopted in the house of origin. Any measure of particular interest to an OBA member should be read in its entirety to determine the effect.

CURRENT BILL STATUS?

To find the current status of a bill, scroll down to the bottom of the Oklahoma State Legislature's website at www.oklegislature.gov and look for "Track Bills." For more information about bills the OBA is watching, click on the "Legislative Report" link at www.okbar.org. The lists on the OBA site are updated every Friday.

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Three Barn Dances and Two Goat Ropings

By John Morris Williams

Down in Stonewall in my younger days, my brother often used to comment that he had “been to three barn dances and two goat ropings — and ain’t seen nothing like this.” This pretty much sums up how I have spent my spring. In more than 30 years of working in one fashion or another in and around the state Capitol, I have never seen anything like it.

I have seen the shortage of money before. This time it is a bigger hole than I can recall because the overall totals have increased over the years — more people, more students, more prisoners, more programs. It all adds up. This is for someone else to resolve. But, it sure has contributed to an atmosphere unlike anything I have seen.

The attacks on the courts and the organized bar have been greater and more persistent than in years past. For the last 10 years or so, there has been one bill or another to attack the Oklahoma Bar Association or the courts. This year several were filed, and HB 3162 has made its way to the Senate. One might ask why the Oklahoma Bar Association has taken a position on this issue. Besides wanting to maintain a constitutional balance of power and not politicizing our court system, the OBA bylaws articulate this is within its very limited range of legislative issues. Article VII Section 3 of

the Bylaws of the Oklahoma Bar Association states:

The Legislative Program of the Association shall be confined to those measures relating to the administration of justice; to court organization, **selection, tenure, salary and other incidents of the judicial office**; to rules and laws affecting practice and procedure in the courts and in administrative bodies exercising adjudicatory functions; and to the practice of law. However, measures relating to these matters may, at the discretion of the Association, be endorsed in principle rather than be included in the Legislative Program. (Emphasis added.)

In 1967 the OBA House of Delegates approved in principle the Judicial Nominating Commission for its current proscribed functions, and since that time it has been the policy of the OBA. In talking with lawmakers, no one has articulated a real problem with the JNC or its record of successfully picking judges and justices who have kept us scandal free since its creation. There seems to be a determination to “pass something” without a stated goal or purpose other than to make the courts “accountable.”

OBA member and term-limited State Rep. Richard Morrisette stated:

In the 12 years I have been in the Legislature, this session has

been the worst I have ever seen. It is disorganized chaos. On the other hand, the perception of many in the Legislature of the OBA has improved because lawyers are beginning to become more engaged in the process. Lawyers calling and letting legislators know how they feel is important.

Morrisette, who has recently announced his candidacy for statewide office, encourages members of the bar, regardless of political party, to participate at every level in the legislative process.

So there it is, three barn dances and two goat ropings, and I ain’t never seen nothing like it. A huge budget deficit, people angry over schools and earthquakes and the answer is to spend time on ways to cripple, punish and control the judicial system. If this matter makes it to the ballot, the OBA (pursuant to state law) cannot have a position on the election. Here the mantle of support or opposition of a ballot initiative will pass to individual lawyers as citizens. I encourage you to get involved because this goat roping is pretty darn important.



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

You Are Not Paranoid If They Really Are Watching You

Attorney-Client Privilege, Confidentiality and Cybersecurity in the 21st Century

By Jim Calloway

"The government is watching me all the time. They have implanted devices to eavesdrop on me." It used to be when a client or friend made this type of statement to you, it was time to gently steer them toward a mental-health evaluation.

After sitting through multiple sessions at ABA TECHSHOW 2016 on privacy and surveillance, I now think these thoughts could be a bit more rational than I might have considered.

"Can They Hear Me Now? Practicing Law in an Age of Mass Surveillance" was the title of a fascinating presentation at ABA TECHSHOW 2016. The panel, moderated by *Above the Law's* David Lat, included the principal technologist with the ACLU Speech, Privacy and Technology Project Chris Soghoian, digital rights attorney Marcia Hoffman and Ben Wizner, the lead attorney for NSA leaker Edward Snowden. If you are Edward Snowden's attorney, it is fair to assume that everyone at NSA knows your name.

But concerns about eavesdropping and communication security are certainly not limited to United States government agencies.

"When it came to Snowden, we had to assume that the threat model is almost univer-



sal," Wizner said. "You have to think that every sophisticated government in the world has an interest into having visibility into Edward Snowden's communications. So you can't assume there's anyone out there who's not trying."¹

The panelists all believe lawyers should step up their cybersecurity awareness and practices. Maybe you believe there is no possible scenario where your business client would be the target of governmental espionage, but there have been reports of intrusion attempts where the purpose was to steal a valuable intellectual property or to otherwise compromise a business' systems. Most of us recall the embarrassment suffered by Sony executives when employees' emails were hacked and then published online. A law firm would certainly not want to be the weak link that damages its client's business in that way.

An observation that took most of the sophisticated TECHSHOW attendees by surprise was Soghoian's statement that if you can reset your lost or forgotten password, then it's not safe for attorney-client data. I'm still digesting this observation as I have always believed it was more likely a lawyer

would lose a password then suffer an intrusion because of password recovery. If we have truly reached the point where one cannot use a service that allows the user to reset a password, that is a significant shift. I'm still not willing to discount the danger of law practices being devastated when a lost password locks up critical client information or all client files.

Whatever your personal opinion may be (and everyone seems to have an opinion) on the recent attempts by the U.S. Department of Justice to obtain a court order to require Apple to unlock an iPhone used by one of the San Bernardino shooters, it is clear that encryption of confidential information is a topic we will be dealing with for some time. Lawyers have compelling reasons for having the ability to encrypt information and keep it hidden and secure.

Cindy Cohn, executive director of the Electronic Frontier Foundation, gave the keynote address at ABA TECHSHOW, which included many remarks on the FBI versus Apple litigation. She also discussed in detail the *Jewel v. NSA* case² where the EFF sued the NSA over data collection efforts on AT&T users. She said the practices there amounted to the government collecting everything and then sorting things out to see what it needed. She further commented that such practice "...turns the entire Fourth Amendment upside down."

Some of the information noted above is controversial and can be the subject of intense debate. But lawyers are duty bound to protect their client confidences. So let's discuss basic security practices to

improve the security of your client's digital data and your personal information.

BASIC SECURITY PRACTICES

The mass surveillance panelists agreed that use of password managers, such as 1Password or LastPass, is a very important security measure. The cost of these tools is relatively nominal compared to the benefit they deliver, and they allow us to create very long passwords that could be almost impossible to crack. Left to our own devices (and relying on our fallible memories) we create passwords that are short and easy to remember and also very insecure.

There was an interesting discussion during the panel over biometric password tools like a fingerprint scanner. Lawyers are reminded that one may have a Fifth Amendment privilege not to disclose statements like a password, but many opinions stand for the proposition that being forced to give up fingerprints for identification purposes is not a violation of the Fifth Amendment. Would the same logic apply to a fingerprint being used to open an encrypted phone or laptop computer? One Virginia circuit court has ruled that it does.³

The easiest security improvement would likely surprise and scare some lawyers, particularly those who have children using computers at home. It was suggested that a Band-Aid placed over the camera on a laptop was an easy security fix, particularly if it was a laptop used by a child. There are many hacks that allow an intruder to operate a laptop camera remotely without the camera's "in use" light being activated. Using another kind of sticker

may cause adhesive to impair the camera lens when it is needed, but the Band-Aid can be positioned so no adhesive adheres to the lens.

Some of the security experts indicated that all lawyers should be making encrypted phone calls. I'm sure many of us have never thought about encrypting calls. One easy way to make an encrypted phone call is to use an iPhone's FaceTime app to call another iPhone. The FaceTime call is encrypted. FaceTime has an audio only function if for some reason you don't want to do a video call. The iMessages app for the iPhone allows for encrypted text messaging. Although if the receiving phone is not an iPhone, the message will not be encrypted. It is easy to tell the difference. If the text is a secure iMessage the bubble containing the words is blue in color. If not, messages are being communicated using the old Short Messaging Service, which displays a green color.

If you want to start having encryption for all of your text messages no matter what type of phone is used, the app Signal is one that can be installed to provide for secure messaging. The Electronic Frontier Foundation provides a secure messaging scorecard online if you wish to do further research or look at other apps.⁴ Even if you are not concerned about the issue, the chart is quite interesting.

My podcast teammate Sharon Nelson, president of Sensei Enterprises Inc., indicated her favorite cybersecurity tip for small law firms concerned about their security was to visit the National Institute of Standards and Technology to download its publication, *Small Business Information Security: The Fundamentals*.⁵ She says the

publication is short (only 24 pages in length) and easy-to-read.

CONFIDENTIAL DATA IN THE CLOUD

Some lawyers have had concerns about storing data in the cloud. But many experts caution that data is more likely safer in secure cloud-based sites than on a computer or network that is not managed by an IT professional. I've always believed there was more attention paid to security by providers of cloud-based services designed for the legal profession; however, it has been hard to find an objective standard supporting that belief.

At ABA TECHSHOW, the Legal Cloud Computing Association released the first set of cloud security standards crafted specifically for the legal industry today. These 21 standards were developed by the participating members of the association and then reviewed by a team of outside expert advisors.⁶ This should be an enormously helpful tool for lawyers seeking a cloud-based service provider for services ranging from practice management to e-discovery.

BACKUP IS A PART OF SECURITY

If you lose your computer data, then your ability to serve and protect your clients is impaired. Therefore, good backup procedures are essential. Backup is so important these days that many smart lawyers are employing duplicate methods of backing up their data, often with one off-site automated provider and with another process of copying important files to a portable hard drive. Since there will be so much client information contained on the portable hard

drive, it is important that this be a drive capable of being password protected. Many lawyers just keep the portable hard drive connected to their computer at all times so backup happens concurrently.

However, with the advent of ransomware malware like CryptoLocker, keeping a hard drive attached to your computer at all times provides no protection. Should your computer or network be infected by this type of ransomware, the portable hard drive will be encrypted along with the rest of the files on your computer and net-

“**...Legal Cloud Computing Association released the first set of cloud security standards crafted specifically for the legal industry today.**”

work. A better plan is to attach the hard drive for periodic backups and keep it disconnected from any computer the rest of the time. Don't forget that your best protection against ransomware is careful and repeated staff training stressing that personnel should be highly cautious about clicking on any email attachments or links contained in an email from any source except very trusted sources. If you have a concern, don't hesitate to call someone and ask, "Did you really send this?"

A cloud-based backup is usually your best defense against ransomware, assuming there is more than one version of the data in the cloud. John W. Simek, vice president of Sensei Enterprises Inc., gave presentations on data security at ABA TECHSHOW. He says law firms doing their own in-house backup should avoid a backup process that includes drive information because ransomware now attacks data associated with letter drives and network shares. Agent-based backups are Simek's preferred method of backup now. In his view, attorneys and IT departments should be having discussions about these topics. Smaller firms with no in-house IT staff are encouraged to use at least one cloud-based method of backup.

ENCRYPTING A LAPTOP COMPUTER

I had a chance to learn more (and teach) about the Health Insurance Portability and Accountability Act (HIPAA) data protection at ABA TECHSHOW. I'll be doing a short update on this topic at the OBA Solo and Small Firm Conference this summer. If you represent a health care provider you may be covered under HIPAA, and if Protected Health Information (PHI) is inadvertently disclosed you may incur breach notification obligations that are both onerous and embarrassing. But if the PHI is encrypted, that qualifies for a safe harbor to the HIPAA breach notification rule.

One of the more common HIPAA inadvertent disclosures is the loss of a laptop computer. At a basic level all laptop computers should be password protected. Encrypting a laptop computer is a very important best practice if you are dealing

with HIPAA-covered PHI and a good idea for all types of confidential information.

BitLocker⁷ has been a part of the Windows operating system since it was included in select editions of Windows Vista. It can be used to encrypt an entire laptop hard drive or set up a single encrypted folder.

Encrypting a laptop computer is not without risk.

A January 2015 *PCWorld* post titled, "You Can Encrypt Your Hard Drive, But the Protection May Not Be Worth the Hassle,"⁸ provides a short summary of the methods to encrypt your computer. The author, while acknowledging that full-disk encryption is the most secure measure and outlining the use of Bitlocker in Windows or third-party programs such as Veracrypt, states, "Encrypting the entire drive can brick your PC. Make an image backup first, and make sure you have emergency repair drives for both the encryption software and your image backup program. . . That's not all. Should your computer or hard drive crash, your chances of successfully recovering lost files drops considerably." Further, the post cautions that using Bitlocker requires users to "know what you're doing." As such, the rec-

ommendation is that a single encrypted folder may be sufficient for many users.

Taking note of statistics regarding the number of lost and stolen laptops, the 2016 *Solo and Small Firm Legal Technology Guide: Critical Decisions Made Simple*, further recommends "whole-disk encryption."⁹ However the guide does not detail the means for accomplishing such encryption.

For Windows 10, a *How-To Geek* post¹⁰ provides more detailed instructions on how to accomplish encryption using Bitlocker or third-party setups.

The best and most obvious advice is to not lose your laptop. Personally, I never leave my laptop in my vehicle unless it is locked in the trunk.

CONCLUSION

Sadly, perfect digital security is not only a moving target but also perhaps unattainable. You should follow best practices to have your computers and networks as secure as you possibly can, but experts still say an essential part of security is having a plan to recover data and files in case there is a breach. Hopefully this article did not cause too many readers to have their eyes glaze over or decide to give up in frustration.

Whether your primary concerns are government surveillance or protection from online "bad guys," it is important to be aware of security issues and to protect your data so you can recover it. If you ever encounter a problem, whether it is a crashed hard drive, a limited online intrusion or a full-blown attack by a hacker, your obligation to represent your client is unaffected by the technology issue, and you should always take reasonable steps to avoid such occurrences.

Mr. Calloway is OBA Management Assistance Program director. Need a quick answer to a tech problem or help solving a management dilemma? Contact him at 405-416-7008, 1-800-522-8065 or jimc@okbar.org. It's a free member benefit!

1. As quoted in the *ABA Journal* coverage of the program, www.abajournal.com/news/article/cybersecurity_experts_offer_stern_warnings_tips_for_security_in_mass-surve/.

2. www.eff.org/cases/jewel.

3. *Commonwealth v. Baust* is 89 Va. Cir. 267 (Va. Cir. Ct. 2014).

4. www.eff.org/secure-messaging-scorecard.

5. csrc.nist.gov/publications/drafts/nistir_7621-r1/nistir_7621_r1_draft.pdf.

6. The completed LCCA Security Standards are posted publicly for all to review at www.legalcloudcomputingassociation.org/standards/.

7. en.wikipedia.org/wiki/BitLocker.

8. The post is available at bit.ly/encrypt_your_drive.

9. 2016 *Solo and Small Firm Legal Technology Guide: Critical Decisions Made Simple*, pg. 192.

10. bit.ly/Geek_Encryption.



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Succession Planning and Your Personal Health

Both Are Your Ethical and Moral Obligation

By Joe Balkenbush

Here is another reminder regarding your duty to implement a succession plan. As recently set out in an ethics counsel article and in the OBA E-News, it is both your ethical and moral obligation to prepare a succession plan. Your failure to do so can be catastrophic, not only for your clients and practice, but for your loved ones who are left behind.

Case in point, within the last month two more OBA members passed away (one from unknown medical reasons and another from suicide). In each case, the decedent has left behind a wife and children. Neither attorney had prepared and implemented a succession plan. In each case, the widow and/or children had to hire counsel to represent them in probating an estate. In each case, the widow is left to close a law practice.

Certainly, none of us want to leave that to our spouse, children, parents or friends.

If you didn't already know, the OBA has prepared *The Attorney Transition Planning Guide*, a 79-page handbook containing sample forms, checklists, frequently asked

questions and other helpful information.

The planning guide can be found in the password-protected my.OKBar part of the OBA website. Just go to www.okbar.org and scroll down to log into your individual account. Once you sign in, look for the link in the lower right of the page.

“You must take the time to prepare and implement your succession plan.”

I desperately wish I could find the right words to motivate every single attorney reading this to prepare and implement a succession plan. The tragic consequences of *not* doing so are *unacceptable*.

The first step is to simply ask an attorney friend to be your successor attorney. We're attorneys, we like to ask ques-

tions, so ask this one! Then use the forms provided and draft at least the short form of the succession plan. It, literally, will take less than an hour to do a short form agreement. You must take the time to prepare and implement your succession plan. If you don't, the loved ones you leave behind will spend who knows how long trying to close your practice. They will have already lost you; please don't compound their grief.

HOW ARE YOU DOING?

On at least an equally important subject, how are you doing? Are you taking care of yourself? Are you taking time to ensure that you are physically, mentally, emotionally and spiritually healthy?

Being aware is the first step. Pay attention to how you're feeling, what you are thinking and how you react to stressful situations. Without question, the attorney who recently took his own life was in an awful place. Unless you've been there, you wonder how someone could get to that dark of a place without someone noticing. So, take a moment and assess your personal well-being. Are you anxious, depressed, irritable, lethargic,

don't have any spunk? Be honest with yourself. If you need help, it is available. Attorney well-being is coming to the forefront all across the United States. The ABA has created an Attorney Well-Being Committee. It is working in conjunction with the ABA Commission on Lawyer Assistance Programs (CoLAP) to raise awareness regarding the mental, emotional, physical and spiritual health of attorneys.

Recently, numerous studies have revealed that depression is a common ailment in our profession. The following are some excerpts from an article titled "Depression: A Lawyer Pandemic" written by Ruth Carter for *Attorney at Work*, an online resource for attorneys that provides "one really good idea every day." You'll find the entire article at goo.gl/Q3omkp.

In the article, Ms. Carter references a 2016 study by the ABA Commission on Lawyer Assistance Programs and the Hazelden Betty Ford Foundation that found that 28 percent of lawyers have mild to severe depression. Per her calculations, that's 336,000 lawyers! Additionally, 46 percent of lawyers reported concerns about depression sometime during their legal career. Of the lawyers who experience depression, 60 percent of them also have anxiety.

Dan Lukasik, founder of Lawyers with Depression, says depression is at "catastrophic" and "pandemic" levels in the legal industry. He went on to say that being in a state of "chronic perpetual stress" — constantly experiencing the fight-or-

flight state — is the "definition of a legal career." The human body wasn't meant to continuously face "five-alarm fires." This can lead to or exacerbate existing problems with depression.

Susan Daicoff, author of *Lawyer Know Thyself: A Psychological Analysis of Personality Strengths and Weaknesses*, describes the lawyer personality as being ambitious, perfectionistic and achievement-oriented, all of which can be contributors to depression.

Martin Seligman wrote the book, *Authentic Happiness: Using the New Positive Psychology to Realize Your Potential for Lasting Fulfillment*, that includes a chapter titled, "Why Are Lawyers So Unhappy." In it, he says that having a "pessimistic explanatory style" is a benefit in an adversarial profession because it helps you identify problems, but it can also cause significant mental and physical problems.

DEALING WITH DEPRESSION

You don't have to be a rocket scientist to know that untreated depression can cause grave problems. Depression is a diagnosable and treatable illness. As lawyers, we are problem-solvers! So, take the necessary steps to take care of this illness. Here are some ideas:

- Educate yourself about depression. There are wonderfully informative books, websites and other resources focused on the topic. Do some research!

- See your primary care physician for a full physical. And be sure to give your physician *all* the facts! As lawyers, we urge our clients to tell us everything so that we can properly assess their case. It's the same with the physician. They cannot be as effective in diagnosing your condition without *all* of the facts. Physicians are trained to screen patients for depression, and you might have medical issues that are causing or contributing to your depressed mood. (When's the last time you had a full physical anyway?)

- Talk with a friend.
- If you are not comfortable talking with a friend, call the Lawyers Helping Lawyers hotline anytime at 800-364-7886 (remember, all contact with LHL is confidential and privileged per Oklahoma law).

If you are diagnosed with depression, there are numerous treatment options (therapy, medication, support groups, self-care, mindfulness, etc.). There is no one single way to deal with it, there's just what's best for you!

The bottom line is that you have got to take care of yourself. No one else is going to do it for you. Take total responsibility for your own well-being. You are worth it!

Mr. Balkenbush is OBA ethics counsel. Have an ethics question? It's a member benefit and all inquiries are confidential. Contact him at joeb@okbar.org or 405-416-7055; 800-522-8056.

Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Feb. 19, 2016.

REPORT OF THE PRESIDENT

President Isaacs reported he attended a planning session for 2017, OBA Legislative Reading Day, ABA Midyear Meeting and House of Delegates in San Diego, National Conference of Bar Presidents meeting, Southern Conference of Bar Presidents meeting, Fastcase partner appreciation dinner, Oklahoma delegate dinner, Custer County Bar Association meeting, OCU School of Law dinner at the Oklahoma Judicial Center and Oklahoma Close Up Program.

REPORT OF THE PRESIDENT-ELECT

President-Elect Thomas reported she attended a planning session for 2017 with OBA past presidents, two Washington County Bar Association meetings, OBA Legislative Reading Day, ABA Annual Meeting and House of Delegates in San Diego, National Conference of Bar Presidents meeting, Southern Conference of Bar Presidents meeting, Fastcase partner appreciation dinner, Oklahoma delegation dinner and telephone conference with Access to Justice Commission Chair David Riggs.

REPORT OF THE PAST PRESIDENT

Past President Poarch reported he attended OBA Legislative

Reading Day, ABA Annual Meeting and House of Delegates in San Diego, National Conference of Bar Presidents meeting, Southern Conference of Bar Presidents meeting, Fastcase partner appreciation dinner and Oklahoma delegate dinner.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the National Association of Bar Executives meeting, monthly staff celebration, committee meetings at the state Capitol, Access to Justice Commission phone conferences, Legislative Reading Day, YLD dinner in Stillwater, swearing in of new officers and board members, staff directors and department heads presentation for new board member orientation, ABA meeting with its legal insurance committee holding a meeting in Oklahoma City, conferences with the OBA software provider, meeting with Lawyers Helping Lawyers Assistance Program provider, OETA 60th Anniversary Planning Committee meeting and Stonewall McLish School Foundation.

BOARD MEMBER REPORTS

Governor Coyle reported he attended two Oklahoma Criminal Defense Lawyers Association meetings and taught twice at OCU School of Law as a guest speaker. **Governor Gottwals** reported he attended the Tulsa County Bar Foundation Board of Trustees meeting, Inns

of Court Pupilage Group meeting and discussion regarding "Representing the Unpopular Client," Quality Assurance Panel meeting, ABA NCBF Midyear Meeting in San Diego, OBA Master Lawyers Section meeting, OBA Family Law Section meeting via teleconference at OSU-Tulsa, TCBA Family Law Section meeting and TCBA Board of Directors meeting. **Governor Hicks** reported he attended the Tulsa County Bar Foundation Board of Trustees meeting and Access to Justice Commission teleconference meeting. **Governor Hennigh** reported he attended OBA Legislative Reading Day and the YLD dinner in Stillwater. He also sent emails and had lunch with state representatives. **Governor Hutter** reported she attended the Cleveland County Bar Association executive meeting, monthly meeting, bench and bar meeting in addition to the county bar's Justice is Sweet Charity Baking Event, which she organized and chaired. She also attended OBA Legislative Reading Day and the funerals of Judge Tom Lucas and OBA member Joe Barr. **Governor Kee** reported as the liaison to the Law Schools Committee, he attended committee visits to the OU College of Law and the TU College of Law. **Governor Kinslow** reported he attended Comanche County Bar Association meetings. **Governor Marshall** reported he attended the Pottawatomie County Bar Association meeting. **Governor Porter** reported she attended the OBA

Communications Committee meeting, OBA Legislative Reading Day, Oklahoma Board of Tests for Alcohol and Drug meeting, William J. Holloway Jr. Inn of Court meeting and Canadian County Bar Association meeting. She met with one of the Women in Law Committee co-chairs and served as scoring panelist for a qualifying round of the OBA High School Mock Trial Program. **Governor Sain** reported he attended the McCurtain Memorial Foundation board meeting. **Governor Tucker** reported he attended the Law Day Committee meeting, Muskogee County Bar Association monthly meeting and met with the Law Day Juror Appreciation Subcommittee co-chair about the program. **Governor Weedn** reported he attended the Ottawa County Bar Association monthly meeting. He served as a mock trial judge for Missouri Southern State University and as a scoring panelist for the OBA High School Mock Trial Program at the trial site in Mays County.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Will reported he chaired the January YLD board meeting in Stillwater at which they had a speaker. It is his goal to have a speaker at every board meeting. He traveled to San Diego for the ABA Midyear Meeting where he also attended the ABA YLD Midyear Meeting and Assembly, hosted the Oklahoma ABA delegates dinner and attended the ABA House of Delegates meeting. The division will assemble bar exam survival kits for a larger than usual spring group. He also reported the division is trying to encourage more of its members to attend the upcoming Solo & Small Firm Conference. Letters will be sent to county bar presidents asking them to help pro-

mote the conference to young lawyers in their counties. The conference will offer a program track on basics and will be promoted as a family vacation opportunity. His goal is to have 20 more YLD members, in addition to YLD board members, attend the event.

NEW STAFF MEMBER INTRODUCED

Executive Director Williams called on Management Assistance Program Director Jim Calloway, who introduced his new employee, Darla Jackson, OBA practice management advisor. She will work with him to provide assistance to attorneys in using technology and other tools to efficiently manage their offices. Her focus will be increasing training opportunities for OBA members and their support staff as well as supporting access to justice initiatives.

BOARD LIAISON REPORTS

Governor Kee reported the Law Schools Committee conducted visits to the OU College of Law and TU College of Law. A visit to OCU School of Law will take place in March. Governor Coyle reported the monthly Lawyers Helping Lawyers Assistance Program discussion groups are being well attended. Governor Porter reported the Women in Law Committee is starting to work on conference ideas and creating subcommittees. The Law-related Education Committee is researching bringing back the Teacher of the Year Award. The OBA's LRE Program will soon host the four-day Oklahoma Close Up Program for high school students. The program is designed to strengthen knowledge of the political process. President Isaacs reported the Law Day Committee is work-

ing to promote juror appreciation. Governor Tucker reported the Law Day Committee received 691 entries in its contest. Judging will take place at the end of the month. He and Oklahoma City attorney Jennifer Castillo will chair the Law Day Committee's Juror Appreciation Subcommittee, which wants to reach out to court clerks for their ideas. He said TV show taping continues, and segment topics are female incarceration, same-sex marriage and juror appreciation.

Governor Hicks reported the Access to Justice Committee is working on getting pro se forms out to courthouses. Administrative Office of the Courts Director Jari Askins is involved in the project that will make the form available online. Governor Hutter reported the OBA Legislative Reading Day sponsored by the Legislative Monitoring Committee was very well attended. Governor Gotwals reported the Professionalism Committee is planning a symposium this year and is searching for a speaker. The committee received positive feedback from giving new lawyers a book about ethics written by Tulsa attorney Fred Miller at the last swearing-in ceremony. The committee would like to continue that practice with this book or one written by Oklahoma City attorney Mike Turpen. Past President Poarch reported the Communications Committee authorized expenditures to support juror appreciation, online consumer brochure promotion and Law Day efforts.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported annual reports of the Professional Responsibility Commission and Professional

Responsibility Tribunal were filed with the Supreme Court. The reports are available online and will be published in the March 12, 2016, *Oklahoma Bar Journal*. A written report of PRC actions and OBA disciplinary matters for January was submitted to the board for its review.

PROFESSIONAL RESPONSIBILITY COMMISSION APPOINTMENT

The board approved President Isaacs' appointment of Richard Stevens, Norman, to fill the unexpired term of Linda Thomas, whose term expires Dec. 31, 2017.

AMENDMENT TO RULES CREATING AND CONTROLLING THE OBA

The board approved the drafting of an amendment to Article II, Section 2(b), that directs the price of an annual subscription to the *Oklahoma Bar Journal* be \$25 for a senior member. Production costs now exceed \$25. Motion passed.

AMENDMENT TO LITIGATION SECTION BYLAWS

The board approved an amendment to the Litigation Section Bylaws that corrects a typo in the section dues, which should be \$25 per year.

LEGISLATIVE UPDATE

Executive Director Williams reviewed the recent attorney general opinion and briefed board members on current legislative activity.

OETA FESTIVAL

Communications Director Manning briefed the board on this annual event that benefits the state's PBS television station, which works with the OBA to produce the *Ask A Lawyer* TV show. The OBA traditionally ranks in the highest donor level for raising private donations. She said additional volunteers were needed to take pledges on the evening of March 9.

NEXT MEETING

The Board of Governors met March 7, 2016, and a summary of those actions will be published after the minutes are approved. The next board meeting will be 10 a.m. Friday, April 22, 2016, at the Oklahoma Bar Center in Oklahoma City.

NOTICE OF JUDICIAL VACANCY

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

Judge for Oklahoma Court of Civil Appeals District Four, Office One

This vacancy is created by the resignation of the Honorable William C. "Bill" Hetherington effective September 2, 2016.

To be appointed to the office of Judge of the Court of Civil Appeals, one must be a legal resident of the respective district at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointees shall have had a minimum of four years experience as a licensed practicing attorney, or as a judge of a court of record, or both within the State of Oklahoma.

Application forms can be obtained on line at www.oscn.net under the link to Programs, then Judicial Nominating Commission, or by contacting Tammy Reaves, Administrative Office of the Courts, 2100 N. Lincoln, Suite 3, Oklahoma City, Oklahoma 73105, (405) 556-9862. Applications must be submitted to the Chairman of the Commission at the same address **no later than 5:00 p.m., Friday, April 29, 2016. If applications are mailed, they must be postmarked by midnight, April 29, 2016.**

John H. Tucker, Chairman
Oklahoma Judicial Nominating Commission

Grantee Spotlight: Marie Detty

Youth & Family Services

From Victim to Survivor

By Candice Jones

Imagine you are a victim of violence in your own home. Your perpetrator is someone you thought loved and cared for you. Someone who at one time made you feel safe and secure. Someone you call family. This is a person you love, but someone who frightens you. Every day you live in constant fear... you never know when your abuser will snap. You worry the anger they have toward you will eventually be directed toward your child. One day your abuser leaves the house, and you've had enough.

You have minutes (maybe seconds) to flee. You must act fast!

There is no time to pack, no time to plan, barely time to think. You tell yourself, "Do this for your child... you must get your child out of this situation!" Grabbing your child's small trembling hand, you reach for the door... pause for a moment... step your foot across the threshold... and run! You run away from the victim you once were and toward the survivor you must now become.

When escaping abuse, a woman is often forced to flee



with just the shirt on her back, holding the hand of her child, scared and unsure of the next step. It is the mission of Marie Detty Youth & Family Service Center Inc. to provide a continuum of care for the children, youth and families of south-west Oklahoma from its Lawton facility. Prevention, diversion, protective and treatment services establish the cornerstone of intervention, and the staff of Marie Detty serve as advocates on behalf of children, youth and families on issues impacting our communities. Last year, Marie Detty provided assistance to a staggering 5,067 clients.

Marie Detty provides numerous services to victims of violence. First, they serve as a safe place and provide basic needs such as emergency shelter, food, clothing and toiletries. They also provide counseling services, case management, support groups, special services for children, court advocacy and a sexual assault response team available 24 hours a day, 7 days a week. The organiza-



Volunteers staff a display creating awareness of Sexual Assault Awareness Month. Individuals impacted by sexual assault come by and place a ribbon on the tree for themselves or someone they know.

tion also runs a 24-hour hotline for victims.

The Oklahoma Bar Foundation provides funding to fulfill a critical legal component at Marie Detty, the salary for a court advocate. The court advocate works five days a week at the Comanche County Courthouse from morning until noon. This dedicated individual is responsible for assisting victims by helping obtain victim protection orders, supporting victims during court proceedings by helping them navigate the court system and serving as a liaison to ensure judges receive valuable information related to the victims' case. The court advocate also works closely with the sexual assault victim advocate to make sure clients are aware of their legal options.

Over the past eight years, the Oklahoma Bar Foundation has provided \$108,000 in funding to Marie Detty's Court Advocate Program assisting on average more than 700 victims with their cases each year.

Ms. Marie Detty, for whom the center is named, was a supervisor in Child Welfare Services in the 1960s and 1970s. She saw the problems many young people were dealing with and sought to find solu-



Silhouettes displayed at a mall illustrate sexual assault survivors.

tions. Ms. Detty had a lifelong involvement in helping others overcome difficulties. In her 30-year career in Oklahoma Public Welfare, Marie Detty pushed for serious change in how women are seen in leadership roles, how children are cared for in our society and how a community responds to its most vulnerable citizens.

We are thankful for Marie Detty's commitment to victims of domestic violence, women, children and families. We are proud of the staff's passion to fulfill the purpose and mission set forth by Marie Detty on a daily basis. We are very honored to call them one of our grantees.

HOW YOU CAN HELP

Your support of the Oklahoma Bar Foundation allows us to help organizations like the Marie Detty Center. Consider becoming a Fellow if you are not already. More information can be found on our website at www.okbarfoundation.org.

ABOUT THE AUTHOR



Candice Jones is director of development and communications for the Oklahoma Bar Foundation.

5,067 clients helped in 2015 by Marie Detty
Youth & Family Services

\$108,000 provided by Oklahoma Bar Foundation
for Court Advocate Program

Court advocate assists with more than **700**
victims' cases per year



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Fellows Program – individuals

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Thank you for your contribution. Your gift is tax deductible.

What is Law Day All About?

By Bryon J. Will

Law Day is the one day of the year in which we as citizens reflect on the role of law and how its effects are important in our society. OBA Past President Hicks Epton conceived the idea of Law Day, and in 1958 President Eisenhower proclaimed Law Day nationally. Setting aside May 1 for the annual celebration took place in 1961 with a Joint Resolution of Congress.

Since then, the American Bar Association has lead the national campaign with the Oklahoma Bar Association leading the campaign for our great state. Throughout the years the county bar associations have taken on active roles by organizing county bar activities and performing community service in observance of Law Day. In fact, as a part of our OBA Annual Meeting awards, the Hicks Epton Law Day award is presented to the county bar association that holds the best Law Day activities and participation that year.

This year the OBA's 2016 Law Day theme is "Judges, Juries and Justice: The Constitution and the Rights of the Accused." This theme's focus is on educating the public on these aspects and their importance in our society of liberty, justice and equality under law. Feel free to take some time to read the poster and materials produced by the OBA on this year's theme at goo.gl/UFTV3H. Along with this theme, Presi-



Volunteers from the Garfield County Bar Association rearrange several areas of the Enid Public Library in 2010.

dent Isaacs is going further in bringing awareness of the importance of juries by holding a Juror Appreciation Month later in the year.



Students at Shawnee High School listen as OBA YLD members present information geared toward graduating seniors approaching their 18th birthday as part of the division's 2012 Community Day of Service.

PAST LAW DAY PROJECTS

Community service is usually the primary focus of Law Day activities, and for the OBA YLD these efforts have often continued beyond Law Day into May.

In 2010, YLD board members and execs teamed up with local libraries throughout the state and provided services needed at the time — from painting and cleaning facilities to reading to children. That year the YLD also donated books on legal topics to the libraries.

In 2012, YLD board members and execs teamed up with local schools throughout the state to educate high school seniors on the transitions into adulthood and the legal matters which they need to be aware of. The YLD also provided the OBA publication, *You're 18 Now – It's Your Responsibility!*, to the students they visited.

In 2013, the OBA held a state-wide community service project in which OBA members participated in a community service project in almost each county in Oklahoma. The YLD joined in this project by reaching out to YLD members across the state to participate in the counties in which they lived.

UPCOMING PROJECTS

Should you wish to get involved in a Law Day activity, whether it be with the OBA or with your local county bar association, I urge you to contact the OBA Law Day Committee or your county bar association's Law Day chair. You'll find the list of chairpersons in this issue and online at www.okbar.org.

For the YLD board meeting on May 21, we will be gathering in Enid for the meeting and



2013 OBA President Jim Stuart (left) thanks OBA YLD members for their Day of Service volunteer efforts at Love Link Ministries in Oklahoma City. YLD members (from left of President Stuart) are Jeff Trevillion, Gabe Bass, YLD Chair Joe Vorndran and Immediate Past Chair Jennifer Castillo.

do a community service project immediately thereafter with Loaves & Fishes, a Regional Food Bank resource center. Please contact me for further details.

Till next month.

ABOUT THE AUTHOR



Bryon Will practices in Oklahoma City and serves as the YLD chairperson. He may be contacted at bryon@bjwilllaw.com.

NOTICE OF JUDICIAL VACANCY

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

**District Judge
Fifth Judicial District, Office 3
Comanche County**

This vacancy is due to the retirement of the Honorable Keith B. Aycock effective July 1, 2016.

To be appointed to the office of District Judge, Fifth Judicial District, Office 3, one must be a legal resident of Comanche at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointee shall have had a minimum of four years experience as a licensed practicing attorney, or as a judge of a court of record, or both, within the State of Oklahoma.

Application forms can be obtained on line at www.oscn.net under the link to Programs, then Judicial Nominating Commission, or by contacting Tammy Reaves, Administrative Office of the Courts, 2100 N. Lincoln, Suite 3, Oklahoma City, Oklahoma 73105, (405) 556-9862. Applications must be submitted to the Chairman of the Commission at the same address **no later than 5:00 p.m., Friday, April 29, 2016. If applications are mailed, they must be postmarked by midnight, April 29, 2016.**

John H. Tucker, Chairman
Oklahoma Judicial Nominating Commission

OBA Members Raise Funds for OETA

The OBA raised nearly \$7,000 in private donations as part of its volunteer effort to support the state's PBS-TV station during the annual OETA Festival. President Garvin Isaacs presented a check to the station, which partners with the bar association to produce the annual *Ask A Lawyer* TV show.

The amount donated keeps the OBA at one of the top sponsorship levels that is recognized in the station's monthly programming guide. Many thanks to those who made financial contributions and to the 22 OBA members and staff who volunteered. This year's volunteers were OBA President Garvin Isaacs, OBA Executive Director John Morris Williams, Judge Richard Kirby, Jerrod Geiger, Michael Shanbour, Margaret Travis, Brittany Jewett, Mark Koss, Edward Oliver, Max Rhodes, Charles Rouse, Ricki Sonders, Kim Stevens, Rex Travis, Mary Travis, Richard Vreeland, OBA President-Elect Linda Thomas, Craig Hoehns, Ernest Nalagan, Barbara Stone, Cliff Elliot and Noel Tucker.



OBA member and on-air personality Kim Brasher interviews President Isaacs about Law Day and the upcoming Ask A Lawyer event and TV show.

LHL Discussion Group to Host April Meeting

"Dealing with Technology Overload" will be the topic of the May 5 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 to 7:30 p.m. at the office of Tom Cummings, 701 NW 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.



**LAWYERS HELPING LAWYERS
ASSISTANCE PROGRAM**

Call 24/7 — 800-364-7886

Students Participate in Oklahoma Close Up Program

Ninety high school students from across Oklahoma attended the OBA LRE Oklahoma Close Up Program the week of Feb. 16. Oklahoma Close Up is a week-long educational program designed to provide students an experiential learning opportunity about Oklahoma state government. Students spent the week learning about the executive and legislative branches of government, shadowing state representatives, senators and other state elected officials, attending a Court of Criminal Appeals case and touring the Capitol.

Another Successful OBA Day at the Capitol

Bob Burke, OBA member and author of *How Bad It Was — How Good It Is: The Value of an Independent Judiciary*, spoke on the importance of keeping our courts fair and impartial during this year's OBA Day at the Capitol on March 8. More than 40 members attended the event. In addition to hearing Bob Burke speak, attendees also heard from several speakers on a variety of topics before meeting with legislators at the Capitol during the afternoon. Speakers were OBA Executive Director John Morris Williams, Administrative Director of the Courts Jari Askins, OBA Legislative Liaison Clay Taylor, Oklahoma Ethics Commission Executive Director Lee Slater, OBA Past President Cathy Christensen and OBA MAP Director Jim Calloway.



Bob Burke, author and attorney, speaks on the importance of keeping our courts fair and impartial at OBA Day at the Capitol.



Aspiring Writers Take Note

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

OBA Member Resignations

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

Griffin McKay Hazard
OBA No. 31080
571 S. 1030 E.
Smithfield, UT 84335

Wesley Mack Hightower
OBA No. 22833
Blaies & Hightower LLP
421 W. 3rd St., Ste. 900
Fort Worth, TX 76102

Claire McNearney Trinidad
OBA No. 11428
18700 Slick Road
Kellyville, OK 74036

Tanya Briana Spavins
OBA No. 17450
104 Green Meadow Court
Hot Springs, AR 71901

Connect With the OBA Through Social Media

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



Kudos

GableGotwals announced the 2016 slate of officers and directors as follows: **David Keglovits**, chair; **Sid Swinson**, president; **Terry Ragsdale**, vice president firm growth; **John Dale**, vice president talent development; **Amy Stipe**, vice president finance; **Dale Cottingham**, secretary; **Rob Robertson** and **Scott Rowland**, members.

Charlie Daniels was elected president of the Opportunity Scholarship Fund, a scholarship granting organization under the Oklahoma Equal Opportunity Education Scholarship Act. He is also chairman of OK Mozart, whose mission is to bring the highest quality professional musical and cultural experience to the citizens of the Bartlesville area, state of Oklahoma and the mid-America region of the United States. He graduated from the OU College of Law in 1965.

The Boy Scouts of America honored **Associate District Judge Tom Newby** at the annual Cimarron Council Good Scout Luncheon on Feb. 23. He received the North Star award for his support of scouting, as well as other organizations in Enid and the surrounding area. The North Star award is the highest award a local Boy Scout council can bestow for significant contributions to scouting. Judge Newby graduated

from the OU College of Law in 1983.

The International Masters of Gaming Law (IMGL) board of directors recently elected Crowe & Dunlevy Tulsa lawyer **D. Michael McBride III** as second executive vice president for the organization. He previously served as IMGL treasurer and graduated from the OU College of Law in 1993.

The National Academy of Elder Law Attorneys (NAELA), an association of attorneys dedicated to improving the quality of legal services provided to older Americans and individuals with special needs, announced that **Donna J. Jackson** has joined the 2016-2017 NAELA Board of Directors. She received her J.D. from the OCU School of Law in 1988.

Paul George was inducted into the Honorary Serjeant's Inn of Court at the annual joint meeting of DFW American Inns of Court at the Belo Mansion in Dallas on Jan. 12. The Serjeant's Inn was established in 2002 by three DFW inns. Each local inn annually nominates one new Serjeant's Inn member, who must be a master in the sponsoring inn and have a career of significant contributions to the profession and the community. Mr. George has been a master in Fort Worth's Eldon Mahon Inn since 1999 and is the 15th Fort Worth lawyer or judge to be honored. He received his J.D. from the TU College of Law in 1978.

The OU College of Law honored four distinguished alumni at its annual Order of the Owl Hall of Fame ceremony: Lawton businessman and entrepreneur **Bill W. Burgess Jr.**, whose public service to higher education spans two decades; **Supreme Court Justice Tom Colbert**, the first African-American to serve on the Oklahoma Supreme Court and to be sworn in as vice chief justice and chief justice and the first African-American to be appointed to the Oklahoma Court of Civil Appeals; **Jim Gallogly**, an industry leader who transformed companies experiencing challenges into successful international businesses; **Supreme Court Justice Noma D. Gurich**, a leader in the legal profession and only the third woman in history to serve on the Oklahoma Supreme Court. The Order of the Owl recognizes OU law graduates who demonstrate leadership and service through outstanding accomplishments in their legal careers.

The Litigation Counsel of America (LCA) recently named Crowe & Dunlevy attorneys **Kevin D. Gordon**, **Mack J. Morgan III**, **Judy Hamilton Morse**, **Terry M. Thomas** and **John M. Thompson** as senior fellows, and attorney **Brooke S. Murphy** as a fellow. The LCA, an invitation-only trial lawyer honorary society, is composed of 3,500 fellows nationwide.

On The Move

Humphreys Wallace Humphreys PC welcomes **Heather Munzuris** as an associate attorney. Her practice will focus on consumer protection law, specifically automobile dealer fraud. She earned her J.D. from the OU College of Law and was admitted to practice before the state courts of Oklahoma in 1996.

Tulsa law firm Atkinson, Haskins, Nellis, Brittingham, Gladd & Fiasco announced that **Meredith D. Lindaman, Keith B. Bartsch** and **J. Andrew Brown** have become partners in the firm. Ms. Lindaman graduated from the TU College of Law in 2008 and her practice is focused on professional negligence, premises liability, complex tort matters and insurance litigation. Mr. Bartsch graduated with honors from the TU College of Law in 2008 and his practice emphasizes general civil litigation, insurance defense, personal injury and Indian law. Mr. Brown received his law degree from the TU College of Law in 2009 and focuses his practice in insurance defense, civil litigation, medical malpractice defense and bad faith defense.

Jones, Gotcher & Bogan PC announces **Maren Minnaert Lively** was named a partner and director of the firm and the addition of **Khadija K. Ghani** as an associate of the firm. Ms. Lively joined Jones, Gotcher & Bogan in December 2014, and has extensive

experience in the areas of family law, probate and estate planning, guardianships, general litigation and appellate work. She earned her law degree from Georgetown University Law Center. Ms. Ghani joined Jones, Gotcher & Bogan as a law clerk in July 2014, and became an associate of the firm in September 2015. She graduated from the TU College of Law in 2015. She will be focusing her practice in the areas of civil litigation and domestic law.

Michael F. Lauderdale, a shareholder with McAfee & Taft has been elected to lead the law firm as its managing director. The Muskogee native joined McAfee & Taft in 1990 after graduating with distinction from the OU College of Law. Throughout the course of his 26-year career with the firm, he has served as co-leader of the firm's labor and employment practices and, more recently, as a member of its Board of Directors. The firm also announced that trial attorney **Paige Hoster Good** has joined its labor and employment group. Her practice encompasses all phases of labor and employment law, including litigation in both state and federal courts, regulatory and administrative agencies, arbitration panels and a broad range of other workplace issues. Ms. Hoster graduated with honors from the OU College of Law in 2013.

Franden, Farris, Quillin, Goodnight + Roberts announced that **Stephen Wilkerson** and **Mark Warman** have joined the firm. Mr. Wilkerson and Mr. Warman will serve of counsel to the firm and continue in

their respective practices providing legal services to their long-standing clients.

Pray Walker PC announced the promotion of **Robert Mitchener III** to shareholder. Mr. Mitchener joined Pray Walker in 2009. He obtained his J.D. from the TU College of Law in 2010 with honors. His practice is focused on general civil litigation primarily in the areas of business, real estate, employment and energy law.

Moyers Martin announced the return of **R. Scott Savage** to the firm and welcomes **Quinn A. Cooper** as a new addition to the firm. Mr. Savage returns to Moyers Martin with 37 years of legal experience. His areas of practice are civil litigation with an emphasis on contracts, employment issues, environmental cases, oil and gas and real estate. He also represents individual clients in matters concerning severe personal injury and economic loss. He graduated from the OU College of Law in 1978. Ms. Cooper represents clients in a variety of legal matters including business litigation, business transactions and general civil litigation, and her practice is focused broadly in the area of civil litigation with an emphasis on insurance defense. She graduated from the TU College of Law in 2015.

Crowe & Dunlevy recently announced former U.S. attorney for the Western District of Oklahoma **Sanford C. Coats** has joined the firm as a director in the Oklahoma City office. He serves as co-chair of the firm's white collar, compliance and investigations practice group and is a member of the litigation and

trial practice group. Mr. Coats received his J.D. from the OU College of Law in 1998. The firm also announced the addition of **J. Blake Johnson**, **Harry "Skeeter" Jordan** and **Melissa McDuffey** as attorneys in the firm's Oklahoma City office and **Alexandra Shipley** as an attorney in the Tulsa office. A member of the firm's litigation and trial, Indian law and gaming and product liability practice groups, Mr. Johnson received his J.D. from the OU College of Law in 2015. Mr. Jordan has joined the firm's intellectual property and litigation and trial practice groups. He received his J.D. from the OU College of Law in 2015. Ms. McDuffey is a member of the labor and employment and litigation and trial practice groups. She graduated from the OU College of Law in 2015. Ms. Shipley is a member of the energy, environment and natural resources and litigation and trial practice groups. She received a J.D. from the OU College of Law in 2015.

Steidley & Neal PLLC has announced **Douglas R. Scott** has been named as a partner in the firm and **Seth A. Caywood** and **Charlie L. Reese V** as associates in the firm. Mr. Scott focuses his practice on insurance defense litigation. He has successfully defended various types of civil cases including automobile accidents, slip and falls, dog bites, insurance coverage and civil rights. He graduated from the OU College of Law in 2004. Mr. Caywood's practice is concentrated primarily in the areas of personal injury, workers' compensation and general liability defense. He graduated from the TU College of Law in 2011. Mr. Reese

is focusing his practice primarily on the research and writing needs of the firm. He graduated from the TU College of Law in 2011.

Andrews Davis announced that **Ryan J. Duffy** has been elected as a shareholder of the firm. Mr. Duffy joined the firm in 2010 bringing with him experience in the areas of estate planning and administration, federal and state tax, corporate organization, transactional law, real estate, securities, nonprofit organizations, commercial litigation and probate. His practice continues to focus on these areas with a specific concentration on tax controversies and business development. He received his J.D. from the OU College of Law in 2006.



Kathryn Burnett spoke at the Tulsa County Bar Association Law Section Meeting on Feb. 17. She discussed recent revisions to the Stark law exceptions. She graduated from the College of William & Mary Law School in 2007.

Marty Ludlum recently made several presentations to Arcada University of Applied Sciences in Helsinki, Finland. His presentations were titled "The Transatlantic Partnership and Investment Program," "Intercultural Trade" and "Intellectual Property and International Trade." He received his J.D. from the OU College of Law in 1989.

Lynne Driver recently spoke at an exclusive Bond Attorneys Winter Conference in Palm Beach, Florida. She delivered a challenging presentation on the Security Exchange Commission's Municipalities Continuing Disclosure Cooperation Initiatives and Issuers. She is a 1993 graduate of the OU College of Law and holds an LL.M (taxation) with distinction from Southern Methodist University, 1995.

Chris Paul made a presentation on legal exposures at the NACE Pipeline Safety Culture Forum in Vancouver, British Columbia, which included panel members Peter Watson, chair of the Canadian National Energy Board and Alan Mayberry, deputy associate administrator for policy and programs of Pipeline and Hazardous Materials Safety Administration. He graduated from the College of William & Mary School of Law in 1983.

Paul R. Foster presented "Dynamic Interactive Question and Answer" panel of bankers and regulators from the Federal Reserve, FDIC, OCC, Oklahoma State Banking Department and New Mexico Financial Institution Division at the Community Bankers Association of Oklahoma's Winter Leadership Conference in Santa Fe, New Mexico, Feb. 10-12, which included attendees from Oklahoma, New Mexico and Texas. He graduated from the OU College of Law in 1984.

Carrie L. Foster presented "Avoiding Common and Potentially Costly Mistakes by Banks on Garnishments, Levies, & Legal Process" at the Community Bankers

Association of Oklahoma's Winter Leadership Conference focusing on consideration for banks that receive out of jurisdiction legal process. She received her J.D. from the OU College of Law in 1985.

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:
Laura Stone
Communications Dept.
Oklahoma Bar Association
405-416-7018
barbriefs@okbar.org

Articles for the Aug. 20 issue must be received by July 18.

IN MEMORIAM

Jenny Rebecca Ebersole-Foster died March 29. She was born Dec. 26, 1973, in El Paso, Texas, and grew up in Houston, Newburgh, Indiana, and Pittsburgh. She received a Bachelor of Arts (*cum laude*) in English from Clarion University in Pennsylvania and received a J.D. from the TU College of Law in 1999. She practiced law in Oklahoma and Tennessee. In lieu of flowers, please make memorial contributions to St. Andrew's Episcopal Church, 314 W. Broadway Ave., Maryville, TN 37801 or Smoky Mountain Animal Care Foundation, P.O. Box 1099, Alcoa, TN 37701.

A Ian Burke Foster of Simpsonville, South Carolina, died March 24. He was born Nov. 28, 1948, in Guymon and graduated from Guymon High School. After receiving his bachelor's degree in 1972 from OSU, he attended the OCU School of Law where he received his J.D. in 1976. He was a prosecutor for the state of Oklahoma and an assistant district attorney in several counties including Noble, Pawnee and Beaver. He also served as an oil and gas attorney with the Oklahoma Corporation Com-

mission. Besides practicing law, he enjoyed spending time with his family, playing golf and finding a joke in every conversation.

Judge Mike McDanel of Norman died Feb. 21. He was born Dec. 13, 1943, in Norman and attended Norman High School. Judge McDanel then attended the OU College of Law, starting in 1964 but leaving in 1966 to join the Navy where he served as a hospital foreman before becoming a Bombar-dier navigator. While in Vietnam, he flew more than 70 combat missions. He left the Navy in 1971 and returned to law school, finishing class in 1973. He became special judge from 1974 to 1982. He then served as a district judge in McClain, Garvin and Cleveland counties until 1993, after which he joined the Cleveland County District Attorney's Office in 1995, retiring from the district attorney's office in 2005.

Edward Harold Moler of Oklahoma City died March 21. He was born May 26, 1923, in Oklahoma City and, after graduating from Classen High School in 1941,

attended OU. After an interruption of several years for service in the USAAF during World War II as a pilot of a B-24 Liberator, he graduated with a B.A. in 1947 and an LL.B. in 1948. Mr. Moler was engaged in private practice from 1948 until 2008 and was an assistant municipal counselor for the City of Oklahoma City from 1952 until 1959. He served as president of the Oklahoma County Bar Association in 1968 and was honored in 2008 as the longest running member.

David G. Probst of Oklahoma City died Feb. 28. He was born June 3, 1931, in Tulsa, was a graduate of the TU College of Law, a member of Alpha Tau Omega fraternity and Phi Alpha Delta law fraternity. He was also a member of the Mineral Lawyers Association in Oklahoma City. He was retired from his private practice law firm at the time of his death.

Gordon David Ross of Tulsa died Jan. 29. He was born Jan. 16, 1954, in Tulsa. He attended Tulsa Memorial High School and later OSU where he earned a degree in finance in 1976. He

went on to graduate from the OU College of Law in 1979. **A veteran, Captain Ross served honorably in the Judge Advocate General's Corps of the United States Army at Fort Riley, Kansas, from 1979 through 1983.** He practiced law for close to 30 years with his most recent firm being Lytle, Soule and Curlee in downtown Oklahoma City. Memorial donations may be made to the Oklahoma Medical Research Foundation at www.omrf.org/gifts.

Judge Billy Marvin Shaw of Claremore died Aug. 16, 2015. He was born July 22, 1948, grew up in Inola and attended Claremore High School. After graduating from Northeastern State College, he **served in the United States Army.** When he returned from duty he completed his master's degree at OSU before attending the TU College of Law. Judge Shaw served as an assistant district attorney for Tulsa, Rogers, Mayes and Craig counties and was appointed as a district judge in the 12th Judicial District of Oklahoma. He is survived by OBA member and daughter Erinn Shaw-Bisceglia.

Herbert N. Standeven of Kimberling City, Missouri, died Oct. 22, 2015. He was born Oct. 22, 1933, in Tulsa. He moved to Oklahoma City where he graduated from Classen High School. He attended Oklahoma Military Academy Jr. College and OU, where he obtained his LL.B. and was admitted to the Oklahoma Bar in 1959. He began his career as assistant city attorney in Oklahoma City and later served as assistant district attorney in the Oklahoma panhandle. In

1970, he started with the Veterans Administration. He held the positions of assistant district counsel in Waco, Texas, and district counsel in both St. Louis and Muskogee. He later served as an associate district judge in the Oklahoma panhandle. He was involved in several civic organizations and was an active member of the Gideons International.

James Hamilton Therrell IV of Fort Lupton, Colorado, died July 17, 2015, in Boulder County. He was born July 24, 1974, in Atlanta. Mr. Therrell was a 1997 graduate of Georgia Southern University where he also spent a semester studying abroad in Estonia. He obtained a law degree from the University of Denver - Sturm College of Law in 2003 and became a licensed attorney in seven states and vice president of legal affairs for Wakefield and Associates. He loved the language of law and it showed in his success in the courtroom.

Patrick "Pat" Turowski of Tulsa died Nov. 6, 2015. He was born July 28, 1970, in Muskogee. He attended Butler County Community College on a full scholarship in livestock judging. He transferred his junior year to the University of Kansas where he graduated in 1992 with a degree in business administration. He was later accepted to the OCU School of Law, receiving his J.D. in 1995. He passed the Oklahoma Bar exam at age 24. At the time of his death he was working for Humphrey, Wallace, Humphrey Law Firm in Tulsa. He previously managed Walden Books in Bartlesville and Books a Million in Tulsa.

Judge Donald C. "Don" Welch of Ponca City died Nov. 16, 2015. He was born May 2, 1928, in Ponca City and attended Ponca City High School, graduating in 1947 as co-valedictorian. He earned his bachelor's degree from OU in 1951 and later his J.D., serving as editor of the *Law Review* for two years. **Judge Welch served his country in the United States Air Force active duty and reserves in the Intelligence Division, eventually retiring with the rank of major.** After two years of active duty service at Lowry Air Force Base in Denver, he returned to Ponca City to practice law. In addition to his private law practice of 60 years, he served as assistant district attorney in Kay County for 31 years, representing Kay County Government as head of the Civil Division of the District Attorney's Office. In August 1989, he was sworn in as special district judge when the Supreme Court created a new position to serve the 8th Judicial District, comprised of Kay and Noble counties. He was honored by Gov. Frank Keating for his volunteer service to the Oklahoma Court of Criminal Appeals in 1996. Memorial contributions may be made in his name to the First Christian Church, 210 N. 5th Street, Ponca City, OK 74601 and earmarked for the Friendship Feast Program.

Walter Wayne Withers of St. Louis, died June 16, 2015. He was born Nov. 4, 1940. He received his J.D. from Northwestern University. He moved to Washington, D.C. to work as a staff attorney for the Federal Trade Commission. In 1968, he moved to St. Louis to join

Monsanto as a corporate counsel. Over the next 21 years, he rose to become chief legal counsel to the company's agricultural products division. Joining Emerson in 1989 as secretary and general counsel, he spent the next 20 years there as the company flourished. He led the company's compliance with the Sar-

banes-Oxley Act of 2002 and became a mentor to many on the legal staff. At the time of his death, he was of counsel in the St. Louis office of Bryan Cave. In addition to his considerable corporate duties, he served on the boards of numerous local and national nonprofit organizations aimed at improving legal services.

Donations may be made to the Missouri Historical Society, P.O. Box 11940, St. Louis, Missouri, 63112, MD Anderson Hospital, c/o Dr. Guillermo Garcia-Manero, 1400 Holcombe Boulevard, Houston, Texas, 77030 or to a charity of your choice.



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SOUTH TULSA LAW FIRM HAS AN OPENING FOR A PARALEGAL. We are looking for a candidate that has background experience in insurance defense; trucking experience would be a plus. The duties involve the management of all of the documents related to the defense of personal injury cases. The ability to request, organize and review medical records is a must. The duties also include preparing matters for significant events such as a deposition, mediation or trial. Candidate should have excellent organization skills. Please send your resume to amy@csmlawgroup.com.

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FAST-PACED OKC INJURY FIRM SEEKS EXPERIENCED LEGAL ASSISTANT to join its personal injury team. Candidate will be expected to assist in all phases of the case, from intake through final resolution. Pay commensurate with experience. Please forward resume and references to "Box AA," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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KLATT LAW FIRM IS SEEKING QUALIFIED, ENERGETIC CANDIDATES to fill full-time or part-time attorney positions in Oklahoma. Ideal candidate would be an Oklahoma licensed attorney also licensed in bankruptcy court. Must have strong communication and organization skills. Primary responsibilities would be as default foreclosure and bankruptcy attorney. Litigation skills preferred. Travel to court throughout Oklahoma required. Salary negotiable based on experience. Please send cover letter, resume and references to mlasley@klatt-law.com.

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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.

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We Don't Want To Be Texas

By Michael J. Blaschke

Sometimes I get the impression that our politicians and “civic leaders” admire the things going on in the Texas judicial system and are encouraged to do the same here. Well, I am not a politician or civic leader. I’m a lawyer. All I can do is try to outline what ideals we may be sacrificing to “become” Texas.

I think common agreement could be found that our ideals are: 1) absolute reverence for the rule of law, 2) absolute reverence for an independent judiciary, beholden to no one, 3) absolute reverence for the equality of all, be he lowly or powerful and 4) absolute reverence for the system of juries, because we do not leave right and wrong in the hands of elected representatives. “We the People” decide.

Some voices, however, think that it is not enough to control two branches of government, but that to have all three in thrall is the only way to achieve certain ends.

This is not new. This is not news. The war between law and power was fought out by the Greeks in their city-states, was fought out by the Roman Republic. It is a war as old as civilization itself and continues here as these ideals are under assault by two really bad ideas.

The first of the two has its roots in the belief that there is something wrong with juries deciding right and wrong under the law and under the guidance of an independent judiciary. So they have sought to “reform” our system by saying, for example, that one who is being tortured to death by pain due to the carelessness

of another is fully compensated for that suffering to the tune of \$350,000 and no more. That one who is rendered a quadriplegic due to that same carelessness, be it the act of prominent physician and hospital or humble truck driver, is made “whole” under the law by that same figure.



In the vernacular of Oklahoma, I got no dog in this personal injury hunt. But I am vitally invested in the ideals. I do have a dog in that hunt. And to suggest that the plaintiff suffering I describe above is fully paid for under “reform” legislation is shameful. Such “reform” is a direct and flagrant desecration of The Four Ideals.

The second bad idea seeks to determine which of our judges are “business friendly.” Everyone wants a vibrant economy and

business climate. This is obvious. The question is: At what price?

Are we truly going to allow judges to be intimidated and frightened to follow our ideals because somebody thinks “business” might be harmed? Are we really going to allow money to be the conduit and the only conduit for attainment of a judgeship? Are we really desirous of partisan elections for judges? Because that is what is happening in Texas — the purchase through moneyed elections of “friendly” judges. Judges are not supposed to be friendly! Good ones never are! Polite and courteous certainly, but never friendly in the sense meant by those proposing to take over the judiciary. We don’t want to be Texas.

Our Oklahoma judges are chosen and retained by laws, regulations, commissions and appointment by the governor, all in keeping with the ideals. They are not chosen on the basis of how “friendly” they are. Not yet.

In the final analysis, however, there is little I can do to change things. I can’t change things. Until “citizens united” find a way to fight these two bad ideas I must in the words of that great prayer find the courage to accept the things I cannot change. The only other thing I can do is raise my small little voice in protest.

Herein, my protest — and my prayer.

Editor’s Note: This article is modified from the original version printed in The Briefcase, published by the Oklahoma County Bar Association.

Mr. Blaschke practices in Oklahoma City.

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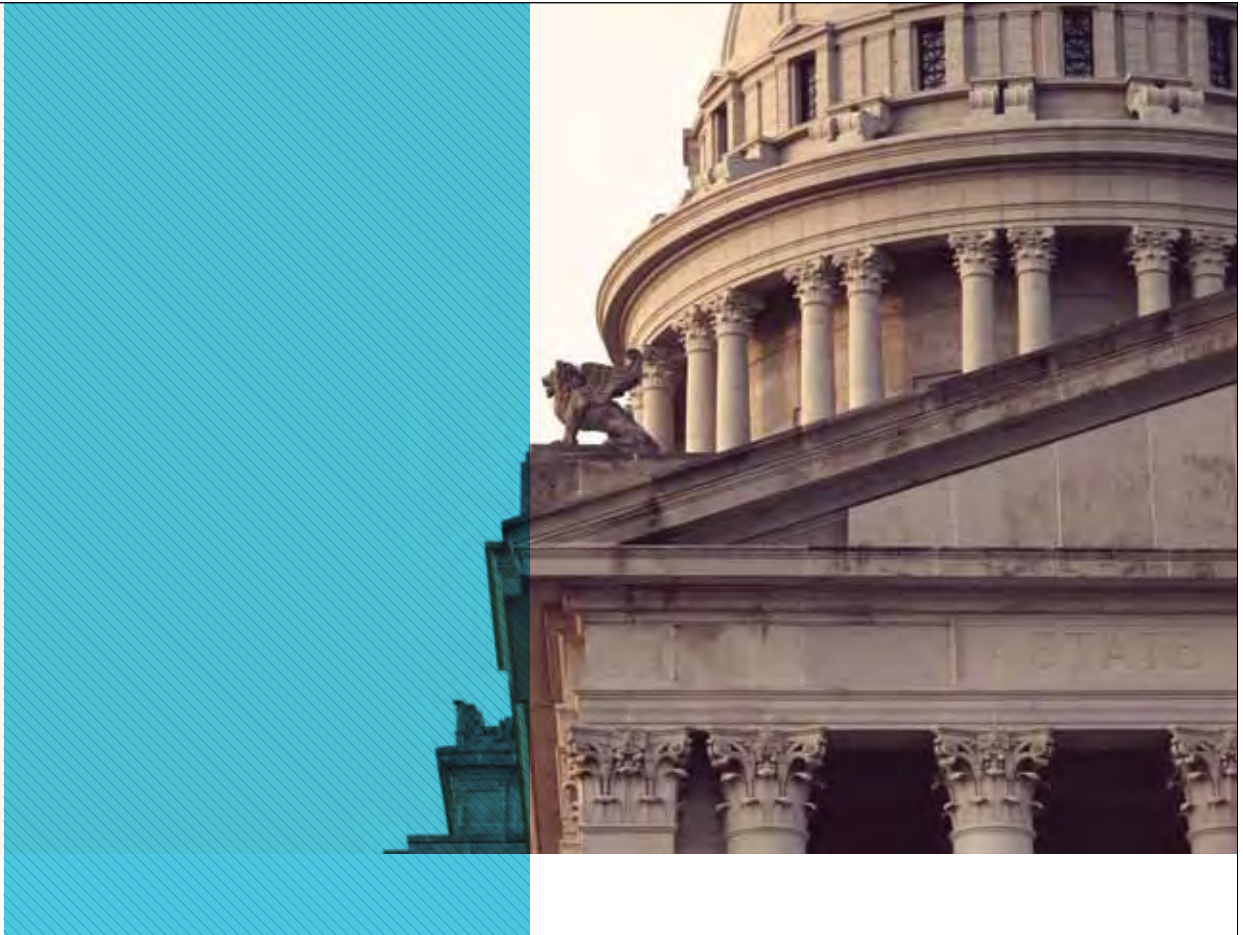


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