

ALSO INSIDE: OBA & Diversity Awards • Sovereignty Symposium
New Lawyers Take Oath • Legislative Report

THE OKLAHOMA BAR Journal

Volume 89 — No. 13 — May 2018



**SCIENCE &
THE LAW**

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Mediation and Arbitration
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Legal Updates 2017
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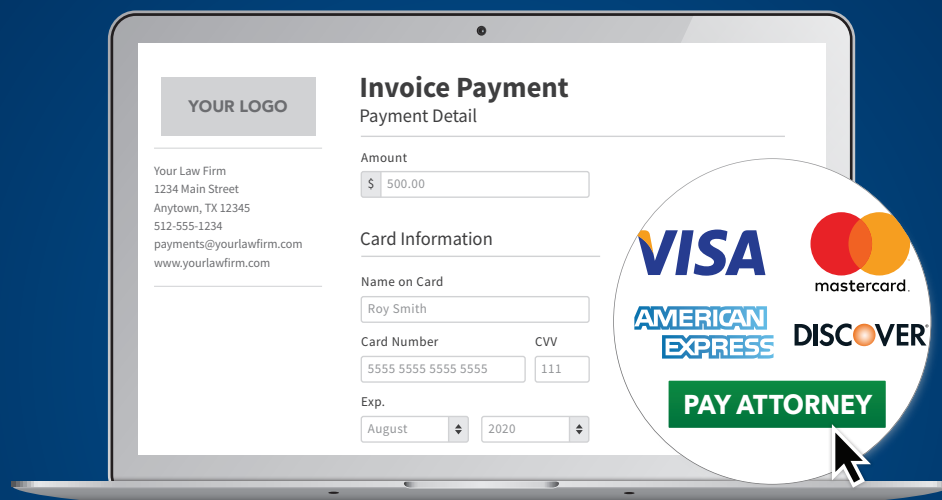
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TUITION: \$225 for early-bird registrations with payment received no later than June 15th; \$250 for registrations with payment received June 16th or later. Tuition includes: 2 hours of CLE, green fee, cart, balls, grab & go breakfast and buffet lunch. Cash bar available. Member guests not staying for CLE or lunch may play for \$175 early and \$200 late by contacting Renee at 405-416-7029. No Walk-ins.

LODGING: If you are planning to attend the Solo & Small Firm Conference and would like to take advantage of our special \$99 room rate at the River Spirit Casino Resort, please call 1-888-748-8731 and refer to the OBA Solo & Small Firm Conference or use the link on our registration page. The Hard Rock Hotel and Casino has arranged a room rate of \$109 for those golfers wanting to stay closer to the course. Hopefully, this will make early check in on Thursday morning a little less painful. It is 7.6 miles from the Hard Rock to the Patriot. Call 1-800-760-6700 and mention "Oklahoma Bar Association - OKC" to receive the special group rate by May 29, 2018.

Your "classroom" is the great outdoors at The Patriot Golf Club. Eighteen ethics scenarios and a set of multiple choice answers are your course materials. Discuss each scenario and possible answers as you play or ride to each hole. After you finish, head to the "19th Hole" for a buffet lunch and discussion of the scenarios and answers led by OBA Ethics Counsel, Joe Balkenbush.

Because of this unique format, participation is limited to 52. Register now to guarantee you or your team a place at this special CLE event! The event is set up for no mulligans, a max of bogey, and prizes will be given for 1st and 2nd place. Tie breaker is best score on the hardest handicapped holes. Flag prizes for closest to pin on hole #8 and #17 and longest drive on #11.

THE OKLAHOMA BAR Journal

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The Practice of Law – It's a Small World

THE MONTH OF MAY IS BUSY – schools recess for summer, graduation celebrations and a chance to be outside enjoying all that our beautiful state has to offer – before we start feeling the 100-degree Oklahoma heat. Law students have successfully completed a challenging year of learning the law, and the graduating law students begin studying for the bar exam. We all lead different lives, while at the same time we, as attorneys, are joined by our common respect for, and knowledge of, the law.

Most of us focus our practice in specific areas of the law: civil litigation, assisting a family with estate planning or ensuring someone's constitutional rights as defense counsel. The practice of law is diverse, as reflected in our 28 OBA sections. Within the practice of the law, there is also the common bond we share – an understanding and respect of the legal profession and the responsibilities that come with the title "attorney," "lawyer" and "counselor at law." As attorneys, we all live in the same *small world* – the legal profession.

Consider the lyrics of the Disney song, "It's a Small World." The song is repeated throughout the slow-moving boat ride found in the Walt Disney World Resort and Disneyland. Have you noticed that the lyrics could describe some thoughts and emotions that might occur in the practice of law?



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*It's a world of laughter, a world of tears
It's a world of hopes and a world of fears
There's so much that we share
That it's time we're aware
It's a small world after all.*

(My sincere apologies if, "It's a Small World" is now repeating in your head.)



Kim's husband and OBF president, Alan Souter, holds their daughter's "Small World" backpack while at Disney last summer. He was "thrilled" to be going on the ride again.

Since we are all on the same ride, but in different boats, in the small world of the legal profession, we must strive to treat each other with civility and respect. The Lawyer's Creed, adopted by the Oklahoma Bar Association Board of Governors on Nov. 17, 1989, and amended March 2008,

includes the pledge, "I recognize that a desire to prevail must be tempered with civility. Rude behavior hinders effective advocacy and as a member of the Bar, I pledge to adhere to a high standard of conduct which clients, attorneys, the judiciary and the public will admire and respect."

To those outside of our small world, we are the examples of the legal profession itself. When we treat each other, the courts and our clients with civility, dignity and respect, we are advancing our own profession. If you have not read the Lawyer's Creed recently, I encourage you to do so. It's available online at tinyurl.com/lawyerscreed.

Finally, I hope you join OBA members from our "small world" and register for the Solo & Small Firm Conference, which will be held June 21-23 at the River Spirit Casino Resort in Tulsa. The planning committee and OBA staff have created an informative and very relevant program, "Serve Our Clients and Protect Their Data." New and innovative ways to serve clients will be central to the conference this year with a special focus on limited scope services, client portals and serving clients via a virtual law practice. This year also includes a special Cybersecurity Fair. The venue is an exciting and new location for the conference. Details can be found at www.okbar.net/solo. I look forward to seeing many of you in June!

THE OKLAHOMA BAR JOURNAL

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THE OKLAHOMA BAR Journal

Volume 89 — No. 13 — May 2018

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The Oklahoma Bar Journal (ISSN 0030-1655) is published three times a month in January, February, March, April, May, August, September, October November and December and bimonthly in June and July by the Oklahoma Bar Association, 1901 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105. Periodicals postage paid at Oklahoma City, Okla. and at additional mailing offices.

Subscriptions \$60 per year except for law students registered with the OBA and senior members who may subscribe for \$30; all active members included in dues. Single copies: \$3

Postmaster Send address changes to the Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036.



Who Am I? What's in My Future? Who Has the Right to Know?

Nondiscrimination and Privacy in Genetic Testing

By Gail Mullins

AS A SPECIES, 99 PERCENT OF OUR DNA is identical; the remaining 1 percent makes each of us unique. Every cell in our body contains a DNA molecule made up of 46 chromosomes, 23 inherited from our mother and 23 from our father. Inside each chromosome resides a twisted double-helix of DNA: the classic long, twisted ladder you may remember from high school biology. Each rung on that ladder consists of two proteins (called base pairs).

The human genome contains about 3 billion base pairs. Each gene is made up of a group of base pairs, and each gene tells our cells how to make a particular protein. Because the human body requires instructions for thousands of proteins, the human genome contains about 20,500 genes.

A base pair that is missing or in the wrong locations on a gene is known as a mutation. A mutated gene may instruct a cell to make no protein, extra proteins or a different type of protein. These instructions may have no effect on the body or may result in disease. Some diseases, such as cystic fibrosis, are caused by a mutation in a single gene. Other diseases result only when multiple genes contain mutations.¹

Researchers have determined the precise location of common gene mutations. When many people share a common mutation, that mutation is known as a single nucleotide polymorphism (SNP). Because the locations of common SNPs are known, it is not necessary to test the entire human genome to determine

whether a person carries a gene for a certain disease. Instead, genetic testing can focus on the specific gene locations where disease-causing mutations are known to occur.

Environment and lifestyle choices can activate or deactivate a mutated gene and influence the impact of the disease. Type II diabetes, for example, can run in families, and it has a genetic component, but persons who watch their weight, don't smoke and exercise regularly may have a lower risk of disease than those who don't make the same positive lifestyle choices.

TESTING

Oklahoma, like most other states, requires all newborns to be screened during the first week of life for more than 30 diseases.² Many of these diseases, including cystic fibrosis and sickle cell anemia, are caused by genetic mutations.

Patients may also undergo genetic testing when family history or medical symptoms indicate a possible genetic mutation. When

planning a pregnancy, if one or both partners have a family history of a genetic disease, both may undergo genetic testing to determine whether they carry a mutation. Genetic testing may also be completed on embryos produced through in vitro fertilization. During pregnancy, a fetus may be tested when other prenatal tests indicate an increased risk of genetically transmitted disease.

More recent developments include pharmacogenomic testing to predict how a person will likely respond to a specific medication – whether that medication will be effective, be likely to cause serious side effects and optimal dosage.³

CRISPR

Clustered Regularly Interspaced Short Palindromic Repeats (CRISPR, pronounced “crisper”) is probably the hottest topic in genetics today. CRISPR is a bacterial defense system that forms the basis for genome editing.⁴ These systems can be programmed to target and edit a

mutated gene known to exist at a specific location, thus potentially curing the underlying genetic disease. While the possibilities are exciting – researchers recently restored vision in blind mice, for example – concerns remain about secondary mutations that might be caused by the CRISPR process, so it may be a while before the potential of this extraordinary technology can be fully unleashed on humans.⁵

DIRECT-TO-CONSUMER TESTING

In April 2017, 23andMe, which has more than 2 million customers in its database, became the first company to have direct-to-consumer genetic testing approved by the FDA. 23andMe currently tests as many as 580,000 genetic variants (SNPs) to assess risk for genetic diseases as well as to provide ancestry information.

Customers of commercial genetic companies pay a fee, spit into a vial provided by the company and mail it in. The consumer's DNA is sequenced and the locations of common genetic mutations are analyzed for the existence of mutations associated with more than 50 diseases, including Parkinson's disease, late-onset Alzheimer's, heart disease, celiac disease, cystic fibrosis, various cancers, age-related macular degeneration, hereditary hearing loss, polycystic kidney disease, some muscular dystrophies, Tay-Sachs and sickle-cell anemia.⁶

Commercial testing companies may also trace your ancestry by comparing your SNPs to those associated with large numbers of people from a particular region of the world. Along with associating your DNA with countries of origin, you may find you have average, low or above-average Neanderthal ancestry. (Don't be embarrassed if your Neanderthal ancestry is above

Cultural issues also surround ancestry: What makes us who we are – is it biology, shared family and culture or a combination of both?

average. Sure, our Neanderthal ancestors had big heads and broad, stooped backs, but the good news is that they also had bigger brains – a trait you may have inherited.)

Does cilantro taste like dish soap to you? Can you curl your tongue? Do you become enraged at the sound of another person chewing? Do you have the muscle type of a sprinter? Are you really lactose intolerant? Do you flush when you drink alcohol? Do you prefer sweet to salty? Can you smell asparagus in urine? Do you sneeze when you first walk outside in the sun? All these traits are inherited, and this intriguing, if not life-changing, information can provide great fodder for cocktail-party chat.

CONCERNS

For many of us, choosing to undergo genetic testing may produce some anxiety. Cultural issues also surround ancestry: What makes us who we are – is it biology, shared family and culture or a combination of both? For example, a 1993 survey of adults with hereditary hearing loss found that almost 30 percent preferred to have a deaf child and over half believed that a genetic test for deafness would lead to negative results in the deaf community.⁷

Other issues can arise if a person learns she has an inherited genetic mutation that may result in a serious illness. What happens

if testing reveals that her siblings each have a 50 percent risk of inheriting the same mutation, but she does not want to share her prognosis? Or perhaps she decides to inform her siblings but, to her surprise, only one sibling chooses to undergo genetic testing.

As databases have grown, commercial testing has also provided unprecedented opportunities for consumers to connect with long-lost relatives. Consumers are given the option to share identifying information with DNA-confirmed relatives or to keep information private. Adopted children searching for a birth parent through a commercial DNA company may find a parent or sibling who was similarly searching, as long as both parties have been tested and have agreed to share information with other relatives. But suppose that when the second sibling in our example above undergoes genetic testing, she also discovers she has a different father than her sisters, a fact heretofore unknown to her or the other siblings. The remaining two siblings chose not to be tested because they did not want the cloud of a potential illness over their lives. What information should be shared?

INFORMATION PRIVACY

Next to finding a genetic mutation or a formerly unknown

biological relationship, the most anxiety-producing concern is that of privacy. How will your genetic information be protected? Can it be shared? Will it be stolen or misused? Research data must be “de-identified,” which means personal identifying information is kept in a separate database from genetic information and linked only by “randomly assigned research identification.”⁸ There is no sharing of identifying information without explicit consent. Commercial genetics companies have every reason to protect individual identifying information – the continued viability of their companies depends on it, but ethicists still worry that it might be possible in some cases to “work backward” and identify individuals based on results and additional clues given in the research.⁹

A more specific concern is that genetic privacy laws almost universally exempt insurers of life, disability income and long-term care insurance. As many as 75 percent of those diagnosed with Alzheimer’s eventually live in a nursing home, at an annual cost currently estimated at \$88,000.¹⁰ The genetic marker APOE is considered “both a direct predictor of nursing home admission and an indirect predictor of long-term care use via its link with Alzheimer’s.”¹¹ Those who have been identified as having the APOE4 gene, a marker associated with a 25 percent risk of developing Alzheimer’s, have been found *six times* more likely to buy long-term care insurance. Insurers do not currently require genetic testing to determine long-term care eligibility or set premiums, but insurers worry that the financial deck is stacked against them when consumers who know, through genetic testing, that they are at high risk for Alzheimer’s, seek disability income, long-term care or life insurance far more often than

do others. Insurers have no access to the genetic information known by the consumer – information that translates to an increased likelihood of eventual use of the insurance product.¹² So, increasingly, insurers have turned to using eligibility questions that subtly reveal early signs of memory loss.

What if you have genetic testing and are later asked on a life insurance or disability policy application whether you have ever been tested? Nondisclosure could be considered insurance fraud because laws protecting privacy of genetic testing do not extend to life, disability income or long-term-care insurance.

FORENSIC DNA

Remember those base pairs that form the rungs of the DNA ladder helix? About 999 out of every 1,000 base pairs are identical from person to person, but because we have 6 billion base pairs, there are still variations in around 6 million of those pairs. Forensic analysis capitalizes on those distinctions to statistically predict the percentage of persons who might share identical DNA markers by comparing specific areas of the gene, called loci, that are *not* typically the same in different people. DNA of a suspect and DNA obtained from a crime scene are compared for matching sequences where there is the greatest human variation.¹³ In forensic testing, a lab may compare only a few of these loci to predict the probability that two DNA samples came from the same source.

In ancestry and medical genetics testing, on the other hand, testing focuses on finding differences where humans share the same genetic information to predict the likelihood of a disease mutation. For that reason, at least currently,

commercial and medical DNA testing has limited applicability in the field of forensics.

STATE AND FEDERAL LAWS ON GENETIC PRIVACY AND NONDISCRIMINATION

The international Human Genome Project, which sequenced the human genome in 23 years¹⁴ two years ahead of schedule,¹⁵ was accompanied by very real concerns about what others would be able to know about us. Genetic information is protected under both state and federal laws, but neither provides for absolute privacy, and it is important to understand what is *not* protected. Oklahoma protects genetic information in the areas of insurance, employment and research.¹⁶ Under the Genetic Nondiscrimination in Insurance Act,¹⁷ accident and health insurers cannot deny or condition coverage and benefits, or discriminate in pricing based on a pre-existing condition as determined by genetic information, including information about the individual, covered family members and a fetus or embryo legally held by the individual or family member. The act specifically does not apply to life, disability income or long-term-care insurance.

In addition, a health insurer may *request but not require* an individual or family member to undergo genetic testing for research if the “insurer clearly indicates” that compliance with the request is voluntary. Interestingly, obtaining “genetic information *incidental* to the requesting, requiring, or purchasing of *other information* concerning any individual” *does not* violate the law.

Under Oklahoma’s Genetic Nondiscrimination in Employment Act,¹⁸ employers cannot obtain or use genetic information of an employee or prospective employee, or require an employee or prospective employee to provide that information for the purpose of “distinguishing

between or discriminating against an employee or prospective employee.” Again, though, this ban on genetic information does not apply to life, disability income and long-term-care insurance.

Those who “maintain[] genetic information” are “compelled to disclose such information” only if 1) the request is related to a paternity determination; 2) the person “whose genetic information is requested is a party to a proceeding in which the genetic information is at issue;” 3) the person “whose genetic information was requested was insured under an insurance policy and the policy as well as the genetic information is at issue;” or 4) “[t]he genetic information is for use in a law enforcement proceeding or investigation or an insurer anticipates or is reporting fraud or

Act²⁰ allows publication of genetic information “for research or educational purposes if no individual subject is identified” or the individual has given “specific informed consent” for disclosure. Genetic research results are not “subject to subpoena or discovery in civil suits, except where the information in the records is the basis of the suit.” Research records are not disclosable to employers or health insurers without the informed consent of the subject,” but once again, this section does not apply to life, disability income or long-term-care insurance.

The Genetic Information Nondiscrimination Act of 2008 (GINA)²¹ protects individuals against discrimination in employment and issuance of health insurance based on genetic information, but, like Oklahoma

undergo genetic research testing if participation has no effect on enrollment status, underwriting, premium or contribution amounts. Group health plans also cannot request, require or purchase genetic information 1) for underwriting purposes or 2) with respect to an individual prior to the individual’s enrollment in connections with such enrollment. GINA prohibits health insurers in the individual market (including Medicare supplemental policies) from basing eligibility on genetic information, including pre-existing conditions based on genetic information. “Genetic information” includes genetic information of 1) a fetus carried by a pregnant woman and 2) an embryo legally held by an individual or family member of an individual using Assisted Reproduction Technology (ART).

Title II of GINA prohibits employers, employment agencies and labor organizations from discrimination based on genetic information, including 1) failing to hire, discharging or otherwise discriminating against an employee with respect to compensation, conditions or privileges of employment; 2) failing or refusing to refer a person for employment; 3) excluding or expelling a member from a labor organization; 4) for an employment agency, labor organization or joint labor management committee, causing or attempting to cause an employer to discriminate against a member; and 5) discrimination in admitting or employing an individual in any program established to provide employment training. Title II provides three exceptions under which an employer may use a person’s genetic information: 1) to comply, for example, with certification requirements of family and medical leave laws; 2) when genetic monitoring is used to measure effects of toxic



criminal activity.”¹⁹ This protection from disclosure in legal proceedings does not apply to “life, disability income or long-term-care insurance.”

Finally, Oklahoma’s Genetic Research Studies Nondisclosure

law, this federal protection does not extend to life, disability-income or long-term-care insurance. Title I of GINA applies to health insurance.

A group health plan can *request* but not *require* a participant to

substances in the workplace; or 3) when the employer conducts DNA analysis as a forensic lab or for human remains identification.

Disclosure of required genetic information may be made only to 1) the employee upon request; 2) an occupational or other health researcher; 3) in response to a court order; 4) a government official investigating compliance with GINA if the information is relevant; 5) in connection with compliance with federal or state family medical leave laws; or 6) a public health agency. GINA does not overturn broader protections provided in state regulations; more than 40 states prohibit genetic discrimination. In addition to GINA, the 21st Century Cures Act of 2016,²² Affordable Care Act (ACA) and HIPAA contain provisions protecting genetic information and banning discrimination.²³

EMPLOYER-SPONSORED WELLNESS PROGRAMS

Recently, in *AARP v. EEOC*,²⁴ the AARP challenged two EEOC regulations promulgated under HIPAA and the ACA “related to incentives and employer-sponsored wellness programs.” The EEOC regulations allowed employers to impose up to a 30 percent premium increase for employees who refuse to disclose medical and genetic information through employer wellness programs.

HIPAA allows discounts or rebates on copayments or deductibles to employees complying with sponsored wellness programs,²⁵ including “a discount on insurance costs or a penalty that increases the plan participant’s costs because of nonparticipation in the wellness program.”²⁶ The ACA amended HIPAA to “allow plans and insurers to offer incentives of up to 30% of the cost of coverage in exchange for an employee’s

participation in a health-contingent wellness program.”²⁷ The decision in *AARP* turned on determining the point at which a penalty or incentive makes participation in a wellness program less than voluntary. The court found “employer-sponsored wellness programs often involve the collection of sensitive medical information from employees, including information about disabilities or genetic information,”²⁸ and the court found no reasonable basis for the 30 percent maximum discount/penalty, and it directed the EEOC to redraft the regulations.

Only four months later, the district court granted AARP’s motion to reconsider and “vacate[d] the challenged incentive portions of the ADA and GINA rules”²⁹ but stayed its decision until January 1, 2019, to allow the EEOC time to redraft rules and to allow affected employers time to comply with those new rules.³⁰ The court found it was “far from clear the EEOC will view a 30% incentive level as sufficiently voluntary,”³¹ and, given the EEOC’s admission that “any new final rule ‘likely would not be applicable until the beginning of 2021,’” the court found it unlikely that the agency would “address its errors ‘in a timely manner.’”³²

The *AARP* decision will affect any features of an employer-sponsored wellness program that involves genetic information, including genetic testing of the employee and the employee’s covered family members, as under both the ADA and GINA, medical examinations must be voluntary. It also shines a spotlight on the Hobson’s Choice facing many employees: the exchange of private information or affordable health insurance?³³

ABOUT THE AUTHOR

Gail Mullins is assistant dean of experiential learning and director of legal research, writing and advocacy at the OU College of Law where she

also teaches legal writing, nonlitigation drafting and bioethics courses. She is licensed to practice in Oklahoma.

ENDNOTES

1. www.genome.gov/pages/education/allaboutthehumangenomeproject/guidetoyourgenome07_vs2.pdf.
2. 63 Okla. Stat. §§1–533; 1–534 (OSCN Dec. 30, 2017).
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Authoritarian Jurors and How to Spot Them

By Rachel Farrar



LITIGANTS IN BOTH CIVIL AND CRIMINAL TRIALS have a constitutional right to an impartial jury. *Voir dire* is one of the few, and most critical, procedures we have to protect that right.¹ The attorney's goal during *voir dire* is to identify each prospective juror's individual experiences, attitudes, beliefs² and biases.³ It is critical to identify a juror who may be biased against your client before that juror has the chance to side with your adversary.

One of the biggest challenges in *voir dire* is uncovering prospective jurors' world views⁴ and hidden biases.⁵ This is no small feat. Often times, people aren't even aware of the biases they harbor.⁶ There is also the problem of prospective jurors who are aware of their biases but conceal or minimize them during *voir dire*.

Prospective jurors know that one of the most critical tenets of our justice system is that jurors hearing a case must be fair and impartial. There can be immense "social/legal desirability" pressure⁷ for prospective jurors to give what they know, or believe to be, the "right" answer to questions they are asked during *voir dire*.⁸ Admitting to being unable or unwilling to be fair and impartial would feel wrong.⁹ A 2014 research study on juror bias concealment during *voir dire* found that people were over 250 percent more likely to admit to being biased when asked in an informal survey than they were during *voir dire* after actually being called for jury

duty.¹⁰ In other words, when we need their honesty most, we are least likely to get it.

It is understandable, though. It is "human tendency on the part of jurors to want to portray themselves in the best possible light. This 'social desirability bias' serves as a standing encouragement for jurors to answer all questions with what they take to be the 'right' or 'good' answer. The courtroom itself, with its many trappings of official power and formality, can heighten for jurors a preference for an answer that they believe will satisfy the judge and the attorneys over an answer that honestly conveys a bias."¹¹ When prospective jurors do inform the attorneys and judge during *voir dire* of biases they hold, they generally cave to the subsequent pressure to say they can set the bias aside and be fair.¹² Even if a prospective juror truly believes¹³ he or she can set aside his or her existing biases and worldviews, neuroscience has shown this to be

nearly impossible to actually do.¹⁴ An assurance to set biases aside should not be reassuring.¹⁵

Instinctively knowing this to be true, many trial attorneys have developed theories and strategies for attempting to identify juror biases and worldview predict how each prospective juror will likely vote. Attorneys frequently form these theories around their own beliefs about a multitude of demographics: age, race, sex, occupation, income level, education. The assumption attorneys typically rely upon is that these characteristics will likely define or shape the prospective juror's worldview, and thus how they will view the client in a certain predictable way. Some attorneys rely merely upon their gut feelings about prospective jurors based on their observations of the jurors' mannerisms and body language. Regardless of the approach, the goal is the same: uncover the prospective jurors' biases and worldviews and determine if they will benefit

or disadvantage the client to predict how the prospective juror is likely to vote. Unfortunately, studies have shown that attorneys are “not particularly good at predicting individual jurors’ decisions.”¹⁶

Psychologists, jury consultants and other social and legal experts have done a lot of research attempting to determine which, if any, individual juror traits are most likely to predict how that juror will vote at the end of the trial. Repeatedly, results of these studies have shown that the personality trait of authoritarianism frequently and consistently predicts juror verdict preferences in a broad range of case types¹⁷ more so than any other trait, characteristic or demographic.¹⁸

CHARACTERISTICS OF AUTHORITARIANS

Authoritarianism is a personality trait which people can be high in, low in or fall somewhere in the middle.¹⁹ As a personality trait, it has been shown to be remarkably stable.²⁰ A longitudinal study on monozygotic and dizygotic twins showed that a person’s level of authoritarianism is influenced more by their genes than by their life experiences.²¹ Authoritarianism is not a political affiliation or limited to only people who identify as either conservative or liberal. Authoritarians can be found across the political spectrum.²²

People who are highly authoritarian typically hold traditional values²³ (such as family values, personal accomplishments, family and national security and conservative religious organization),²⁴ conform with conventional societal norms²⁵ and idealize an orderly and powerful society.²⁶ Because of

this, they typically identify with mainstream society,²⁷ submit to authority,²⁸ faithfully follow leaders they perceive to be strong²⁹ and expect everyone else to do the same.³⁰ Authority figures and strong leaders are not limited only to military, law enforcement or elected officials, but can also include anyone who is perceived to have a sense of authority or power: CEOs, doctors, teachers, religious leaders and other people or even companies that are generally regarded as well-respected and being of high status.³¹

Conformity, predictability and control within a community bring authoritarians a sense of safety.³² They are frequently uncomfortable with social change (such as feminism, LGBTQ rights, immigration, etc.) because such change defies and disrupts the currently accepted social norms which make them feel safe. They view outsiders and people who challenge social structure as being the cause of all problems, believing that if they could just be shut down or removed that everything could go back to being fine. Many authoritarians believe their religious beliefs should guide our laws and morals; but not all authoritarians are necessarily religious.

For authoritarians, people are either one of “us” (in-group) or one of “them” (out-group).³³ Authoritarians view people who deviate from, question or defy authority figures or societal norms and rules (members of an out-group) as a threat to their sense

of safety and respond to them with hostility and/or aggression.³⁴ Minority groups are generally assumed to be deviating from or defying societal rules and will be seen as members of an out-group. For example, a transgender person is deviating from societal norms, and thus will not be in the in-group. A practicing Muslim may be seen as nonconforming to social norms and, therefore, not accepted as part of the in-group. A person receiving government assistance could be seen as violating the traditional value of pulling oneself up by the bootstraps to achieve the American dream. Authoritarians prioritize and demand conformity with social norms, comply with the demands of authority figures and try to force such conformity and compliance onto all who fail to fall in line. One psychological framework on authoritarianism categorizes each of these tendencies as falling into one of three facets of authoritarianism: authoritarian aggression, authoritarian submission and conventionalism.³⁵

HIGHLY AUTHORITARIAN JURORS IN CIVIL TRIALS

In civil cases, highly authoritarian jurors tend to initially identify the higher status party as being more respectable and conforming with the ideals and values of mainstream society, and thus view them as a member of their in-group.³⁶ Highly authoritarian jurors tend to be initially skeptical and cynical of underdog plaintiffs who bring

Conformity, predictability and control within a community bring authoritarians a sense of safety.

lawsuits against individuals or organizations that are more powerful, making them often hesitant to find the higher status party to be at fault and reluctant to give large awards.³⁷ The “reptile”³⁸ approach used by some plaintiff attorneys works to change this first impression by showing it is the high status party who has violated the societal norms and rules, which could play to an authoritarian juror’s need for a sense of predictability and safety within the community and their reflexive instinct to punish those who threaten it.³⁹

For highly authoritarian jurors, the character of the parties and witnesses can influence their decision just as much or even more than the evidence presented to them.⁴⁰ Since their decisions are often based on feelings, authoritarian jurors are prone to black-and-white, all-or-nothing thinking and can struggle to see the shades of gray necessary to determine comparable or shared fault.⁴¹

HIGHLY AUTHORITARIAN JURORS IN CRIMINAL TRIALS

In criminal cases, authoritarian jurors typically favor the prosecution, seeing the prosecutor, the police officers and medical examiners as respectable authority figures and members of their in-group.⁴² Highly authoritarian jurors have even been shown to have better recall of the prosecutor’s arguments and evidence and the testimony of the prosecutor’s witnesses than of the defendant’s.⁴³ Defendants in a criminal case are typically seen as members of the out-group.⁴⁴ Authoritarian jurors are prone to convict defendants and give harsh sentences.⁴⁵ One study found that highly authoritarian jurors were more likely to vote to convict even when the researchers

had intentionally slanted the evidence to point toward innocence.⁴⁶ Another study found that a jury panel made up entirely of highly authoritarian jurors

questions designed specifically to measure authoritarian attitudes and beliefs about our legal system.⁵¹ This fine-tuned measure of authoritarianism, referred to



recommended prison sentences more than twice as long.⁴⁷

There is, however, an exception to these tendencies when the defendant is an authority figure, someone of high status or is some other well-respected member of mainstream society who the highly authoritarian juror identifies as being a member of the in-group.⁴⁸ In these situations, the highly authoritarian juror may favor the defense over the prosecution.⁴⁹

SPOTTING AUTHORITARIANS

Researchers have developed a psychological instrument called the Revised Legal Attitudes Questionnaire-23 (RLAQ-23),⁵⁰ an instrument with 23 likert-scale (generally, but not always, a scale of 1-7 wherein participants rate how strongly a statement does or does not describe them)

as “legal authoritarianism,”⁵² predicts how a juror will vote more reliably than “traditional authoritarianism,” but only slightly more reliably.⁵³

However, a 23-question-long written assessment with scales that must be individually scored and interpreted is of little use to an attorney standing in front of a group of prospective jurors trying to make evaluations on the fly. Fortunately for attorneys, psychologists aren’t the only professionals who have been assessing people for authoritarianism. Political scientists have been informally assessing people’s levels of authoritarianism since 1992 with a short and sweet four-question, either-or test that doesn’t push participants’ patience nor comfort levels.⁵⁴ The test is simple:

When it comes to raising children, is it more important to have a child who is:

- 1) Respectful or independent?
- 2) Obedient or self-reliant?
- 3) Well-behaved or considerate?
- 4) Well-mannered or curious?

Selecting the first option on all four questions suggests the respondent is highly authoritarian. Because the topic of child-rearing is seemingly innocuous⁵⁵ and each of the four questions includes a choice between two subjectively positive traits, there is little to no legal/social desirability pressure to give the “right” answer. As such, prospective jurors are more likely to give their honest opinion, increasing the likelihood of getting genuine responses that accurately reflect their values from which inferences can be drawn about their more general worldviews.

CLOSING

Highly authoritarian persons can be either beneficial or detrimental to have as jurors, depending on who the client is. If the client is a member of an “out-group,” it may be prudent to find and promptly deselect the prospective jurors who are highly authoritarian.⁵⁶ Conversely, if the client fits squarely into their “in-group,” highly authoritarian jurors may be beneficial.

It goes without saying that keeping or eliminating highly authoritarian jurors is no guarantee of a favorable verdict. Juror authoritarianism is only one of many factors that should be considered when making choices during jury selection. It is critical to consider the overall makeup up of the jury panel. If there is another juror on the panel who authoritarians will likely see as

influential or an authority figure, authoritarian jurors are likely to go along with the ideas that authority figure expresses⁵⁷ and could be persuaded by them to change their vote.⁵⁸ Nonetheless, juror authoritarianism is an important trait to assess for and consider during jury selection.

ABOUT THE AUTHOR

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4. Ken Broda-Bahm, “Getting Beyond ‘Can You Be Fair?’: Framing Your Cause Questions,” *The Jury Expert* (Aug. 15, 2013), www.thejuryexpert.com/2013/08/getting-beyond-can-you-be-fair-framing-your-cause-questions/, (“The most pernicious juror biases are worldviews: frameworks that jurors will use to understand facts, reconstruct stories, and interpret testimony and other evidence.”).
5. Mykol C. Hamilton and Kate Zephyrhawke, “More Techniques for Uncovering Juror Bias Before It’s Too Late,” *The Jury Expert* (Jan. 31, 2017), www.thejuryexpert.com/2016/12/more-techniques-for-uncovering-juror-bias-before-its-too-late/, (“[T]he biggest problem – the real problem – is hidden bias. By design, human beings make rapid judgments about other people upon first sight; among them are trustworthiness and likeability. These judgments quickly transform into ‘gut feelings’, which lead people to unconsciously filter new information in a way that confirms their original, and often erroneous, impression. These processes come into play regardless of good intentions to be fair and open-minded.”).

6. Hamilton, “Practice,” *supra*, (“Most people are unaware of how much their attitudes affect their behavior in general, due perhaps to the introspection bias and the bias blind spot...”).
7. Hamilton, “Practice,” *supra*, (“[T]he *voir dire* process commonly places social/legal desirability pressure on prospective jurors through judges’ introductions and questions and through attorney questioning. With insufficient regard for accuracy, attorneys and judges exert pressure on prospective jurors to declare, even before they have revealed any bias, that they can be impartial, set aside pretrial information, and follow the law by presuming innocence. Given how clearly and repeatedly judges and attorneys communicate their expectations, it is not surprising that prospective jurors rarely admit bias.”).
8. Hamilton, “Practice,” *supra*, (“They say the juror faces ‘a judge perched high on a bench...; an armed deputy standing guard over the proceedings; a court reporter taking down every spoken word; a room full of lawyers dressed in suits; and all eyes focused on the jury box.’ How could such a setting not push a prospective juror toward the ‘right’ answers, toward trying to appear intelligent and responsible...?”).
9. Hamilton, “Practice,” *supra*, (“To express such doubts is to say, essentially, ‘No, I can’t follow the law. I don’t believe in the American justice system. I’m not willing to set aside my prejudices. I’m a bad citizen. In fact, I’m a rotten person.’”).
10. Hamilton, “Practice,” *supra*, (“However strong the social/legal desirability pressure might be in a survey, we predicted that the pressure in *voir dire* would be measurably greater. Confirming the hypothesis, more than two-and-a-half times the proportion of COV survey respondents (57%) as venirepersons (22%) admitted that they believed Hall was guilty.”).
11. Broda-Bahm, “Framing,” *supra*.
12. Hamilton, “Practice,” *supra*.
13. Hamilton, “Practice,” *supra*, (“We are notoriously bad at preventing our biases from influencing us. Furthermore, we strongly but erroneously believe that we can control our biases, thus we are likely to tell judges and attorneys that we can be fair and open-minded even if we cannot...People are disturbingly unsuccessful at setting aside bias (assuming they are aware of their bias in the first place). Unconscious processes such as confirmatory information searching, belief perseverance, the backfire effect, cognitive dissonance, and plain old poor recall may all contribute to this lack of self-understanding.”).
14. Macpherson, *supra*, (“More recent neuroscience research dramatically illustrates how outside stimuli trigger immediate reactions in the brain and offer further proof that a request to ‘set aside’ a relevant experience, attitude or belief is asking jurors to do the impossible. Jurors simply cannot flip a switch and shut off the influence of their own life experiences or well-established attitudes and beliefs.”).
15. Broda-Bahm, “Framing,” *supra*, (“Yes, the juror has made a verbal commitment to try to set aside bias. But no, there is no reason to believe that the juror has in the process recovered from their bias...The average juror will tend to agree with you, to say they will follow the judge’s instructions, and promise to be fair to everyone in the courtroom, while still maintaining a biased worldview.”).
16. Caroline Crocker Otis, Sarah M. Greathouse, Julia Bussa Kennard and Margaret Bull Kovera, “Hypothesis testing in attorney-Conducted *voir dire*,” 38 *Law and Human Behavior* 392 (2014).

17. Margaret B. Kovera, "Voor dire and Jury Selection: Personality Traits as Predictors of Verdict," *Forensic Psychology* 639-640 (2d ed. 2013).

18. Gayle Herde, "Take Me To Your Leader: An Examination of Authoritarianism as an Indicator of Juror Bias," *The Jury Expert* (March 25, 2011), www.thejuryexpert.com/2009/01/take-me-to-your-leader-an-examination-of-authoritarianism-as-an-indicator-of-juror-bias.

19. Philip Dunwoody and Friederich Funke, "The Aggression-Submission-Conventionalism Scale: Testing a new three factor measure of authoritarianism," *4 Journal of Social and Political Psychology* 571, (2016).

20. Authoritarianism is not one of the "Big Five" personality dimensions (Openness to Experience, Conscientiousness, Extraversion, Agreeableness, and Neuroticism), but it correlates with "Big Five" scores which are both low in Openness to Experience and high in Conscientiousness. See Kovera, *supra*.

21. Steven G. Ludeke and Robert F. Krueger, "Authoritarian as a Personality Trait: Evidence From a Longitudinal Behavior Genetic Study," *55 Personality and Individual Differences* 480, (2015).

22. Matthew MacWilliams, "The One Weird Trait That Predicts Whether You're a Trump Supporter," *Politico Magazine* (Jan. 17, 2016), www.politico.com/magazine/story/2016/01/donald-trump-2016-authoritarian-213533.

23. Kovera, *supra*.

24. Herde, *supra*.

25. "How Does Jurors' Authoritarianism Affect Criminal Verdicts?" *Online Jury Research Update* (November 2008), www.kkcomcon.com/OJRU/ROJR1108-4.htm.

26. Herde, *supra*.

27. Herde, *supra*.

28. Herde, *supra*.

29. MacWilliams, *supra*.

30. *Online Jury Research Update, supra*.

31. Ken Broda-Bahm, "Look Out for the Authoritarian Personality," *Persuasive Litigator* (January 2016), www.persuasivelitigator.com/2016/01/look-out-for-the-authoritarian-personality.html.

32. Ludeke, *supra*.

33. Herde, *supra*.

34. Herde, *supra*.

35. Dunwoody, *supra*, ("According to Altemeyer [1996], authoritarian aggression is intentional harm [physical or psychological] toward another person [or group] if the aggressor believes that 'proper authority approves of it or that it will help preserve such authority'. Authoritarian submission is 'a general acceptance of the statements and actions [of those in authority] and a general willingness to comply with their instructions without further inducement.' Conventionalism is 'a strong acceptance of and commitment to the traditional norms in one's society.'").

36. Broda-Bahm (2016).

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38. David Ball and Don C. Keenan, *Reptile: The 2009 Manual of the Plaintiffs Revolution*, (2009).

39. Broda-Bahm, "Personality," *supra*.

40. Herde, *supra*.

41. Broda-Bahm, "Personality," *supra*.

42. Herde, *supra*.

43. *Online Jury Research Update, supra*.

44. Herde, *supra*.

45. Kovera, *supra*.

46. Herde, *supra*, ("[A] study of authoritarianism in the legal setting concluded that persons prone to convict, even when the evidence was deliberately slanted toward innocence, scored higher in authoritarianism than persons who acquitted, confirming previous studies showing that

high authoritarians tend to be punitive. Authoritarian jurors are more likely to convict in criminal trials and are more severe in their punishments.").

47. Dennis J. Devine, Laura D. Clayton, Benjamin B. Dunford, Rasmy Seying and Jennifer Pryce, "Jury Decision Making: 45 Years of Empirical Research on Deliberating Groups," *7 Psychology, Public Policy, and Law* 622, (2001), ("[J]uries composed entirely of high-authoritarian jurors recommended prison sentences over twice as long.").

48. *Online Jury Research Update, supra*.

49. *Online Jury Research Update, supra*, ("Authoritarian jurors are less punitive in cases in which the defendant was an authority figure (e.g., a police officer) or when a defendant committed an obedience-oriented crime (e.g., such as a Marine following a superior officer's order or someone who committed murder while disciplining a disobedient son)... In sum, authoritarian jurors are generally more prosecution-oriented. However, when the defendant is similar to the juror, of high status or is acting in obedience to authority, authoritarians generally lean more toward the defense.").

50. Jennifer L. Skeem and Stephen L. Golding, "Describing Jurors Personal Conceptions of Insanity and Their Relationship to Case Judgments," *7 Psychology, Public Policy, and Law* 561, (2001).

51. The Revised Legal Attitudes Questionnaire-23 (RLAQ-23) is an assessment which asks respondents to rate how much they agree or disagree with 23 statements regarding attitudes and beliefs surrounding the effectiveness of our legal system. See, David A. Kravitz, Brian L. Cutler and Brock Petra, "Reliability and Validity of the Original and Revised Legal Attitudes Questionnaire," *17 Law and Human Behavior* 661, (1993).

52. Herde, *supra*, ("The following are a few of the statements from the Revised Legal Attitude Questionnaire, which, when jurors are in agreement, have been found to effectively identify persons high in legal authoritarianism: Too many obviously guilty persons escape punishment because of legal technicalities; The law coddles criminals to the detriment of society; and, Upstanding citizens have nothing to fear from the police.").

53. Devine, *supra*, ("Narby [et al] conducted a meta-analysis of studies that measured juror verdict preferences and two forms of authoritarianism: traditional and legal. They found that both forms of authoritarianism were reliably but modestly associated with juror verdict preferences across 20 studies, with legal authoritarianism a somewhat better predictor than traditional authoritarianism.").

54. MacWilliams, *supra*.

55. Child development experts have studied authoritarianism as it relates to parents and parenting. Upon comparison, it is easy to see the commonalities between the descriptions of highly authoritarian jurors and the descriptions of highly authoritarian parents. For example, see: Nancy Darling, "Authoritative vs. Authoritarian Parenting Style," *Psychology Today* (Sept. 18, 2014), www.psychologytoday.com/blog/thinking-about-kids/201409/authoritative-vs-authoritarian-parenting-style/, ("Authoritarian parents believe that children are, by nature, strong-willed and self-indulgent. They value obedience to higher authority as a virtue unto itself. Authoritarian parents see their primary job to be bending the will of the child to that of authority – the parent, the church, the teacher. Willfulness is seen to be the root of unhappiness, bad behavior, and sin. Thus a loving parent is one who tries to break the will of

the child...Authoritarian parents... exert control through power and coercion. They have power because they exert their will over their children.").

56. Herde, *supra*, ("If your client belongs to an 'out-group' [e.g., racial or ethnic minority; sexual orientation; 'adult' industry or other questionable employment], especially if it is relevant to the trial, you want to locate and eliminate the high authoritarians.").

57. Herde, *supra*, ("High authoritarians are likely to acquiesce to the perceived attitudes in the jury room [of]...others who have superior knowledge of and/or experience relating to the subject, no matter how tangential.").

58. Devine, *supra*, ("[A]uthoritarian jurors are more susceptible to group conformity pressure as well as influence of authority figures...[H]igh-authoritarian jurors were more likely to change their verdict preferences during deliberations.").

Legal and Regulatory Developments Arising From the Growth of Cryptocurrency

By Kellis K. Tankersley, Ashley R. Davis and Alexandra G. Ah Loy

WITH THE RISE OF THE POPULAR BITCOIN, there have been increasing questions regarding the legal, tax and regulatory implications for virtual currencies. Some courts have ruled that digital currency (virtual currency or cryptocurrency), including bitcoins, is “funds” or “money,” thus bringing it within the ambit of federal criminal statutes and, more broadly, the Commerce Clause of the United States Constitution.¹ “Blockchain” refers to the technology underlying cryptocurrencies.

Blockchain is a distributed ledger, or a database that is shared and synchronized among a number of users. It is referred to as a distributed ledger because it exists on thousands of computers running the same software, required for a transaction to occur, creating a network where each computer is considered a “node.” In order for a transaction to take place, the transacting parties must be authenticated with “cryptography.” When a transaction is entered in the blockchain ledger, there is a consensus mechanism which requires a majority of the nodes in the network to validate the transaction data’s authenticity, decreasing the likelihood of fraud.² Once the transaction is recorded, it is irreversible.

While the irreversible nature of the transaction can lead to other issues (such as forking, discussed later in this article), such

irreversibility also builds trust in the technology and the transaction, reducing the need for trust in the transacting parties themselves. While financial supervisory authorities generally have not been required with blockchain, in lieu of such oversight, some companies have instituted exchange platforms and brokerage servers, among other things, effectively limiting the usage of blockchains to private service agreements.³

Additionally, due to the potential for civil and criminal liability related to misuse of digital currency, state and federal agencies have issued warnings to consumers and investors about the risks of virtual currencies. Among these warnings are the unclear cost of digital currencies, volatile exchange rates, the threat of hacking and scams and the lack of protection for lost or stolen funds. Similar concerns have also prompted increasing regulatory efforts.⁴

For example, in 2013 the U.S. Department of the Treasury Financial Crimes Enforcement Network (FinCEN), the agency charged with implementing the Bank Secrecy Act (BSA),⁵ issued an interpretive guidance in an attempt to bring clarity and certainty to one aspect of the regulation of virtual currencies.⁶ The FinCEN guidance explains that administrators and exchangers of virtual currency are money transmitters under existing regulations, and thus must register with FinCEN, keep particular records and report suspicious transactions to adequately guard against money laundering and terrorist financing abuse.⁷ FinCEN’s guidance therefore makes it clear the finance regulatory intent was to focus on individuals facilitating “the entry and exit into a convertible virtual currency system.”⁸ Also, since August 2014,

consumers who have encountered a problem with digital currency products or services have been able to submit complaints to the U.S. Consumer Financial Protection Bureau (CFPB) to seek redress.⁹

Since FinCEN issued its guidance, dozens of participants in virtual currency arrangements (exchangers and administrators) have registered with FinCEN. FinCEN has also received an increasing number of suspicious activity reports (SARs) from these entities. While it is encouraging to see players in the virtual currency industry appreciating such responsibilities and modifying their businesses to comply with these transparency requirements, there are still many virtual currency exchangers and administrators who have not registered with FinCEN and are failing to fulfill their recordkeeping and reporting requirements. By failing to comply with the FinCEN rules and regulations, these entities are putting themselves at risk of future legal or criminal consequences. Not only are they subject to FinCEN's civil monetary penalties, but a knowing failure to register a money transmitting



business with FinCEN – failure to register with state authorities when required – could constitute a federal criminal offense.¹⁰

The Commodity Futures Trading Commission approved the CME Group (owner of the Chicago Mercantile Exchange) to start trading bitcoin futures on Dec. 18, 2017, marking the first time bitcoin would be traded on a Wall Street exchange and subject to federal oversight. To ensure compliance with federal regulations, the CME Group implemented a process known as a “self-certification,” which is when an exchange pledges that the new instruments will not break any federal securities laws.¹¹

On Dec. 11, 2017, Securities and Exchange Commission (SEC) Chairman Jay Clayton issued a strong statement on cryptocurrencies and initial coin offerings to urge market professionals, including attorneys, to peruse the SEC’s 21(a) Report and subsequent enforcement actions in which the SEC “applied longstanding securities law principles to demonstrate that a particular token constituted an investment contract and was therefore a security under our federal securities laws.”¹² SEC Chairman Clayton further noted that, in its 21(a) Report, the SEC “concluded that the token offering represented an investment of money in a common enterprise with a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.”¹³ With regard to market participants who have failed to analyze the applicability of securities laws to digital currencies, Chairman Clayton offered strong caution:

Selling securities generally requires a license, and

experience shows that excessive touting in thinly traded and volatile markets can be an indicator of “scalping,” “pump and dump” and other manipulations and frauds. Similarly, I also caution those who operate systems and platforms that effect or facilitate transactions in these products that they may be operating unregistered exchanges or broker-dealers that are in violation of the Securities Exchange Act of 1934.

On cryptocurrencies, I want to emphasize two points. First, while there are cryptocurrencies that do not appear to be securities, simply calling something a “currency” or a currency-based product does not mean that it is not a security. Before launching a cryptocurrency or a product with its value tied to one or more cryptocurrencies, its promoters must either (1) be able to demonstrate that the currency or product is not a security or (2) comply with applicable registration and other requirements under our securities laws. Second, brokers, dealers and other market participants that allow for payments in cryptocurrencies, allow customers to purchase cryptocurrencies on margin, or otherwise use cryptocurrencies to facilitate securities transactions should exercise particular caution, including ensuring that their cryptocurrency activities are not undermining their anti-money laundering and know-your customer obligations. **As I have stated previously, these market participants should treat payments and**

other transactions made in cryptocurrency as if cash were being handed from one party to the other.

Thus, the SEC’s position is clear that cryptocurrency should be generally treated no differently than other tangible currency. While calling for vigorous policing of cryptocurrency and enforcement action on violators, Chairman Clayton concluded that, “[b]y and large, the structures of initial coin offerings that I have seen promoted involve the offer and sale of securities and directly implicate the securities registration requirements and other investor protection provisions of our federal securities laws. Generally speaking, these laws provide that investors deserve to know what they are investing in and the relevant risks involved.”¹⁴

However, there remains a lack of clarity over what specific regulations currently apply – and to what extent they apply – to cryptocurrency. On Jan. 18, 2018, the SEC issued a staff letter addressing issues arising from funds potentially focused on cryptocurrency-related products. In the letter, the director of the Division of Investment Management (DIM) of the SEC explored the implications of the Investment Company Act of 1940 (1940 Act) upon cryptocurrency. DIM Director Blass explained that the 1940 Act’s intent was to impose “safeguards to ensure that registered funds maintain custody of their holdings.”¹⁵ The rise of cryptocurrency has created new questions related to compliance with the 1940 Act. For example, uncertainty arises when a fund plans to hold cryptocurrency directly, as there had been no reported custodians providing fund custodial services

for cryptocurrencies. Further, there are related concerns over the constraints for such a fund to be able “to validate existence, exclusive ownership and software functionality of private cryptocurrency keys and other ownership records.”¹⁶ Moreover, it is still unclear what adequate safeguards can be implemented under the 1940 Act to protect against cybersecurity threats and hacks on digital wallets. After a focused analysis over the uncertainty regarding how to properly regulate cryptocurrency, including accounting, audit and reporting requirements and compliance with the Securities Act of 1933, Director Blass concluded that:

Until the questions identified above can be addressed satisfactorily, we do not believe that it is appropriate for fund sponsors to initiate registration of funds that intend to invest substantially in cryptocurrency and related products, and we have asked sponsors that have registration statements filed for such products to withdraw them. In addition, we do not believe that such funds should utilize rule 485(a) under the Securities Act, which allows post-effective amendments to previously effective registration statements for registration of a new series to go effective automatically. If a sponsor were to file a post-effective amendment under rule 485(a) to register a fund that invests substantially in cryptocurrency or related products, we would view that action unfavorably and would consider actions necessary or appropriate to protect Main Street investors, including

recommending a stop order to the Commission.¹⁷

Thus, there remains uncertainty as to the applicability of current regulations to virtual currency. While other agencies may have uncertainty regarding cryptocurrency, the Internal Revenue Service has made it very clear that virtual currency transactions are taxable just as any other property transaction.¹⁸ The consequences of not reporting can include the tax due with interest and penalties, and, in more extreme cases, possible criminal charges for tax evasion and filing a false tax return, both of which carry a prison term and fine of up to \$250,000 each.¹⁹

With China, South Korea and India paving the way to establishing broad-reaching regulatory frameworks over virtual currency, it would seem federal regulation in the United States is imminent. In fact, on Feb. 6, 2018, the Senate Banking Committee held a promising hearing about the need for oversight of digital currencies.²⁰

STATE REGULATION AS OF NOVEMBER 2017²¹

In the absence of clear federal law on the implications and regulation of cryptocurrency, state governments have begun enacting their own statutory and/or administrative frameworks for regulating cryptocurrency and safeguarding against its attendant risks. While many states have remained silent, several states have enacted some form of blockchain laws. These state laws have taken a variety of forms but do share some common themes.

Some states, such as Alabama, have enacted laws requiring persons engaging in monetary transmission, including through

virtual currency, to obtain licensure unless otherwise exempted.²² Similarly, the Texas Department of Banking issued a supervisory memorandum in 2014 stating that cryptocurrency is not “money” under its Money Services Act, concluding that “[b]ecause neither centralized virtual currencies nor cryptocurrencies are coin and paper money issued by the government of a country, they cannot be considered currencies under Texas’s statute.” However, the memorandum made clear the position that “[a] cryptocurrency business that conducts money transmission must comply with all applicable licensing provisions of [Texas’s Finance Code and Administrative Code].”²³

Arizona has specifically codified the legal effect, validity and enforceability of “smart contracts.”²⁴ Other state legislation has been enacted to address recordkeeping for trading corporate stock via electronic networks.²⁵ Additionally, California has proposed active legislation to create a Digital Currency Business Enrollment Program that would require digital currency business to pay a nonrefundable fee to participate.²⁶

Other states have passed legislation to address the concerns regarding secured and unsecured lending in cryptocurrencies. For example, Connecticut passed a statute requiring that “[e]ach licensee that engages in the business of money transmission in this state by receiving, transmitting, storing or maintain custody or control of virtual currency on behalf of another person shall at all times hold virtual currency of the same type and amount owed or obligated to such other person.”²⁷

In July 2017, North Carolina amended its Money Transmitter Act to define virtual currency

as a medium of exchange but which does not have tender status recognized by the United States government.²⁸ North Carolina's act applies not only to money transmission but also to transactions conducted in whole or in part in virtual currency. The act previously required a surety bond, but now, due to cybersecurity risks inherent in virtual currency and the applicant's business model, the commissioner has been vested with discretion to require additional insurance coverage.²⁹ Moreover, states such as Florida and West Virginia have amended their laundering statutes to specifically include virtual currency as monetary currency.³⁰

Some states have also begun enacting legislation directed at the ownership and tax implications of virtual currency. For example, New Jersey passed legislation expressly authorizing an estate's executor under certain circumstances to manage the digital assets, including virtual currencies, of a decedent.³¹ New Jersey's Division

of Taxation further addressed the issue of cryptocurrency taxation by issuing a technical advisory memorandum stating that New Jersey confirms to the federal tax treatment of virtual currency and, therefore, any transactions using virtual currency in a transaction for goods or services should be recorded in U.S. dollars at the date of payment or receipt, but that such cryptocurrency is treated as intangible property with respect to sales or use tax associated where the virtual currency is the subject of the transaction (and therefore is not subject to sales tax).³² In March 2017, Utah amended its Unclaimed Property Act to include virtual wallets and virtual currency.³³

Other states have adopted broad regulatory frameworks in response to the emergence of cryptocurrency. For example, in 2015, the New York State Department of Financial Services established the BitLicense Regulatory Framework, which requires operations related to virtual currency transactions to obtain a license issued by the

state. The New York framework provides that such licensees are required to maintain and enforce policies regarding anti-fraud, anti-money laundering, cybersecurity and privacy and information security, all of which must be reviewed and approved by a licensee's governing body.³⁴

Like New York, Washington has adopted a broad regulatory framework for virtual currency.³⁵ Washington's statutory framework includes virtual currency within its definition of money transmission, over which it imposes strict regulations. Among other regulations, Washington's Uniform Money Services Act requires virtual currency exchange operators to comply with the state's money transmitter and licensing rules. With the passage of such stringent regulatory laws on virtual currency, it should be no surprise that virtual currency operators have begun shopping for states with friendlier laws for their market.

By way of contrast, some states, such as Nevada, have outright rejected any regulation or imposition of tax burdens upon cryptocurrency.³⁶ Such legislation would in effect create an encouraging market for technology startups. Wyoming has also seen the formation of the Wyoming Blockchain Coalition, whose aim is to create cryptocurrency- and blockchain-friendly laws and regulations to encourage virtual business growth within the state of Wyoming.³⁷

UNREGULATED STATES AS OF NOVEMBER 2017

Despite the rise of blockchains and cryptocurrency, many states have not yet enacted legislation. At the end of the state legislative sessions in 2017, most of the states, including Oklahoma, still had no blockchain laws enacted.³⁸



Other states have adopted broad regulatory frameworks in response to the emergence of cryptocurrency.

However, even in the absence of specific legislation, many of those states' regulatory agencies have issued opinion letters and memoranda addressing concerns over the interaction between cryptocurrency and state laws.³⁹

In Oklahoma, there are currently no blockchain- or virtual currency-specific regulations. However, in 2014, Oklahoma's Legislature added an official comment to its statute regarding transfers of money and transfers of funds from deposit accounts, 12A O.S. §1-9-332. The comment states:

As of mid 2014, the use of so called "bitcoins" and the like seem to be gaining traction as a form of "currency," *i.e.*, as a payment method. Apparently some sellers are willing and able to take bitcoins in payment for goods or services sold. If that payment instead were made in cash, or by a check out of a deposit account, any security interest in that cash or account as proceeds of the claim of a secured party that has a security interest in inventory would not impair the further use of the payment by the seller for payment of debt or other transfers to a third party. *See* UCC sections 9-332, 9-315(a)(2), (c) and (d). This is a consistent policy under UCC

Article 9 -- *see*, for example, sections 9-320, and 9-321, and is particularly strong with respect to "currency." However, section 9-332 cannot be construed to protect the receiver of bitcoins. Whether the policy mentioned above should allow a court to reach the same result remains a presently unanswered question.

Thus, while the Oklahoma Legislature has not formally enacted any statutory framework specific to virtual currencies or blockchains, the Legislature has made clear its position that a seller who accepts virtual currency does not take such virtual currency free of an existing security interest. It is also worth noting that in 2017 the Texas-based company Coinsource installed a bitcoin ATM in Oklahoma City, the first such machine to be installed in Oklahoma.⁴⁰

While some states had not yet passed legislation specific to virtual currency as of the end of their 2017 legislative sessions, several of those states' regulatory agencies had issued warnings and guidance on virtual currency. For example, in Kansas, the Office of the State Bank Commissioner issued guidance on the applicability of the Kansas Money Transmitter Act to people or businesses transacting virtual currency.⁴¹ In Maryland, the Department of Labor, Licensing

and Regulation issued a warning to consumers about the potential dangers of virtual currency.⁴² In Massachusetts, the Office of Consumer Affairs and Business Regulation issued an opinion letter which declared that "financial institutions" do not include bitcoin ATMs where traditional currency is inserted and a paper receipt is given or money is moved to a public key on a blockchain, but does not connect to a bank account.⁴³ In Michigan, the Department of the Treasury addressed the application of sales tax with respect to virtual currency.⁴⁴

Although there is no uniformity in virtual currency laws across the United States, the laboratories of democracy are beginning to respond to the demand for increased regulation, and the federal government is entertaining discussions of a broad regulatory framework. This is a novel and growing area of law that should excite lawyers, accountants and techies alike, as it will undoubtedly continue to create questions of law and compliance.

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27. Conn. Gen. Stat. Ann. §36a-603; see, also, Conn. Gen. Stat. Ann. §36a-596(16) (defining "virtual currency" as "any type of digital unit that is used as a medium of exchange or a form of digitally stored value or that is incorporated into a payment system technology").

28. N.C. Gen. Stat. §§53-208.41, *et seq.*

29. See N.C. Gen. Stat. §§53-208.42(20), 53-208.44-47.

30. Fla. Stat. §896.101. The authors note this amendment appears to have been in response to a Florida court dismissal of two counts of money laundering against a defendant based upon its ruling that Bitcoin is not "money" within the plain reading of Florida's money laundering statute. See *State v. Espinoza*, No. 14-cr-2923, *motion to dismiss granted* (Fla. Cir. Ct., Miami-Dade Cty., July 22, 2016). See also, W. Va. Code Ann. §61-15-1(8).

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34. N.Y. Comp. Codes R. & Regs. tit. 23, §§200.1, *et seq.*

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36. See Nev. Rev. Stat. §SB 398, §6 (Restrictions on incorporated cities regarding blockchains).

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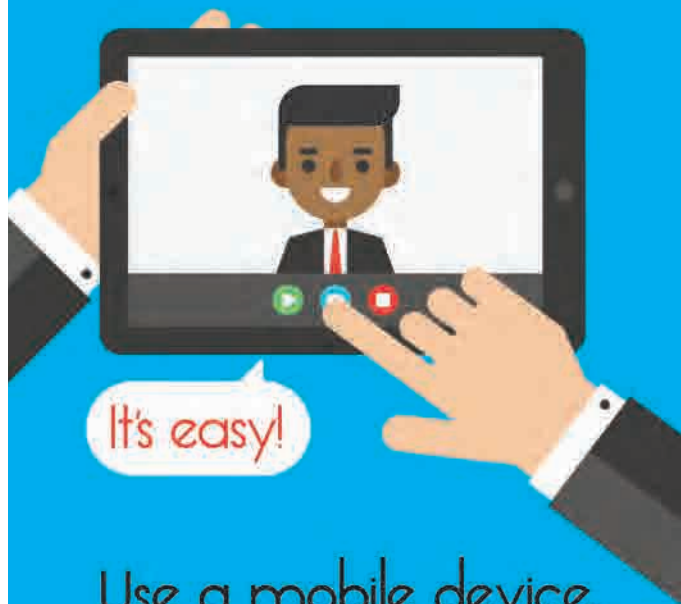
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Thoughts on *Daubert*

Oklahoma Expert Testimony Revisited

By Wendi Kotal

IN 1993, THE U.S. SUPREME COURT in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,¹ shed the austere *Frye*² “general acceptance in the scientific community” standard for admitting expert testimony, ruling that the Federal Rules of Evidence (specifically FRE 702) “occupied the field.”³ *Daubert* arose from a suit against the manufacturers of Bendectin, an anti-nausea medication prescribed to the pregnant mothers of two plaintiffs who alleged the medication caused their children to have birth defects.

The *Daubert* court created an evidentiary “gatekeeper” role for trial court judges, requiring them to perform a two-pronged analysis when considering expert testimony: first asking is the evidence reliable, and second, is it relevant? Regarding reliability, the court reasoned that FRE 702 requires “the subject of an expert’s testimony be ‘scientific knowledge,’” scientific meaning having a “grounding in the methods and procedures of science.” Similarly, the “knowledge” must not be speculation but “derived by the scientific method” and “supported by appropriate validation – i.e. ‘good grounds,’ based on what is known.”⁴ For the relevance prong, the trier of fact must ask whether expert testimony offered is “fit,” meaning it is “sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute.”⁵

The *Daubert* court provided a set of general and nondefinitive observations to aid federal judges in their inquiries, sometimes referred to as the “*Daubert* factors:”

1) whether the theory or technique has been tested; 2) whether it has been subjected to peer review and publication; 3) what is the known or potential rate of error and the standards governing the technique; and 4) is there a scientific community in which the technique or theory is generally accepted.⁶ The *Daubert* framework through federal courts and Oklahoma state courts took unique paths but in time have grown increasingly in sync. The following article will discuss a brief history of *Daubert* and its progeny as well as developments in *Daubert*’s line in the Court of Appeals for the 10th Circuit and in Oklahoma.

EARLY DAUBERT

In two additional cases (also known as the *Daubert* trilogy), the U.S. Supreme Court provided much-needed guidance to trial court judges on how to conduct its newly defined gatekeeping duty.⁷ In 1997, in *General Electric v. Joiner*,⁸ the court held that abuse of discretion is the standard

applicable to review of a district court’s decision to admit or exclude expert scientific evidence under *Daubert*. In *Joiner*, a city utility employee sued the manufacturers of electrical transformers and their fluid after he developed small cell lung cancer from exposure to polychlorinated biphenyls (PCBs) found inside the transformers. The Supreme Court reversed the 11th Circuit and found that plaintiff *Joiner*’s proffered experts relied on animal studies “so dissimilar to the facts presented in this litigation that it was not an abuse of discretion for the district court to have rejected the experts’ reliance on them.”⁹ *Daubert* and FRE 702 did not require “a district court to admit opinion evidence which is connected to existing data only by the *ipse dixit* of the expert,” and noted that a “court may conclude that there is simply too great an analytical gap between the data and the opinion proffered.”¹⁰

*Kumho Tire Company, Ltd. v. Carmichael*¹¹ extended *Daubert*’s general holding setting forth



the trial judge's "gatekeeping" obligation to expert testimony based not only on science, but also on "'technical' and 'other specialized' knowledge." The *Daubert* factors were clarified as intended to be "flexible, neither necessary nor exclusive in all cases."¹² *Kumho* reiterated abuse of discretion as the standard of review for assessing 1) whether testimony should have been admitted or excluded by the trial court and 2) the procedure used by the trial court in making the reliability determination. A federal trial judge possessed the authority "to avoid unnecessary 'reliability' proceedings in ordinary cases where the reliability of an expert's methods is properly taken for granted, and to require appropriate proceedings in the less usual or more complex cases where cause for questioning the expert's reliability arises."¹³

The 2000 amendment to FRE 702 codified the Supreme Court's

decisions in *Daubert* and *Kumho* and provided the standards for admissibility of expert opinion testimony: 1) the testimony is based upon sufficient facts or data, 2) the testimony is the product of reliable principles and methods and 3) the witness has applied the principles and methods reliably to the facts of the case.¹⁴

DAUBERT APPLICATION IN OKLAHOMA

In *Taylor v. State*, the Oklahoma Court of Criminal Appeals adopted *Daubert* and rejected the *Frye* "general acceptance test" for novel scientific evidence in state criminal proceedings.¹⁵ Most importantly, the court declined to retroactively apply *Daubert* to non-novel scientific subjects previously accepted as valid for expert testimony, effectively creating a list of sanctioned expert subjects where *Daubert* analysis was not required.¹⁶ After *Kumho*,

the Oklahoma Court of Criminal Appeals held that *Daubert* should be applied to all novel expert testimony (including technical and specialized knowledge).¹⁷

In 2003, in *Christian v. Gray*,¹⁸ the Oklahoma Supreme Court adopted *Daubert* and *Kumho* for application in Oklahoma state civil actions. In *Christian*, the plaintiffs sued the owners and operators of a circus at the Oklahoma State Fair, alleging chemicals kicked into the air during the circus performance had caused them respiratory injuries. The Oklahoma Supreme Court assumed original jurisdiction over plaintiff's appeal of an interlocutory order denying testimony from the plaintiff's medical expert on causation. *Christian* concluded that the trial court had 1) failed to determine that the methods of plaintiffs' expert were insufficient under the *Daubert* factors, "or some other factor determined to be

appropriate in applying *Daubert*” and 2) had “challenged the expert’s conclusion,” without specifically linking “a deficient conclusion with either a faulty method or an exercise of *ipse dixit* by the expert.”¹⁹ The *Christian* court also agreed with the Oklahoma Court of Criminal Appeals’ decision in *Taylor v. State* to limit a *Daubert* inquiry to circumstances “where the reliability of an expert’s method cannot be taken for granted” and noted that the first step in a *Daubert* inquiry would thus include “an initial determination of whether the expert’s method is one where reliability may be taken for granted.”²⁰

PROCEDURAL CONSIDERATIONS

Mirroring the different approach taken by the state courts in *Taylor* and *Christian*, the necessary gatekeeping duties of the court under *Daubert* are not identical between federal and state proceedings. While a federal district court has discretion in the manner it conducts its *Daubert* analysis (hearing, special briefing, etc.), “there is no discretion regarding the actual performance of the gatekeeper function.”²¹ The most common method to assess a *Daubert* motion is by conducting a *Daubert* hearing, but a hearing “is not specifically mandated.”²² First, the court should make a preliminary finding that the

expert is qualified to testify (by examination of credentials), then the proponent of expert testimony must establish that the expert used reliable methods to reach his or her conclusions and that the expert’s opinion is based on a reliable factual basis.²³

Specific findings on the record supporting its ruling to admit or exclude expert evidence are required by the federal district court so that reviewing courts may “determine whether it applied the relevant law and properly performed its gatekeeping function.”²⁴ In a federal court bench trial, while *Daubert*’s standards must still be met, the usual concerns regarding unreliable expert testimony reaching a jury do not arise, and the inquiry is more relaxed.²⁵

Practitioners should also keep in mind that the timeliness of objections have an important effect on federal court *Daubert* proceedings and review. Where a party fails to object to the reliability or relevance of an expert’s testimony at trial, an appellate court will review only for plain error.²⁶ The trial judge must still ensure “that an expert’s testimony rests on a reliable foundation and is relevant, but *Daubert* does not mandate an inquiry questioning and challenging the scientific proffer absent a timely request by an objecting party.”²⁷

In *Weaver v. Blake*, the 10th Circuit noted the importance of renewing objections to expert evidence at trial even after a *Daubert* hearing has taken place at the motion in limine stage.²⁸ In *Weaver*, the trial court permitted the testimony of a police accident investigator expert over the in limine objection of the defendant but limited his testimony to matters of data and observations only, not analysis of the data. At trial, the judge modified his pretrial order and allowed some testimony as to cause of the accident; defendant moved for a mistrial. The 10th Circuit held there was no abuse of discretion and noted that the requirement for renewing objections at trial emphasized “it is generally not reversible error for a district court to revisit an issue that is the subject of a previous ruling on a motion in limine.”²⁹

In the state court setting, a *Daubert* inquiry is limited to circumstances where the expert’s evidence is novel or where the reliability of an expert’s method cannot be taken for granted.³⁰ Thus, a *Daubert* challenge must first include “an initial determination of whether the expert’s method is one where reliability may be taken for granted.”³¹ Where the topic “involved has ‘long been recognized as the proper subject of expert testimony,’ the testimony is not novel and no *Daubert* hearing is

In *Weaver v. Blake*, the 10th Circuit noted the importance of renewing objections to expert evidence at trial even after a *Daubert* hearing has taken place at the motion in limine stage.

necessary.”³² The Oklahoma Court of Criminal Appeals, in *Romano v. State*,³³ declined to retroactively apply *Daubert* to scientific subjects previously accepted as valid for expert testimony. This policy was recently reiterated and approved in *Day v. State*.³⁴ Similar to federal court, trial court decisions concerning admission of evidence are reviewed on appeal using the abuse of discretion standard.³⁵ Failure to raise a timely *Daubert* objection to expert testimony during trial will waive the error on appeal, in the absence of fundamental error.³⁶

DEVELOPMENTS IN EXPERT TESTIMONY IN THE 10TH CIRCUIT AND OKLAHOMA

In 2013, the Oklahoma Legislature amended 21 O.S. §2702 governing expert witnesses to reflect the language in the 2000 FRE 702 (and therefore *Daubert*).³⁷ Since federal court decisions can have persuasive value “when they construe federal evidence rules with language substantially similar to that in [Oklahoma] evidence statutes,” a sampling of 10th Circuit cases discussing *Daubert* since the early 2000s is instructive.³⁸

In *Champagne Metals v. Ken-Mac Metals, Inc.*,³⁹ the court held that the district court correctly excluded testimony from an economic expert who predicated his opinion about the defendant’s strength in one economic market (upstream) by relying on evidence drawn from another market (downstream). Because the expert, notwithstanding the arguments made by counsel on his behalf, failed to personally “provide a ‘plausible explanation based on sound economic theory’ to support substituting one market for the other,” the testimony was inadmissible.

*Attorney General of Oklahoma v. Tyson Foods, Inc.*⁴⁰ upheld



a district court’s exclusion of expert scientific testimony when the expert used polymerase chain reaction (PCR) analysis, a technique previously approved by federal case law, in a “novel and untested” manner. The court stated that “when experts employ established methods in their usual manner, a district court need not take issue under *Daubert*; however, where established methods are employed in new ways, a district court may require further indications of reliability.” Where a district court “looked to other indications of reliability, including those enumerated by the *Daubert* court, but could find none,” there was no abuse of discretion.

The 10th Circuit in *United States v. De Lopez*,⁴¹ upheld the district court’s admission of a border patrol agent as an expert witness testifying concerning the alien smuggling trade. The court reasoned that the agent “provided information about how smuggling operations work, why crossing a border patrol interior checkpoint is important, and the difficulty of apprehending an undocumented alien the further he or she moves away from the border,” all of which “[t]he average juror is unlikely to be

aware.” In determining whether expert testimony will assist the trier of fact, district courts must “consider whether the testimony is within the juror’s common knowledge and experience, and whether it will usurp the juror’s role of evaluating a witness’s credibility.”⁴²

*Etherton v. Owners Ins. Co.*⁴³ provides an example of properly executed medical differential diagnosis testimony. Noting that “[t]his court has recognized that differential diagnosis can reliably determine causation,” the 10th Circuit upheld the district court’s admission of a physician’s testimony where the expert applied a three-step methodology to determine the injury’s cause.

United States v. Tenorio,⁴⁴ discussed polygraph evidence in federal court and noted that “where polygraph evidence is not offered as scientific evidence, neither FRE 702 nor a per se rule against admissibility applies.”

For state court *Daubert* developments, in *Scruggs v. Edwards*,⁴⁵ the Oklahoma Supreme Court retroactively applied *Daubert* and its progeny to an Oklahoma workers’ compensation claim that was based upon an injury that

occurred prior to July 1, 2005, the effective date of two amendments concerning medical evidence to the Workers' Compensation Act. The court assumed original jurisdiction as an extraordinary writ and held that *Daubert* and the updated FRE 702 were procedural legislation (and thus applicable to all actions, even those pending) and did not impact the substantive law required to prove causation in an inhalation workers' compensation case.

In *Collier v. Reese*,⁴⁶ the Oklahoma Supreme Court reaffirmed "that polygraph evidence is inadmissible in criminal and civil proceedings," though discussion of the issue was limited. In her opinion, Justice Kauger noted the lack of "consensus among the federal courts, the state courts, or the scientific community about the reliability of polygraph techniques" and deferred the issue back to the trial court for *Daubert* hearing.

The Oklahoma Court of Civil Appeals applied a *Daubert* analysis to uphold the medical report of a chiropractor in *Adecco Inc. v. Dollar*.⁴⁷ When Ms. Dollar re-opened her workers' compensation claim and alleged further injury of a mental nature (psychological overlay), the trial court accepted the report of her chiropractor over the "employer's probative value objection that 'a chiropractor administering a Zung Depression Test' does not 'constitute[] a medical expert within the meaning of the Dauber[t] cases in Oklahoma.'" The Oklahoma Supreme Court held there was no abuse of discretion in admitting the chiropractor's assessment for the reasons that: 1) though the Oklahoma Supreme Court has never held chiropractors should be considered equivalent to that

of a medical doctors, the Workers' Compensation Act defines "physician" to include licensed chiropractors; 2) physicians are generally presumed competent to testify as experts on matters "concerning mental condition;" 3) the chiropractor in question had testified on psychological overlay before the Workers' Compensation Court before; and 4) the chiropractor's opinions were "formulated in accordance with AMA Guidelines." Two years after *Dollar* and on nearly identical facts (including the same chiropractor), the Oklahoma Supreme Court reversed the official position on chiropractors' mental health opinions in *Joe Brown Co. v.*

at length on the relevance prong of *Daubert*. Plaintiff Terry Moore appealed his negligence action against Robert Blackwell after the jury returned a verdict in favor of Blackwell. Moore's 12-year-old son had been walking along an I-35 service road in Norman, at night and crossed the center line when Robert Blackwell's vehicle approached in the dark, striking the boy. At trial, Blackwell introduced testimony of two expert witnesses, an accident reconstructionist and the investigating officer. Defendants objected at trial alleging the experts would not assist the trier of fact, should not be allowed "to testify on issues that should



Melton.⁴⁸ The court held that "a chiropractor is not qualified as an expert in diagnosing psychological illnesses such as depression," and therefore "[t]he report of a chiropractor as an expert in the field of psychology, as to a claimant's psychological overlay, is inadmissible."

In *Moore v. Robert Blackwell & Farmers Ins. Co.*,⁴⁹ the Oklahoma Court of Civil Appeals opined

have been reserved for the jury," and that no scientific evidence is necessary for a jury to make a determination of whether a driver negligently operated a vehicle. In agreement with its previous findings in *Gabus v. Harvey*, the court ultimately held that the opinion of an investigating police officer or an accident reconstructionist as to whose fault caused the accident was prejudicial

and not helpful to a jury “as it told the jury which conclusion to draw.”

In *Carnahan v. Chesapeake Operating, Inc.*,⁵⁰ the Oklahoma Court of Civil Appeals conducted an in-depth *Daubert* analysis of the credentials and methodologies of three oil field experts, finding that all experts were properly admitted to testify at the trial. Expert Keen used a differential analysis methodology for determining the cause of contamination to the plaintiff’s land, considering possible sources of contamination like “the Bettye # 1-2 Well, other wells, pipelines, surface spills, and leaks from pits during drilling” and ruling out “illegal dumping.” He also “checked records, eliminated other well sources, and checked for but found no documentation for onsite spills.” Similarly, expert Black visited the site multiple times, conducted tests and took samples. Artman’s opinion were “based upon common and customary measures used by appraisers applying relevant industry guides,” and he had “sufficient and relevant experience and education to form his conclusions.”

CONCLUSION

It has been 24 years since *Daubert v. Merrell Dow Pharmaceuticals, Inc.* established the key principles of relevance and reliability and the gatekeeping role for trial courts. A legion of federal case law, shaping both the court’s duty and expectations for expert witnesses has resulted. Though Oklahoma state courts applying *Daubert* diverged to an extent, emphasizing the application of *Daubert* to novel evidence, they are quickly laying a foundation as solid as that of the federal circuits in procedure and judicial examination.

ABOUT THE AUTHOR

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ENDNOTES

1. 509 U.S. 579 (1993).
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3. *Daubert*, 509 U.S. at 587.
4. *Id.* at 589-90.
5. *Id.* at 591.
6. *Id.* at 594.
7. *Id.* at 598 (Renquist, C.J., concurring in part and dissenting in part).
8. 522 U.S. 136 (1997).
9. *Id.* at 144.
10. *Id.* at 146.
11. 526 U.S. 137 (1999)
12. *Id.* at 143-44.
13. *Id.* at 152.
14. Fed. R. Evid. 702; see also 702 Committee Notes.
15. *Taylor v. State*, 889 P.2d 319, 328 (Okla. Crim. App. 1995).
16. *Id.* at 339; see *Day v. State*, 303 P.3d 291 (Okla. Crim. App. 2013) (Shaken Baby Syndrome evidence did not require *Daubert* hearing); *Webster v. State*, 252 P.3d 259 (Okla. Crim. App. 2011) (latent fingerprint individualization testimony permitted); *Simpson v. State*, 230 P.3d 888, 901 (Okla. Crim. App. 2010) (police officers allowed to give opinion testimony based on training and experience); *Anderson v. State*, 252 P.3d 211, 213 (Okla. Crim. App. 2010) (*Daubert* scientific foundation not applicable to field sobriety tests such as HGN); *Jones v. State*, 128 P.3d 521, 547 (Okla. Crim. App. 2006) (declining to rule on admissibility of chemical composition comparison of lead bullets but finding no error); *Stouffer v. State*, 147 P.3d 245, 266 (Okla. Crim. App. 2006) (blood spatter and crime scene reconstruction testimony admissible under *Daubert*); *Wood v. State*, 959 P.2d 1 (Okla. Crim. App. 1998) (PCR method of DNA testing satisfied *Daubert*); *Bryan v. State*, 935 P.2d 338 (Okla. Crim. App. 1997) (materials analysis of lead composition was non-novel); *Romano v. State*, 909 P.2d 92 (Okla. Crim. App. 1995) (approving blood spatter analysis without *Daubert* analysis).
17. *Harris v. State*, 13 P.3d 489, 492-493 (Okla. Crim. App. 2001).
18. 65 P.3d 591 (Okla. 2003).
19. *Id.* at 612.
20. *Id.* at 599-600.
21. *Goebel v. Denver & Rio Grande Western Railroad*, 215 F.3d 1083 (10th Cir. 2000) (citing *Kumho Tire*, 526 U.S. at 158-59 (Scalia, J., concurring)).
22. *Goebel v. Denver & Rio Grande W. R.R. Co.*, 215 F.3d 1083, 1087 (10th Cir. 2000).
23. *Bitler v. A.O. Smith Corp.*, 400 F.3d 1227, 1232-33 (10th Cir. 2005); see *United States v. Nacchio*, 555 F.3d 1234, 1258 (10th Cir. 2009) (en banc) (expert witness’ testimony can be based on experience if it is the right type of experience and supports a conclusion that an expert’s opinion on a subject is reliable).

24. *Burlington Northern and Santa Fe Ry. Co. v. Grant*, 505 F.3d 1013 (10th Cir. 2007); *The Procter & Gamble Co. v. Haugen*, 427 F.3d 727 (10th Cir. 2005).
25. *Seaboard Lumber Co. v. United States*, 308 F.3d 1283, 1302 (Fed.Cir.2002).
26. *McKenzie v. Benton*, 388 F.3d 1342, 1350 (10th Cir. 2004) (reviewing for plain error where party objected to expert testimony on qualifications, but then argued relevance on appeal).
27. *Maccenti v. Becker*, 237 F.3d 1223, 1230 (10th Cir. 2001).
28. *Weaver v. Blake*, 454 F.3d 1087, 1092 (10th Cir. 2006).
29. *Id.*
30. *Christian v. Gray*, *supra* at 599.
31. *Day v. State*, 303 P.3d 291, 295 (Okla. Crim. App. 2013).
32. *Harris v. State*, *supra* at 493.
33. 909 P.2d 92, 112 (Okla. Crim. App. 1995).
34. 303 P.3d 291 (Okla. Crim. App. 2013)
35. *Myers v. Missouri Pac. R. Co.*, 52 P.3d 1014, 1033 (Okla., 2002).
36. *Covel v. Rodriguez*, 272 P.3d 705, 709 (Okla., 2012).
37. 2013 O.S.L. 15.
38. *Christian*, *supra* at 597.
39. 458 F.3d 1073, 1079 (10th Cir. 2006).
40. 565 F.3d 769 (10th Cir. 2009).
41. 761 F.3d 1123, 1137-38 (10th Cir. 2014).
42. *Id.* (quoting *United States v. Garcia*, 635 F.3d 472, 476-477 (10th Cir. 2011)).
43. 829 F.3d 1209, 1221-22 (10th Cir. 2016).
44. 809 F.3d 1126 (10th Cir. 2015).
45. 154 P.3d 1257, 1262 (Okla. 2007).
46. 223 P.3d 966, 973-74 (Okla. 2009).
47. 254 P.3d 729, 733-34 (Okla. Civ. App., 2011)
48. 307 P.3d 342, 346 (Okla. 2013)
49. 325 P.3d 4, 11 (Okla. Civ. App. 2014); *Gabus v. Harvey*, 678 P.2d 253 (Okla. 1984)
50. 347 P.3d 753, 762-64 (Okla. Civ. App. 2014)

The Decision Advantage

Making Small Data Work for Your Firm

By Ed Walters and Morgan Morrisette Wright

RECENTLY *THE ECONOMIST* PUBLISHED an article proclaiming “The world’s most valuable resource is no longer oil, but data.” The author declares that data is “the oil of the digital era,” raising antitrust concerns in an age where long-established tech companies like Google, Facebook and Amazon amass more and more information to spin into profit, while other players lag hopelessly behind. Big data is undoubtedly powerful stuff, but it’s not just for giants to take advantage of. In reality, data has changed the way we think about information and decisions as a culture, from the largest corporation down to the individual level, there is no going back.

Lawyers make countless decisions every day, whether they work in a large or small firm context, which can benefit from tapping into data. Should we accept this settlement offer? Who at the firm can handle this matter most profitably? Is this contract clause standard? The trouble is too many times the answers attorneys arrive at are not based on data, but can best be characterized as hunches. When decision makers do not approach issues in an appropriately analytical way, clients suffer. Many lawyers are simply not framing the decisions they face in a data-driven way. For instance, the answer to “How much is my case worth?” is not a number; it’s a distribution of outcomes in similar cases. “Should we accept this settlement offer?” is a probabilistic answer based on a likely range of outcomes, not a simple yes or no.

It may be surprising to some practitioners that clients are

often more skilled at using data to their advantage than the lawyers they employ. This leads to understandable frustration when attorneys do not possess comparable prowess in high-risk situations that deeply impact client interests. In the business world, using data is a necessity, not an innovative idea. It no longer suffices for lawyers to answer with “it depends.” Clients are insisting that a firm’s experience means more than a limited set of stories dimly recalled from a lawyer’s own experience. Although the experience of a seasoned lawyer is certainly valuable, clients will always prefer the judgment of a seasoned lawyer informed by relevant information.

BigLaw is beginning to embrace data, but small firms that handle major problems such as incarceration, custody, housing, employment or bet-the-company litigation still have work to do.

The changing of tides is especially significant considering the market share of smaller firms. According to the Thomson Reuters Legal Executive Institute, small law firms represent more revenue than BigLaw. Firms with fewer than 29 lawyers represent \$108 billion in annual revenue, while firms with more than 175 lawyers bring in \$95 billion per year. Small firms don’t mean small stakes, and data is as important for solo and small firms as it is for the world’s biggest firms.

HARNESSING SMALL DATA IN THE SMALL FIRM

Given the benefits of using data in the office, where should firms that are willing to innovate begin? It may be best to start at the ground level. Ask the manager of a small firm – from a solo practitioner to the managing partner of a boutique firm – what keeps him or her awake at night. The answer will not be legal

tech or artificial intelligence, although both topics garner a lot of attention. The responses are more likely to be focused on day-to-day management. According to the 2016 State of U.S. Small Law Firms Study from Thomson Reuters, the top three concerns of small firms are 1) acquiring new client business, 2) clients wanting more service for less money and 3) wasting too much time on administrative tasks.

Marketing Matters

Advertising methods have changed rapidly over the past 15 years. Previously attorneys may have relied on advertising in the Yellow Pages or networking in the community, but these methods alone no longer cut it. Social media marketing, call centers, sponsored search, print advertising and even television can be effective for advertising, but, without data, it's hard to know what is effective and what isn't. Any one of these new prospecting methods is pricey on its own – without efficient targeting and tracking, it can be easy to spend a lot of money pursuing marketing strategies without knowing whether they are effective. The data is ready to help small and solo firms if they are willing to collect it, but the key is careful and consistent tracking. This can be as simple as asking

new clients how they heard about the firm, or something more in depth and automated.

Seth Price, the managing partner of Washington, D.C. firm Price Benowitz LLP, says his firm uses Salesforce to manage potential clients, especially intake. "We can run all sorts of reports which help us determine how to allocate resources." Customer relationship management systems can help determine which clients came from which campaigns, measure return on investment for marketing expenses and even help determine which practices and clients are most profitable for the firm.

The challenge of new business is not just about growing revenues – it is also about tracking which clients are most profitable – which requires linking revenues and expenses for different clients, practice areas and even lawyers at the firm. Adding revenues is great unless it cuts the firm's overall profitability. While it takes some discipline, it is relatively simple to track metrics around phone calls and consultations to learn the origin of consultations and the percentage of those consultations that result in an engagement letter. Lawyers can track profits and revenues all the way back to lead sources without resorting to specialty practice management software, although it may make the task significantly simpler.



Satisfying Client Expectations

Another major concern for small firms is that clients expect more work for less money. Especially at a time when in-house counsel are making more efficient use of technology and taking work back from outside counsel, there is more pressure than ever to deliver legal services at a more competitive cost.

Corporate clients have already begun taking matters into their own hands at a rapid clip. In 2016, BTI Consulting estimated that companies were bringing \$4 billion of legal work back in-house. Empowered with tools that automate legal workflow and troves of their own data, corporate lawyers are choosing to do more work themselves. But that does not mean that data analysis is only for large firms that have in-house knowledge management systems, data scientists, price consultants and marketing managers.

Lawyers may be under the mistaken impression that only the largest clients would want data-enabled decision making from their law firms. Nothing could be further from the truth. Firms must handle legal matters with the same data-driven rigor that their data-tracking clients do. Even individual clients track their fitness down to the step with trackers like Fitbit or Apple Watch and compare the results on dashboards. Indeed, individuals – not companies – are driving the growth of services such as Mint, which rolls up individual financial factors like mortgages, savings, investments, credit cards and bill payments into a single dashboard that shows net gains or losses in personal finances over time. Consumer legal services and do-it-yourself platforms in general have changed the game. Small businesses and now individuals

use data more than ever, and their expectations of their law firms, even small firms, are changing based on this behavior.

For certain types of highly customized legal work, only certain firms will do. But for others, clients may care little about which firm provides the service. As Jordan Furlong has pointed out in his new book of the same name, law is a buyer's market. Certain types of legal services are becoming more commoditized. Does commodity pricing mean that the price of legal services has to trend to zero? No, but it does mean that lawyers will have to differentiate their services. One key way to do this is fixed-fee arrangements. Offering legal services at a fixed fee shifts a greater deal of the risk in legal services transactions from clients to their law firms. In a competitive market, clients will insist on fixed-fee engagements, and lawyers who offer them (and who price them correctly) will be the most competitive in this environment.

The key to pricing fixed-fee engagements lies with data. Firms can aggregate their own data about costs (in time and expenses) for different types of work. Even with only a few data points, firms will have better information about the services they can provide and at what cost. (Of course, more data paints an even clearer picture.) More experienced lawyers and firms may be able to access some of the most important information from their practice management or billing software. Lawyers without practice management software, or new lawyers, may have to work harder to find this information from paper files or more general industry information.

These pricing pressures are greater in some practice areas than others and greater in some

regions than others. Again, data can give cues to where the pressures are most acute. The 2016 Legal Trends Report from Clio aggregated anonymized data from approximately 40,000 active users of its practice management software to identify national and regional trends. The report shows, for example, that bankruptcy lawyers and corporate lawyers on average have the highest billable rates, while criminal, personal injury and insurance lawyers have the lowest billable averages.

Setting Benchmarks

Even within the firm, lawyers can collect “small data” about their own practice to better understand client costs and firm profitability. A firm's billing and accounting system is a trove of data about historical trends.

One promising innovation is the idea of standards for matter IDs to describe legal work, a uniform vocabulary that firms, lawyers, companies and clients can use to describe legal services performed. Individual firms can compare how long it takes, for example, to draft a research memo, using a standard code. This would allow a firm to compare time and billing by different lawyers on different matters to complete the same task. Because the matter names would be open, it would be possible for outside counsel to benchmark the average time and cost of common tasks across firms. Firms could use these common legal task standards to see where they outperform regional averages for the same work or where they need to become more competitive.

Standard task IDs are being developed by Adam Stock of SALL, the Standards Advancement for the Legal Industry, a consortium of groups working on open matter standards who debuted the idea

at Stanford CodeX's FutureLaw Conference in April 2017. The idea promises to address one of the most vexing problems of value for legal services – comparing similar tasks across different firms, when each firm calls the service by a different name and groups the services differently. By giving the tasks open legal task IDs, clients, firms or researchers can compare levels of efforts on similar tasks, creating for the first time metrics across multiple firms and lawyers about the efficiency of legal services.

Creating More Billable Hours

One of the most publicized findings of the Legal Trends Report was the average collection rate for lawyers – not the number of hours worked or billed but, instead, the number of billed hours for which the law firm collected. The report showed that, on average, lawyers logged 2.2 hours of billable time per day but only billed clients for 1.8 hours per day. Worst of all, lawyers collected on average, 1.5 hours worth of time per day. As the report pointed out, this collection rate illustrates why, despite billing an average of \$232 per billable hour, small firms nevertheless have a hard time running their firms profitably.

Low utilization, realization and collection rates likely have many different causes. One cause is simply not enough work. Data-driven marketing and competitive, data-informed pricing may help to create new work. Another cause for low collection rates may be that small firms cannot allocate enough time to billable tasks. When the lawyer is the litigator, marketer, webmaster, legal researcher, facilities engineer and HR manager, it's hard to

make enough time for billable work. Data can help inform when it is time to outsource tasks to independent contractors or hire new staff, as well as what to pay them.

Efficiency here may also require investing training time and money in learning new tools, such as practice management software, smarter legal research tools or even ways of more fully using standard tools such as Microsoft Excel or Word. For example, 49 state bar associations offer legal research free as a benefit of membership, allowing firms to recover thousands of dollars per year of unbillable subscription costs. For example, the Oklahoma Bar Association offers free nationwide legal research access through the Fastcase legal research service, a subscription that costs \$995 per user per year – but which is free as a member benefit of the OBA.

Law firms can be more competitive by investing in process improvements to make their legal tasks more efficient. Firms that charge fixed fees can create even

Forms that are created frequently can be standardized, for example, among different lawyers in the firm. Companies such as Contract Standards collect standard contract terms, derived from hundreds of thousands of public contracts, for reuse in firm contracts. Even better, lawyers can use document automation tools to make these documents fillable and reusable (instead of finding and replacing party names and pronouns). Accounting for the number and type of documents produced by the firm may not seem remarkable, but it is nothing less than collecting data, one of the key legal services the firm offers.

Efficiency comes in many forms. Well-managed firms can collect data about who and what is most effective in certain circumstances, gathering information about best practices and debriefing on things that did not work or resulted in nonbillable overhead. Then, importantly, the firm can use that information to improve and, iteratively, to become more effective. Small data of this sort can drive process

Law firms can be more competitive by investing in process improvements to make their legal tasks more efficient.

more value in handling more transactions in the same amount of time but with better processes. This can involve simple data collection, such as collecting information about what legal documents the firm creates in a year.

improvements and better outcomes for clients at a lower cost.

Practice efficiency has many benefits. In addition to reducing firms' nonbillable administrative work, these practices should help lawyers to serve more people

Practice efficiency has many benefits. In addition to reducing firms' nonbillable administrative work, these practices should help lawyers to serve more people more effectively.

more effectively. According to the Legal Executive Institute, the size of the market for legal services in the U.S. was \$437 billion in 2015. A 2014 study by the American Bar Foundation showed that roughly 80 percent of people who have legal problems do not address them through the legal system. Even if the latent market for legal services is not as lucrative as the traditional market, the total size of the market for legal services may exceed \$1 trillion.

A more efficient, data-driven practice is not just a way to serve more people; it's also a way to tap into an enormous latent market for legal services.

CONCLUSION

Big data is often seen as the province of large entities with a historical trove of data from thousands of data sources, combed over by data scientists and knowledge management personnel. But big and small firms can improve their practices by using small data that already exists in their firms today. For example, information about marketing and its connection through a matter to collected revenues for the firm can be an amazing source of insight about profitability, marketing and which

practice areas are most profitable for a firm.

Small data does not require specialized personnel or expensive software, although the use of simple practice management software goes a long way to standardizing data collection. More than anything, using data in a law practice requires a different mindset about the value of this information in the practice. Billings and collections are often seen as administrative tasks in small law firms, but they are a source of very powerful insights into the things that concern small firms the most.

Using this kind of information in small-firm practice requires firms to think differently about their work as it is typical for firms to warehouse files after they collect fees, never to be seen again. Firms should use the same mentality as Google or Amazon, collecting data in the course of everyday business, whether or not it's immediately useful. Running a data-driven firm requires lawyers and their teams to treat information about the work as part of the service, and to collect, standardize and analyze data from a file's cradle to its grave. It does not require vast data sets. Many firms can

tap into data already sitting in their offices to address their most pressing concerns.

ABOUT THE AUTHORS

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Nominate Someone Who Deserves to Be Honored

By Jennifer Castillo

TO SOME OF YOU, spring may bring to mind images of shamrocks, leprechauns, pastel colored eggs and chocolate bunnies. For others, spring may mean breaks from school and family vacations. In my mind, spring represents the beginning of the OBA Awards Committee's work for the year. It is the time when we plan our year as a committee and begin to publicize the nominations process. As a working mom of two, I understand how difficult it can

be to find a few extra minutes in which to write and submit an OBA award nomination. But consider how a few minutes of your time now can encourage and inspire others to continue serving our community through leadership, public service and service to the profession far into the future.

For example, Carolyn S. Thompson received the Alma Wilson Award in 2017 for her work at Douglass High School in Oklahoma City as chair of the Law and Public Safety Career

Academy. In this role, Ms. Thompson spends 20 to 25 hours a week coordinating speakers, arranging field trips and summer internships as well as writing grants for all the academy's funding. She believes the work she does makes a difference in the lives of Oklahoma students, but the work also comes with many obstacles and frustrations. When asked about how receiving the award impacted her, Ms. Thompson told me that on the days when she feels like beating

NOMINATION RULES AND TIPS

- The deadline is Friday, July 27, but get your nomination in EARLY!
- Make sure the name of the person being nominated and the person (or organization) making the nomination is on the nomination.
- If you think someone qualifies for awards in several categories, pick one award and only do one nomination. The OBA Awards Committee may consider the nominee for an award in a category other than one in which you nominate that person.
- Submission options (pick one):
 - 1) email awards@okbar.org (you will receive a confirmation reply);
 - 2) fax: 405-416-7089;
 - 3) mail: OBA Awards Committee, P.O. Box 53036, Oklahoma City, OK 73152.
- Visit www.okbar.org/awards for the nomination form if you want to use one (not required), history of previous winners and tips for writing nominations.



her head against a wall to get some small task accomplished, having been recognized by the OBA motivates her to keep going.

Judge Jill Weedon, who received the Judicial Excellence Award in 2017, similarly told me how meaningful it is to her and her family that someone noticed her efforts. She said, "Writing a nomination letter is an act of kindness that will only cost you a little time. You may surprise someone with the gift of having their achievement publicly acknowledged." Ms. Thompson added, "I am sure there are many Oklahoma lawyers who do pro bono work who deserve to be recognized but who receive little recognition. It takes time and effort to prepare and submit an award nomination, but to those being nominated that time and effort will mean a lot and might

make a real difference in the nominee's life. I encourage OBA members to take the time to seek out and nominate our members for the great work they are doing."

HOW TO NOMINATE

To encourage nominations, the Awards Committee has made the nomination process as streamlined as possible. Anyone can submit an award nomination, and anyone nominated can win.¹

No specific form is required. Nominations can be as short as a one-page letter (however, the entire nomination cannot exceed five singled-sided 8 ½ x 11 pages including exhibits and support letters). No specific method of delivery is required. Nominations may be mailed, emailed or faxed (but please pick just one).

I encourage you to take a look at the award categories and

nominate at least one deserving colleague or professional organization for an award. You never know what great acts of service and kindness you may inspire.

ENDNOTES

1. Please note that in election years, the OBA Awards Committee does not recommend awards for judges in contested elections.

ABOUT THE AUTHOR

Jennifer Castillo is an attorney with OG&E in Oklahoma City. She serves as Awards Committee chairperson.

AWARDS

OUTSTANDING COUNTY BAR ASSOCIATION AWARD – for meritorious efforts and activities

2017 Winners: Noble County Bar Association and Oklahoma County Bar Association

HICKS EPTON LAW DAY AWARD – for individuals or organizations for noteworthy Law Day activities

2017 Winner: Seminole County Bar Association

GOLDEN GAVEL AWARD – for OBA committees and sections performing with a high degree of excellence

2017 Winner: OBA Indian Law Section

LIBERTY BELL AWARD – for nonlawyers or lay organizations for promoting or publicizing matters regarding the legal system

2017 Winner: San Nguyen, Oklahoma City

OUTSTANDING YOUNG LAWYER AWARD – for a member of the OBA Young Lawyers Division for service to the profession

2017 Winners: Tiece Dempsey, Oklahoma City and Bryon J. Will, Yukon

EARL SNEED AWARD – for outstanding continuing legal education contributions

2017 Winners: Aaron Bundy, Tulsa and M. Shane Henry, Tulsa

AWARD OF JUDICIAL EXCELLENCE – for excellence of character, job performance or achievement while a judge and service to the bench, bar and community

2017 Winner: Judge Jill C. Weedon, Arapaho

FERN HOLLAND COURAGEOUS LAWYER AWARD – to an OBA member who has courageously performed in a manner befitting the highest ideals of our profession

Not awarded in 2017

OUTSTANDING SERVICE TO THE PUBLIC AWARD – for significant community service by an OBA member or bar-related entity

2017 Winners: Jason Lowe, Oklahoma City and Oklahoma Lawyers for Children Inc., Oklahoma City

AWARD FOR OUTSTANDING PRO BONO SERVICE – by an OBA member or bar-related entity

2017 Winner: Kendra Coleman, Oklahoma City

JOE STAMPER DISTINGUISHED SERVICE AWARD – to an OBA member for long-term service to the bar association or contributions to the legal profession

2017 Winner: Judge Jon K. Parsley, Guymon

NEIL E. BOGAN PROFESSIONALISM AWARD – to an OBA member practicing 10 years or more who for conduct, honesty, integrity and courtesy best represents the highest standards of the legal profession

2017 Winner: Judge Bryan Dixon, Oklahoma City

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

2017 Winner: Judge Millie Otey, Tulsa

ALMA WILSON AWARD – for an OBA member who has made a significant contribution to improving the lives of Oklahoma children

2017 Winner: Carolyn Thompson, Edmond

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

Not awarded in 2017

INDIVIDUALS FOR WHOM AWARDS ARE NAMED

NEIL E. BOGAN — Neil Bogan, an attorney from Tulsa, died unexpectedly on May 5, 1990, while serving his term as president of the Oklahoma Bar Association. Mr. Bogan was known for his professional, courteous treatment of everyone he came into contact with and was also considered to uphold high standards of honesty and integrity in the legal profession. The OBA's Professionalism Award is named for him as a permanent reminder of the example he set.

HICKS EPTON — While working as a country lawyer in Wewoka, attorney Hicks Epton decided that lawyers should go out and educate the public about the law in general, and the rights and liberties provided under the law to American citizens. Through the efforts of Mr. Epton, who served as OBA president in 1953, and other bar members, the roots of Law Day were established. In 1961, the first of May became an annual special day of celebration nationwide designated by a joint resolution of Congress. The OBA's Law Day Award recognizing outstanding Law Day activities is named in his honor.

FERN HOLLAND — Fern Holland's life was cut tragically short after just 33 years, but this young Tulsa attorney made an impact that will be remembered for years to come. Ms. Holland left private law practice to work as a human rights activist and to help bring democracy to Iraq. In 2004 she was working closely with Iraqi women on women's issues when her vehicle was ambushed by Iraqi gunmen, and she was killed. The Courageous Lawyer Award is named as a tribute to her.

MAURICE MERRILL — Dr. Maurice Merrill served as a professor at the University of Oklahoma College of Law from 1936 until his retirement in 1968. He was held in high regard by his colleagues, his former students and the bar for his nationally distinguished work as a writer, scholar and teacher. Many words have been used to describe Dr. Merrill over the years, including brilliant, wise, talented and dedicated. Named in his honor is the Golden Quill Award that is given to the author of the best written article published in the Oklahoma Bar Journal. The recipient is selected by the OBA Board of Editors.

JOHN E. SHIPP — John E. Shipp, an attorney from Idabel, served as 1985 OBA president and became the executive director of the association in 1998. Unfortunately, his tenure was cut short when his life was tragically taken that year in a plane crash. Mr. Shipp was known for his integrity, professionalism and high ethical standards. He had served two terms on the OBA Professional Responsibility Commission, serving as chairman for one year, and served two years on the Professional Responsibility Tribunal, serving as chief-master. The OBA's Award for Ethics bears his name.

EARL SNEED — Earl Sneed served the University of Oklahoma College of Law as a distinguished teacher and dean. Mr. Sneed came to OU as a faculty member in 1945 and was praised for his enthusiastic teaching ability. When Mr. Sneed was appointed in 1950 to lead the law school as dean, he was just 37 years old and one of the youngest deans in the nation. After his retirement from academia in 1965, he played a major role in fundraising efforts for the law center. The OBA's Continuing Legal Education Award is named in his honor.

JOE STAMPER — Joe Stamper of Antlers retired in 2003 after 68 years of practicing law. He is credited with being a personal motivating force behind the creation of OUJI and the Oklahoma Civil Uniform Jury Instructions Committee. Mr. Stamper was also instrumental in creating the position of OBA general counsel to handle attorney discipline. He served on both the ABA and OBA Board of Governors and represented Oklahoma at the ABA House of Delegates for 17 years. His eloquent remarks were legendary, and he is credited with giving Oklahoma a voice and a face at the national level. The OBA's Distinguished Service Award is named to honor him.

ALMA WILSON — Alma Wilson was the first woman to be appointed as a justice to the Supreme Court of Oklahoma in 1982 and became its first female chief justice in 1995. She first practiced law in Pauls Valley, where she grew up. Her first judicial appointment was as special judge sitting in Garvin and McClain Counties, later district judge for Cleveland County and served for six years on the Court of Tax Review. She was known for her contributions to the educational needs of juveniles and children at risk, and she was a leader in proposing an alternative school project in Oklahoma City, which is now named the Alma Wilson SeeWorth Academy. The OBA's Alma Wilson Award honors a bar member who has made a significant contribution to improving the lives of Oklahoma children.

Ada Lois Sipuel Fisher Awards: Nominations Due July 31

THE DIVERSITY COMMITTEE

is now accepting nominations for the Ada Lois Sipuel Fisher Diversity Awards to be presented in October. The awards categories are: members of the judiciary, licensed attorneys and businesses/groups/organizations that have championed the cause of diversity. All nominations must be received by Tuesday, July 31.

For additional information, please contact OBA Diversity Committee Chair Telana McCullough at 405-267-0672.

SELECTION CRITERIA AND NOMINATION PROCESS

One or more diversity awards will be given to a business, group or organization that has an office in the state of Oklahoma and has met one or more of the following criteria:

- Developed and implemented an effective equal opportunity program as demonstrated by the organization's commitment to the recruitment, retention and promotion of individuals of underrepresented populations regardless of race, ethnic origin, gender, religion, age, sexual orientation, disability or any other prohibited basis of discrimination
- Promoted diversity initiatives that establish and foster a more inclusive and equitable work environment
- Demonstrated continued corporate responsibility by devoting resources for the improvement of the community at large
- Exhibited insightful leadership to confront and

resolve inequities through strategic decision-making, allocation of resources and establishment of priorities

Two more diversity awards will be given to licensed attorneys and an additional award will be given to a member of the Oklahoma judiciary who has met one or more of the following criteria:

- Demonstrated dedication to raising issues of diversity and protecting civil and human rights
- Led the development of innovative or contemporary measures to fight discrimination and the effects
- Fostered positive communication and actively promoted inter-group relations among populations of different backgrounds
- Participated in a variety of corporate and community events that promoted mutual respect, acceptance, cooperation or tolerance and contributed to diversity awareness in the community and workplace
- Reached out to a diverse array of attorneys to understand firsthand the experiences of someone from a different background

NOMINATIONS

- Include name, address and contact number of the nominee.
- Describe the nominee's contributions and accomplishments in the area of diversity.
- Identify the diversity award category (business/group/organization, licensed attorney or judiciary) in which the nominee is being nominated.
- The submission deadline is July 31.
- Submissions should not exceed five pages in length.
- Submit nominations to diversityawards@okbar.org.



Ada Lois Sipuel Fisher by Mitsuno Reedy from the Oklahoma State Capitol Art Collection, used with permission, courtesy of the Oklahoma Arts Council.

LAW DAY 2018

THANK YOU

**THANKS TO EVERYONE WHO
HELPED US CELEBRATE ANOTHER
SUCCESSFUL LAW DAY!**

Ask A Lawyer hotline



*Ask A Lawyer TV
Show Filming*

Law Day Contest winner ceremony



A special thank you to those who partnered with the OBA Law Day Committee to support Law Day projects.

Chief Justice Douglas Combs
OBA President Kimberly Hays
Linda Herndon, massage therapist
Law-related Education Committee
OETA
Oklahoma County Bar
Association Auxiliary
Oklahoma County Bar Association
Young Lawyers Division

The Oklahoman
Astrud Ray-Kubier, massage
therapist
Kim Reber, massage therapist
Soup Soup Carry Out & Catering
Scott's Printing
Tulsa County Bar Association
Volunteers statewide



THE SOVEREIGNTY SYMPOSIUM XXXI

June 6 - 7, 2018 | Skirvin Hotel | Oklahoma City, Oklahoma

Wednesday Morning

4.0 CLE/CJE credits / 0 Ethics included

7:30 - 4:30 Registration Honors Lounge

8:00 - 8:30 Complimentary Continental Breakfast

10:30 - 10:45 Morning Coffee / Tea Break

12:00 - 1:15 Lunch on your own

8:30 - 12:00 PANEL A: ECONOMIC DEVELOPMENT

(THIS PANEL CONTINUES FROM 3:00 - 5:30)

MODERATOR: JAMES C. COLLARD, Director of Planning and Economic Development, Citizen Potawatomi Nation

OVERVIEW AND IMPACT OF TRIBAL BUSINESS

CHRIS BENGE, (*Cherokee*), Chief of Staff to Governor Mary Fallin, Oklahoma Secretary of Native American Affairs

BILL G. LANCE, JR. Secretary of Commerce, Chickasaw Nation Intertribal Trade and Investment Organization

DAVID NIMMO, Chief Executive Officer/President, Chickasaw Nation Industries

SCOTT FREENY, (*Choctaw*), Senior Legal Director, Choctaw Nation Division of Commerce

KYLE DEAN, Assistant Professor of Economics, Director of Center for Native American & Urban Studies, Oklahoma City University

INTERNATIONAL INTER-TRIBAL TRADE

CO-MODERATOR: WAYNE GARNONS-WILLIAMS, Senior Lawyer & Principal Director, Garwill Law, Canada, Chair, International Inter-Tribal Trade and Investment Organization

MONIKA SURMA, Senior Trade Policy Advisor -- Trade Negotiations -- North America Division -- Global Affairs Canada

VASKEN KHABAYAN, Acting Consul General, Office of the Canadian Consul General, Dallas

AMY GOUDAR, Foreign Policy and Diplomacy Service Officer, Global Affairs Canada, Dallas

JONNA KAUGER KIRSCHNER, Senior Vice President, Chickasaw Nation Industries

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

Photo credit: Eric Tippeconnic Briefcase Warrior, Joseph French Photography

8:30 - 12:00 PANEL B: VISUAL AND VERBAL IMAGERY: SIGNS, SYMBOLS AND SOUNDS

(THIS PANEL CONTINUES FROM 3:00 - 5:30)

MODERATORS: WINSTON SCAMBLER, Student of Native American Art
ERIC TIPPECONNIC, (*Comanche*), Historian, Artist, and Professor, California State University, Fullerton

HARVY PRATT, (*Cheyenne*) Artist and Finalist for the Design of the National Native American Veterans' Memorial, National Museum of the American Indian

KELLY HANEY, (*Seminole*), Artist, Former Oklahoma State Senator, Former Chief of the Seminole Nation, Finalist for the Design of the National Museum of the American Indian

DANIEL SASUWEH JONES (*Ponca*), Artist and Finalist for the Design of the National Museum of the American Indian

GORDON YELLOWMAN, (*Cheyenne*), Peace Chief, Assistant Executive Director of Education, Cheyenne and Arapaho Tribes

PATRICK RILEY, Artist, Art Educator and Mask Maker

NATHAN HART, (*Cheyenne*), Economic Development Director, Cheyenne and Arapaho Tribes, Artist

KENNETH JOHNSON, (*Muscogee/Seminole*), Contemporary Jewelry Designer and Metalsmith

8:30 - 12:00 PANEL C: LAND, WIND AND WATER

(THIS PANEL CONTINUES FROM 3:00 - 5:30)

MODERATOR: PATRICK WYRICK, Justice, Oklahoma Supreme Court

STEPHEN H. GREETHAM, Chief General Counsel, Department of Commerce and Special Counsel on Water, Chickasaw Nation

MICHAEL BURRAGE, Whitten Burrage Law Firm

SARA HILL, Secretary of Natural Resources for the Cherokee Nation, Senior Assistant Attorney General, Cherokee Nation

JULIE CUNNINGHAM, Executive Director, Oklahoma Water Resources Board

8:30 - 12:00 PANEL D: TRUTH AND RECONCILIATION: IMPLICATIONS OF ASSIMILATION

MODERATOR: NOMA GURICH, Vice Chief Justice, Oklahoma Supreme Court

LINDSAY ROBERTSON, Faculty Director, Center for The Study of American Indian Law and Policy, Chickasaw Nation Endowed Chair in Native American Law, Professor, University of Oklahoma College of Law

JAY HANNAH, (*Cherokee*), Executive Vice-President of Financial Services, Bancfirst

JOAN HOWLAND, Roger F. Noreen Professor of Law, Associate Dean for Information And Technology, University of Minnesota

JESSICA Y. STERN, Associate Professor of History, California State University, Fullerton

GORDON YELLOWMAN, (*Cheyenne*), Peace Chief, Assistant Executive Director of Education, Cheyenne and Arapaho Tribes

KIRKE KICKINGBIRD, (*Kiowa*), Hobbs, Straus, Dean and Walker

ROBERT HAYES, Methodist Bishop of Oklahoma, Retired

Wednesday Afternoon

4 CLE/CJE credits / 0 Ethics included

7:30 - 4:30 Registration Honors Lounge

2:45 - 3:00 Afternoon Coffee / Tea Break

1:15 - 2:45 CAMP CALL: **GORDON YELLOWMAN**, (*Cheyenne*), Peace Chief, Cheyenne and Arapaho Tribes

OPENING CEREMONY

MASTER OF CEREMONIES: **STEVEN W. TAYLOR**, Justice, Oklahoma Supreme Court (Retired)

PRESENTATION OF FLAGS

HONOR GUARDS: **KIOWA BLACK LEGGINGS SOCIETY**

SINGERS: **SOUTHERN NATION**

INVOCATION: **ROBERT HAYES**, Methodist Bishop of Oklahoma, Retired

WELCOME: **DAVID HOLT**, (*Osage*), Mayor of Oklahoma City

WELCOME: **KIMBERLY HAYS**, President, Oklahoma Bar Association

WELCOME: **DOUGLAS COMBS**, (*Muscogee(Creek)*), Chief Justice, Oklahoma Supreme Court

INTRODUCTION OF KEYNOTE SPEAKER: **STEVEN TAYLOR**, Justice Oklahoma Supreme Court (Retired)

KEYNOTE SPEAKER: **LT. GENERAL LEE K. LEVY II**, Commander, Air Force Sustainment Center, Air Force Material Command, Tinker Air Force Base

PRESENTATION OF AWARDS, **YVONNE KAUGER**, Justice, Oklahoma Supreme Court

HONOR AND MEMORIAL SONGS: **SOUTHERN NATION**

CLOSING PRAYER: **KRIS LADUSAU**, Reverend, Dharma Center of Oklahoma

Grand Ballroom D-E-F

3:00 - 5:30 PANEL A: ECONOMIC DEVELOPMENT (A CONTINUATION OF THE MORNING PANEL)

MODERATOR: JAMES C. COLLARD, Director of Planning & Economic Development, Citizen Potawatomi Nation

DEBBIE BLANKE, Vice Chancellor for Academic Affairs,
Oklahoma State Regents for Higher Education
MARY BLANKENSHIP POINTER, President, Sister Cities OKC, Inc.
JIM BRATTON, Assistant Vice President of Economic
Development, Executive Director, Office of Technology
Development, University of Oklahoma
RICO BUCHLI, Honorary Consul of Switzerland in Oklahoma
DEBY SNODGRASS, Oklahoma Secretary of Commerce
AMBER SHARPLES, Executive Director, Oklahoma Arts Council

Crystal Room

3:00 - 6:00 PANEL B: VISUAL AND VERBAL IMAGERY: SIGNS, SYMBOLS AND SOUNDS (A CONTINUATION OF THE MORNING PANEL)

CO-MODERATORS: WINSTON SCAMBLER, Student of Native
American Art
ERIC TIPPECONNIC, (*Comanche*), Historian, Artist, and
Professor, California State University, Fullerton
JAMES PEPPER HENRY, Director, American Indian
Cultural Center
JEROD IMPICHCHAACHAAHA' TATE, (*Chickasaw*),
Artist, Composer And Musician
BRENT GREENWOOD, (*Ponca/Chickasaw*) Artist and Musician
TIMOTHY TATE NEVAQUAYA, (*Comanche*), Artist and Musician
MARK PARKER, Dean, Schools of Music & Theatre,
Oklahoma City University
HOLLY DAVIS, Principal, Cherokee, Imersion School
HOWARD PADEN, Cherokee Language Master Apprentice
Program
JASON MURRAY, (*Chickasaw*), Independent Scholar &
Professor, Formerly Of The University Of South Dakota
JOSHUA HINSON, (*Chickasaw*), Chickasaw Language
Revitalization Program
GEOFFREY STANDING BEAR, Chief, Osage Nation

Grand Ballroom A-B
Grand Ballroom C

3:00 - 5:30 PANEL C: LAND, WIND AND WATER (A CONTINUATION OF THE MORNING PANEL)

MODERATOR: PATRICK WYRICK, Justice, Oklahoma
Supreme Court
CASEY ROSS, University General Counsel, Clinical Professor,
Native American Legal Resource Center, Oklahoma City
University
LAUREN KING, (*Muscogee (Creek)*), Attorney -- Foster Pepper
PLLC, Appellate Judge -- Northwest Intertribal Court System
DREW KERSHEN, Earl Sneed Centennial Professor of Law
Emeritus, University of Oklahoma, College of Law
KEN BELLMARD, (*Kaw*), Attorney

Thursday Morning

4.0 CLE/CJE credits / 1 Ethics included

7:30 Registration Honors Lounge

8:00 - 8:30 Complimentary Continental Breakfast

10:30 - 10:45 Morning Coffee / Tea Break

12:00 - 1:15 Lunch on your own

8:30 - 12:00 PANEL A: ECONOMIC DEVELOPMENT -- SUPPORTING INFRASTRUCTURE

MODERATOR: JAMES C. COLLARD, Director of Planning and
Economic Development, Citizen Potawatomi Nation

MIKE PATTERSON, Oklahoma Department of Transportation,
TIM GATZ, Executive Director, Oklahoma Turnpike Authority
DAN SULLIVAN, President, Grand River Dam Authority
JANIE SIMMS HIPPI, Director, Indigenous Food and Agriculture
Initiative, Robert A. Lefflar Law Center, University of Arkansas
NATHAN HART, (*Cheyenne*), Economic Development Director,
Cheyenne and Arapaho Tribes, Artist
JOY HOFMEISTER, Oklahoma Superintendent of Public Instruction
CHAD DONOLEY, Vice-President, AOK Railroad
KELLI MOSTELLER, Director, Citizen Potawatomi Nation Cultural
Heritage Center

8:30 - 11:00 PANEL B: JUVENILE LAW AND CHILDREN'S ISSUES (THIS PANEL CONTINUES FROM 1:30 - 5:00)

C. STEVEN HAGER, Director of Litigation, Oklahoma Indian
Legal Services
ANGEL R. SMITH, Attorney
MIKE WARREN, Associate District Judge, Harmon County
ELIZABETH BROWN, (*Cherokee*), Associate District Judge,
Adair County, Oklahoma
STEPHANIE HUDSON, (*Kiowa*), Attorney, and Executive
Director, Oklahoma Indian Legal Services
JACINTHA WEBSTER, Attorney, Oklahoma Indian Legal Services
DEBORAH SHROPSHIRE, Oklahoma Department of Human
Services, Deputy Director, Child Welfare Services Tribal
Foster Care
CARMIN TECUMSEH-WILLIAMS, (*Muscogee (Creek)*), Tribal
Affairs Liaison for the Oklahoma Department of Human
Services

8:30 - 9:30 PANEL C: ETHICS ADDRESS

JOHN REIF, Justice, Oklahoma Supreme Court

Grand Ballroom A& B

8:30 - 11:00 PANEL D: CRIMINAL LAW

MODERATOR: DANA KUEHN, Judge, Oklahoma Court of Criminal Appeals

CO-MODERATOR: ARVO MIKKANEN, (*Kiowa/Comanche*), Assistant United States Attorney and Tribal Liaison, Western District of Oklahoma

Thursday Afternoon

4.5 CLE/CJE credits / 0 Ethics included

3:30 - 3:45 Afternoon Coffee / Tea Break

12:00 - 1:30 LUNCH FOR THE STATE, FEDERAL, TRIBAL JUDICIARY AND THE SOVEREIGNTY SYMPOSIUM FACULTY

1:30 - 5:30 PANEL A: THE CONCERNS OF THE JUDICIARY - A FOCUS ON MUTUAL CONCERNS OF THE STATE, FEDERAL, AND TRIBAL BENCH

TRICIA TINGLE, (*Choctaw*), Associate Director - Tribal Justice, Office of Justice Services, Bureau of Indian Affairs

JARI ASKINS, Administrative Director of the Courts, Former Lt. Governor of Oklahoma, Former District Court Judge

WILLIAM P. BOWDEN, Major General (Retired), United States Air Force

TOM WALKER, Judge, Court of Indian Offenses, Anadarko

1:30 - 5:30 PANEL B: JUVENILE LAW

(A CONTINUATION OF THE MORNING PANEL)

PHIL LUJAN, (*Kiowa/Taos Pueblo*), Holistic Health for Tribal Youth, Seminole Nation

JENNIFER KIRBY, Director, Youth Services & Special Projects and Interim Director, Family Assistance, Cherokee Nation Human Services

BRANDON ARMSTRONG, Senior Probation Officer Cherokee Nation

KEVIN HAMIL, Director of Reintegration, Choctaw Nation

ALISHA EDELEN, Assistant Director of Juvenile Services, Choctaw Nation

AMBER LOFTIS, Juvenile Services Coordinator, Choctaw Nation

DOLORES SUBIA BIGFOOT, Director, Tribal Youth and Training and Technical Assistance Center

JANE SILOVSKY, Treatment for Children with Sexual Behavior Problems, University of Oklahoma Child Study Center

TODD CRAWFORD, Executive Officer, Aalhakoffichi' Adolescent Transitional Living Facility, Chickasaw Nation

JAKE ROBERTS, Project Eagle Director, Ponca Tribe of Oklahoma

JANELLE BRETTEEN, Senior Project Researcher and Planner, Office of Juvenile Affairs

BRIAN HENDRIX, Deputy Assistant of Native American Affairs, Oklahoma Secretary of State

KIMEE WIND-HUMMINGBIRD, Director, Children & Family Services Administration

SHELLY HARRISON, Tribal Prosecutor, Muscogee (Creek) Nation

DEBRA GEE, Executive Officer and General Counsel, Chickasaw Nation (Juvenile Justice Subcommittee of the Inter-tribal Council of the Five Civilized Tribes)

1:30 - 5:30 PANEL C: GAMING: RECOGNITION OF THE 30TH ANNIVERSARY OF THE INDIAN GAMING REGULATORY ACT

CO-MODERATORS: MATTHEW MORGAN, (*Chickasaw*), Director of Gaming Affairs, Division of Commerce, Chickasaw Nation

NANCY GREEN, (*Choctaw*), Green Law Firm, Ada, Oklahoma

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

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

KATHRYN ISOM-CLAUDE, (*Taos Pueblo*), Vice Chair, National Indian Gaming Commission

WILEY HARWELL, Executive Director, Oklahoma Association for Problem and Compulsive Gambling

G. DEAN LUTHEY, Jr., Gable Gotwals

MICHAEL MCBRIDE, III, Crowe and Dunlevy

ELIZABETH HOMER, (*Osage*), Homer Law Chartered

WILLIAM NORMAN, (*Muscogee (Creek)*) Hobbs, Strauss, Dean & Walker

NOTICE

State, tribal and federal judge training will be June 7, 10:00 a.m. – 5:00 p.m. daily, at the Skirvin Hotel. Topics to be covered include violence against women, drug courts and criminal diversion programs. For information contact Julie Rorie at 405-556-9340.

A lunch for state, federal and tribal judges will be held Thursday, June 7, at noon at the Skirvin Hotel.

The Sovereignty Symposium XXXI

June 6 - 7, 2018
Skirvin Hotel
Oklahoma City, Oklahoma

Name: _____ Occupation: _____

Address: _____

City: _____ State _____ Zip Code _____

Billing Address (if different from above) _____

City: _____ State _____ Zip Code _____

Nametag should read: _____

Other: _____

Email address: _____

Telephone: Office _____ Cell _____ Fax _____

Tribal affiliation if applicable: _____

Bar Association Member: Bar # _____ State _____

16.5 hours of CLE credit for lawyers will be awarded, including 1.0 hours of ethics.

of Persons Registration Fee Amount Enclosed

\$275.00 (\$300.00 if postmarked after May 22, 2018) \$175.00 June 7, 2018 only (\$200.00 if postmarked after May 22, 2018)

Total Amount

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

THE SOVEREIGNTY SYMPOSIUM, INC. The Oklahoma Judicial Center, Suite 1 2100 North Lincoln Boulevard Oklahoma City, Oklahoma 73105-4914 www.thesovereigntysymposium.com

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New Lawyers Take Oath

BOARD OF BAR EXAMINERS

Chairperson Roger Rinehart announces that 47 applicants who took the Oklahoma Bar Examination on Feb. 27-28, were admitted to the Oklahoma Bar Association on Tuesday, April 17, or by proxy at a later date. Oklahoma Supreme Court Chief Justice Douglas Combs administered the Oath of Attorney to the candidates at a swearing-in ceremony at the Oklahoma Judicial Center in Oklahoma City. A total of 87 applicants took the examination.

Other members of the Oklahoma Board of Bar Examiners are Vice Chairperson Thomas M. Wright, Muskogee; Robert Black, Oklahoma City; Monte Brown, McAlester; Tommy R. Dyer Jr., Jay; Juan Garcia, Clinton; Robert D. Long, Ardmore; Bryan Morris, Ada; and Loretta F. Radford, Tulsa.

THE NEW ADMITTEES ARE:

Jerry Dace Arnold
Leah Nicole Asbury
Blythe Rachel Bradley
Matthew Ray Bray
Joshua Joe Conaway
Justin Blake Conway
Cody Glyn Cook
Tyler DeWayne Davis
Christopher Maxwell Deane
Elizabeth Mary Edwards
Sherry Lynn Erb
Amy Lynn Faltisko
Vassiliki Economides Farrior
Andy Nash Ferguson
Andrew Heath Garrett
Andrea Morgan Golden
Alexander Scott Hall

Caleb Alexander Harlin
Joshua William Harrison
Charles Robert Haskell
Marco Antonio Hernandez Jr.
Andrew John Hofland
Kristin Nicole Hutton
Mackenzie Dawn Jacobson
Johnnie Jonathan James III
Kelbie RaeAnn Kennedy
John Thomas-Hohn Knapp
John Kavanagh Kristjansson
Tiffany Michelle Lemons
Lori Lee Lindsey
Donald Cyril Macarthy
Michael William Mathis
Donald Robert McConnell
Walter James Morris II
Eric Scott Nickel
Jeremy Eugene Otis

Morgen DeAnna Potts
Courtney Paige Rainbolt
Kylie Danielle Ray
Elizabeth Gean Roberts
Trent Allen Robinson
Jeffrey Bruce Roderick
Andrea Claire Rogers
Dakota Lynn Semrad
Shannon Lynn Stone
Audrey Camille Talley
Rachel Nicole Voss



New lawyers stand to take the attorney's oath at the OU College of Law and TU College of Law swearing-in ceremony.

Session Winding Down, Ends May 25

By Angela Ailles Bahm

AS OF THE WRITING of this article, we are still in the midst of the most significant example of democracy in action that I have witnessed – the Oklahoma teacher walk out. Regardless of your political beliefs, one must find the current events remarkable! For me, it is a stunning reminder that the folks in ALL capitols work for us. We just need to remind them of it every now and then.

Which is why, again, I encourage all of you to participate in the OBA Legislative Monitoring Committee. At a minimum, be engaged with your state and federal representatives. No, we cannot walk out of our offices and march arm in arm on specific issues. As a mandatory bar, we need to be constantly vigilant we do not overstep and mindful that we simply cannot represent everyone's opinions. But what we can do as individuals is educate ourselves and others on the process – and arm ourselves, others and members of the Legislature with facts.

SOMETHING NEW THIS SUMMER

This July (maybe August – yes, I'm hedging a bit), the committee is going to try something new. We are going to have a legislative debrief, if you will. More to come – but the

thought is to have an overview of bills passed affecting the practice of law and to have a legislative panel discuss the session. If you have some thoughts on what you would like to hear, please let me know.

UPDATE ON BILLS

The following is an update on the bills Clay Taylor, legislative liaison for the OBA, discussed during Day at the Capitol. The end of the session is May 25. You will need to look up the ones I note as "continues to advance" to see if they are still alive and/or signed by the governor. Remember, that website is www.oklegislature.gov.

HB 1051 eliminates the court of criminal appeals – Died

HB 2941 affects title insurance and title work – Continues to advance

HB 3277 and SB 1340 workers' compensation bills – Continues to advance

SB 968 requires the petition to include facts supporting the claims – Continues to advance

SB 1136 applies several liability to products liability cases – Continues to advance

SB 1447 exempts health care providers from liability under certain circumstances – Died

SB 1550 allows for post judgment review of new evidence – Died

Proposed legislation affecting the judiciary all died including: SB 700 (required the six attorney JNC members to be appointed by the president pro tem and the House speaker); HB 1925 (provided for five justices from the current congressional districts and four at-large positions); and SB 699 (applied mandatory retirement to all appellate judges and justices at 80 years of age). Because this is the second of our two-year session, none of these bills float into the 2019 session. Any and all bills will need to be submitted anew.

The committee will continue to have scheduled meetings on the first Tuesday of the month at noon. Please join us; and as always, if you have any suggestions to improve the LMC, please write me at angela.ailles-bahm.ga2e@statefarm.com.

ABOUT THE AUTHOR

Angela Ailles Bahm is the managing attorney of State Farm's in-house office and serves as the Legislative Monitoring Committee chairperson.



May 1, 2003

By John Morris Williams

PERHAPS MAY 1, 2003, is not a day that will live in infamy. At least I hope not. That is the day I began work as the Oklahoma Bar Association executive director. If I am fortunate to hang on another month or two, I may exceed the tenure of the long serving – and admired by many – Marvin Emerson. I began this job sitting at his old desk, and many times I have looked up and wondered what he would have done in tough situations. I have no qualms in knowing no one will ever ponder such things about me.

In the past 15 years, a lot of change has come to the Oklahoma Bar Association. Some of it I like, some of it I tolerate and some of it scares me. I like not filing a MCLE report if you have your credit before the end of the year. One day it just struck me that we had the records, the members were paying for the people and equipment to maintain the records, so why not acknowledge the information we have and save members the trouble of sending us 15,000 plus pieces of paper to tell us what we already know? Thanks to our great MCLE staff, they made it work. Also, I like that we have, without debt, completely remodeled and updated everything functional and mechanical in the bar center building. Goodbye to the asbestos!

I have tolerated technology changes. I knew coming into

this job that technology would blossom and keeping up would be hard and expensive. That is an understatement. We are operating on new software in every facet of our operations and in the middle of yet another website update.

The costs are staggering. In this online world, everything changes constantly. Every upgrade costs in dollars and staff time. We are big enough to have a lot of data and yet not big enough to have the staff and resources like major banks and retailers for cutting-edge technology on a large scale. It's frustrating because I know what is out there, and I know what we can spend. It is a constant balance of being frugal with dues dollars and providing great member service. We have about the cheapest state bars dues in the country, and our technology is comparable to some larger and better-financed bar associations. So, I guess it's tolerable.

WHAT SCARES ME

What scares me is the increasing changes in the practice of law and the attacks on the profession and the courts. Online legal services, many by nonlawyers, have invaded the market. They are here to stay. I fear the quality of services will be less and the public not well protected. There are consistent and ongoing cases challenging the regulation of the practice of law. Some challenge unified bars, some challenge individual states authority to regulate and some appear to want no regulation.

Lastly, the attacks on our judiciary are most frightening. For most of the time I have been your executive director, I have dealt consistently with attacks on our courts and the Judicial Nominating Commission. Most of the harsh language and attempts to erode judicial independence have come about because the courts are following

In the past 15 years, a lot of change has come to the Oklahoma Bar Association. Some of it I like, some of it I tolerate and some of it scares me.

the law. At times I wonder if the public possesses the knowledge of the separation of powers and a clear understanding of the role of the courts.

I have been consistently amazed at how the public and the press have grasped these concepts and joined with us to preserve the Judicial Nominating Commission. A few selfless lawyer legislators have been incredibly helpful as well. I still fear the constant (and at times well-funded) attacks on merit selection of judges and justices may someday prevail. Yes, it is scary to ponder the political and corrupt system returning to our state.

I cannot close without saying there are many things in the last 15 years I have loved. First, it is being with and serving our members. That is the most satisfying part of my job. Next, is the great and talented leaders in our governance I have worked with. I wish our members knew of all the things our elected leaders have sacrificed to bring outstanding governance to our association. I can personally attest that while they have differed in style, every one of them has demonstrated a strong commitment to the profession with exceptional integrity. And then there is the staff. As the chief of staff, I will put our folks up against anyone. They do

some incredible stuff behind the curtain. Gotta love them.

On May 1, 2003, I had no idea how many wonderful and talented people I would cross paths with and that I would be around this long. It has been a tremendous honor to serve this past 15 years. Thank you to the Supreme Court justices, OBA presidents, Board of Governors members, staff and the countless members who have helped me, taught me, encouraged me and some who just tolerated me. Because of each of you, I have been blessed.



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

A Brief Recap of ABA TECHSHOW 2018

By Jim Calloway and Darla Jackson

FOR THOSE WITH AN interest in legal technology, there is really nothing like ABA TECHSHOW, held each spring in Chicago. Although this year, the weather was anything but spring-like.

For us, one of the best things about ABA TECHSHOW is (really shameless plug warning) that we will be seeing many of the speakers again soon. Six speakers, *yes SIX*, from ABA TECHSHOW 2018 will be joining us at the OBA Solo & Small Firm Conference June 21-23 in the warm and welcoming environment of the River Spirit Casino Resort in Tulsa which features Jimmy Buffett's Margaritaville Casino & Restaurant.¹

Back to ABA TECHSHOW. From seven tracks of educational sessions to an Expo Hall full of law office technology products, there's really nothing like ABA TECHSHOW. Of course, we must admit our biases. Jim is a former ABA TECHSHOW chair who was on the faculty and attending for his 19th year, and Darla was on her third ABA TECHSHOW and was invited to be a member of the faculty this year.

E-DISCOVERY

Several years ago, a clear majority of vendors in the TECHSHOW Expo Hall were

e-Discovery vendors. E-Discovery was the hot topic. There were still a good number in attendance this year and CLE session titles ranged from "Playing in the Big Leagues: E-Discovery in Large, Complex Litigation" to "E-Discovery for the Rest of Us." Increasingly there is a focus on small case e-Discovery at reasonable prices. The good news for the lawyer with a modest e-Discovery budget due to the amount in controversy is that prices have been dropping, particularly with cloud-based (SaaS) document review platforms. Logikcull is one of these providers with more affordable pricing, but their marketing game also delivered as they became the talk of the TECHSHOW with two different T-shirt giveaways, including one striking Ramones tribute T-shirt.



In "E-Discovery for the Rest of Us," the panel discussed the Electronic Discovery Reference Model (EDRM). The EDRM was last updated in 2014 to include information governance. Assisting a client with information governance mitigates risk and expense if e-Discovery becomes an issue through policies governing the initial creation of electronically stored information (ESI) through its final disposition. This type of proactive legal service is in line with Professor Richard Susskind's observation that "clients want a fence at the top of the cliff, rather than an ambulance at the bottom."

One saying from TECHSHOWs of years past is coming true today – e-Discovery is just discovery. This is certainly true in the area of social media. Several of the participants in the Start-up Pitch competition, which pits legal tech startups against one another in a pitch contest, were related to collection, analysis and management of social media data and evidence. The winner of the competition, Voluable, "aggregates social media data for use in commercial litigation." Evichat is "a cloud-based, mobile evidence collection and management company" and Social Evidence "collects and manages information from social media for evidence."²

DOCUMENT AUTOMATION

Document automation continued to be a hot topic for attorneys and vendors as well. TheFormTool announced the launch of its new product, Aurora webData, at TECHSHOW and provided a demo during a lunch and learn session. Aurora webData, as indicated by the name, is a web-enabled system that facilitates collection of data from remote users to allow attorneys to make decisions

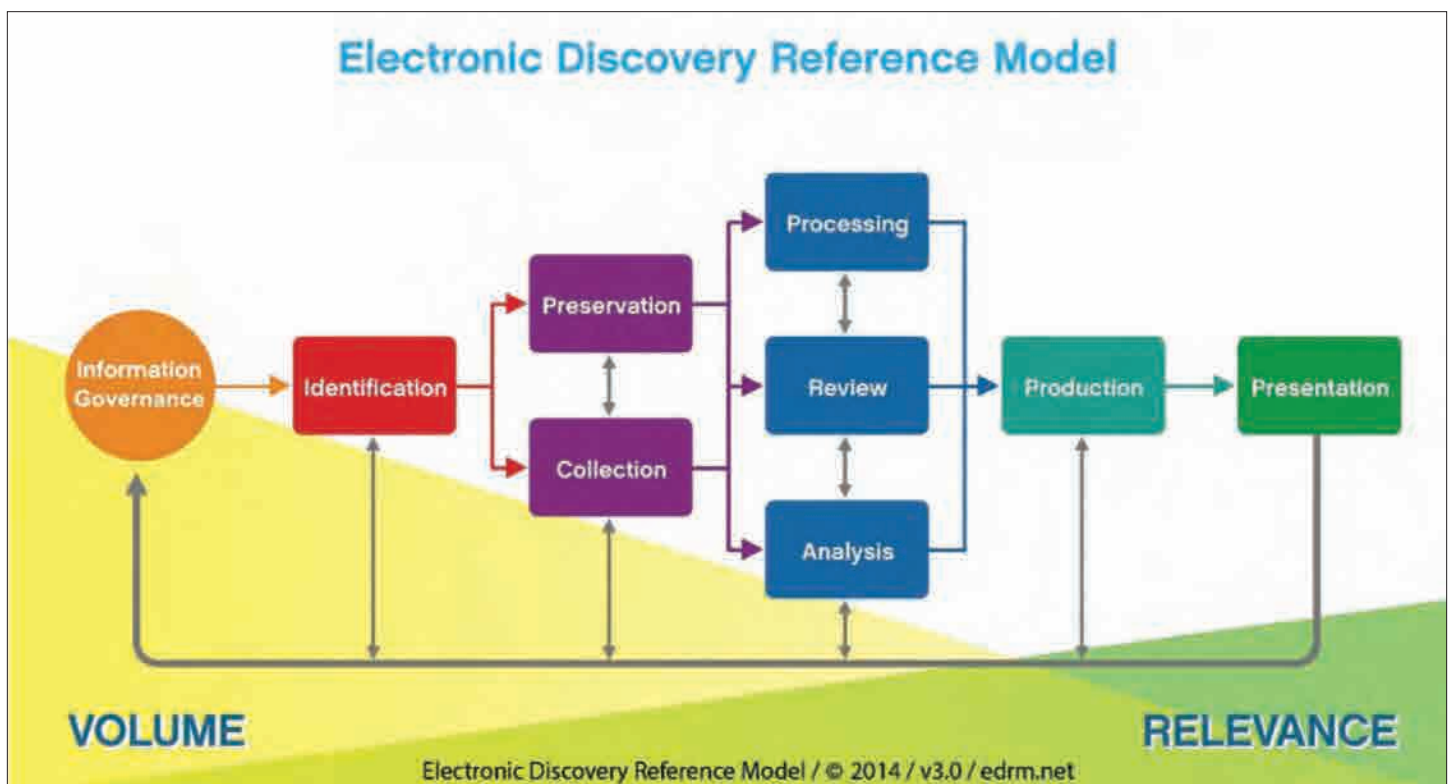
and to easily create documents using the customized and collected data.³ Two of the start-ups in the pitch competition, Lawyaw and NextChapter, also involve document automation. NextChapter focuses on document automation in bankruptcy filings and case management.

RECORD KEEPING AND FILE DESTRUCTION

TECHSHOW operates at so many levels, from planned CLE

sessions to Taste of TECHSHOW dinners with faculty members. Informal discussions are often as great a learning opportunity as the planned lectures. In the Speaker Ready Room over the lunch break, one table was filled with current and former TECHSHOW chairs and the discussion turned to file retention and destruction.

ABA TECHSHOW Co-Chair Tom Mighell, who works with companies on business records



Interested parties can download a wall poster-sized version of this graphic at www.edrm.net.

With an emphasis on all the tech tools and services, it is easy to overlook the importance of people in managing and providing legal services.

retention and organization, said something he likely repeats to clients every week, but made several heads turn. “Businesses need to make sure they know the difference between a record and a nonrecord. You only need to retain records, not nonrecords.”

That’s a good lesson for lawyers *and* their clients. Do we really need to keep all 11 drafts of a document that has now been executed or filed? Is there any point except perhaps documenting who made the now-corrected mistake on draft 5? (Perhaps that is a poor reason.) There is a good argument that keeping 11 versions gets in the way of easily locating the final version and creates the risk that someone in the firm looking for a form could locate and use a version that was not complete.

Generally speaking, a nonrecord is a document such as a rough draft, worksheet or extra copy created for convenience that has no retention value and no filing need.

SPEAKING OF DOCUMENT MANAGEMENT

Two of the returning document management vendors at TECHSHOW were Worldox and NetDocuments. Both products provide for not only document but also email management. While

many smaller firms may be able to transition to digital client files using a practice management system, if your practice is document intensive, you may desire to review the value added by a document management system that could integrate with a practice management solution. NetDocuments currently integrates with Clio and is poised to work with other solutions.

HOW DO I FIND IT ON FASTCASE?

Fastcase was represented at ABA TECHSHOW and provided information on several initiatives, including their offering of the LoisLaw treatise library, Docket Alarm and AI Sandbox. These resources are not provided as an OBA member benefit. However, Fastcase has not lost sight of its primary commitment to make research more efficient for attorneys. The new ABA book, *Fastcase: The Definitive Guide*, by law librarian Brian Huddleston, was showcased at TECHSHOW and is available from the OBA Practice Management Assistance Program’s Lending Library.

CAN YOU COVER A HEARING FOR ME?

When Uber became a household name with huge growth, there was a lot of talk

among developers about the potential for “Uber for Lawyers.” The label was more of a cool name than an actual idea.

At TECHSHOW there were two exhibitors with different approaches to that concept – Lawclerk.legal⁴ and Court Buddy.⁵ Lawclerk states its mission as “Making general practitioners and law firms more profitable by outsourcing projects to freelance lawyers with all levels of experience and expertise.” The name is a bit counterintuitive. The theory is that “Lawclerks are lawyers who provide legal services as paraprofessionals (as permitted by the ABA model rules) under the direct supervision of Attorneys ...”

Court Buddy matches potential clients with lawyers for either full or limited scope representation. The entire website is split into information for clients and information for lawyers. We did not investigate the details of either company’s user agreement or examine any legal ethics issues. Neither indicated Oklahoma as within their current coverage area. We do note that Court Buddy won the 2017 American Bar Association Louis M. Brown Select Award for Legal Access.

HANDS-FREE TIMEKEEPING PRODUCTS

So, here’s a dream concept for lawyers. Any time you need to record time on a client file you simply say out loud “Billing app, bill client Joseph Johnson on Smith matter one hour for drafting response to motion for summary judgment” and the time is properly recorded in your billing records.

Tali is not a new product but was one of the more visible vendors at TECHSHOW. Marketed as the hands-free

time tracking tool, Tali works with Alexa, Cortana and Google Assistant to allow you to record your time. Tali allows you to review your activities in the Tali dashboard and then sync with several time and billing products. Tali originally integrated only with Clio, but it also recently announced integrations with Rocket Matter and PracticePanther.

Time Miner is a legal tech start-up designed to automatically record time you spend on your smartphone. No need to start a timer. "Time Miner finds your previous billable calls and text messages and generates a report detailing each communication in terms of client, date, duration and dollar value (based on your hourly rate)." This information can then be imported into your time and billing software.

PROCESS AUTOMATION

We hear a lot about robots and automation and how these tools will soon replace many jobs, but in one program at TECHSHOW, "Connecting the Dots – Automating Web Apps and Services," described an automation process that would sound great to many lawyers today. Erin H. Gerstenzang talked about using the web service Zapier to automate her client on-boarding process. When a client decides to hire Erin over the phone, she asks them to text message her their full name and email address. With that information, Erin can quickly start a chain reaction that starts by sending an electronic fee agreement which the client can sign from his/her cellphone. After signing the fee agreement, a Zap sends the client to an intake form that captures all of the relevant information from the case. That information is then couriered

over by yet another Zap to Clio to populate the client profile. Finally, there is a Zap that sends the client an electronic invoice.

I'm certain it doesn't always work that smoothly in real life, but as Erin said, can you imagine talking to a potential client on the phone while you are driving to court in the morning, and by the time you arrive at the courthouse, the client has signed an agreement, paid the fee and turned over paperwork and information, all without any additional lawyer or staff time?

DON'T FORGET PEOPLE ARE IMPORTANT!

With an emphasis on all the tech tools and services, it is easy to overlook the importance of people in managing and providing legal services. Debbie Foster, one of the 2018 ABA TECHSHOW co-chairs, thinks this message is so important that she took time to present a session on "Embedding Process Through Effective Change Management." Without implementation that includes change management principles such as maintaining buy-in and adapting workflows and processes, new technology tools may not be able to perform as originally envisioned.

You are an important person as well. Darla Jackson gave a presentation at TECHSHOW on "Disconnecting and the Potential Benefits It Can Bring." She notes that everyone needs to disconnect periodically in order to improve focus, productivity and mental state. Look for an OBA CLE webcast on that topic Oct. 17.

Mark your calendar now for ABA TECHSHOW 2019, Feb. 28 – March 2, at the Hyatt Regency Chicago. We assume we will have a discount code for OBA members who wish to attend.

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

ENDNOTES

1. www.okbar.net.
2. For a full list of participants, see the *ABA Journal* article "Techshow first-timer wins Start-Up Pitch Competition."
3. Additional information about Aurora webData is available at www.theformtool.com/eliminates-costs-minimizes-errors/.
4. www.lawclerk.legal.
5. www.court buddy.com.

Lawyer Mobility and Ethics

By Joe Balkenbush

THE NATIONAL TREND of lawyers leaving a firm to open their own firm or solo practice is in full bloom here in Oklahoma. There are many reasons why the legal industry is trending away from larger firms, but the more important consideration is how to facilitate the transition of clients and their files. There are a number of ethical issues which must be considered by both the firm and the departing attorney.

First, and perhaps most importantly, it is the clients, not the firm or the departing lawyer, who determines who will continue to represent them. In 1999, the American Bar Association (ABA) Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 99-414, titled "Ethical Obligations When a Lawyer Changes Firms."¹

The opinion provides a list of the ethical issues it considers critical when a lawyer leaves a firm:

- disclosure of the pending departure in a timely fashion to clients for whom the lawyer is currently responsible or plays a principal role in the representation;
- ensuring that the matters to be transferred with the lawyer do not create conflicts of interest at the new firm and can be competently managed there;

- protecting client files and property and ensuring that, to the extent reasonably practicable, no client matters are adversely affected as a result of the lawyers withdrawal;
- avoiding conduct involving dishonesty, fraud, deceit, or misrepresentation in connection with the lawyers planned withdrawal; and
- maintaining confidentiality and avoiding conflicts of interest at the lawyer's new firm regarding client matters remaining at the former firm.

The ABA opinion states that whenever possible, the departing lawyer and the current firm should send a letter jointly to all clients with whom that lawyer had significant personal contacts. As ABA Formal Op. 99-414 emphasizes,

[L]aw firms have an ethical obligation to their clients to notify them that an attorney who had been actively working on their matters is leaving. While joint notice is not always feasible, it is the best practice whenever possible. The client must be informed that the choice of whether to stay with the firm or go with the departing lawyer (or to an entirely

different firm) is the client's alone, and that there will be no adverse consequences from the client's decision.

A joint letter to the client ensures "evenhanded treatment" of both the departing lawyer and the firm, and reduces the risk that either side will later accuse the other of misconduct. As we all know, break-ups can be acrimonious. It is most often in everyone's best interest (departing lawyer, the firm and most importantly the client) to work together to minimize any potential disputes and focus on prompt and accurate disclosure to the client.

The ABA opinion goes on to state:

... [T]here may be circumstances in which joint notice is not possible. In those cases, the firm may be required, and may in any event wish to send its own letter to all clients with whom the departing lawyer had significant personal contacts, apprising them of the attorney's departure and informing them that they have the choice whether or not to remain with the firm. The firm should also avoid disparaging the departing attorney. If the attorney's departure resulted from some kind of misconduct, illness or disability, the firm may have

a duty to notify its clients, but this too must be balanced against the firm's duty not to unlawfully disparage its former employee ...

Next, "departing attorneys should generally not discuss their departure plans with clients before telling their current firms about their upcoming withdrawal, and should not seek to sign up clients to the new firm prior to notification of their current firm of intent to depart. While the precise scope of permissible communication with clients on the part of the departing lawyer has not yet been established with complete clarity... prudence cautions against any contact with clients, other than for routine business, until after formal announcement of a lawyer's departure."²

The Oklahoma Rules of Professional Conduct (ORPC)³

contain several relevant rules which must be reviewed, considered and applied to each situation.

- Rule 1.4. Communication, obligations of lawyers to inform clients of their impending departure
- Rule 7.3. Direct Contact with Prospective Client, the types of pre- and post-departure notices to send to clients
- Rule 1.16(d). Declining or Terminating Representation, the duty to protect client interests
- Rule 8.4. Misconduct, the need to avoid conduct involving fraud, deceit, or misrepresentation, and
- Rule 7.1. Communications Concerning a Lawyer's Services)

The ABA formal opinion, Oklahoma Rules of Professional

Conduct and case law from across the country urge the law firm and the departing lawyer to work together to ensure that they both act in the best interest of *the client* and thereby minimize the potential for disputes when a lawyer leaves the firm.

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; 800-522-8065.

ENDNOTES

1. American Bar Association Formal Opinion 99-414.
2. Peter Geraghty, "Breaking Up is Hard to Do," *ABA GPSOLO Magazine* (Jan./Feb. 2008), www.americanbar.org/content/newsletter/publications/gp_solo_magazine_home/gp_solo_magazine_index/breakingup.html.
3. ORPC, www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=448827.



Meeting Summary

The Oklahoma Bar Association Board of Governors met March 5 at the Oklahoma Bar Center in Oklahoma City.

REPORT OF THE PRESIDENT

President Hays reported she attended the Tulsa County Bar Association judicial dinner and spent time on various communications regarding legislative matters.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the YLD board meeting, a meeting with OCU deans regarding possible collaborations, a meeting on a possible new workers' compensation member benefit, a meeting with an Access to Justice Committee member to discuss possible OBA collaborations and various staff and legislative meetings. He presented a CLE seminar in Custer County.

BOARD MEMBER REPORTS

Governor Beese reported he attended the Muskogee County Bar Association meeting, met with the county bar president to discuss Law Day activities and met with the OBA Law Day Committee chair to discuss District 7 Law Day activities. **Governor Fields** reported he contacted county bar presidents in District 2 regarding OBA Day at the Capitol. **Governor Hermanson** reported he sent an email to all District 1 county bar presidents encouraging them to

attend OBA Day at the Capitol, spoke to the Blackwell Leadership Group and attended the Ponca City Chamber of Commerce Board of Directors meeting. **Governor Hicks** reported he attended the Tulsa County Bar Foundation Golf Tournament Committee meeting, planning meeting with the TCBF Law Week Committee chair and TCBF Building Renovation Committee meeting. **Governor Hutter** reported she attended the Women in Law Committee meeting and Cleveland County Bar Association Executive Committee meeting. **Governor Williams** reported he attended the TCBA judicial dinner, TCBA Board of Directors meeting and inns of court presentation on judicial pet peeves. He also served on the panel for an OBA Professional Responsibility Tribunal hearing on a pending reinstatement application.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Richter reported he chaired the YLD February board meeting.

BOARD LIAISON REPORTS

Governor Hutter reported the Women in Law Committee has started planning its 2018 events.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported a written report of Professional Responsibility Commission actions and OBA disciplinary matters for February was submitted to the board for its review.

REQUEST TO ATTEND CONFERENCE

Executive Director Williams explained OBA policy requires board approval for unbudgeted out-of-state travel. He said IT Director Watson has requested permission to attend a Word Camp Conference in Kansas City, and the cost will be conference registration, mileage and meals only. The board approved expenses for IT Director Watson to attend the conference.

REPORT ON LEGISLATIVE SESSION

Executive Director Williams reported the attention of legislators is currently focused on the state budget. He reviewed bills he is most concerned about.

LEGISLATIVE MONITORING COMMITTEE REPORT

Chairperson Angela Ailles Bahm briefed the board on changes to the committee and the way it operates, including asking to have the chairperson of each section added to the Legislative Monitoring Committee. She said many sections watch proposed legislation in their practice area and keep the committee updated. Having the section leaders involved improves the exchange of information. The committee was asked by Sen. Kay Floyd to help identify legislation that involved unconstitutional bills and their impact. Former committee chair Duchess Bartmess put together a list of constitutional provisions related to legislation that can be used as a reference for legislators. Ms. Bahm said a committee goal is to increase awareness among legislators that OBA members are available to provide free legal research regarding proposed legislation. While visiting legislators during Day at the Capitol, bar members will give legislators note pads with an email address for them to request the legal research. She asked board members for suggestions on how the committee could improve its efforts.

REPORT ON APPLICATIONS FILED WITH THE SUPREME COURT

Executive Director Williams reported a legal intern rule amendment and a change in the deadline requirements for the executive director to submit reports to the Board of Governors were submitted to the Supreme Court for its consideration.

EXECUTIVE DIRECTOR MESSAGE

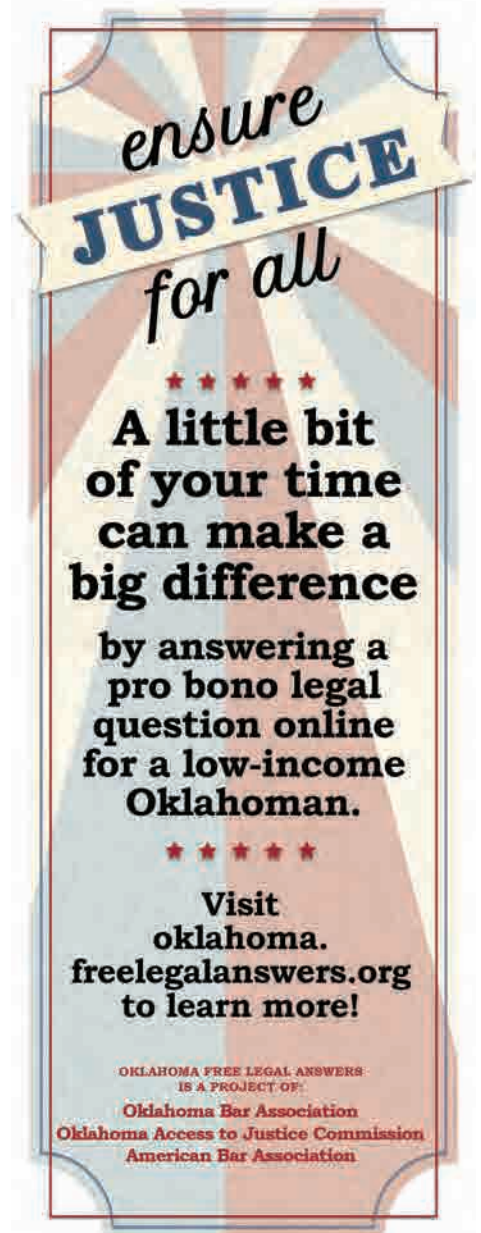
President Hays called the board's attention to an article written by Executive Director Williams for the April bar journal encouraging all lawyers to be involved in county Law Day activities.

PRESENTATION

2017 Vice President Jennifer Castillo presented Past President Thomas with her past president pin.

NEXT MEETING

The Board of Governors met in April at the Oklahoma Bar Center in Oklahoma City. A summary of those actions will be published in the *Oklahoma Bar Journal* August magazine. The next board meeting will be at 10 a.m. on Friday, May 18, at the Oklahoma Bar Center in Oklahoma City.



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Scholarship Recipient Highlights

CHAPMAN-ROGERS SCHOLARSHIP RECIPIENT



Leslie Briggs

Hometown:	Tulsa
Law School:	TU College of Law
Graduation Year:	2019
What field of law are you studying:	Public Interest
Undergraduate:	OSU
Undergrad Major:	Spanish and History

What are your short-term and long-term goals?

My short-term goal is to serve the public in some capacity, whether it is through legislative advocacy, public defense or some other public service legal occupation. Long term I would like to improve access to justice and equitable outcomes in Oklahoma for its most vulnerable citizens.

What made you decide to attend law school?

My father. He has worked as both a public servant and an attorney for vulnerable workers his entire life. I admire his spirit of service and integrity.

Are there any laws or social rules that baffle you?

That those who are facing deportation are not afforded the right to an attorney. I understand the constitutional principles behind it, but I also know there have been American citizens improperly detained and denied access to counsel by immigration authorities under the belief they are undocumented. One American citizen spent three years in detention due to errors in investigation by immigration authorities and not having a right to an attorney.

Which historical figure inspires you and why?

Eleanor Roosevelt because she did not seek celebrity, power or greatness but rose to meet the challenge life presented her. She endured great embarrassment and pain at the hands of her husband, and yet stayed committed to the greater good. She kept her focus on the big picture while impacting the individuals she saw as most in need.

What is the most important thing you have learned in law school?

The race is long, and in the end, it is only with yourself. So much time and effort is exuded by law students in competing and comparing themselves to their peers. The silliest part is that this nonstop comparison often distracts from the purpose of law school – learning to analyze and learning the law. Recognizing that law school is but a tiny fraction of your life and career and being able to focus on what is important – the work – is so critical not only to academic success, but to mental well-being.

Your support changes lives!

Fellows Programs

Fellows – for individuals

\$100/year Sustaining Fellow
\$200/year Contributing Fellow
\$300/year Benefactor Fellow
\$500/year Leadership Fellow
\$1,000/year Governing Fellow

Community Fellows – for organizations or businesses

\$1,000/year Community Partner
\$2,500/year Community Supporter
\$5,000/year Community Champion
\$7,500/year Community Pillar
\$10,000/year Community Cornerstone

Memorials & Tributes

Make a tribute or memorial gift in honor of someone. OBF will send a handwritten tribute card to them or their family.

Unclaimed Trust Funds

Unclaimed trust funds can be directed to the OBF. Please include the client name, case number and as much detailed information as possible about the funds on your company letterhead with the enclosed check.

Interest on Lawyer Trust Accounts (IOLTA)

OBF Prime Partner Banks give at higher interest rates, so more money is available for OBF Grantees to provide legal services. Select a Prime Partner Bank when setting up your IOLTA account: BancFirst, Bank of Oklahoma, MidFirst Bank, The First State Bank, Valliance Bank, First Oklahoma Bank Tulsa, City National Bank of Lawton, Citizens Bank of Ada, First Bank and Trust Duncan.

Cy Pres Awards

Leftover monies from class action cases and other proceedings can be designated to the OBF's Court Grant Fund or General Fund as specified.



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Kick It Forward

By Nathan D. Richter

WHAT IS THE OBA KICK IT Forward (KIF) program? You may have seen a line item on your annual bar dues invoice where you can voluntarily make an additional financial contribution to Kick It Forward. But what is it, and why give your hard-earned money?

In 2014 a young lawyer wrote a letter to the YLD asking if the OBA provided relief for those struggling to pay their annual dues. You may recall that not too long ago, the legal industry was saturated, and young lawyers faced challenges finding employment. That letter prompted an inquiry into the number of lawyers around the state who struggle to pay their annual dues.

We learned there were practicing lawyers of all ages who, for a number of unfortunate reasons, struggled to pay their annual dues. We learned that those lawyers, while facing challenges that affected their ability to practice

law and earn a living, continued to provide legal services to their clients in a limited capacity within the boundaries established by their challenges. These lawyers were not bad apples ruining the bunch – so to speak – but instead were colleagues who faced challenges alone or without much support. We learned there existed a real need within our legal community that the OBA and the YLD felt compelled to meet.

After a year of planning and organizing, our 2015 YLD chair, LeAnne McGill, established KIF and kicked off the fundraising effort to assist lawyers in need with a kickball tournament. The money raised provided a fund from which our colleagues could apply for assistance to pay their annual dues. Thus, the Kick It Forward program was born.

KIF helps lawyers who are facing an array of difficulties such

We learned that those lawyers, while facing challenges that affected their ability to practice law and earn a living, continued to provide legal services to their clients in a limited capacity within the boundaries established by their challenges.



Faye Rodgers and 2015 YLD Chair LeAnne McGill co-chaired the event that started it all.

Opposite page: 2016 YLD Chair Bryon Will gets a running start for his turn on the mound.



Team Ramrod takes a group photo at the 2015 Kick It Forward Tournament, which raised the money to start the program.

as health concerns, family matters and lack of job opportunities, all of which contribute to their inability to earn enough income to pay their annual dues. Establishing the KIF program provides a helping hand to those lawyers susceptible to losing their license to practice law because they are unable to afford their annual dues. Rather than simply handout money with a pat on the back, the Kick It Forward program requires recipients to give back to KIF when they get back on their feet so other struggling lawyers may benefit from the program.

Eligible recipients of KIF funds are attorneys who: 1) are currently licensed and in good standing with the OBA, 2) reside primarily in Oklahoma, 3) are actively engaged in the practice of law or searching for legal employment, 4) are earning less than \$1,500 gross each month and 5) are willing to “kick it forward” and pay at least

the amount paid on the attorney’s behalf back into the program at a future date. Applicants submit their information which is reviewed by a committee for approval.

This year we have approved four applicants who faced decisions to feed their family, pay their medical bills or use that money to pay their bar dues. The applications are heartbreaking, but for most of us, including those who face these difficulties, the accomplishment of obtaining a law license is such a profound achievement that the hope of regaining their full-time practice motivates their resolve to be better, get well and pay it forward by giving back that which helped them in their time of need.

Kick It Forward is a wonderful program designed to help our profession be better. As a legal community, we are stronger together through professionalism and our uncompromising adherence to the rule of law. Our

profession becomes stronger when we work together to solve problems for our clients.

I encourage those of us who have been blessed to avoid challenges faced by some of our colleagues to give back by helping those who find themselves in difficult times with advice, mentoring or financial assistance. As for those in need of this assistance for 2019 dues, you can find the application on the OBA website at www.okbar.org/members/YLD/kickitforward.

Mr. Richter practices in Mustang and serves as the YLD chairperson. He may be contacted at nathan@dentonlawfirm.com. Keep up with the YLD at www.facebook.com/obayld.



Richard Darby

DISTRICT JUDGE RICHARD DARBY TO SERVE AS OKLAHOMA SUPREME COURT JUSTICE

Gov. Mary Fallin appointed District Judge Richard Darby as an Oklahoma Supreme Court justice. He succeeds former Justice Joseph Watt who retired last year.

Justice Darby has served as district judge for the 3rd Judicial District since 1994. Before that, he served as a special judge and an associate district judge for Jackson County. His duties as district judge included presiding over civil and criminal cases, assigning cases to six other judges in the district and managing a staff of one secretary bailiff and five court reporters.

"It is an honor and a privilege to be appointed to serve on the Oklahoma Supreme Court," Justice Darby said. "I am ready to meet the new challenges that will come with this appointment. I pledge to be objective and open-minded, and I will apply the law fairly."

Justice Darby will formally be sworn in Friday, May 11 at 2 p.m. in the Oklahoma Supreme Court Ceremonial Courtroom at the state Capitol.

Justice Darby is a lifelong resident of southwest Oklahoma and will represent the 9th district on the Supreme Court. He earned his bachelor's degree in political science from Southwestern Oklahoma State University and his J.D. from the OU College of Law.

LHL DISCUSSION GROUP HOSTS JUNE MEETING

"Family Members With Mental Illness" will be the topic of the June 7 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 N.W. 13th St., Oklahoma City. There is no cost to attend and snacks will be provided. RSVPs to onelife@plexisgroupe.com are encouraged to ensure there is food for all.

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/OKBarAssociation and be sure to follow @OklahomaBar on Twitter and @OKBarAssociation on Instagram.

IMPORTANT UPCOMING DATES

Don't forget the Oklahoma Bar Center will close Monday, May 28, and Wednesday, July 4, in observance of Memorial Day and Independence Day. Remember to register and join us for the 2018 Solo & Small Firm Conference in Tulsa June 21-23, and be sure to docket the OBA Annual Meeting Nov. 7-9 also to be held in Tulsa.



James Gallogly

OBA MEMBER NAMED AS OU'S 14TH PRESIDENT

OBA member James Gallogly has been named as OU's 14th president. Mr. Gallogly will succeed longtime OU President David Boren, who is retiring June 30.

"I'm here because I love the University of Oklahoma," said Mr.

Gallogly. "It's a privilege to be part of the university, and I will work tirelessly with our outstanding students, faculty and administration as we achieve new standards of academic excellence."

Mr. Gallogly has held several executive positions with LyondellBassell, ConocoPhillips, Chevron Phillips Chemical Co. and Phillips Petroleum Co., beginning his career in the energy business in northeast Oklahoma in 1980. Prior to that, he practiced law with a private firm in Denver.

He received a Bachelor of Arts from the University of Colorado at Colorado Springs, Colorado, in 1974 and a J.D. from the OU College of Law in 1977. He also completed the Advanced Executive Program at the J.L. Kellogg Graduate School of Management at Northwestern University, Evanston, Illinois, in 1998.

TWENTY-TWO ATTORNEYS GRADUATE FROM THE OBA LEADERSHIP ACADEMY

Twenty-two Oklahoma attorneys graduated April 20 from the OBA's 2017-2018 Leadership Academy. Graduates completed the academy's training in leadership, motivation and communication. This is the sixth class to graduate since the academy's origination in 2007.

Graduates are Kristina Bell, City of Norman City Attorney's Office; Clayton Baker, Ward, Lee & Coats PLC; John Barbush, John E. Barbush PC; Grayson Barnes, Barnes Law PLLC; Christopher Brecht, Perrine, Redemann, Berry, Taylor & Sloan PLLC; Ruth Calvillo, Fry & Elder; Andrew Casey, Foshee & Yaffe; John W. "Billy" Coyle IV, Coyle Law Firm; Tiece Dempsey, Office of the Federal Public Defender, Western District of Oklahoma; Melissa East, McDaniel Acord PLLC; Alexis Gardner, Gardner Law Firm PLLC; Randy Gordon, Hall & Ludlam PLLC; Kari Hawkins, Oklahoma Attorney General's Office; April Kelso, Pierce Couch Hendrickson Baysinger & Green LLP; Amber Martin, Martin Law Office; Gigi McCormick, Oklahoma Department of Human Services; Candice Milard, Milard Law PLLC; Howard Morrow, Morrow Law Firm PLLC; Elizabeth Oglesby, Angela Ailles & Associates; Kendall Sykes, Cathy Christensen & Associates PC; Katherine Trent, Trent Westman Law Group; and Melissa York, Law Offices of Melissa L. York PLLC.



Leadership Academy 2017-2018 graduates

OBA MEMBER RESIGNATIONS

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

Karl Kenneth Boatman Jr.
OBA No. 14188
1804 N. Timber Avenue
Bethany, OK 73008

Gaia Thomas Patterson Mosher
OBA No. 6951
1330 Westwick Forest Ln.
Houston, TX 77043

Thomas T. Rogers
OBA No. 7726
Jackson Walker LLP
100 Congress Ave., Ste. 1100
Austin, TX 78701

Rebecca Sher
OBA No. 32667
810 Pan Court
Lafayette, CO 80026

Thomas Joseph St. Ville
OBA No. 8733
Miles & Stockbridge
100 Light Street
Baltimore, MD 21202

Dean C. Williams
OBA No. 14026
7120 S. Lewis Ave., Ste. 200
Tulsa, OK 74136-5401



BAR JOURNAL TAKES SUMMER BREAK

The *Oklahoma Bar Journal* theme issues are taking a short break. The next issue, devoted to education law, will be published in August. You'll still receive electronic issues containing court material twice a month in June and July. Have a safe and happy summer!

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 of about 500 words to OBA Communications Director Carol Manning, carolm@okbar.org.

OBA MEMBER REINSTATEMENTS

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

Charles Lawrence Case Jr.
OBA No. 15700
11414 S. 69th E Place
Bixby, OK 74008

Nancy Leah Sisson Davis
OBA No. 14398
18350 Hatteras St., Apt. 220
Tarzana, CA 91356-1695

ON THE MOVE

Gary J. Heinen, Scott P. Sullivan, Preston P. Newton, J. Tyler Willey and Bruce V. Meyer have formed The Title Law Group PLLC. The firm can be reached at 13909 Technology Drive, Suite A-2, Oklahoma City, 73134 or by phone at 405-608-1900. **R. Wayne Anderson** joins the firm as of counsel. The firm's primary practice will be oil and gas title examination.

Tiffany J. Wythe joined the Oklahoma City-based firm of Fuller Tubb & Bickford in the firm's employment law practice. Ms. Wythe previously served as an assistant attorney general as well as of counsel for the Oklahoma Department of Labor.

Jim Banowsky joined AmpThink LLC as general counsel in the firm's Dallas office. Before joining AmpThink, Mr. Banowsky worked for Microsoft Corp. for 19 years.

Jim Gaffney was named executive director of Oklahoma City-based firm Doerner, Saunders, Daniel & Anderson. Mr. Gaffney most recently served as the corporate director of Bullivant Houser Bailey PC in Portland, Oregon.

Monica A. Dionisio and Kara Rose Didier joined the Edmond-based firm Hester Schem Hester & Dionisio. Ms. Dionisio joins the firm as a partner and Ms. Didier joins as an associate. Both concentrate their practices on family law.

Gina D. Knight joined the Tulsa office of Baer & Timberlake PC as an associate. Ms. Knight will practice in the areas of title examination and foreclosure litigation.

Blake M. Feamster joined the Tulsa-based firm of Moyers Martin as an associate. Ms. Feamster is a 2012 graduate of the TU College of Law. She will practice civil litigation and appellate proceedings.

Katherine Taylor Loy was named managing director of Oklahoma City-based law firm Durbin, Larimore & Bialick. Ms. Loy practices in the areas of insurance law, litigation, personal injury and products liability. **Kaci L. Trojan** was named partner at the firm. Ms. Trojan practices appellate and civil litigation, insurance law, personal injury, product liability and pharmaceutical litigation.

John M. O'Connor, Daniel R. Ketchum II, Keith A. Wilkes, Jon M. Payne and Gregory P. Reilly joined Hall Estill as shareholders, **G.W. "Bill" Newton and Thomas M. Klenda** joined the firm in of counsel positions and **Isaac B. Helmerich** joined as an associate in the Tulsa office. Mr. O'Connor provides counsel on corporate and business law. Mr. Ketchum focuses his practice on trust and estate administration and planning. Mr. Wilkes practices labor and employment, civil rights and complex business litigation. Mr. Payne practices commercial litigation and insurance company liquidations. Mr. Reilly practices business and corporate law, labor and employment law and civil litigation. Mr. Newton assists clients in the areas of real estate, estate planning and guardianship matters. Mr. Klenda focuses his practice on franchise law, commercial transactions, business succession planning and estate and asset protection planning. Mr. Helmerich practices business and corporate law, estate planning,

commercial transactions, complex commercial litigation and insurance company liquidations.

Jennifer Golden joins Hallman & Associates PC as an associate in the firm's Norman office. Ms. Golden practices estate planning, business planning, complex probate matters and banking.

Mark H. Price joined The Bethany Law Center LLP. Mr. Price practices in the areas of trust and estate planning and business transactions.

Lori Winland joined the Oklahoma City office of Ogletree Deakins as of counsel. Ms. Winland practices litigation, administrative and regulatory law, employment counseling, compliance and ethics issues for both public and private entities.

Kevin B. Ratliff opened The Ratliff Law Firm. The firm is located at 1403 Classen Drive, Oklahoma City, 73106. His new phone number is 405-228-2017. Mr. Ratliff practices tax planning, tax controversies, estate planning and general business.

Mark A. Morrison of Durant was appointed by Chief Gary Batton and confirmed by the Choctaw Nation Tribal Council as a district court judge of the Choctaw Nation of Oklahoma. Mr. Morrison was administered the oath of office in March.

James W. Feamster III joined the Tulsa office of Allen & Garrett, Attorneys as a partner. Mr. Feamster practices family law.

KUDOS

Dawn Hallman of Norman was honored at the American Cancer Society's 2018 Individual Giving Conference where she received the ACS's National Professional Advisor of the Year award. The award was established to recognize estate planners, trust officers and wealth managers who encourage and present philanthropic opportunities to clients.

J. Michael Nordin of Oklahoma City was elected a fellow of the American College of Mortgage Attorneys (ACMA). Mr. Nordin practices complex business and corporate transactions.

Michael S. Laird of Oklahoma City was honored with the Oklahoma Arts Council Community Service Award for his significant contributions in leadership and volunteerism to the

Oklahoma arts community. Mr. Laird serves on several boards, including Allied Arts, the Arts Council of Oklahoma City, the Myriad Gardens Foundation and the Oklahoma City Ballet.

Lisa Riggs of Tulsa was recognized as a 2018 Distinguished Alumni of the OU College of Arts and Sciences. She practices civil litigation, mediation, medical malpractice, personal injury and product liability law.

AT THE PODIUM

Marty Ludlum of Edmond, a professor at the University of Central Oklahoma, spoke to several classes at Arcada University in Helsinki about the many recent changes in trade law and intercultural trade issues.

Jeff Tate of Oklahoma City spoke to the McClain County Bar Association about the automatic stay and other general bankruptcy issues.

Paul R. Foster of Norman moderated a banking regulator panel at the Community Bankers Association of Oklahoma's Winter Leadership Conference in Charleston, South Carolina.

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 to:

Lacey Plaudis
Communications Dept.
Oklahoma Bar Association
405-416-7017
barbriefs@okbar.org

Articles for the August issue must be received by July 5.



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IN MEMORIAM

Johnny Albert of Oklahoma City died March 8. He was born Sept. 15, 1967, in Oklahoma City. He received his J.D. from the OU College of Law in 2002. He was awarded the Clarence Darrow Award by the Criminal Defense Attorneys Association in 2004 following 20 consecutive not guilty verdicts while working in the Oklahoma County Public Defenders' Office. In 2012, Mr. Albert was honored by the Oklahoma County Criminal Defense Attorneys Association with the award named for his father, the Barry Albert Award. Donations in his honor may be made to the MidFirst Bank college trust account established to benefit Mr. Albert's children.

James Miner Bailey of Ponca City died March 26. He was born Jan. 15, 1955, in Trinidad, Colorado. Upon completion of high school, he attended Northern Oklahoma College, transferred to Central State University and graduated in 1977. He received his J.D. from the OU College of Law in 1980. After passing the bar, Mr. Bailey joined Northcutt, Northcutt, Clarke and Raley and later established his own private practice. He enjoyed hunting, fishing and boating. He also loved storytelling, playing the guitar and completing crossword puzzles. Mr. Bailey was involved in many local organizations including serving as the president for the Ponca City Country Club and the Kay County Bar Association. He also served on the Board of Directors for United Way and the American Red Cross.

David O. Cordell of Tulsa died March 15. He was born Nov. 11, 1931. He was a graduate of Cascia Hall Preparatory School. Mr. Cordell graduated from the University of Kansas in 1954 with a LL.B. In 1955, he received his J.D. from the OU College of Law. **After spending two years as a trial and defense attorney in the judge advocate corps of the U.S. Air Force in Korea,** Mr. Cordell joined the Tulsa law firm of Wills and Wills. In 1966, he left to open his own practice, practicing in oil, gas and real estate. Memorial donations may be made to the Chancel Choir at First Presbyterian Church of Tulsa.

Richard P. Cornish of McAlester died March 25. He was born Sept. 9, 1942, in Evanston, Illinois. He attended grade school at St. Johns in McAlester and high school at St. Gregory's High School in Shawnee. In 1964, he earned his Bachelor of Science from OSU. Mr. Cornish received his J.D. from the OU College of Law in 1966. **He was in the U.S. Army Reserve from 1966 to 1976 where he obtained the rank of captain.** He began his law practice in McAlester. In 1976, he was appointed as a U.S. magistrate judge for the Eastern District of Oklahoma and served in this capacity until his retirement in 2000. He continued to practice law until he closed his office in 2018. He was a member of the Pittsburg County Bar Association, having served as its president. Donations in his honor may be made to the Boys and Girls Club of McAlester.

Meredith E. Hardgrave of Antlers died March 24. He was born Dec. 22, 1931, in Albion. He was a 1949 graduate of Antlers High School. Mr. Hardgrave attended OU for his undergraduate degree. He went on to receive his J.D. from the OCU School of Law in 1958. After passing the bar he joined his father to form Hardgrave & Hardgrave Law Practice. He was later appointed as a district judge, serving 10 years on the bench. Mr. Hardgrave was an active citizen of Antlers serving on the school board and was long-time member of the First United Methodist Church as well as Antler's Masonic Lodge #39.

John Paul Jones of Murfreesboro, Tennessee, died Dec. 29, 2017. He was born Sept. 22, 1934, in Ft. Smith, Arkansas. He graduated from North Side High School in 1952. In 1956, he graduated from New Mexico State University and began working for the El Paso Natural Gas Co. (EPNG). After six years working for EPNG, Mr. Jones moved to Tulsa to attend the TU College of Law, receiving his J.D. in 1967. He worked in private practice for three years before returning to EPNG. After 35 years, he retired from EPNG. Mr. Jones loved to golf, read and support the Arkansas Razorbacks. He also loved to work outdoors, especially driving his riding mower.

Von Lofland of Ada died Sept. 22, 2017. He was born Jan. 27, 1959, in Beaver. He received his undergraduate degree from Oral Roberts University. In 1985, Mr. Lofland received his J.D. from the O. W. Coburn School of Law at Oral Roberts University. He practiced law for a brief period before returning to school to earn a Master of Science in telecommunications and management from OSU. At the time of his death, he was the communications specialist for People's Cooperative in Ada. He was an avid hunter and fisherman. Mr. Lofland also enjoyed listening to music and playing his guitar.

Larry L. Oliver of Tulsa died March 12. He was born Nov. 27, 1935. **After graduating from Central High School, he enlisted in the U.S. Navy.** After an honorable discharge he attended OU on a track scholarship. Mr. Oliver went on to earn his J.D. from the TU College of Law while working as an officer with the Tulsa Police Department. After working in the District Attorney's Office, he opened his own law firm, Oliver and Associates. Mr. Oliver was in private practice for many years before becoming a Supreme Court justice of the Muscogee Creek Nation.

Steven Randolph Steakley died Sept. 16, 2017. He was born June 18, 1946, in Oklahoma City. He graduated with a Bachelor of Science from OU and was a member of Phi Gamma Delta Fraternity. Mr. Steakley received his J.D. from the OCU School of Law. **He served in the U.S. Army as a first lieutenant stationed**

at Fort Sill. He was a CPA who practiced accounting as a partner with Byers & Steakley and then a partner with Coopers & Lybrand before founding Steakley & Gilbert. Mr. Steakley was a sports enthusiast and an avid golfer. He served as a director of the former Oklahoma City 89ers Baseball Club. Memorial contributions may be made to Christ the King Catholic Church.

Patrick D. Sullivan of Duncan died March 21. He was born Sept. 14, 1927, in Duncan. He graduated from Duncan High School in 1945. Mr. Sullivan earned his Bachelor of Arts from OU in 1949. In 1951, he received his J.D. from the OU College of Law. He was a member of the Delta Tau Delta social fraternity as well as the Phi Delta Phi legal fraternity. **He was called into the U.S. Air Force in 1952 during the Korean War** and attended the Judge Advocate General Course at The Air Force University Command and Staff School at Maxwell Air Force Base in Montgomery, Alabama. After graduation, he was stationed at Lackland Air Force Base in San Antonio in the Judge Advocate General's Department. Mr. Sullivan was honorably discharged from the U.S. Air Force Reserve with the rank of captain. He practiced law in the military for 57 years. He was a founding partner in the law firm of Leach & Sullivan. He was a member and former president of the Stephens County Bar Association.

OKLAHOMA BAR JOURNAL

EDITORIAL CALENDAR

2018 ISSUES

AUGUST

Education Law

Editor: Luke Adams
ladams@tisdalohara.com

SEPTEMBER

Bar Convention

Editor: Carol Manning

OCTOBER

Sports Law

Editor: Shannon Prescott
shanlpres@yahoo.com

NOVEMBER

Torts

Editor: Erin L. Means
erin.l.means@gmail.com
Deadline: Aug. 1, 2018

DECEMBER

Ethics & Professional Responsibility

Editor: Leslie Taylor
leslietaylorjd@gmail.com
Deadline: Aug. 1, 2018

2019 ISSUES

JANUARY

Meet Your Bar Association

Editor: Carol Manning

FEBRUARY

Estate Planning

Editor: Amanda Grant
amanda@spiro-law.com
Deadline: Oct. 1, 2018

MARCH

Criminal Law

Editor: Aaron Bundy
aaron@fryelder.com
Deadline: Oct. 1, 2018

APRIL

Law Day

Editor: Carol Manning

MAY

Technology

Editor: C. Scott Jones
sjones@piercecouch.com
Deadline: Jan. 1, 2019

AUGUST

Appellate Law

Editor: Luke Adams
ladams@tisdalohara.com
Deadline: May 1, 2019

SEPTEMBER

Bar Convention

Editor: Carol Manning

OCTOBER

Indian Law

Editor: Leslie Taylor
leslietaylorjd@gmail.com
Deadline: May 1, 2019

NOVEMBER

Starting a Law Practice

Editor: Patricia Flanagan
Patriciaaflanaganlawoffice@cox.net
Deadline: Aug. 1, 2019

DECEMBER

Ethics & Professional Responsibility

Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2019

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



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Increase Your Self-Confidence

Low self-esteem can make you unhappy, anxious and hold you back from pursuing career opportunities. Unfortunately, increasing self-confidence is a process, but here are some actions you can take to help build yours.

[Goo.gl/qV5f1L](https://goo.gl/qV5f1L)



Memorial Day in Oklahoma

Memorial Day was created to honor the men and women who have served our country and is a time for families to spend quality time together and explore the great state we live in! Visit a military history museum, attend an outdoor festival or head to the lake!

[Goo.gl/xHsYbV](https://goo.gl/xHsYbV)



2018 Peeps in Law Contest Winners

Every year the American Bar Association hosts a Peeps in Law diorama contest. This year's submissions included a government shutdown, eviction, political appointments and much more. See who took home this year's trophy!

[Goo.gl/4pcPVM](https://goo.gl/4pcPVM)



How to Benefit From a Mentor

According to Chris Hargreaves, creator of *Tips for Lawyers*, the number one problem with mentoring programs in law firms is nobody knows what to do with them. In this article, he shares a few ways you can benefit from having a mentor and from being a mentor.

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OFFICE SPACE AVAILABLE IN ESTABLISHED FIRM. Space located in Midtown at 136 NW 10th Street, Oklahoma City. Space includes use of common areas including two conference rooms, copy room, large reception area, kitchen, workout facilities, locker rooms and more. One or several offices. Price depends upon specific needs and circumstances. Contact George Brown, gbrown@browngouldlaw.com.

LAW OFFICE SPACE FOR LEASE. One executive law office available in established practice. \$750 per month. Furnished or unfurnished. Includes Wi-Fi and access to conference room etc. Downtown location with parking. Call Jarman Law Offices 405-606-8400 for details or email JarmanLaw@gmail.com.

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POSITIONS AVAILABLE

WATKINS TAX RESOLUTION AND ACCOUNTING FIRM is hiring attorneys for its Oklahoma City and Tulsa offices. The firm is a growing, fast-paced setting with a focus on client service in federal and state tax help (e.g. offers in compromise, penalty abatement, innocent spouse relief). Previous tax experience is not required, but previous work in customer service is preferred. Competitive salary, health insurance and 401K available. Please send a one-page resume with one-page cover letter to Info@TaxHelpOK.com.

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 Margaret Travis, 405-416-7086 or heroes@okbar.org.

PROGRESSIVE, OUTSIDE-THE-BOX THINKING BOUTIQUE DEFENSE LITIGATION FIRM seeks a nurse/paralegal with experience in medical malpractice and nursing home litigation support. Nursing degree and practical nursing care experience a must. Please send resume and salary requirements to edmison@berryfirm.com.

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LANDOWNERFIRM.COM IS LOOKING TO FILL TWO POSITIONS in the Tulsa office: 1) a paralegal or legal assistant with strong computer skills, communication skills and attention to detail and 2) an attorney position – the ideal candidate will have excellent attention to detail with an interest in writing, drafting pleadings, written discovery and legal research. Compensation DOE. Please send resumes and any other applicable info to tg@LandownerFirm.com. Applications kept in strict confidence.

NORTHWEST OKLAHOMA CITY LAW FIRM, MEE MEE HOGE & EPPERSON, PLLP, seeks office manager and/or assistant office manager. Strong bookkeeping background required including extensive experience with QuickBooks and TABS. Some IT knowledge and HR experience would be a plus. Send resume to srk@meehoge.com.

DOWNTOWNLAWFIRMISSEEKINGANASSOCIATE ATTORNEY in its Tulsa office. Ideal candidate will have 3-7 years of experience in civil litigation, with a preference for experience in the areas of insurance defense or medical malpractice. Send cover letter, resume and writing sample to pbeck@gablawyers.com.

TITLE ATTORNEY: Law firm in downtown OKC seeking an attorney to prepare oil and gas title opinions. No portable business necessary. Applicant must have experience checking land records or writing title opinions. All applications will remain confidential. Please send resume to "Box K," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

BARBER & BARTZ IS SEEKING AN ATTORNEY WITH A MINIMUM OF 12 YEARS of civil and business litigation experience. The ideal candidate will have solid litigation experience, excellent communication skills and be well-organized. Candidates seeking a firm with a team approach to litigation and a firm characterized by an environment encouraging faith and family will be interested in this unique opportunity. The compensation package is commensurate with level of experience and qualifications. An exceptional benefit package includes bonus opportunity, health insurance, life insurance and 401K with match. Applications will be kept in strict confidence. Please send resume to Robert J. Bartz, 525 South Main Street, Suite 800, Tulsa, OK 74103

POSITIONS AVAILABLE

NORMAN BASED FIRM IS SEEKING SHARP, MOTIVATED ATTORNEYS for fast-paced transactional work. Members of our growing firm enjoy a team atmosphere and an energetic environment. Attorneys will be part of a creative process in solving tax cases, handle an assigned caseload and will be assisted by an experienced support staff. Our firm offers health insurance benefits, paid vacation, paid personal days and a 401K matching program. No tax experience necessary. Position location can be for any of our Norman, OKC or Tulsa offices. Submit resumes to justin@polstontax.com.

ASSISTANT DISTRICT ATTORNEY POSITION AVAILABLE. Eighth District Attorney Brian T. Hermanson is taking applications for an assistant district attorney in Kay County, Oklahoma. The position includes prosecuting a wide range of criminal cases with a focus on general misdemeanor and felony cases. Zero – 2 years of experience required, along with strong writing and research skills. Candidates should desire to work closely with victims. This is a salaried position with full state benefits. Please email a resume, a writing sample, references and a cover letter to Brian.Hermanson@dac.state.ok.us.

IN-HOUSE LEGAL ADMINISTRATIVE ASSISTANT - Love's Travel Stops & Country Stores, Inc. seeks a full-time legal administrative assistant for its OKC Corporate Legal Department. Purpose of position is to provide full range of administrative support to multiple members of legal team, including clerical, receptionist, technical and organizational assistance. Provide heavy administrative support in processing the company's subpoenas as well as supporting multiple aspects of the company's litigation and adversarial matters. Eligible for full benefits package. Two years' experience as an administrative assistant working in litigation in a law firm or corporate legal department required. Qualified candidates are urged to act quickly and apply online for the "Legal Administrative Assistant" position at www.loves.com/jobs.

POSITIONS AVAILABLE

THE OKLAHOMA WORKERS' COMPENSATION COMMISSION is accepting applications for a qualified general counsel in our Oklahoma City office. The general counsel is the commission's chief legal officer and manages the commission's Counselors' Division and its staff. Primary duties include advising the commission's three commissioners, its executive director and other commission personnel on legal issues affecting the agency, and engaging in public education seminars. The general counsel position requires substantial experience and skills as an attorney. Candidates must have outstanding leadership, analytical, research and written and oral communication skills, and demonstrate reliability by managing time effectively and productively. Other important qualifications are knowledge and understanding of adjudicatory procedures, basic administrative law and rules of practice and procedure before the commission. Knowledge of Oklahoma state government processes, of the public records and open meeting laws, of employment law and of workers' compensation laws are also required. Familiarity with the Oklahoma legislative process is advantageous. Applications will be accepted until 11:59 p.m. Friday, May 25, 2018. This is full-time employment with state benefits and the pay range is \$75,000 - \$100,000 and is commensurate with experience and qualifications. Application forms may be downloaded from www.ok.gov/wcc/About_the_Commission/Employment/index.html. Submit application form, resume and writing sample to Human.Resources@wcc.ok.gov or mail to 1915 N. Stiles, Suite 309, Oklahoma City, OK 73105.

Please Don't Ask Me to Explain

By D. Sharon Gentry

I'M PROUD OF MY PROFESSION and believe that practicing law is interesting. But trying to explain your law practice or expertise to someone not familiar with the law is definitely NOT interesting. So, I dread it when a new acquaintance, old friend, a relative – or anyone else for that matter – asks me what kind of law I practice. My usual answer is “civil litigation” which, of course, does not mean much to most people. When the person looks at me questioningly, I say, “No criminal cases.” This clears away some of the confusion, but I can see little word bubbles

forming over their heads saying, “No big courtroom battles or gory crime scenes. Boring.” If I’m lucky, the person moves on to the next topic, and I’m off the hook.

Sometimes a person says, “Oh, great! I have a friend who is in a custody battle with an ex-girlfriend ... *blah, blah*. I’ll tell him to call you. How much do you charge?” Luckily for me, the answer is, “I don’t handle domestic matters.” (*Whew!*)

Other times, the follow-up question may be, “What kind of civil cases?” (*Oh, boy! Here we go.*) “I do personal injury, debtor-creditor litigation, some bankruptcy, some employment matters and others.” Hopefully, this is enough information to make their eyes glaze over and nudges them on to other topics.

If I am *unlucky*, I get more follow-up questions, like “What are you working on now?” (*Well, I’m working on about 50 different things. Which one do you want to know about?*) Instead, I say, “Oh, I have several irons in the fire, but, nothing stands out at the moment.” (*In other words, let’s change*

the subject.) A few times, I have actually tried to answer that question. Here’s an example: “Well, today I spoke with an opposing counsel about some disputed documents. Then, I consulted with a man who needs a lawyer *right now* because of deadlines coming up in his case. Then, I reviewed a brief for one of my colleagues...” This time, the listener’s attention starts to wander before I get to the second sentence – (*In fact, you were probably dozing off just reading it.*) – which is why I don’t answer that question anymore.

Really, my work is *not* boring. It is just hard to explain. I could easily spend an hour talking about my cases, clients and colleagues. On occasion, I can pull an amusing little anecdote out of my head, (*“The funniest thing happened in court today ...”*), but most of the time, nothing really fascinating comes to mind.

So, the next time you are at a social gathering and you politely ask someone in the group what kind of work they do, be satisfied with a vague answer. It may be that the person simply does not have the strength to explain it to you. And, honestly, you probably don’t want to know the details anyway.

Ms. Gentry practices in
Oklahoma City





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UPCOMING AUDIO WEBCASTS

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LIVE REPLAY: The Ethics of Supervising Other Lawyers

(1 total credit hour/includes no ethics credit)

Monday, May 21

LIVE REPLAY: Trust and Estate Planning for Client Privacy in a Public World

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Tuesday, May 22

Escrow Agreements in Real Estate Transactions

(1 total credit/includes no ethics credit)

Wednesday, May 23

Ethics and Digital Communications

(1 legal ethics credit)

Thursday, May 24

LIVE REPLAY: Decanting and Otherwise Fixing Broken Trusts

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Friday, May 25

LIVE REPLAY: From One Thing to Another:

Business Entity Conversions & Domestication

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LIVE REPLAY: Techniques to Restrict Shareholders/LLC Members:

The Organizational Opportunity Doctrine, Non-Competes & More

(1 total credit/includes no ethics credit)

Wednesday, May 30

Basics of Cyber-Attack Liability and Protecting Clients

(1 total credit/includes no ethics credit)

Thursday, May 31

Professionalism for the Ethical Lawyer

(1 legal ethics credit)

Friday, June 1

Choice of Entity for Service Businesses

(1 total credit/includes no ethics credit)

To register go to: www.okbar.org/members/CLE/AudioWebcast



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