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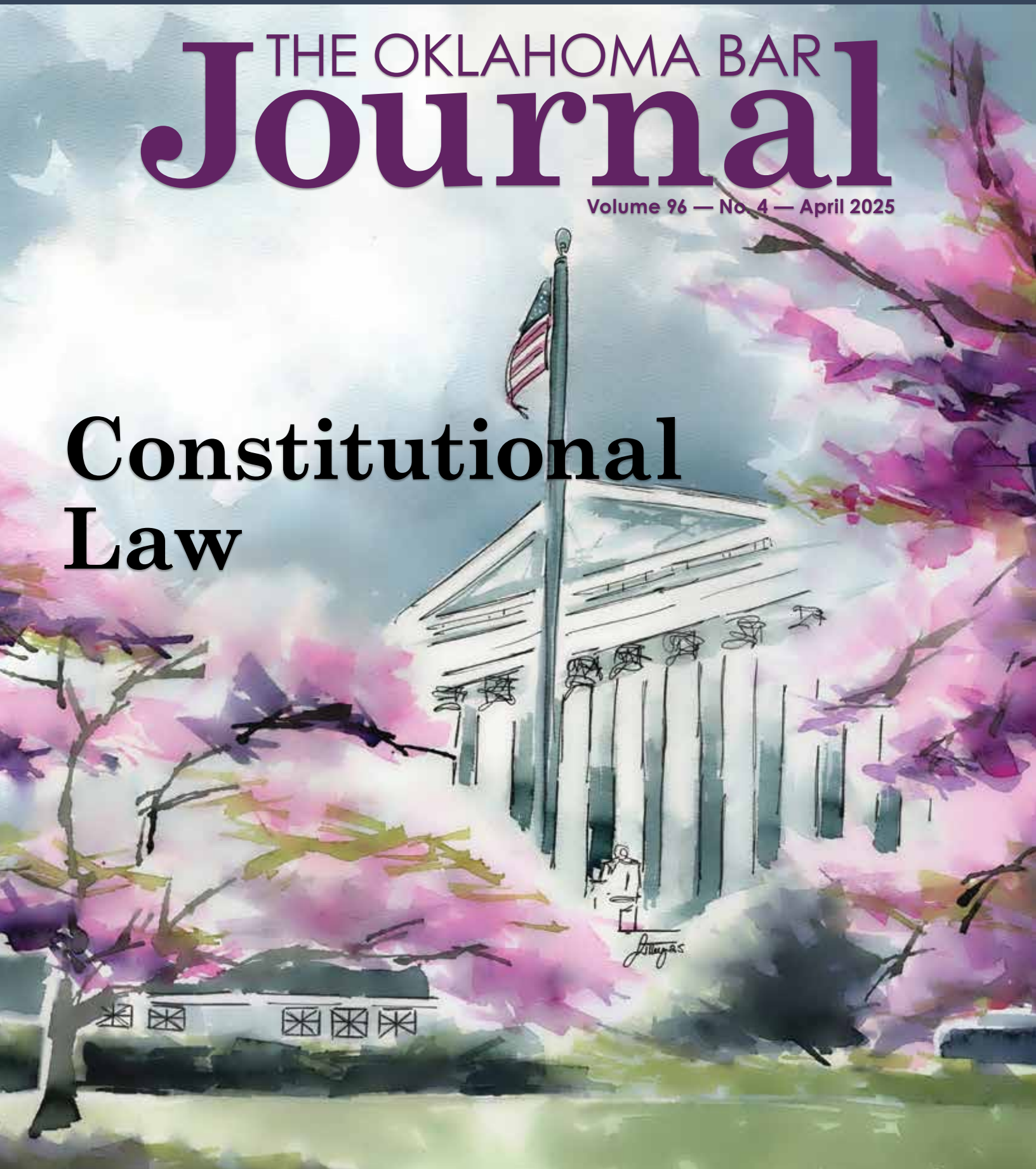

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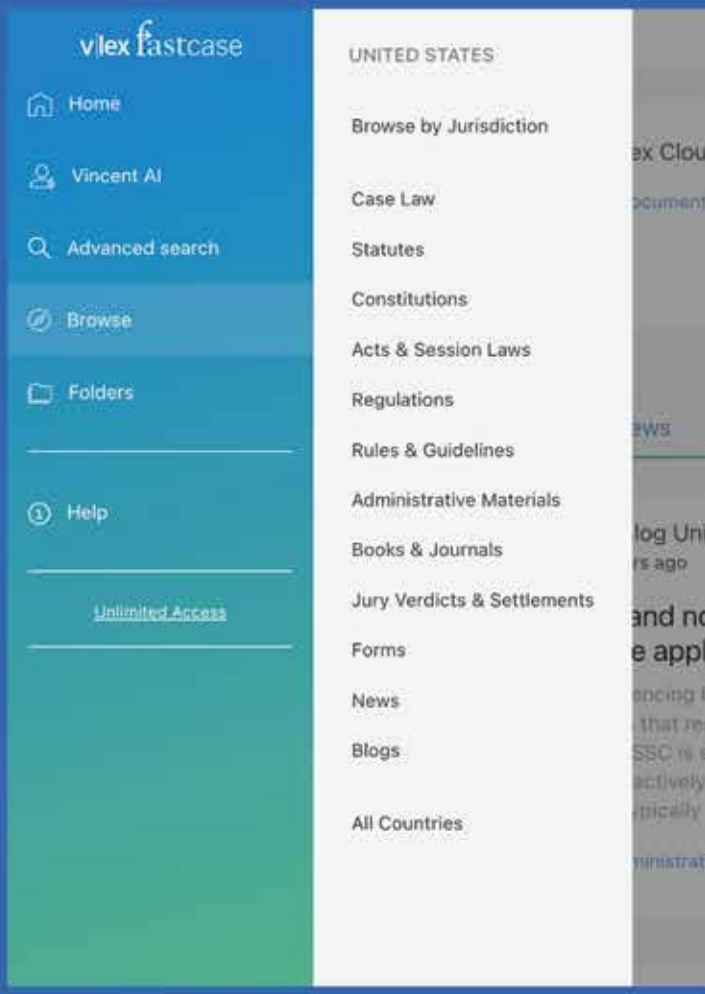

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Killers of the Flower Moon:

The Osage Murders and How Attorneys Can Combat Bias

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ABOUT THE PROGRAM:

In 1920s Oklahoma, Native Americans were treated as second class citizens. In the book and movie, *Killers of the Flower Moon*, we learn the true story about how members of the Osage Tribe were cheated out of their wealth and murdered for their oil rights. In this presentation we will watch film clips of the movie and discuss laws that discriminated against the Osage tribe.

Further, we will examine how William Hale schemed to murder members of the tribe and steal their wealth.

Finally, we will examine the work of several attorneys who led the fight against this racial persecution and helped to convict Mr. Hale of murder. The goal of the presentation is for attorneys to understand that as members of the legal profession we are in a unique position to prevent bias and discrimination.

ABOUT OUR SPEAKER: PHILIP BOGDANOFF, ESQ.

Philip Bogdanoff is a nationally recognized continuing legal education speaker on the topics of ethics, professionalism, and other related topics. Previously, as an attorney, he served as assistant prosecutor in the Summit County, Ohio Prosecutor's Office for more than 25 years, beginning in 1981. Mr. Bogdanoff argued cases before the Ohio Ninth District Court of Appeals and twenty cases before the Ohio Supreme Court including six death penalty cases - before retiring as a senior assistant prosecutor.

He is the author of numerous articles on ethics, professionalism and other related legal topics and has taught the members of numerous organizations including the National Association of Legal Administrators, as well as numerous state and local Bar associations, Prosecuting Attorney's Associations, and law firms.

★★★★★ **Robin L - Miami, Oklahoma**
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THE OKLAHOMA BAR Journal

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THEME: CONSTITUTIONAL LAW

Editor: Melanie Wilson Rughani

ON THE COVER: *"Supreme Court Building, Washington, D.C." by Amanda Lilley*
Amanda Lilley is an OBA member and watercolor artist whose artwork has been shown in exhibitions across Oklahoma, Kansas and Texas. Based in Enid, she practices in the area of criminal defense law. Her online gallery may be viewed at www.simplylilley.com.

FEATURES

DEPARTMENTS

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PAGE 50 – Jenks High School Named Mock Trial State Champion

The Magna Carta's Everlasting Impact

By D. Kenyon "Ken" Williams Jr.

THE RULER'S EXECUTIVE ORDERS WERE A problem for the rebellious house of representatives. Other concerns were the ruler's elevation of foreign-born individuals without regard to the impact on the resident population and the ruler's insistence upon arbitrary taxes, as well as his confiscatory policies, not to mention the ruler's conflict with the Jews. Ultimately, the house of representatives passed a bill that the ruler could not veto, and for a time, it seemed that the conflict was resolved.

Does that sound sort of familiar? Yes, no, maybe? From *Inventing Freedom* by Daniel Hannan:

> On June 15, 1215, in a field near Windsor an event of truly planetary significance took place. For the first time, the idea that governments were subject to the law took written, contractual form. The king [King John] put his seal to a document that, from that day to this, has been seen as the foundational charter of Anglosphere liberty: Magna Carta.

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Unfortunately, within six months, King John disregarded the Great Charter (or Magna Carta) and plunged England into the civil war that the barons (precursors to England's representative house of Parliament) sought to avoid. But, as Mr. Hannan stated in *Inventing Freedom*, "Just as that war seemed to be on the point of stalemate, the providentially bad monarch (King John) rendered one last service to England by dying opportunely in Newark Castle in October 1216 (almost certainly of dysentery, and sadly not, as one source claims, from a surfeit of peaches)."

For any of you who may be fact-checkers, feel free to confirm that King John brought foreign nationals into his circle of advisors, which caused both resentment in the barons and highlighted for the general population the national identity of Englanders. You will also find that King John imposed heavy tax burdens on England to finance his military efforts to reclaim lands lost in prior wars. He also imposed confiscation of lands and holdings of widows for the same purpose. With regard to the Jews, there was a relatively small population of Jews in England at this time, but they served as financiers, which gave rise to conflicts in which King John was involved.

So what was the Great Charter about? From Professor David Carpenter's book *Magna Carta*:

> The Charter was above all about money. Its overwhelming aim was to restrict the king's ability to take it from his subjects. Another major thrust was in the area of law and justice. The Charter wanted to make the king's dispensation of justice fairer and more accessible, while at the same time preventing his arbitrary and lawless treatment of individuals.

Even though most of us remember Sir William Blackstone for his treatise, *Commentaries on the Laws of England* (1765-1769), he is also credited with establishing a numbering system for the provisions of the Magna Carta. Chapters 40 and 39 are the two chapters that, in my opinion, cause the Magna Carta to still be revered today. Chapter 40 simply states, "To no one will we sell, to no one will we deny or delay, right or justice." Chapter 39 states:

(continued on page 66)

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CIRCLE
$A = \pi r^2$
$C = 2\pi r$
$\pi = 3,14$
$r = 5\ cm$
$A = 3,14 \cdot 5^2 =$
$= 3,14 \cdot 25 = 78,5\ cm^2$
$A = \frac{1}{2} \cdot b \cdot h$
$S = \frac{1}{4} A$
$D = 2r$

Playing the Odds: What's Next for Religion in Schools?

By Brent Rowland

OKLAHOMANS LOVE THEIR CASINOS. We have more than any other state – 143 offering slots, blackjack and off-track betting.[1] They don't take bets on U.S. Supreme Court decisions, but as attorneys, wouldn't it be great to know odds? Part of our work is playing the odds. We strategize based on factors like controlling precedent or persuasive case law and what we know about the judge's prior decisions. I'm not setting odds on constitutional questions before the Supreme Court, but I wondered: If we look at the court's decisions on religion in schools, what trends might stand out? What characteristics of the cases and the court could be generalized so that correlations among them might help explain how the court has decided cases in the past and possibly predict how it'll decide the cases currently before it? And what would that data predict about the outcome of an Oklahoma case awaiting argument before the court, the St. Isidore case,[2] a decision that could provide public funding for private religious schools in the U.S. like never before?

IDENTIFYING AND DEFINING CHARACTERISTICS OF THE CASES AND THE COURT

The court's religion-in-schools cases fall into two categories: those deciding whether *religious practices* violate the establishment or free exercise clauses of the First Amendment[3] and those determining how government *funding* can support religious schools without breaching the separation of church and state.

As for characteristics of the court, the justices on the court and the era that shaped it can be sufficiently identified with the chief justice who presided over it. For example, the Warren Court, contemporaneous with the civil rights movement, stands out for its activism on religion-in-schools issues like state-sponsored prayer and scripture reading.[4] Is there a similar identifiable tendency for each court? And do those tendencies hold true when deciding funding issues as well as religious practice issues?

A court's stance on any case, a characteristic of its jurisprudence, can be characterized as activist or restraintist. Courts take an activist stance when they:

1) strike down arguably constitutional actions of other governmental actors;
2) ignore controlling precedent from a higher court or the court's own previous decisions;
3) legislate from the bench;
4) deviate from accepted canons of interpretation to reach a decision; or
5) engage in result-oriented decision-making.[5]

Conversely, when not exercising activism, courts are practicing restraint.

Just as that dichotomy can be used to describe a court's stance on jurisprudence in general, the court's approach to religion-in-schools cases, in particular, adds a layer of data that may make its future decisions more predictable. Erwin Chemerinsky presents three competing approaches the court can take to its application of the establishment and free exercise clauses.[6]

The first approach is strict *separation*, maintaining a wall of separation between government and religion to the greatest extent possible.[7]

In the second approach, *neutrality*, the court expects the government to remain neutral on religion by neither favoring religion over secularism nor one religion over any other.[8] Applying a neutralist approach, courts read the establishment and free exercise clauses together so that religious classification provides no basis for the government to confer any benefit or impose any burden; government neither endorses nor disapproves of religion.[9]

Accommodation, the third approach, says the government accommodates a relationship with religion based on its significance to society and culture.[10] As an example, in the accommodationist view, the government would only violate the establishment clause by literally establishing a church or coercing participation in a religion.[11]

BRINGING CHARACTERISTICS TOGETHER IN ONE TABLE

Figure 1 is a chronological list of the Supreme Court's religion-in-schools cases since the Vinson Court, with additional columns to show the nature of the issue as funding or religious practice; whether the decision was based on the establishment clause, the free exercise clause or another First Amendment freedom; the court's holding – constitutional if it upheld the government's law or action, unconstitutional if it didn't; the court's stance on the case as activist or restraintist; and its approach to the case as separationist, neutralist or accommodationist.[12]

Reasonable minds could reach different conclusions about the court's stance on and approach to a given case. Their inclusion on the table doesn't make them definitively correct. Their importance is in the invitation to think beyond what the court explicitly says in its opinions and to look at the unspoken beliefs that shape its decisions, yielding trends in the court's past reasoning that offer clues about its future rulings.

LOOKING FOR TRENDS IN THE DATA

Now that the table – the "racing form" – is built, let's turn to the data. What observations stand out? First, the issue most commonly brought before the court has shifted from religious practice to government funding. Before 1993, only three of 14 cases concerned funding issues. Since 1993, of the nine religion-in-schools cases the Supreme Court has heard, seven of those addressed funding, with three of the seven decided since 2017 by the Roberts Court.

Second, the court's constitutional rationale has shifted over time. Before 1993, the establishment clause was the basis for 85% of religion-in-schools cases – or 12 of 14 decisions. In contrast, from 1993 on, less than half of the cases, four of nine, were decided on the establishment clause. The majority of cases relied on free exercise, with one, *Kennedy v. Bremerton*,[13] incorporating free exercise and freedom of speech. Every case before the Roberts Court has involved free exercise.

Although the increase in challenges to government funding of religious schools has coincided with increased reliance on the free exercise clause, the two don't appear in the same case as often as one might expect. Of the 10 funding cases the court has addressed, only four were decided on the free exercise clause. All four of those cases were decided after 2004. Every funding decision in the last 20 years, including three opinions from the Roberts Court, has been based on free exercise. Here, a pattern emerges that's likely predictive.

Before the Roberts Court, only the Warren Court consistently took an activist stance. To date, the Roberts Court has done the same, invalidating the government's action in each of the religion-in-schools cases it's heard. As for approach, every previous court has been mixed in their application – sometimes separationist, sometimes neutralist, rarely accommodationist. The Roberts Court, however, has invariably accommodated religion both in government funding programs and in questions of religious practice. But here's a twist: Prior to 1995, every funding case before the Supreme Court challenged the government's use of funds to somehow *support* religion – paying for parochial school buses, allowing tax credits for families' parochial school expenses or providing for a sign language interpreter in a religious school. Beginning

FIGURE 1: COMPARISON OF RELIGION-IN-SCHOOLS CASES

Vinson Court, 1946 to 1953						
Case	**Issue**	**Basis**	**Holding**	**Stance**	**Approach**	**Note**
Everson v. Bd. of Ed. of Ewing Twp., 330 U.S. 1 (1947)	Funding: State funds were used to pay parochial students' bus fares to get to and from school.	Establishment Clause	Constitutional	Restraintist	Separationist	The result seems neutral. But the court said, "[The] wall (between church and state) must be kept high and impregnable." (18).
McCollum v. Bd. of Ed., 333 U.S. 203 (1948)	Religious practice: A public school released students to religious classes during school hours in the school building.	Establishment Clause	Unconstitutional	Activist	Separationist	Reasoning: Tax-supported school buildings were being used for the dissemination of religious doctrine.
Zorach v. Clauson, 343 U.S. 306 (1952)	Religious practice: A public school released students during school hours for religious class off school grounds.	Establishment Clause	Constitutional	Restraintist	Accommodationist	Allowing students to receive religious instruction during school was accommodating religion – no government funds or facilities were used. (313).
Warren Court, 1953 to 1969						
Case	**Issue**	**Basis**	**Holding**	**Stance**	**Approach**	**Note**
Engel v. Vitale, 370 U.S. 421 (1962)	Religious practice: The state created a prayer that public schools led each morning.	Establishment Clause	Unconstitutional	Activist	Separationist	Reasoning: The government-composed prayer constituted a state endorsement of religion.
Sch. Dist. of Abington Twp., Pa. v. Schempp, 374 U.S. 203 (1963)	Religious practice: A public school began each day with the Lord's Prayer and a Bible reading.	Establishment Clause	Unconstitutional	Activist	Neutralist	The court said, "[F]ree Exercise ... never meant that a majority could use the machinery of the State to practice its beliefs." (226).
Epperson v. State, 393 U.S. 97 (1968)	Religious purpose: State law illegalized the teaching of evolution.	Establishment Clause	Unconstitutional	Activist	Separationist	Reasoning: The law was derived from a particular religious doctrine of a particular religious group.
Burger Court, 1969 to 1986						
Case	**Issue**	**Basis**	**Holding**	**Stance**	**Approach**	**Note**
Lemon v. Kurtzman, 403 U.S. 602 (1971)	Funding: Public funds supplemented parochial teachers' salaries for secular subjects that used public textbooks.	Establishment Clause	Unconstitutional	Activist	Separationist	Established the three-part Lemon Test, including the excessive entanglement prong.
Wisconsin v. Yoder, 406 U.S. 205 (1972)	Religious practice: State compulsory schooling laws disrupted the Amish way of life and parents' right to direct children's religious upbringing.	Free Exercise Clause	Unconstitutional	Activist	Accommodationist	Reasoning: Amish families' right to free exercise outweighed the state's interest in compelling school attendance.

Stone v. Graham, 449 U.S. 39 (1980)	Religious observation: The state planned to place a copy of the Ten Commandments in every public classroom using private funds.	Establishment Clause	Unconstitutional	Activist	Separationist	Reasoning: The act was religious in nature, and not all commandments are secular. The establishment clause was violated using the Lemon Test.
Widmar v. Vincent, 454 U.S. 263 (1981)	Religious practice: A state university denied a religious group the use of facilities for religious meetings.	Freedoms of Speech and Association	Unconstitutional	Activist	Neutralist	Reasoning: Excluding religious speech is not necessary in order to comply with the establishment clause.
Mueller v. Allen, 463 U.S. 388 (1983)	Funding: A state income tax credit for education expenses was available to public and parochial school students.	Establishment Clause	Constitutional	Restraintist	Neutralist	The court applied the Lemon Test. It also found the statute was neutral on its face.
Wallace v. Jaffree, 472 U.S. 38 (1985)	Religious practice: State law required one minute of silence in public schools for meditation or prayer.	Establishment Clause	Unconstitutional	Activist	Separationist	The court applied the Lemon Test. Its reasoning: Legislative intent clearly intended the measure to return prayer to schools.
Rehnquist Court, 1986 to 2005						
Case	**Issue**	**Basis**	**Holding**	**Stance**	**Approach**	**Note**
Edwards v. Aguillard, 482 U.S. 578 (1987)	Religious practice: State law required public schools that teach evolution to teach creation science also.	Establishment Clause	Unconstitutional	Activist	Separationist	The court applied the Lemon Test. Its reasoning: The court found that the law's primary purpose was to endorse a particular religious doctrine.
Lee v. Weisman, 505 U.S. 577 (1992)	Religious practice: Clergy delivered prayer at a public school graduation.	Establishment Clause	Unconstitutional	Activist	Accommodationist	Reasoning: The court found coercion to participate in prayer, which violates the establishment clause, even from an accommodationist approach.
Zobrest v. Catalina Foothills Sch. Dist., 509 U.S. 1 (1993)	Funding: A government-funded interpreter accompanied a deaf student to parochial school classes.	Establishment Clause	Constitutional	Activist	Neutralist	Activist because it seems inconsistent with the ruling in Lemon. Neutralist because the government provided benefits without reference to religion.
Rosenberger v. Rector and Visitors of Univ. of Virginia, 515 U.S. 819 (1995)	Funding: State university assistance provided to secular groups was denied to a religious student group that published a campus magazine.	Freedom of Speech; Establishment Clause	Unconstitutional as to Speech; Constitutional as to Establishment	Activist	Neutralist	Reasoning: Free speech must be promoted equally. Activist because of the shift from the earlier decision in *Rust v. Sullivan,* 500 U.S. 173 (1991).

Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000)	Religious practice: A public high school elected a student to lead a prayer over a public address system at each football game.	Establishment Clause	Unconstitutional	Activist	Separationist	Reasoning: Prayer was authorized by the government and government-sponsored on government property. Many students were required to attend the games.
Zelman v. Simmons-Harris, 536 U.S. 639 (2002)	Funding: The state provided tuition vouchers students could use to attend any private school, secular or religious.	Establishment Clause	Constitutional	Activist	Neutralist	Reasoning: "[B]enefits are available to ... families on neutral terms, with no reference to religion." (653).
Locke v. Davey, 540 U.S. 712 (2004)	Funding: A state scholarship program included religious colleges but not ministerial studies because the state constitution prohibited public funding of religion.	Free Exercise Clause	Constitutional	Restraintist	Neutralist	Reasoning: The state could allow scholarships to be used by students studying for ministry, but denying it doesn't violate the free exercise clause.
Roberts Court, 2005 to Present						
Case	**Issue**	**Basis**	**Holding**	**Stance**	**Approach**	**Note**
Trinity Lutheran Church of Columbia, Inc. v. Comer, 582 U.S. 449 (2017)	Funding: The state gave grants to resurface playgrounds but denied a grant to a church school because the state constitution prohibited public funds for religion.	Free Exercise Clause	Unconstitutional	Activist	Accommodationist	Reasoning: The state denied an otherwise available public benefit because of a school's religious status.
Espinoza v. Montana Dep't of Revenue, 591 U.S. 464 (2020)	Funding: State tax credit was prohibited for religious schools because the state constitution prohibited funding religion.	Free Exercise Clause	Unconstitutional	Activist	Accommodationist	Reasoning: The state must have a compelling reason and no alternative any time it denies benefits to religious institutions that it allows to secular ones.
Carson as next friend of O. C. v. Makin, 596 U.S. 767 (2022)	Funding: The state provided funds to attend private schools in rural areas without public schools but did not allow funds for religious schools.	Free Exercise Clause	Unconstitutional	Activist	Accommodationist	"A state violates the Free Exercise Clause when it excludes religious observers from otherwise available public benefits." (778).
Kennedy v. Bremerton Sch. Dist., 597 U.S. 507 (2022)	Religious practice: A public school coach was fired for kneeling and praying midfield after games.	Freedom of Speech; Free Exercise	Unconstitutional	Activist	Accommodationist	Reasoning: "The District sought to restrict Kennedy's actions at least in part because of their religious character." (508).

with *Rosenberger v. Rector,*[14] the cases flipped as to the government action being challenged. Since then, the court has only decided cases in which the government *denied* funding based on religion. All three of the funding cases before the Roberts Court have challenged the government's denial of funding to schools or families based on religion. The Roberts Court has found the government's action to be unconstitutional each time.

USING THE DATA TO MAKE A PREDICTION ABOUT THE COURT'S DECISION IN *ST. ISIDORE*

What does all this predict for the government funding of St. Isidore as a religious school? In the St. Isidore case, the Oklahoma City and Tulsa Catholic dioceses applied to the Oklahoma Statewide Charter School Board[15] to approve their contract to make St. Isidore of Seville Catholic Virtual School a statewide public charter school.[16] As the name suggests, St. Isidore plans to operate as a Catholic school and incorporate the teachings of the Catholic Church into every aspect of the school, including curriculum.[17] The board approved their contract.[18]

The Oklahoma Supreme Court held that the contract violated the Oklahoma Constitution and the Oklahoma Charter Schools Act, which prohibit the state from using public money for the benefit of religious institutions and require charter schools to be public and nonsectarian.[19] The Oklahoma Supreme Court reasoned that when St. Isidore asked to be funded as a public school, it also applied to become a governmental entity and a state actor bound by the separation of church and state. The court distinguished St. Isidore's case from those in which it allowed state-funded scholarships to be used at private religious schools because those scholarship funds did not directly fund religious institutions but instead went to families who made the choice to use the state funds at religious schools.[20]

St. Isidore's Catholic identity increases its attraction as a religion-in-schools test case because it brings to mind the anti-Catholic roots of the failed federal Blaine Amendment of the 19th century and the present challenges to state laws that Oklahoma and other states have enacted to prohibit public support of religious institutions.[21] Considering the trend data that indicates the Roberts Court is persistently activist in its stance, it's no surprise that the court is hearing the case and has scheduled oral argument in St. Isidore for April 30. What's more, the Roberts Court has applied a consistently accommodationist approach in cases where the state is challenged for denying benefits based on an institution's religious status. So here, where a challenge to the government's denial of funding is based on the free exercise clause and is brought before a court whose record is activist and accommodationist, the data suggests the U.S. Supreme Court will likely overrule the Oklahoma Supreme Court and accommodate St. Isidore as a religious charter under the Oklahoma Charter Schools Act.

As with any gamble, playing the odds doesn't guarantee a win. The court may instead find that the school's church-based policies in admissions and operations discriminate in ways that disqualify it from public funds. St. Isidore

> After looking at the types of religion-in-schools cases the Supreme Court has heard, analyzing the kinds of cases in which the court has been activist or restraintist and considering its tendencies to be separationist, neutralist or accommodationist, we may be able to predict the court's decision in *St. Isidore* more accurately than we could a hand of poker.

maintains it will be Catholic in all aspects, including church-based policies in admissions and operations that could potentially be challenged as discriminatory. St. Isidore also asserts it is a private – not public – school, despite Oklahoma's statutory definition of a charter school. The court could also object to the state providing funding to a religious institution in such a direct way, as opposed to the indirect government funding it has upheld in cases involving tax credits or vouchers to attend private religious schools.

CONCLUSION

After looking at the types of religion-in-schools cases the Supreme Court has heard, analyzing the kinds of cases in which the court has been activist or restraintist and considering its tendencies to be separationist, neutralist or accommodationist, we may be able to predict the court's decision in *St. Isidore* more accurately than we could a hand of poker. But courts aren't casinos. We don't go there for the entertainment value or the loose slots. We go to the court for justice and to keep the constitution alive in our laws and policies. In that endeavor, may the odds be forever in our favor.

ABOUT THE AUTHOR

Brent Rowland is the legal director and one of the attorneys for the Oklahoma Appleseed Center for Law and Justice (OK Appleseed), a public interest organization based in Tulsa. OK Appleseed works through community organizing, legislative advocacy and litigation in the areas of education, youth and criminal justice to protect the rights of and promote opportunities for all Oklahomans. Mr. Rowland is a graduate of the TU College of Law.

ENDNOTES

1. *The Oklahoman*, https://bit.ly/41Fh7NS, (last visited Nov. 29, 2024).
2. *Okla. Statewide Charter Sch. Bd. v. Drummond*, Docket No. 24-294, *SCOTUSblog*, https://bit.ly/43gGBIC, (last visited Nov. 29, 2024) (awaiting *certiorari* at the time of writing, Dec. 3, 2024).
3. U.S. Constitution, Amendment I.
4. Rebecca E. Zietlow, "The Judicial Restraint of the Warren Court (and Why It Matters)," 69 *Ohio State L. J.* 255 (2008).
5. Fern Fisher, "Moving Toward a More Perfect World: Achieving Equal Access to Justice Through a New Definition of Judicial Activism," 17 *CUNY L. Rev.* 285 (2014), citing Keenan D. Kmiec, "The Origin and Current Meanings of 'Judicial Activism,'" 92 *Calif. L. R.* 1441 (2004).
6. Erwin Chemerinsky, *Constitutional Law* 1524, Aspen Publ'g (7th ed. 2024).
7. *Id.*
8. *Id.*
9. *Id.* quoting *Lynch v. Donnelly*, 465 U.S. 668, 694 (1984).
10. *Id.* at 1527.
11. *Id.*
12. *See* Figure 1: Comparison of Religion-in-Schools Cases.
13. *Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 142 S. Ct. 2407, 213 L. Ed. 2d 755 (2022).
14. *Rosenberger v. Rector and Visitors of Univ. of Virginia*, 515 U.S. 819, 115 S. Ct. 2510, 132 L. Ed. 2d 700 (1995).
15. Formerly the Oklahoma Statewide Virtual Charter School Board.
16. *Drummond ex rel. State v. Oklahoma Statewide Virtual Charter Sch. Bd.,* 2024 OK 53, 558 P.3d 1.
17. *Id.* at 6.
18. *Id.*
19. *Id.* at 7-9.
20. *Id.* at 10, citing *Oliver v. Hofmeister*, 2016 OK 15, 368 P.3d 1270.
21. *See generally* Ward M. McAfee, "The Historical Context of the Failed Federal Blaine Amendment of 1876," 2 *First Amend. L. Rev* 1 (2003), available at https://bit.ly/3EW58m7. *See also* Frederick M. Gedicks, "Reconstructing the Blaine Amendments," 2 *First Amend. L. Rev.* 85 (2003), available at https://bit.ly/3EW5clR (explaining state Blaine Amendments in light of recent U.S. Sup. Ct. decisions).

End-Running the First Amendment in Public Schools? Lessons on the State Actor Doctrine From Oklahoma's Religious Charter School Case

By Randall J. Yates

IN *DRUMMOND V. OKLAHOMA STATEWIDE VIRTUAL CHARTER SCHOOL BOARD*, the Oklahoma Supreme Court invalidated the nation's first religious public charter school. The court ordered the Oklahoma Statewide Virtual Charter School Board to rescind its contract establishing St. Isidore Catholic Virtual Charter School, finding that the contract – which permitted a private organization affiliated with the Catholic Church to operate a virtual charter school within Oklahoma's public education system, fully integrating religion and religious teachings into its curriculum and activities – violated both the Oklahoma Constitution and the establishment clause.

Central to the court's reasoning in invalidating the contract was its application of the state actor doctrine, which determines when a private entity's conduct is subject to constitutional scrutiny, usually reserved for state actions.[1] The court concluded that St. Isidore's religious instruction and related activities were fairly attributable to the state, making the establishment clause and relevant state constitutional provisions applicable to the school, as they would be to any other public school. Through this case, this article takes a closer look at the state actor doctrine and its application when private entities are engaged in public endeavors.

UNDERSTANDING THE STATE ACTOR DOCTRINE

Constitutional protections, especially under the Bill of Rights and the 14th Amendment, typically apply to government actions, not private entities.[2] But when governments collaborate with private entities through partnerships, contracts or incentives, the line between public and private action can blur, raising constitutional questions.

The state actor doctrine provides a framework for determining when private conduct should be treated as government action and subject to constitutional limits. Courts consider factors like the level of state involvement, whether the private entity performs a function traditionally reserved for the state and the extent of state influence over the entity's actions. When a private entity is deemed a state actor, its

actions must comply with constitutional protections, just as if the government itself was acting directly.

The doctrine evolved largely in response to the limitations revealed by the *Civil Rights Cases* of 1883. In those cases, the U.S. Supreme Court held that the 14th Amendment did not apply to private acts of discrimination by privately owned businesses. But that left a gap in constitutional protections where state involvement, though ostensibly absent, was actually driving private conduct. Critical to determining whether a nominally private person or entity has engaged in state action is whether that action is "fairly attributable to the State."[3] The U.S. Supreme Court has developed several tests to make this determination. These tests include:

1) *Public Function Test:* This test asks whether the private entity is performing a function that is traditionally and exclusively the prerogative of the state, such as running elections or operating a town.
2) *Nexus or Joint Action Test:* This test examines whether there is a close relationship between the state and the private entity, such that the private entity's actions can be considered those of the state. This could include situations where the state and the private entity are working together or where the state has a significant influence on the private entity's actions.
3) *State Compulsion Test:* Under this test, a private entity may be considered a state actor if the state has coerced, compelled or significantly encouraged the private conduct in question.
4) *Entwinement Test:* This test considers whether the state is so entwined with the private entity's operations that the private entity's actions can be seen as those of the state, often taking into account factors like governance, regulation and oversight.

These tests may overlap, and the U.S. Supreme Court in *Brentwood Academy v. Tennessee Secondary School Athletic Association* cautioned that determining whether an action is fairly attributable to the state is a complex and contextdependent judgment.[4] No single factor universally dictates state action, and the decision must consider a range of factors. Even if certain conditions suggest state involvement, other reasons might still prevent attributing the action to the government. Still, these tests help courts determine when constitutional protections should apply to private actions, ensuring that the state's influence or involvement does not bypass fundamental rights. With that in mind, we will now delve deeper into each test.

The Public Function Test

To begin, the public function test applies when a private entity performs a function that has traditionally and exclusively been the role of the state. Under this test, if a private entity assumes a role historically reserved for the government, such as conducting elections or managing a town, its actions may be considered state actions and thus subject to constitutional scrutiny. The key question is whether the function has been one that *only* the government has traditionally performed; if so, the private entity may be held to the same constitutional standards as the state.

The public function test was developed under unique circumstances in *Marsh v. Alabama* in 1946. The U.S. Supreme Court considered whether a state could constitutionally impose criminal penalties on a person distributing religious literature in a company-owned town against the wishes of the town's management. The private town, owned by Gulf Shipbuilding Corp., operated like any typical American town, with public streets, a business district and a post office. A Jehovah's Witness was arrested for distributing religious literature on the town's sidewalk after being denied a permit. The Supreme Court ruled that, despite its private ownership, the company town could not infringe on First Amendment freedoms because it served the public in the same manner as any other municipality.[5]

In contrast, in *Jackson v. Metropolitan Edison Company*, the U.S. Supreme Court held that the termination of electric service by a privately owned utility company, despite being labeled "public," did not constitute state action under the 14th Amendment. The case involved a resident who had her electricity service terminated by the company for nonpayment, which it was certified by the state to do. She filed a lawsuit claiming the utility's actions violated her due process rights under the 14th Amendment, arguing that the company's actions were effectively state actions due to its regulated status, public service function and monopoly power. The Supreme Court disagreed, ruling that extensive regulation and the provision of an essential public service did not convert the utility's actions into state actions.[6]

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The bar for applying the public function test is notably high, as the function in question must not only be one traditionally performed by the government but also one that has been carried out exclusively by the government, without private involvement. The test also contains an inherent contradiction: If an activity is truly an exclusively public function – meaning only the state has traditionally performed it – then it would be unusual for a private entity to undertake it. The very fact that a private entity is performing the function suggests it may no longer be exclusively public, if it ever was. This raises the question of why a private entity is involved in what is supposed to be an exclusive governmental role. In any event, the exclusivity criterion significantly limits the range of activities that can meet the test.

The Nexus or Joint Action Test

The next test – the nexus or joint action test – is more direct in its approach. It evaluates whether the relationship between the state and the private party's conduct is sufficiently close to warrant attributing the private party's actions to the state.

The U.S. Supreme Court's *Burton v. Wilmington Parking Authority* decision provides an instructive illustration. In this case, the U.S. Supreme Court ruled that the discriminatory actions of a privately owned restaurant, which refused service to a Black customer, could be deemed state action due to the close relationship between the restaurant and the Wilmington Parking Authority, a state agency. The Wilmington Parking Authority had leased public property to the restaurant and provided various forms of support, establishing a connection where the restaurant's operations were closely interconnected with the state's interests. But the court cautioned that while many relationships might appear to fall within the scope of the 14th Amendment, differences in circumstances result in differing outcomes, perhaps limiting the ruling's application specifically to lessees of public property.[7]

Another application of this test is when a private party uses state legal procedures to deprive another party of property or when the private party is a "willful participant in joint activity with the State or its agents."[8] This was first exemplified in *Lugar v. Edmondson Oil Co.*, in which the U.S. Supreme Court held that a private creditor that secured a prejudgment attachment of the petitioner's property through state procedures was a state actor. The petitioner argued that this action deprived him of his property without due process of law. The court determined that because Edmondson Oil had invoked state procedures and engaged state officials in attaching the property, its actions were attributable to the state. The court reasoned that when private parties use state procedures to deprive individuals of their property, those actions create a sufficient nexus to be considered state action.[9]

By examining the relationship between the state and the private entity, the nexus or joint action test ensures that actions involving significant state involvement or cooperation do not escape the protections of constitutional rights. This test demonstrates the underlying principle that the state cannot insulate itself from constitutional obligations by merely acting through private parties.

The State Compulsion Test

The state compulsion test is another test used to determine when a private party's actions can be attributed to the state. This test applies when the state has either exercised coercive power or provided significant encouragement, effectively making the private party's conduct an extension of state action.

The case of *Blum v. Yaretsky* illustrates that in applying the state compulsion test, mere state regulation – like with the public function test – is insufficient to attribute private actions to the state. Private decisions, even in a heavily regulated context, must be directly influenced or compelled by the state to be considered state actions.

In *Blum*, the court held that the decisions of privately owned nursing homes to discharge or transfer Medicaid patients do not constitute state action under the 14th Amendment. The issue arose from a class action lawsuit by Medicaid patients who challenged the lack of procedural safeguards in such decisions, arguing that these actions were attributable to the state due to extensive regulation and state funding. The court reasoned that while the nursing homes were subject to state regulation and received state funding, the decisions to discharge or transfer patients were ultimately made by private parties based on medical judgments and, thus, could not be attributed to the state.[10]

On the other hand, in *Peterson v. City of Greenville*, the U.S. Supreme Court held that a restaurant's refusal to serve Black patrons was

not merely a private decision but was coerced by the state due to the local ordinance mandating segregation.[11] Likewise, in *Shelley v. Kraemer*, the U.S. Supreme Court held that the enforcement of racially restrictive covenants by state courts constituted significant state encouragement, thereby transforming private discriminatory agreements into state action. Although the covenants themselves were private, the court found that state judicial enforcement provided the necessary state involvement to trigger the protections of the 14th Amendment.[12]

While unbridled coercion is often readily apparent, determining the line between proper and improper government encouragement under the state compulsion test is challenging because government influence can take many forms, such as conditional funding, legal mandates or informal pressures. That is, an attempt to "convince" is different from an attempt to "coerce." Each instance requires a case-by-case analysis of the public-private relationship, making it difficult to establish a clear, consistent standard for when vigorous government encouragement crosses over into impermissible compulsion.

This difficulty recently took center stage in lawsuits arguing that social media platforms are subject to the First Amendment due to alleged government coercion in restricting or removing content. Although the social media companies had policies to remove misinformation, government officials were also in constant contact with these companies to remove certain posts deemed harmful or misleading, including vaccine- and coronavirus-related content. Censorship based on the latter would implicate the First Amendment but not so with the former. Under the facts of the case, it could be argued that it was not the internal policies of a private company that were the motivating factor in removing posts but the government's encouragement.[13]

The Entwinement Test

Finally, the entwinement test considers whether the state's involvement in the private entity's operations is so pervasive that the entity's conduct can be treated as that of the state. It is within this catch-all test that factors like governance, regulation and oversight are considered.

This test is best exemplified by *Brentwood Academy v. Tennessee Secondary School Athletic Association*, wherein the U.S. Supreme Court determined that a statewide athletic association was a state actor, due to the pervasive entwinement of state officials in its operations – including governance, regulation and oversight – making its actions subject to constitutional scrutiny. The issue was whether certain athlete-recruiting rules violated free speech protections. The court found that the association's regulatory activities could be fairly attributed to the state due to a confluence of factors: The majority of its members were public schools, its leadership was composed of public officials, and it operated with significant state involvement. These elements combined to create a relationship where the TSSAA's actions were sufficiently entwined with state interests, making its conduct subject to constitutional scrutiny as state action.[14]

This case shows that the entwinement test serves as a loose framework for stateattributable conduct. Consequently, the test is challenging to apply consistently, due to its reliance on vague, open-ended, multifactor analysis. Without clear criteria, courts must weigh varying factors like state involvement and integration, leading to line-drawing problems and potentially inconsistent outcomes across similar cases.

THE STATE ACTOR DOCTRINE, PUBLIC CHARTER SCHOOLS AND THE FREE EXERCISE TRILOGY

Given the rough terrain of the state actor doctrine, charter schools inevitably present challenging constitutional issues, especially in light of the U.S. Supreme Court's recent broadening of free exercise considerations in the education realm. Charter schools occupy a unique position within the public education system, blending elements of both the public and private sectors. Although they are managed by private entities, which grants them certain autonomies typically not afforded to traditional public schools, charter schools receive public funding and operate under state regulation.[15] This hybrid nature has led to complex legal questions regarding the application of the state actor doctrine to charter schools.

In *Caviness v. Horizon Community Learning Center, Inc.*, for example, the 9th Circuit Court of Appeals held that Horizon, a private nonprofit corporation running a charter school in Arizona, was not a state actor under 42 U.S.C. §1983 in its employment-related actions against a former teacher. The teacher argued that, as a charter school providing public education, it should be considered

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a state actor because public education is typically a state function. While the court acknowledged that education is a public function, it noted the relevant inquiry is not simply whether the entity performs a public function but whether the function in question has been "traditionally and exclusively the prerogative of the state."[16]

The *Caviness* court relied on the U.S. Supreme Court's decision in *Rendell-Baker v. Kohn*, where a private school providing special education was not deemed a state actor, even though it served a public function.[17] The 9th Circuit applied the same reasoning, concluding that while Horizon provided educational services, this did not make its actions automatically attributable to the state. The court noted that education can be provided by both public and private entities, and the fact that Horizon operated as a charter school under state law did not mean that all its actions, particularly employment decisions, were state actions.[18]

On the other hand, the 4th Circuit found that a public charter school was a state actor – albeit regarding different conduct under different circumstances. In *Peltier v. Charter Day School*, the 4th Circuit held that a public charter school in North Carolina was a state actor for purposes of the equal protection clause. The court determined that despite being managed by a private entity, the charter school operated as a public school under North Carolina law and was, therefore, subject to constitutional constraints. This status made the charter school accountable for its actions under the 14th Amendment, including its sex-based dress code requiring female students to wear skirts.[19]

The *Peltier* court distinguished this situation from *Rendell-Baker v. Kohn*, a case on which *Caviness* relied. In *Rendell-Baker*, the U.S. Supreme Court held that a private school for maladjusted high school students, providing education to certain students under contract with the state, did not act under color of state law when it discharged certain employees. Despite the school's heavy reliance on public funding and extensive regulation, the court determined the school's personnel decisions were not attributable to the state, as they were not influenced by state authority or policy.

The *Rendell-Baker* court held that the receipt of public funds and the performance of a public function did not make the school's actions state actions. The school was not dominated by the state, and there was no "symbiotic relationship" like in *Burton* between the school and the state, reasoning that "[a]cts of ... private contractors do not become acts of the government by reason of their significant or even total engagement in performing public contracts."[20]

Meanwhile, starting in 2017, the U.S. Supreme Court significantly expanded protections against religious discrimination (particularly private religious schools) under the free exercise clause in three landmark cases: *Trinity Lutheran Church of Columbia, Inc. v. Comer*,[21] *Espinoza v. Montana Department of Revenue*[22] and *Carson v. Makin*.[23] These cases collectively established that when a state offers a public benefit, it cannot exclude religious entities solely because of their religious nature. In each case, the court struck down state policies that denied religious organizations or individuals access to generally available public benefits, emphasizing that such exclusions violated the free exercise clause by discriminating against religion.

In *Trinity Lutheran*, the court held that Missouri's denial of a public grant to a church-run preschool for playground resurfacing solely because it was a religious institution violated the free exercise clause. *Espinoza* extended this principle by ruling that Montana could not bar religious schools from receiving public scholarship funds available to other private schools, as this exclusion was based purely on religious status. Finally, in *Carson*, the court further solidified this precedent by striking down a Maine program that excluded religious schools from receiving tuition assistance available to students in rural areas, finding that the exclusion based on religious use was unconstitutional.

For our purposes, it's important to recognize that in each of these cases – *Trinity Lutheran*, *Espinoza* and *Makin* – the U.S. Supreme Court ruled that state constitutional or statutory provisions similar to those in Oklahoma were unconstitutional as applied to the specific programs at issue. Like laws in Oklahoma, these provisions prohibited state funds, whether directly or indirectly, from being allocated to religious institutions. However, the constitutional challenges in these cases were necessarily "as-applied" because, due to the establishment clause, these provisions could not be deemed facially unconstitutional – that is, unconstitutional in all its applications.[24] Against this backdrop, we turn to the Oklahoma case.

THE OKLAHOMA SUPREME COURT'S APPLICATION OF THE STATE ACTION DOCTRINE IN THE CHARTER SCHOOL CASE

In *Drummond v. Oklahoma Statewide Virtual Charter School Board*, the Oklahoma Supreme Court considered whether the contract between the Charter School Board and St. Isidore Catholic Virtual School violated state and federal law, including the establishment clause, the Oklahoma Charter Schools Act's nonsectarian requirement and Article II, Section 5 of the Oklahoma Constitution, which states:

> No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.

In doing so, the court examined whether St. Isidore, as a publicly funded charter school managed by a private religious organization, was a state actor, making its religious instruction attributable to the state.

The contract between the board and St. Isidore – which, under Oklahoma law, established the school as a public virtual charter school – attempted to allow St. Isidore to function simultaneously as both a public charter school and a religious institution, incorporating significant religious elements into its operations and governance.

Key terms of the contract included:

- *Religious Affiliation:* Unlike the standard model, which requires charter schools to be nonsectarian, the St. Isidore contract explicitly acknowledged its religious nature. The school was permitted to fully integrate Catholic teachings into its curriculum and activities, with the contract recognizing certain rights and exemptions under state and federal law, such as the "ministerial exception" and the "church autonomy doctrine."

- *Exemption From Nonsectarian Requirements:* The contract omitted the usual prohibition against religious affiliation, allowing St. Isidore to operate as a religious institution and exercise its religious beliefs and practices, diverging from the nonsectarian mandate typically required for public charter schools.
- *Governance:* The governance of St. Isidore was to be managed by a Board of Directors primarily composed of individuals affiliated with the Catholic Church, with no more than two non-Catholics permitted on the board, ensuring the school's leadership remained firmly within Catholic control.
- *Educational Philosophy and Mission:* The contract emphasized that St. Isidore's educational mission was rooted in Catholic teachings, with the school's purpose defined as an instrument of the Catholic Church's evangelizing mission.
- *Oversight and Accountability:* While the contract allowed for some oversight by the Charter School Board, it also recognized that St. Isidore would operate with religious exemptions not typical for other public charter schools.
- *Financial Support:* St. Isidore was to receive full state funding similar to other public charter schools to support its operations.[25]

The approval of this contract was contentious, with the Charter School Board narrowly passing St. Isidore's application and final contract in 3-2 votes on June 5, 2023, and Oct. 9, 2023, respectively. The contract was formally executed Oct. 16, 2023, making St. Isidore the nation's first state-sponsored religious public charter school.[26]

Ultimately, the Oklahoma Supreme Court held that St. Isidore of Seville Catholic Virtual School, as a public charter school, was both a governmental entity and a state actor. Consequently, the court found this contractual arrangement unconstitutional. The court ruled that, under Oklahoma law, charter schools are public schools and must remain free from sectarian control, as mandated by Article 1, Section 5 of the Oklahoma Constitution. The religious character of St. Isidore led the court to conclude that the state, through the Charter School Board, was directly funding a religious institution, resulting in state-sponsored religious activities.[27]

Missed Opportunity? The Simpler Path of the Joint Action Test

Interestingly, the court relied on the "public function" and "entwinement" tests to find state action when a more straightforward path might have been through the "joint action" test. While it recognized the availability of the other tests, the court stopped after finding that St. Isidore satisfied the criteria for state action under the "entwinement" and "public function" tests.

In applying the entwinement test, the court reasoned that the state's deep involvement in establishing, funding and overseeing St. Isidore's operations demonstrated a close, intertwined relationship between the state and the school, effectively making the state a participant in the school's religious mission. The public function test was applied because St. Isidore, as a public charter school, was fulfilling the state's constitutional obligation to provide *free* public education, a role traditionally and exclusively reserved for the state in Oklahoma.[28]

The use of the public function test alone here could be seen as a missed opportunity because, as discussed above, the test itself is quite limited. While it is designed to identify instances where private entities perform roles traditionally and exclusively reserved for the government, the reality is that many functions historically associated with both public and private actors, like education, fall into a gray area. The Oklahoma Supreme Court's reliance on the public function test also puts it at odds with the 9th Circuit's decision in *Caviness*, where the court ruled that a charter school was not a state actor under the public function test because education, while a function the state undertakes, is not exclusively reserved to the state. The 9th Circuit noted that education has historically been provided by both public and private entities, and thus, it does not meet the criteria for being an exclusively public function. This is consistent with *Rendell-Baker v. Kohn*, where the U.S. Supreme Court said, "There can be no doubt that the education of maladjusted high school students is a public function," but courts should not stop the analysis there.[29]

Indeed, the first step in determining whether a private entity is a state actor is to identify the specific conduct that might warrant being attributed to the state. In this case, the conduct in question isn't necessarily educational services

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but religious instruction. Religious instruction is inherently outside the domain of the state – that's the whole point. Recognizing that the question is not whether a private entity is an arm of the state for all purposes but whether an action is fairly attributable to the state may have provided a way to distinguish *Caviness*. However, such recognition points toward using a different test.

The joint action test, on the other hand, straightforwardly examines whether a private entity is a "willful participant in joint activity with the State."[30] And the joint action test, as applied here, may fairly subsume the entwinement test. Under the facts, "joint action" – and, thus, sufficient entwinement – can be established simply by looking at the contract's terms.

The contract establishes St. Isidore as a public charter school – a governmental entity – managed by a private nonprofit. It explicitly includes religious instruction within a state-sponsored, publicly funded framework. By approving, funding and overseeing St. Isidore's operations – including its religious activities – via contract, the state directly ties the school's actions to itself, creating a joint endeavor through the contract. Indeed, it is hard to imagine more straightforward evidence of "willful participation in joint activity with the State" than such a contract.[31]

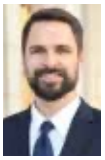
THE FUTURE OF THE STATE ACTOR DOCTRINE IN OKLAHOMA AND BEYOND

Distinguishing public from private actions in public charter schools presents significant legal challenges, hinging on the specific action under the contract with the state. Going forward, understanding how the doctrine applies here will provide valuable guidance for other situations where the government contracts with private entities to achieve public objectives. Thus, the Oklahoma Supreme Court's ruling raises important questions about how state action is defined and how it will be applied in the future.

The complexity of the state actor doctrine and the varying tests for its application mean that future cases could turn on subtle differences in how much control or influence a state exerts over a private entity, which is subject to legislative or administrative adjustment. The court's reliance on the subjective entwinement and public function tests leaves open the possibility that different facts applying different tests could lead to different outcomes. As charter schools – as well as other public-private cooperative agreements – continue to grow and diversify, the courts will likely see more challenges at the intersection of public funding, private management and the constitution.

On Jan. 24, 2025, the U.S. Supreme Court granted the Charter School Board's petition for writ of *certiorari*, agreeing to hear the question of whether St. Isidore is a state actor, with Justice Amy Coney Barrett recusing. While that leaves open the possibility of an affirmance under a 4-4 split, this case has the potential to shape the landscape not only of public education and public endeavors more broadly but also to clarify the boundaries of state involvement in religious institutions, making it a case and an area of law to watch closely.

ABOUT THE AUTHOR



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ENDNOTES

1. For present purposes, let us set aside the other side of the state actor doctrine recognized in *Lindke v. Freed*: whether a *state official* acted in an official capacity or as a private citizen. 601 U.S. 187, 196 (2024).
2. *Flagg Bros. v. Brooks*, 436 U.S. 149, 156 (1978) (noting that "most rights secured by the Constitution are protected only against infringement by governments.").
3. *Lindke*, 601 U.S. at 196; *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 937 (1982); *Brentwood Acad. v. Tennessee Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 295 (2001) ("[W]e say that state action may be found if, though only if, there is such a 'close nexus between the State and the challenged action' that seemingly private behavior 'may be fairly treated as that of the State itself.'").
4. *Brentwood Acad.*, 531 U.S. at 295-96.
5. *Marsh v. State of Ala.*, 326 U.S. 501 (1946).
6. *Jackson v. Metro. Edison Co.*, 419 U.S. 345 (1974).
7. *Burton v. Wilmington Parking Auth.*, 365 U.S. 715 (1961).
8. *Lugar*, 457 U.S. at 941.
9. *Id.*
10. *Blum v. Yaretsky*, 457 U.S. 991 (1982).
11. *Peterson v. City of Greenville, S. C.*, 373 U.S. 244 (1963).
12. *Shelley v. Kraemer*, 334 U.S. 1 (1948).
13. *See, e.g., Missouri v. Biden*, 22-CV-1213 (W.D. La 2022).
14. *Brentwood Acad.*, 531 U.S. 288.
15. David French, *New York Times*, "Oklahoma Breaches the Wall Between Church and State," (June 8, 2023) ("While they tend to operate separately from local public school districts (and often have private management), they're creations of state law, highly regulated and publicly funded.").
16. *Caviness v. Horizon Cmty. Learning Ctr., Inc.*, 590 F.3d 806, 814 (9th Cir. 2010).
17. *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982).
18. *Caviness*, 590 F.3d 806.
19. *Peltier v. Charter Day Sch., Inc.*, 37 F. 4th 104 (4th Cir. 2022), *cert. denied*, 143 S. Ct. 2657 (2023).
20. *Rendell-Baker*, 457 U.S. at 841.
21. *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449 (2017).
22. *Espinoza v. Montana Dep't of Revenue*, 591 U.S. 464 (2020).
23. *Carson as next friend of O. C. v. Makin*, 596 U.S. 767 (2022).
24. *Bucklew v. Precythe*, 587 U.S. 119, 138 (2019).
25. *Drummond ex rel. State v. Oklahoma Statewide Virtual Charter Sch. Bd.*, 2024 OK 53, ¶¶4-8.
26. *Id.* ¶9.
27. *Id.* ¶45.
28. *Id.* ¶30 ("The provision of education may not be a traditionally exclusive public function, but the Oklahoma Constitutional provision for *free public* education is exclusively a public function.").
29. *Rendell-Baker*, 457 U.S. 830 at 842.
30. *Lugar*, 457 U.S. at 941.
31. *Id.*

Procedural Due Process and the Oklahoma Medical Marijuana Authority

By Nada N. Higuera

SINCE THE PASSAGE OF STATE QUESTION 788, which legalized medical cannabis, Oklahoma's cannabis industry has exploded. Oklahoma is currently home to 1,811 dispensaries and 3,029 grow facilities.[1] It has the most cannabis dispensaries per capita of any state: 36 dispensaries for every 100,000 residents.[2]

When State Question 788 was passed in 2018, there was a lack of comprehensive regulatory framework and government resources to manage the cannabis boom. Medical cannabis quickly became a billion-dollar industry in the state, second only to oil and natural gas. Now, after thousands of licenses for dispensaries and grow facilities have been issued, the Oklahoma Medical Marijuana Authority is struggling to manage and keep up with the industry.

OMMA enforces cannabis regulations through its administrative rules and procedures found in Title 442 of the Oklahoma Administrative Code. The rules govern licensure and disciplinary proceedings before OMMA, which are conducted by administrative law judges from the Oklahoma attorney general's office. The rules have constantly been in flux since OMMA became an independent state agency in 2022.[3] In fact, OMMA has operated under five distinct sets of successive rules in the last year alone.

This article examines the potential due process implications of recent rules and actions by OMMA. While OMMA is tasked with the important and difficult job of managing the cannabis industry, its regulations and enforcement actions are required to uphold the fundamental constitutional due process rights of Oklahoma citizens.

DUE PROCESS

"No person shall be deprived of life, liberty, or property, without due process of law." (Okla. Const. Art. 2, §7).

Procedural due process is a cornerstone of American constitutional law.[4] The words "life, liberty, or property, without due process of law" appear twice in the United States Constitution, in the Fifth and 14th amendments, evidencing their importance. Oklahoma's own due process clause is even more protective than its federal counterpart.[5]

"Due process" may sound like an esoteric platitude, largely irrelevant, even to lawyers. It also doesn't help that due process is more of a concept, rather than a clear legal standard. However, it is imperative for preserving basic constitutional liberties from governmental encroachment in all areas of life.

Due process requires that, before the government can deprive a citizen of their rights, the government must provide "adequate notice and a realistic opportunity to appear at a hearing in a meaningful time and in a meaningful

manner."[6] Due process is not only about the fairness of outcomes but also the fairness of the procedures by which decisions are made. The "due process clauses of the State and Federal Constitutions afford protection against arbitrary and unreasonable administrative actions."[7] It sets a minimum standard of fairness that government agencies must follow if they seek to act against an American citizen, and it applies to criminal, civil and administrative matters. In a nutshell, due process is a safeguard against injustice, ensuring that every individual is treated with dignity and respect within the legal system.

DUE PROCESS APPLICABILITY

Case law is clear that the due process clause of both the Oklahoma and the United States constitutions apply to administrative hearings where the loss of a property right is at stake.[8] This includes both business licenses and professional licenses.[9] The rationale is that when an administrative agency acts in a quasi-judicial manner, including the authority

to adjudicate the rights of an individual, that agency is required to provide due process similar to civil courts.[10] Courts consider the balancing of three factors to determine whether due process was afforded in administrative actions: "First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."[11]

Here, OMMA has the authority to suspend and revoke business licenses, fine license holders and, as discussed below, "embargo" and destroy product. Therefore, OMMA acts in a quasi-judicial manner, and its proceedings must comport with due process guarantees. OMMA must balance the interests of individuals and procedural safeguards in protecting constitutional rights. Unfortunately, at least three OMMA rules raise serious due process concerns: summary suspension, discovery and summary order of destruction.

DUE PROCESS CONCERNS

Summary Suspension

Oklahoma Administrative Code (OAC) Section 442:1-1-7 provides that if OMMA "finds that the public health, safety, or welfare requires emergency action," then the "summary suspension of any licensee may be ordered pending proceedings for revocation." The licensee may then request a hearing on the suspension, but "the burden [is] on the licensee to show good cause why the suspension should be set aside."[12] This rule places the burden of proof solely on the licensee.

When the government initiates legal proceedings against a private individual or company, the government bears the burden of proving it is justified in taking adverse action.[13] If the government claims someone violated the law and seeks to punish the individual, the government must meet the applicable standard of proof showing the evidence of the violation. Even with a show-cause order issued on a temporary employment license suspension, the burden of proof remains on the accusing party, the government, to produce evidence supporting its accusations.[14] Not only does the law clearly place the burden on the government, but arguably, the standard of that burden should be clear and convincing evidence in order to ensure due process.

The Oklahoma Supreme Court has previously addressed the standard of proof required to meet due process in administrative proceedings. In *Johnson v. Board of Governors of Registered Dentists of State of Okla.*, a dentist petitioned the Supreme Court of Oklahoma to review an administrative disciplinary action imposed against the dentist by the Board of Governors of Registered Dentists.[15] The court emphasized the importance of the right to a fair hearing because of the "possible loss of a constitutionally protected property right, the loss of a livelihood, and the loss of a professional reputation."[16] As part of that fair hearing, the Supreme Court of Oklahoma took issue with the standard of proof – reasoning the government should have had a *higher* standard of proof: "The proper standard of proof in disciplinary proceedings against a person holding a professional license is clear and convincing

If the government claims someone violated the law and seeks to punish the individual, the government must meet the applicable standard of proof showing the evidence of the violation.

evidence."[17] The court invalidated the underlying administrative rule establishing "preponderance of the evidence" as the standard.[18]

The *Johnson* case emphasized that because the defendant faced "the possible loss of a constitutionally protected property right, the loss of a livelihood, and the loss of a professional reputation," due process demands the government meet a clear and convincing evidence standard. Although *Johnson* involved a professional dental license, its reasoning applies equally to a general business license.[19]

The OMMA summary suspension rule goes far beyond imposing a lower standard of proof in suspending a business license. It would seem to remove any burden at all from the government, placing the burden solely and squarely on the licensee. Under this rule, OMMA merely needs to *allege* that "health, safety, or welfare" requires suspension. Essentially, a licensee who has invested time and money in obtaining a business license may have that license summarily suspended, and then the licensee has to obtain a hearing and prove the suspension is not valid. Someone defending themselves from government action generally is entitled to assess the evidence and claims of the government and then prepare a defense. This begs the question: How is a licensee supposed to defend against claims and evidence the government has not presented?

A licensee can always challenge license revocations and suspensions in district court, and practitioners should be aware of available appellate options.[20] Such a process, however, can be time-consuming and expensive, especially when the licensee has been temporarily put out of business. The lack of procedures at the agency level thus raises serious due process concerns.

Discovery

Many agencies, like the Oklahoma Corporation Commission, have detailed discovery rules that allow interrogatories, document production and depositions and provide that discovery on some dockets is governed by the Oklahoma Discovery Code.[21] But OMMA has not adopted the Discovery Code as set forth in the Oklahoma Rules of Civil Procedure, nor has it adopted any other discovery framework. The only discovery rule is OAC Section 442:1-1-10, but it merely allows OMMA to place limits on potential discovery.[22]

OMMA rules do not prescribe the manner or method to obtain discoverable information. The Oklahoma Administrative Procedures Act, to which OMMA is subject, allows limited subpoenas and depositions, but it does not confer any individual rights to discovery in administrative actions.[23] Because there are no methods for discovery or rules governing discovery, there is no rule-based mechanism in which to enforce fair discovery in OMMA proceedings.

Due process, at its core, requires the right to obtain discovery, including the right to "information concerning the claims of the opposing party, reasonable opportunity to be heard, and the right to confront the unfavorable witnesses."[24] In criminal cases, defendants have a due process right to discover exculpatory evidence. While an administrative OMMA hearing need not go that far, due process would seem to require OMMA, at a minimum, to disclose its evidence and findings. This is particularly true when OMMA places the burden of proof on the individual to defend themselves. "The crux of the matter is that democracy implies respect for the elementary rights of the person, however suspect or undeserving, a democratic government must practice fairness – and fairness can rarely be obtained by secret, one-sided determination of facts and decisive rights."[25]

In *Greene v. McElroy*, the United States Supreme Court reversed an administrative revocation of a security clearance because the appellant "was denied access to much of the information adverse to him and any opportunity to confront or cross-examine witnesses against him."[26] The court held that where "governmental action seriously injures an individual, and the reasonableness of the action depends on fact findings, the evidence used to prove the government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue."[27] The appellant "was denied access to much of the information adverse to him and any opportunity to confront or cross-examine witnesses against him."[28] As a result, the court reversed the actions of the administrative agency.

In OMMA hearings, OMMA has no obligation under its own rules to produce any information adverse to the licensee. OMMA may withhold even basic information, including the complaint and evidence that led to the OMMA investigation, OMMA investigative findings and body camera footage from OMMA investigators. To ensure compliance with recordkeeping and tracking of product, OMMA requires

licensees to pay for and use a "seed to sale" program called "Metrc."[29] Yet, OMMA can, and has, prohibited licensees from accessing their own business records. This is particularly problematic when OMMA accuses the licensee of failing to comply with Metrc records.

Licensees are put in a difficult position by bearing the burden of disproving OMMA's allegations but not having the evidence or basic information needed to protect their constitutionally protected property interests. To make matters worse, the administrative hearing officers conducting OMMA hearings have no authority to compel OMMA to produce exculpatory evidence, leaving a licensee powerless to defend itself in the administrative hearing.

The only real recourse for licensees to protect themselves against arbitrary and capricious actions is to seek declaratory relief from civil court. Again, however, this can be time-consuming and expensive, especially when the licensee has been temporarily put out of business.

Summary Order of Destruction

In July 2024, OMMA promulgated a new rule, Section 442:1-1-12, "Summary order for destruction," which allows OMMA to destroy any product if it asserts "the public health, safety, or welfare requires emergency action." Like with the summary license suspension rule discussed earlier, this rule places the burden of proof on the licensee to show that the licensee's private property should not be destroyed. Not only does this raise due process concerns, but this rule also appears to go well beyond the scope of the limited embargo authority granted to OMMA by the Legislature.[30]

The Legislature gave OMMA the authority to destroy product through one method only: an action in district court.[31] Presumably, the Legislature understood the severity of government agents destroying private property and, thus, required a court's approval. After all, civil court judges are entrusted to safeguard due process guarantees. The Legislature gave licensees the protection of the civil court before an administrative agency could destroy a private citizen's agricultural products.

However, OMMA created its own "summary order of destruction" rule outside the existing legislative framework of 63 O.S. §427.24(B). The Oklahoma Supreme Court has repeatedly held that administrative agencies may not make law or go beyond legislative authority.[32] Therefore, OMMA's "summary order for destruction" may exceed, if not contradict, its statutory authority, in addition to raising due process concerns. Yet, a licensee faced with a summary destruction order may have few options other than to seek a writ of prohibition or other extraordinary relief from a civil court in order to prevent summary destruction of its property – an expensive and time-consuming endeavor without the guarantee of success.

CONCLUSION

While OMMA has an extraordinarily important and difficult job of regulating the cannabis industry, accountability to the people of Oklahoma should be the foundation of its activities, especially when constitutionally protected rights are at stake.

If lawyers were subject to rules like this, there would likely be outrage. OMMA may be dealing with a seedy industry (pun intended), but due process guarantees apply equally to cannabis licensees – Oklahomans who entered this business as a means of livelihood and with dreams of becoming successful entrepreneurs. The Oklahoma voters overwhelmingly approved the legalization of medical marijuana in 2018. Accordingly, the rights of cannabis business license holders are constitutionally protected to the same extent as any other protected interest.

Surely, OMMA can do both – effectively enforce and regulate the industry while doing so in a manner consistent with fundamental due process rights. It *must* do both.

ABOUT THE AUTHOR

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ENDNOTES

1. "Licensing and Tax Data, OMMA Dashboard, Licensing Reports and Tax Revenue Reports," Oklahoma Medical Marijuana Authority, https://bit.ly/4h7ImGo (last visited Dec. 19, 2024).
2. "2024 Marijuana Industry Statistics & Data Insights," Flowhub, https://bit.ly/3QK5QW0 (last visited Dec. 19, 2024).
3. OMMA was previously under the Oklahoma State Department of Health until it became a stand-alone agency on Oct. 31, 2022.
4. Due process includes both "procedural due process" (the required legal steps) and "substantive due process" (protecting fundamental rights from government overreach). *See Cleveland Bd. of Educ. v. Loudermill,* 470 U.S. 532, 541, 105 S. Ct. 1487, 1492, 84 L. Ed. 2d 494 (1985) (holding that "minimum [procedural] requirements [are] a matter of federal law, they are not diminished by the fact that the State may have specified its

own procedures that it may deem adequate for determining the preconditions to adverse official action."); *See also, Baby F. v. Oklahoma Cty. Dist. Court*, 2015 OK 24, ¶16, 348 P.3d 1080, 1085-86 (holding that "the substantive component of the due process clause bars certain governmental action despite the adequacy of procedural protections provided.").

5. *Messenger v. Messenger*, 1992 OK 27, N. 42, 827 P.2d 865.

6. *Jackson v. Indep. Sch. Dist. No. 16 of Payne Cty.*, 1982 OK 74, ¶10, 648 P.2d 26, 30 (holding that due process is violated by the mere act of exercising judicial power upon process not reasonably calculated to apprise interested parties of the pendency of an action and are afforded the opportunity to present evidence and argument, representation by counsel, if desired, and information concerning the claims of the opposing party with reasonable opportunity to controvert them).

7. *Lindsey v. State ex rel. Dep't of Corr.,* 1979 OK 35, ¶17, 593 P.2d 1088, 1093 (reasoning that disciplinary action against an individual without due process "is not a matter of administrative discretion. It is a matter of constitutional rights.").

8. *Bowen v. State ex rel. Oklahoma Real Est. Appraisers,* 2011 OK 86, 270 P.3d 133*; Johnson v. Board of Governors of Registered Dentists of State of Okla.*, 1996 OK 41, 913 P.2d 1339.

9. *State ex rel. Oklahoma State Board of Embalmers and Funeral Directors v. Guardian Funeral Home*, 429 P.2d 732, 733, 736 (Okla. 1967) ("where it is necessary to procure a license in order to carry on a chosen profession or business, the power to revoke a license, once granted, and thus destroy in a measure the means of livelihood, is penal and therefore should be strictly construed.").

10. *Bowen v. State ex rel. Oklahoma Real Est. Appraisers, supra* note 8.

11. *Daffin v. State ex rel. Oklahoma Department of Mines*, 2011 OK 22, 251 P.3d 741, 748, citing *Mathews v. Eldridge,* 424 U.S. 319, 334-335 (1976).

12. Okla. Admin. Code §442:1-1-7(c) (2024).

13. *Johnson v. Board of Governors of Registered Dentists of State of Okla., supra* note 8 (holding that the administrative board improperly established the burden on the government lower than required for due process).

14. *Thompson v. State ex rel. Bd. of Trustees of Oklahoma Pub. Employees Ret. Sys.*, 2011 OK 89, ¶7, 264 P.3d 1251, 1254-55.

15. *Johnson, supra,* at ¶19.

16. *Id.*

17. *Id*. at ¶20.

18. *Id*. at ¶26.

19. *See, e.g., State ex rel. Oklahoma State Board of Embalmers and Funeral Directors v. Guardian Funeral Home, supra* at n. 9.

20. *See* Okla. Admin. Code 442:10-2-5(j).

21. Okla. Admin. Code §165:5-11-1.

22. Okla. Admin. Code §442:1-1-10 states in its entirety: "Discovery shall not be commenced unless a scheduling order is entered in the case and the tribunal determines that discovery is necessary for the resolution of the issues. Discovery shall be completed in accordance with the scheduling order entered in the case. The tribunal may set the total permitted number of written discovery including interrogatories, requests for production and requests for admission based on the needs of the case. The tribunal may limit the frequency, scope, and manner of depositions based on the needs of the case."

23. Okla. Stat. tit. 75 §315(b).

24. *State ex rel. Oklahoma Bar Ass'n v. Maddox*, 2006 OK 95, 152 P.3d 204, 210.

25. *Jackson v. Indep. Sch. Dist. No. 16 of Payne Cty., supra* at n. 6.

26. *Greene v. McElroy*, 360 U.S. 474, 496 (1959) (holding that no person may be deprived of the right to follow their chosen profession without full hearings where accusers may be confronted and cross-examined).

27. *Id*.

28. *Id*.

29. *See* Okla. Admin. Code 442:10-4-5(d), (e).

30. *Compare* Okla. Admin. Code 442:1-1-12 with Okla. Stat. tit. 63 §427.24.

31. Okla. Stat. tit. 63 §427.24(B).

32. *See Indep. Sch. Dist. No. 12 of Oklahoma Cty. v. State ex rel. State Bd. of Educ.*, 2024 OK 39, ¶39 (holding that the State Board of Education was without statutory authority to exercise discretionary power over the local school board under promulgated administrative regulation).

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First Among Equals: The Division of Executive Power Between the Governor and the Attorney General

By John Tyler Hammons

THE GOVERNOR OF OKLAHOMA IS THE "CHIEF MAGISTRATE" of the state government,[1] directly elected by the people of Oklahoma and charged by the Oklahoma Constitution with the duty of "caus[ing] the laws of the State to be faithfully executed."[2] The people also elect an attorney general, whom the Legislature has declared the "chief law officer of the state,"[3] with statutory authority to "take and assume control" of any litigation involving the state.[4] These competing authorities inevitably lead to conflict between Oklahoma's top executive officials. The proper division of power between the governor and the attorney general is no mere matter of arcane political interest. It is a question of paramount constitutional significance that directly impacts the liberty of all Oklahomans.

SEPARATION OF POWERS

The republic of Oklahoma has endured for over a century because of its governmental structure. The state's founding fathers believed the separation of governmental power was essential to securing freedom.[5] Although this principle is visible in the traditional separation of powers into legislative, executive and judicial branches, the state constitution provides a double layer of protection. Not only is power at the state government level divided externally between the three branches,[6] it is also divided internally between the officers who make up those branches. This internal division of power is a fundamental principle of constitutional order. When the constitution prescribes a particular function is to be performed by a given officer, then the "exercise and discharge [of that function] by any other officer [is] forbidden."[7] Allowing an officer to perform functions not pertaining to their office causes "the whole constitutional fabric [to be] undermined and destroyed."[8]

The constitution's double layer of protection is most evident through the structure of the state's executive branch. In contrast to the unitary executive of the U.S. Constitution that vests all executive power in the president of the United States alone,[9] Oklahoma employs a plural executive, in which executive power is dispersed between 11 statewide elected officials, among them being the governor and the attorney general.[10] Under this structure, the constitution "confer[s] upon [the attorney general] certain powers and duties independent of the Governor."[11] The attorney general is neither "the

agent of the Governor"[12] nor is it within the governor's power "to prevent [the attorney general] from discharging any duty imposed upon him by virtue of the constitution or the statutory law."[13] Complicating Oklahoma's plural executive, however, is the unique role the state's founding fathers assigned to the governor. While the governor and the attorney general are both vested with a portion of the executive power, the constitution gives the "supreme executive power" to the governor alone.[14]

THE POWER OF THE GOVERNOR

The precise limits of the governor's "supreme executive power" have never been fully defined, with disagreements over its scope being "nothing new."[15] In July 1908, a mere eight months after the adoption of the state constitution, the first governor asserted his authority over the first attorney general. In *State ex rel. Haskell v. Huston*, the governor sought to dismiss a lawsuit initiated by the attorney general.[16] A unanimous Supreme Court sided with the governor, ruling the attorney general could not initiate any lawsuits without first obtaining the governor's consent.[17] Observing that "the Constitution nowhere designated the duties of the Attorney General," the court held the attorney general could only exercise those powers that were consistent with state statute.[18] Although agreeing that the attorney general possessed broad common law prerogatives, the court ruled the constitution did not protect those powers against legislative alteration, diminishment or abolition.[19] Because the relevant statute restricted the attorney general from initiating lawsuits on his own motion,[20] the attorney general's common law powers were abrogated and his actions declared unlawful.[21]

The governor's constitutional position differs significantly from the attorney general in this regard. While the constitution declares only with "paucity ... the duties of the state's Attorney General,"[22] it extensively defines the role of the governor. Among the other duties assigned to that office, the constitution leaves no speculation as to whom is to administer the laws enacted by the Legislature: The governor is singularly charged with this task.[23] Unlike the attorney general, whose powers may be freely altered by legislative enactment,[24] the governor's investiture of the "supreme executive power" preserves to that office "the complete or full-range of executive powers that were recognized at the

time the Oklahoma Constitution was adopted" against legislative diminishment.[25] The ability to employ special counsel is one such preserved power, existing even in the absence of explicit statutory authorization.[26] By employing special counsel, the governor can fulfill their constitutional duty to ensure the laws of the state are faithfully executed even when, in the judgment of the governor, the officials typically responsible for their enforcement fail to faithfully perform their duties.[27]

While the governor's litigation powers have existed since statehood,[28] the attorney general's authority in this realm is a relatively recent development. At the time the constitution was adopted, the attorney general was limited to only representing the state in appeals before the Supreme Court or the Court of Criminal Appeals.[29] Although the attorney general could initiate trial court-level suits with the governor's approval, this authorization merely granted the attorney general "concurrent" rather than "exclusive" power and did not operate "to relieve or to disqualify or to take away" the powers of other relevant officials.[30] This concurrent authority was altered in 1939 when the Legislature revised the attorney general's statutory responsibilities.[31] Along with designating the attorney general the "chief law officer" of the state for the first time,[32] the 1939 amendments empowered the attorney general to "take and assume control" over any litigation involving the state.[33] This preclusive authority conferred upon the attorney general "complete dominion over every litigation" involving the state absent "explicit legislative or constitutional expression to the contrary."[34] However, as with the pre-1939 practice, this preclusive authority still required prior authorization from the governor.[35] It was not until 1995 that the attorney general gained the statutory power to initiate a lawsuit – or to assume control over an existing one – on their own motion.

CHEROKEE NATION V. UNITED STATES DEPARTMENT OF THE INTERIOR

The Supreme Court resolved the conflict between the governor's special counsel powers and the attorney general's post-1995 statutory authority in *Cherokee Nation v. United States Department of the Interior*.[36] In *Cherokee Nation*, the governor executed compacts with four tribal governments that purported to permit the compacting tribes to engage in casino operations in Oklahoma.[37] Other tribal governments sued the governor in federal court to block the implementation of such compacts.[38] The governor appointed special counsel to defend the lawfulness of his actions, but the attorney general, citing his post-1995 statutory authority, attempted to oust such special counsel with a view toward confessing error on the part of the governor. The governor objected, arguing his "supreme executive power" prohibited the attorney general from excluding the governor's involvement in the case. In light of these competing claims, the federal court certified the question of each officer's authority to represent the state to the state Supreme Court for resolution.[39]

A unanimous Supreme Court ruled in favor of the governor. The court determined the governor's "supreme executive power" is "more than a mere verbal adornment."[40] Instead, this investiture "clearly contemplates a hierarchy" within the state's executive branch "with the Governor at the top."[41] As the "highest in authority" in the executive branch,[42] the governor has the "final say" on the enforcement of state law.[43] Accordingly, the attorney general's post-1995 statutory authority cannot "override the Governor's constitutional role," with the executive branch's hierarchy mandating such authority be "subordinate" to the governor's constitutional prerogative to employ special counsel.[44] Although the attorney general is typically responsible for managing state litigation, the governor "has the right to represent the State's interests" in litigation if their own views contradict those of the attorney general.[45] This allows the governor to "concurrently" advocate for the state alongside – or in opposition to – the attorney general and, in so doing, fulfill their constitutional duty to ensure the law is faithfully executed.[46] The governor's unique role as the head of the executive branch, however, does not "nullify the Attorney General's authority."[47] Instead, both officials "may act independently" to simultaneously "represent such segments of the State's interest not represented by the [other]."[48]

CONCLUSION

The power-sharing arrangement between the governor and the attorney general recognized in *Cherokee Nation* aligns with Oklahoma's founding fathers' intention to divide governmental power to better secure liberty. While it might be more efficient for one official alone to speak for

the state in litigation, the purpose of the separation of powers is "not to promote efficiency but to preclude the exercise of arbitrary power."[49] By allowing both the governor and the attorney general to express their competing litigation positions, each side is subjected to rigorous examination. This "inevitable friction ... save[s] the people from autocracy" and preserves constitutional order.[50]

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John Tyler Hammons is an attorney in Muskogee and a founding partner at Hammons Hamby & Price, who represents municipalities and other governmental clients. Mr. Hammons is a sixth-generation Oklahoman and an enrolled citizen of the Cherokee Nation. He previously served as the 47th mayor of Muskogee, and he currently serves as the city attorney for Checotah, McAlester and Tahlequah and presides as the chief municipal judge in Muskogee.

ENDNOTES

1. Okla. Const. Art. VI, §2.
2. Okla. Const. Art. VI, §8, cl. 1.
3. 74 O.S. §18.
4. 74 O.S. §18b(A)(3).
5. *Wentz v. Thomas*, 1932 OK 636, ¶8, 15 P.2d 65, 109.
6. Okla. Const. Art. IV, §1.
7. *Trapp v. Cook Construction Co.*, 1909 OK 259, ¶11, 105 P. 667, 670.
8. *Id.* Accord *Dank v. Benson*, 2000 OK 40, ¶6, 5 P.3d 1088, 1091 ("constitutional order is offended" when power is exercised by the wrong official).
9. U.S. Const., Art. II, §1, cl. 1 ("The executive Power shall be vested in a President of the United States of America."); *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 213 (2020) ("The entire executive Power belongs to the President alone.") (internal quotation omitted).
10. Okla. Const., Art. IV, §1, cl. 1 ("The Executive authority of the state shall be vested in a Governor [and] ... Attorney General.").
11. *Insurance Co. of North America v. Welch*, 1915 OK 914, ¶12, 154 P. 48, 52.
12. *State ex rel. West v. Huston*, 1910 OK 259, 113 P. 190, 198. *Compare with Seila Law LLC*, 591 U.S. at 213 (federal executive officials "must remain accountable to the president, *whose authority they weld*") (emphasis added).
13. *State ex rel. Taylor v. Cockrell*, 1910 OK 374, ¶3, 112 P. 1000, 1000.
14. Okla. Const., Art. IV, §2.
15. *Keating v. Edmondson*, 2001 OK 110, ¶16, 37 P.3d 882, 889.
16. 1908 OK 157, 97 P. 982.
17. *Id.* at 990.
18. *Id*. at 986.
19. *Id.* at 995. *Accord Trapp*, 1909 OK 259, ¶16, 105 P. at 672 (duties assigned by the constitution to specific officers, either expressly or impliedly, may not be altered by the Legislature).
20. The statute in question was Section 6567 of the Revised Statutes of Oklahoma Territory. Although adopted by the territorial legislative assembly, Section 2 of the schedule attached to the state constitution provided all territorial laws would continue in force and effect unless repugnant to the new constitution or until repealed by the new state Legislature.
21. *Haskell*, 1908 OK 157, 97 P. at 986.
22. *State ex rel. Cartwright v. Georgia-Pacific. Corp.*, 1982 OK 148, ¶6, 663 P.2d 718, 720.
23. Okla. Const. Art. VI, §8.
24. *Cartwright*, 1982 OK 148, ¶10, 663 P.2d at 721.
25. *Vandelay Entm't, LLC v. Fallin*, 2014 OK 109, ¶12, 343 P.3d 1273, 1276.
26. *Haskell*, 1908 OK 157, 97 P. at 985.
27. *Johnston v. Conner*, 1951 OK 262, ¶8, 236 P.2d 987, 990. *Accord State ex rel. Murray, for Use & Benefit of Sapulpa State Bank v. Pure Oil Co.*, 1934 OK 514, 37 P.2d 608 (governor may act to execute the law when usual official fails or refuses to do so).
28. The governor – through his territorial-era predecessor – has possessed special counsel powers since the organization of Oklahoma Territory in 1890. *See* Section 6592 of the Revised Statutes of Oklahoma Territory of 1903. This territorial-era provision was subsequently readopted by the state Legislature as 74 OS §6.
29. Section 6567 of the Revised Statutes of Oklahoma Territory of 1903. This section was subsequently reenacted by the state Legislature as 74 OS §11 (now repealed).
30. *Dupree v. State*, 1918 OK CR 31, 171 P. 489, 491.
31. 1939 OSL 20 (codified as 74 OS §18c).
32. *Id.* at §1 (codified as 74 OS §18).
33. *Id.* at §3(c) (codified as 74 OS §18b(A)(3)).
34. *State ex rel. Nesbitt v. Dist. Court of Mayes Cnty.*, 1967 OK 228, ¶17, 440 P.2d 700, 707. *Accord State ex rel. Derryberry v. Kerr-McGee Corporation*, 1973 OK 132, 516 P.2d 813.
35. 1939 OSL 20, §3(c) (codified as 74 OS §18b(A)(3)).
36. 2025 OK 4, ___ P.3d ___.
37. The federal Indian Gaming Regulatory Act (25 USC §2701 *et seq*.) allows federally recognized Indian tribes to engage in casino operations if the state in which the casino is located enters a compact with the tribe at issue permitting the same. State approval of such gaming compacts is governed by the Oklahoma State-Tribal Gaming Act. 3A OS §261 *et seq*.
38. *Cherokee Nation, et al. v. United States Department of the Interior, et al*., case pending, Case No. 20-CV-2167-TJK, United States District Court for the District of Columbia (docketed Aug. 6, 2020).
39. The Oklahoma Revised Uniform Certification of Questions of Laws Act (20 OS §1601 *et seq*.) allows a federal court to certify an unresolved question of Oklahoma law to the Oklahoma Supreme Court for a definitive answer in order to allow the federal court to correctly apply state law in pending federal cases.
40. 2025 OK 4, ¶27, ___ P.3d ___. (citing with approval *Riley v. Cornerstone Community Outreach, Inc*., 57 So. 3d 704 (Ala. 2010)).
41. *Id.* at ¶¶24; 28.
42. *Id.* at ¶25 (citing with approval *State ex rel. Stubbs v. Dawson*, 86 Kan. 180, 119 P 360 (Kan. 1911)).
43. *Id.* at ¶28.
44. *Id.* at ¶27.
45. *Id.* at ¶30 (citing *Haskell*). While reaffirming the governor's constitutional authority to employ special counsel, the court also noted state statute recognized this power by expressly limiting the attorney general's powers as they relate to the governor. *Cherokee Nation*, 2025 OK 4, ¶18, ___ P.3d ___ (citing 74 OS §§6; 18c(A)(4)(a)).
46. *Id.* at ¶33.
47. *Id.* at ¶54 (citing *State ex rel. Howard v. Corporation Commission*, 1980 OK 96, 614 P.2d 45) (holding the various *constitutional* officers in Oklahoma's plural executive are permitted to concurrently present litigation views that differ from those of the attorney general on matters that affect their own authorities). *See also Teleco, Inc. v. Corporation Commission*, 1982 OK 93, 649 P.2d 772 (holding the attorney general may not use their litigation powers to undermine the positions expressed by a *constitutional* officer while serving as their counsel). *Contrast with Battle v. Anderson*, 708 F.2d 1523 (10th Cir. 1983) (holding the litigation position adopted by the attorney general, as the statutory chief law officer of the state, must prevail over the competing views of a *statutory* officer).
48. *Id*. at ¶55.
49. *Dank*, 2000 OK 40, 5 P.3d at 1091.
50. *Id*.

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&
OCDLA ANNUAL MEETING

JUNE 26 & 27, 2025
EMBASSY SUITES NORTHWEST
OKLAHOMA CITY, OK

The Oklahoma Criminal Defense Lawyers Association, Oklahoma Indigent Defense System, Oklahoma County and Tulsa County Public Defender Offices proudly present the ***Patrick A. Williams*** **Criminal Defense Institute & OCDLA Annual Meeting**. This year, the CDI will be held at the Embassy Suites Northwest in Oklahoma City, OK.

Location

Embassy Suites has room rates starting at **$139.00** for the CDI. This rate is good until **June 4th**. For room reservations, please call **1-405-842-6633** or visit the OCDLA website for the reservation link. If calling, reference the **OCDLA**.

The OCDLA awards presentation & Annual Meeting will take place on Thursday evening of the Institute, along with dinner and a happy hour. Awards to be given are:

The Clarence Darrow Award, Thurgood Marshall Appellate Advocacy Award &
Lord Thomas Erskine Award, Jack D. Pointer Criminal Defense Advocacy Award

Cutoff date for nominations is May 31, 2025 @ 5:00pm.
For OCDLA information, awards criteria and past award winners, please visit **www.ocdlaoklahoma.com.**

Please send nominations to:

Mail: OCDLA
PO Box 2272
OKC, OK 73101-2272

Email: bdp@for-the-defense.com

Fax: 405-212-5024

FOR MORE INFO:
EMAIL: BDP@FOR-THE-DEFENSE.COM OR CALL THE OCDLA: 405-212-5024

2025 CRIMINAL DEFENSE INSTITUTE

(FULL AGENDA AVAILABLE AT WWW.OCDLAOKLAHOMA.COM)

Thursday, June 26, 2025

– **Affirmative Obligation & Advocacy** – *Debbie Maddox, OIDS Lawton*
– **Fighting the Powers: Direct/Indirect Contempt Charges & Recusal Motions**
David Autry, Oklahoma City
– **Getting What You Need (& What They Don't Want You to Have)**
Open Records Request – *Josh Lee, Vinita, OK*
– **Stepping Into Your Power*** – *Lexlee Overton, Baton Rouge, LA*
– **Putting Your Client on the Stand** – *Ken Countryman, Phoenix, AZ*
– **What's Going on With Criminal Justice Reform** – *Damion Shade, Exec. Director &*
Michael Olson, Policy Counsel – Oklahoma Justice Reform

OCDLA Annual Meeting and Awards Dinner

5:30pm – Sponsored Happy Hour
6:30pm – Annual Meeting & Awards Dinner

Friday, June 27, 2025

– **Lessons Learned From Being Prosecuted: My Role as a Defense Attorney and the Examination of Ethics in the Process*** – *Winston Connor, Stockwell & Connor, Jay, OK*
– **Search & Seizure: How to Keep Out What You Don't Want In** – *Kent Bridge, Oklahoma City*
– **Getting What You Need: Utilizing Your Investigator to Find Difficult Information/Witnesses**
Brenda McCray, Federal Defender, Oklahoma City

Registration Fees (Awards Dinner Included)

– OCDLA Member	**_____ $ 300.00**
– Non-Member	**_____ $ 350.00**
– Registration after June 21st	**_____ $ 325.00 (OCDLA Member)**
	_____ $ 375.00 (Non-Member)

– Printed Materials _____$ 45.00 **Dinner Guest _____ $ 35.00**

TOTAL: _____

Name: _____ **Bar #:** _____

Address: _____ **City/State/Zip:** _____

Phone: _____ **Email:** _____

Credit Card Info: # _____ **Exp. Date**_____

VISIT WWW.OCDLAOKLAHOMA.COM TO REGISTER
OR MAIL THIS AD WITH PAYMENT TO: OCDLA, PO BOX 2272, OKC, OK 73101

30th Anniversary of the Murrah Building Bombing

OUR STATE AND NATION WERE FOREVER CHANGED ON APRIL 19, 1995. As we mark the 30th anniversary of the Alfred P. Murrah Federal Building bombing, we remember the Oklahoma Bar Association members who were lost that day. Thank you to the Oklahoma City National Memorial & Museum for allowing the OBA to publish these tributes and photos that are part of the museum's collection.

SUSAN JANE FERRELL

"She loved life and was determined to enjoy and make it better for all."

Cats, traveling, people and dancing – four of Susan Ferrell's loves. She had three cats, put a lot of miles on her feet in Europe, was always there to help a friend and loved to dance. Her mother, Sally Ferrell, said, "Susan had an incredible passion for dancing." This included jazz, ballet and belly dancing, which Ms. Ferrell called "Cultural Heritage Eastern Dancing." She delighted in being a member of the Jewels of the Nile dancing troupe. Ms. Ferrell, 37, was an attorney for U.S. Housing and Urban Development.

JULES A. VALDEZ

"In his younger days he had a garden and, to him, every living thing was special."

"He was always willing to work, always willing to put forth an extra effort." That's how a fellow Rotarian described Jules Valdez, 51, of Edmond. Mr. Valdez worked in the Indian Affairs division of the Department of Housing and Urban Development. A 1991 Edmond City Council candidate, he was a member of St. John the Baptist Catholic Church, the Edmond Central Rotary Club, Leadership Edmond and the Edmond Area Chamber of Commerce. He and his wife, Virginia, had a daughter, Marisa.

MICHAEL D. WEAVER

"His family came first, before his golf game, before his favorite football team."

Michael Don Weaver met his wife, Donna, while both were attending the University of Oklahoma. He proceeded to add the fun to her life for the next 21 years. For the last five years, he had served as general counsel for the Department of Housing and Urban Development. Mr. Weaver, 45, was in his office when the bomb destroyed the building. He will be missed during the family's annual get-together, where he played co-host for the "Clique Awards" along with his brother, Greg. Mr. Weaver's laughter, dry sense of humor and role of the "straight man" will always be remembered by his family.

CLARENCE EUGENE WILSON SR.

"He was known to patiently explain his position over and over again until, invariably, the other person would have to concede."

Clarence Eugene Wilson, who was chief legal counsel for Housing and Urban Development, had served as a councilman for the city of Forest Park. His sister-in-law said he was a caring person who helped everybody. Mr. Wilson, 53, was the first African American to earn a bachelor's degree in pharmacy from the University of Oklahoma before studying law at OU. Mr. Wilson had a son, Clarence Wilson Jr. Mr. Wilson was born on Aug. 8, 1945, in Lawton. He was the fourth of five children born to James and Estella Wilson. Both parents and one son, Mark, preceded him in death.

Judicial Nominating Commission Elections

Nomination Period Opens for Elections in Districts 3 and 4; Nominating Petitions Due May 16 by 5 p.m. Petition Forms Available for Download at www.okbar.org/jnc.

THE SELECTION OF QUALIFIED persons for appointment to the judiciary is of the utmost importance to the administration of justice in this state. Since the adoption of Article 7-B to the Oklahoma Constitution in 1967, there has been significant improvement in the quality of the appointments to the bench. Originally, the Judicial Nominating Commission was involved in the nomination of justices of the Supreme Court and judges of the Court of Criminal Appeals. Since the adoption of the amendment, the Legislature added the requirement that vacancies in all judgeships, appellate and trial, be filled by appointment of the governor from nominees submitted by the Judicial Nominating Commission.

The commission is composed of 15 members. There are six nonlawyers appointed by the governor, six lawyers elected by members of the bar and three at-large members: one selected by the speaker of the House of Representatives, one selected by the president pro tempore of the Senate and one selected by not less than eight members of the commission. All serve six-year terms except the members at large, who serve two-year terms. Members may not succeed themselves on the commission. The lawyer members are elected from each of the six congressional districts as they existed in 1967. (Congressional districts were redrawn in 2011.) Elections are held each odd-numbered year for members from two districts.

2025 ELECTIONS

This year, there will be elections for members in Districts 3 and 4, as those congressional districts existed in 1967. Please see the district map on page 42.

District 3 is composed of 22 counties in the eastern and southeastern parts of the state; those counties are Atoka, Bryan, Carter, Choctaw, Coal, Cotton, Garvin, Haskell, Hughes, Jefferson, Johnston, Latimer, LeFlore, Love, Marshall, McCurtain, Murray, Pittsburg, Pontotoc, Pushmataha, Seminole and Stephens.

District 4 is composed of 13 counties in the western and southwestern parts of the state, along with a portion of Oklahoma County; those counties are Caddo, Cleveland, Comanche, Grady, Greer, Harmon, Jackson, Kiowa, McClain, Oklahoma (part),* Pottawatomie, Tillman and Washita.

Lawyers desiring to be candidates for the Judicial Nominating Commission positions have until Friday, May 16, 2025, at 5 p.m. to submit their nominating petitions. Members can download petition forms at www.okbar.org/jnc. When submitting a nominating petition, candidates should include a biography of 100 words or less and a photo (preferably both digital). For additional details and a sample bio format, email Mark Schneidewent at marks@okbar.org.

Ballots will be mailed June 6, 2025, to active attorneys in good standing in Congressional Districts 3 and 4, as they existed in 1967. Ballots must be received at the Oklahoma Bar Center by 5 p.m. Friday, June 20, 2025. Ballots will be opened, tabulated and certified, and election results will be posted on June 23, 2025. In the event of a runoff, the ballots for the runoff election will be mailed June 27, 2025, and the deadline for their return is 5 p.m. July 18, 2025. Those ballots would be opened, tabulated and certified on July 21, 2025.

It is important to the administration of justice that OBA members

in Congressional Districts 3 and 4 become informed on the candidates and cast their votes. The framers of the constitutional amendment entrusted to the lawyers the responsibility of electing qualified people to serve on the commission. Lawyers in Congressional Districts 3 and 4 are encouraged to fulfill their responsibility by voting.

OBA PROCEDURES GOVERNING THE ELECTION OF LAWYER MEMBERS TO THE JUDICIAL NOMINATING COMMISSION

1. Article 7-B, Section 3, of the Oklahoma Constitution requires elections be held in each odd numbered year by Active members of the Oklahoma Bar Association to elect two members of the Judicial Nominating Commission for six-year terms from Congressional Districts as such districts existed at the date of adoption of Article 7-B of the Oklahoma Constitution (1967).
2. Ten (10) Active members of the Association, within the Congressional District from which a member of the Commission is to be elected, shall file with the Executive Director a signed petition (which may be in parts) nominating a candidate for the Commission; or, one or more County Bar Associations within said Congressional District may file with the Executive Director a nominating resolution nominating such a candidate for the Commission.
3. Nominating petitions must be received at the Bar Center by 5 p.m. on the third Friday in May.
4. All candidates shall be advised of their nominations, and unless they indicate they do not desire to serve on the Commission, their name shall be placed on the ballot.
5. If no candidates are nominated for any Congressional District, the Board of Governors shall select at least two candidates to stand for election to such office.
6. Under the supervision of the Executive Director, or her designee, ballots shall be mailed to every Active member of the Association in the respective Congressional District on the first Friday in June, and all ballots must be received at the Bar Center by 5 p.m. on the third Friday in June.
7. Under the supervision of the Executive Director, or her designee, the ballots shall be opened, tabulated and certified at 9 a.m. on the Monday following the third Friday of June.
8. If there are three or more candidates, the candidate who receives forty percent (40%) or

more of the votes cast, shall be declared the winner. If two candidates receive more than forty percent (40%) of the votes each, the candidate with the highest number of votes shall be declared the winner.

9. In case a runoff election is necessary in any Congressional District, runoff ballots shall be mailed, under the supervision of the Executive Director, or her designee, to every Active member of the Association therein on the fourth Friday in June, and all runoff ballots must be received at the Bar Center by 5 p.m. on the third Friday in July.
10. Under the supervision of the Executive Director, or her designee, the runoff ballots shall be opened, tabulated and certified at 9 a.m. on the Monday following the third Friday in July.
11. Those elected shall be immediately notified, and their function certified to the Secretary of State by the President of the Oklahoma Bar Association, attested by the Executive Director.
12. The Executive Director, or her designee, shall take possession of and destroy any ballots printed and unused.
13. Following the approval of these procedures, the election procedures, with the specific dates included, shall be published in all print and electronic publications of the Oklahoma Bar Association and placed on the Oklahoma Bar Association website until the deadline for filing nominating petitions.

NOTICE

Judicial Nominating Commission Elections Congressional Districts 3 and 4

Nominating petitions for election as members of the Judicial Nominating Commission from Congressional Districts 3 and 4 (as they existed in 1967) will be accepted by the Executive Director until 5 p.m., May 16, 2025. Ballots will be mailed June 6, 2025, and must be received at the Oklahoma Bar Center by 5 p.m. on June 20, 2025. Members can download nominating petition forms at www.okbar.org/jnc.

The six districts as they were in 1967, and as shown in Title 14 §3 of the Oklahoma Statutes.

DISTRICT NO. 3
Atoka County
Bryan County
Carter County
Choctaw County
Coal County
Cotton County
Garvin County
Haskell County
Hughes County
Jefferson County
Johnston County
Latimer County
LeFlore County
Love County
Marshall County
McCurtain County
Murray County
Pittsburg County
Pontotoc County
Pushmataha County
Seminole County
Stephens County

DISTRICT NO. 4
Caddo County
Cleveland County
Comanche County
Grady County
Greer County
Harmon County
Jackson County
Kiowa County
McClain County
Oklahoma County *(part)**
Pottawatomie County
Tillman County
Washita County

**District 4 shall include that portion of Oklahoma County described as State Senate District Number 42 and that portion of House District Number 96 not otherwise included in State Senate District Number 42, as now defined and described in Title 14, Oklahoma Statutes, Section 79 (as they existed in 1967).*

OBA CLE
Continuing Legal Education

THURSDAY,
AUGUST 14, 2025
Beginning at 9 a.m.
Oklahoma Bar Center, OKC

Live Webcast Available

Save the Date

IMPAIRED DRIVING SEMINAR

SOME TOPICS TO BE COVERED:

Tribal Law

DUI 101

Interlock Devices

Breath Testing/Blood Testing

IDAP

Sobriety Field Testing

Disclaimer: *All views or opinions expressed by any presenter during the course of this CLE is that of the presenter alone and not an opinion of the Oklahoma Bar Association, the employers, or affiliates of the presenters unless specifically stated. Additionally, any materials, including the legal research, are the product of the individual contributor, not the Oklahoma Bar Association. The Oklahoma Bar Association makes no warranty, express or implied, relating to the accuracy or content of these materials.*

ONLINE REGISTRATION COMING SOON

Bar Members Celebrate Membership Anniversaries

THE OKLAHOMA BAR Association congratulates these members who reached significant milestone anniversaries in 2025.

CLEVELAND COUNTY
Gene Charles Smith, *Norman*

OKLAHOMA COUNTY
Gordon F. Brown, *Oklahoma City*
William James Robinson, *Oklahoma City*

OUT OF STATE
Gerald Gaylord Barton, *Monterey, CA*

In 1955, Disneyland opened in Anaheim, California; the Brooklyn Dodgers won their first World Series; the Montgomery bus boycott was sparked by Rosa Parks' arrest for refusing to give up her seat on a segregated bus; President Eisenhower presented his "Open Skies" plan at the Geneva summit meeting; and General Motors demonstrated the world's first solar-powered car.

BRYAN COUNTY
Payton L. Phelps, *Durant*

CANADIAN COUNTY
Richard Meacham Fogg, *El Reno*

CLEVELAND COUNTY
Ben T. Benedum, *Norman*
Don R. Nicholson II, *Norman*
David S. Stratton, *Norman*
Charles Curtis Yon, *Oklahoma City*

COMANCHE COUNTY
John Wesley Kinslow, *Lawton*

GARFIELD COUNTY
James Richard Cox, *Enid*

LEFLORE COUNTY
Mike Sullivan, *Poteau*

OKLAHOMA COUNTY
Jon Michael Belanger, *Oklahoma City*
George W. Dahnke, *Oklahoma City*
Rollin E. Drew, *Oklahoma City*
David W. Edmonds, *Oklahoma City*
Irving Lee Faught, *Oklahoma City*
Arlen Eugene Fielden, *Oklahoma City*
Garwin Kent Fleming, *Edmond*
Philip Holmes, *Edmond*
Artis Visanio Johnson, *Oklahoma City*
Timothy D. Leonard, *Oklahoma City*
Donald Ray Lisle, *Oklahoma City*
K. T. Meade Jr., *Oklahoma City*
Robert H. Mitchell, *Oklahoma City*
Odie Allen Nance, *Edmond*
William E. Owen, *Oklahoma City*
James Michael Peters, *Oklahoma City*
William W. Rodgers Jr., *Nichols Hills*
David L. Russell, *Oklahoma City*
William F. Shdeed Jr., *Oklahoma City*
Kenneth W. Turner, *Oklahoma City*
Roy Edward Williams, *Oklahoma City*

PITTSBURG COUNTY
Robt Linthicum Ivester, *McAlester*

STEPHENS COUNTY
Rick Rodgers, *Duncan*

TILLMAN COUNTY
Loyd L. Benson, *Frederick*

TULSA COUNTY
Dick A. Blakeley, *Tulsa*
James Edward Frasier, *Tulsa*
Phil Frazier, *Tulsa*
James O. Goodwin, *Tulsa*
Robert G. Green, *Tulsa*
Vance R. Kriete, *Tulsa*
Charles A. Purser, *Tulsa*
Jerry C. Reed, *Tulsa*
Harry Lauderdale Seay III, *Tulsa*
Stephanie Kulp Seymour, *Tulsa*
John Edgar Walker, *Tulsa*
Stephen Charles Wolfe, *Tulsa*

WASHINGTON COUNTY
Charles Edward Daniels, *Bartlesville*

OUT OF STATE
Wendel Dale Jarvis, *Glenwood, AR*
Edward Coleman Hume, *Prescott, AZ*
Gene G. Livingston Jr., *Sacramento, CA*
Jack W. Rippy, *San Clemente, CA*
F. David Nelson, *Salida, CO*
John Barlow Nelson, *Chicago, IL*
Clifford Kennedy Cate Jr., *Lawrence, KS*
David Leroy Pippenger, *Timonium, MD*
Milton D. McKenzie, *Dallas, TX*
Robert James Reid, *Helotes, TX*
Billy Stephen Edwards, *Spring, TX*

In 1965, President Lyndon B. Johnson addressed a joint session of Congress to urge the passage of legislation guaranteeing voting rights for all; Martin Luther King Jr. led the historic march from Selma to Montgomery, Alabama; Edward H. White II was the first American astronaut to walk in space during the Gemini IV mission; and the U.S. Supreme Court struck down a Connecticut law banning contraception in *Griswold v. Connecticut*, establishing a constitutional right to privacy.

BECKHAM COUNTY
Leon W. Willsie, *Sayre*

BRYAN COUNTY
Kenneth D. Rainbolt, *Durant*

CADDO COUNTY
Larry Ray Monard, *Anadarko*

CANADIAN COUNTY
John A. Bass, *El Reno*
John Gerald Fears, *Mustang*
David Allen Mitchell, *Yukon*

CARTER COUNTY
Lee Card, *Ardmore*

CHEROKEE COUNTY
Steven Kent Allen, *Tahlequah*

CLEVELAND COUNTY
Deno James Argentos, *Norman*
Verland E. Behrens, *Norman*
Joe Brent Clark, *Norman*
Charles Emory Douglas, *Norman*
Gary W. Gardenhire, *Norman*
Teddy Wayne Haxel, *Norman*
Darrell L. Hogue, *Norman*
Virgil Leornard Holden, *Norman*
Cornelius Leader, *Norman*
Bruce Arnold Moates, *Oklahoma City*
R. Marc Nuttle, *Norman*
Nim Michael Razook Jr., *Norman*
Judith A. Ridgeway, *Newalla*
Micheal Charles Salem, *Norman*
Linda Gray Sheffield, *Moore*
Cody B. Waddell, *Norman*

COMANCHE COUNTY
Michael Clarke Mayhall, *Lawton*
Mark Randall Smith, *Lawton*

CRAIG COUNTY
Kent Ryals, *Vinita*

CREEK COUNTY
Wiley William Smith, *Sapulpa*
John Mark Young, *Sapulpa*

DELAWARE COUNTY
Edward Lee Bowman, *Grove*

GARFIELD COUNTY
Dennis W. Hladik, *Enid*
Linda McKnight Pickens, *Enid*
Cathy Lee Stocker, *Enid*

GRADY COUNTY
Terry M. Bruner, *Chickasha*

GRANT COUNTY
William T. Sperry, *Pond Creek*

HUGHES COUNTY
Greggory Marcel Smith, *Holdenville*

KAY COUNTY
Douglas Clair Revard, *Ponca City*
Thomas Marion Rigdon, *Newkirk*
Michael R. Vanderburg, *Ponca City*

KINGFISHER COUNTY
Ralph Edward Harrison, *Kingfisher*

LATIMER COUNTY
Mary Ann Coleman, *Talihina*

LEFLORE COUNTY
Ted A. Knight, *Poteau*

MCCLAIN COUNTY
Diane Catharine Moershel, *Norman*

MCCURTAIN COUNTY
Donald Ray Shaw, *Idabel*

OKLAHOMA COUNTY
Rebecca L. Adams, *Oklahoma City*
Teresa Bradley Adwan, *Edmond*
R. Daniel Alcorn Jr., *Oklahoma City*
Kaye Lynn Anderson, *Oklahoma City*
Jack L. Atkinson, *Edmond*
Jerry D. Balentine, *Edmond*
Jeff Ray Beeler, *Oklahoma City*
James W. Berry, *Oklahoma City*
Harry W. Birdwell, *Edmond*
Joseph C. Biscone II, *Oklahoma City*
G. Michael Blessington, *Oklahoma City*
John M. Bond, *Oklahoma City*
Doyle Eugene Brower Jr., *Oklahoma City*
G. David Bryant, *Jones*
Kenneth Louis Buettner, *Edmond*
William John Bullard, *Oklahoma City*
Steven English Clark, *Oklahoma City*
Michael Glen Coker, *Oklahoma City*
Howard W. Conyers, *Oklahoma City*
Gayle Freeman Cook, *Edmond*
James D. Cooke, *Edmond*
Barry R. Davis, *Edmond*
Brenda Jane Dilks Dodson, *Edmond*
Paul William Dudman, *Oklahoma City*
Jerry J. Dunlap II, *Oklahoma City*
Jack Leslie Elliott, *Edmond*
James Howard Everest, *Oklahoma City*
Richard Carey Ford, *Oklahoma City*
Richard Jay Gore, *Oklahoma City*
John Joseph Griffin Jr., *Oklahoma City*
Donald Eugene Halbrook, *Oklahoma City*
Norman Nash Hill III, *Oklahoma City*
Brady R. Hunt, *Midwest City*
Garvin Isaacs Jr., *Oklahoma City*
Niles Lee Jackson, *Edmond*
Kester D. Lackey Jr., *Oklahoma City*
Gregory L. Mahaffey, *Oklahoma City*
Richard G. Mason, *Edmond*
Roma McElwee, *Edmond*
H. Richard Muehleisen, *Oklahoma City*
Brooke Smith Murphy, *Oklahoma City*
Robert John Nantois, *Midwest City*
Suzanne Williams Nichols, *Oklahoma City*
Allie V. Peoples III, *Oklahoma City*
David E. Pepper, *Edmond*
D. Frank Plater Jr., *Oklahoma City*
John Thomas Pugh, *Oklahoma City*
Gregg R. Renegar, *Oklahoma City*
Robert L. Roark, *Oklahoma City*
Robert T. Roberson, *Edmond*
Mark A. Robertson, *Oklahoma City*
Ralph Edward Seals Jr., *Oklahoma City*
Bernard Leo Semtner III, *Oklahoma City*
Charles C. Smith, *Oklahoma City*
Michael Edward Smith, *Oklahoma City*
Robert Dean Smith, *Oklahoma City*
T. Scott Spradling, *Nichols Hills*
Michael D. Stack, *Edmond*
John Ray Stacy, *Oklahoma City*
Ronald Edward Stakem, *Oklahoma City*
Sheryl S. Sullivan, *Oklahoma City*
Mark Stanley Thompson, *Oklahoma City*
Robert Coleman Thompson, *Oklahoma City*
Robert Dean Tomlinson, *Oklahoma City*
Michael C. Turpen, *Oklahoma City*
Gary Ralph Underwood, *Oklahoma City*
James Wayne Vogt, *Oklahoma City*
James U. White, *Oklahoma City*

OKMULGEE COUNTY
Charles M. Humphrey III, *Okmulgee*
John Michael Insabella, *Henryetta*

OSAGE COUNTY
John Michael Gerkin, *Bartlesville*

OTTAWA COUNTY
Robert George Haney, *Miami*
Martha Barksdale Thompson, *Miami*

PAYNE COUNTY
Gary Carl Clark, *Stillwater*

PITTSBURG COUNTY
Paul B. Bishop, *McAlester*

PONTOTOC COUNTY
Alvin Dean Files, *Ada*
William Norris Peterson, *Ada*

POTTAWATOMIE COUNTY
Randy Clayton Parsons, *Shawnee*
Thomas Arthur Thompson, *Shawnee*

PUSHMATAHA COUNTY
James Thomas Branam, *Antlers*

ROGERS COUNTY
Robert W. Sullivan Jr., *Chelsea*

STEPHENS COUNTY
Thomas Taylor Ellis, *Duncan*
Susan Shea Lindley, *Duncan*
Michael M. Reynolds, *Duncan*

TULSA COUNTY
E. Clifton Baker Jr., *Broken Arrow*
Vaden F. Bales, *Tulsa*
James Worten Barlow, *Tulsa*
Howard G. Barnett Jr., *Tulsa*
Trent Allen Baulch, *Tulsa*
Ronald Edward Bernbaum, *Tulsa*
Kenneth Leonard Brune, *Tulsa*
Mark E. Buchner, *Tulsa*
Louis W. Bullock, *Tulsa*

Donald Paul Carpenter, *Tulsa*
Harold Wayne Cooper, *Tulsa*
Jack D. Crews, *Tulsa*
Robert Allen Curry, *Tulsa*
Terrel B. DoRemus, *Tulsa*
Robert Harold Fain Jr., *Tulsa*
James George Fehrle, *Tulsa*
James H. Ferris, *Tulsa*
Jeffrey David Fischer, *Tulsa*
Steven Philip Flowers, *Tulsa*
H. Delbert Frieze, *Broken Arrow*
Robert Allen Fugate, *Tulsa*
Thomas F. Ganem, *Tulsa*
Richard Alan Gann, *Tulsa*
Richard T. Garren, *Tulsa*
James Robert Gotwals, *Tulsa*
Steven M. Harris, *Tulsa*
James Kevin Hayes, *Tulsa*
Edward J. Hicks III, *Tulsa*
James Collins Hodges, *Tulsa*
Richard A. Hoffman, *Tulsa*
Charles Ralph Hogshead, *Tulsa*
Richard Kent Holmes, *Tulsa*
William Charles Kellough, *Tulsa*
Patrick Kernan, *Tulsa*
James R. Lloyd, *Sand Springs*
Gary Michael McDonald, *Tulsa*
Charles H. McKee, *Bixby*
David Bruce McKinney, *Tulsa*
J. Michael Medina, *Tulsa*
Stephen Alan Milligan, *Tulsa*
John G. Moyer Jr., *Tulsa*
Charles "Buddy" Neal Jr., *Tulsa*
James Pierce Niedermeyer, *Tulsa*
Richard Billings Noulles, *Tulsa*
John R. Paul, *Tulsa*
R.K. Pezold, *Tulsa*
Harlan Sykes Pinkerton Jr., *Sand Springs*
Philip E. Pinnell, *Tulsa*
Frederic Arden Pottorf, *Tulsa*
Thomas L. Restor, *Sand Springs*
Hugh V. Rineer, *Tulsa*
Marcialyn G. Robinowitz, *Tulsa*
Carol Joy Russo, *Tulsa*
John L. Shafer III, *Tulsa*
Pete Silva Jr., *Tulsa*
Allen M. Smallwood, *Tulsa*
Randolph Preston Stainer, *Tulsa*
Thomas E. Steichen, *Tulsa*
Charles Malcolm Sublett, *Tulsa*
Timothy John Sullivan, *Tulsa*
Janine H. VanValkenburgh, *Tulsa*
Justice Philip H. Viles Jr., *Tulsa*
John Hollis Vincent Jr., *Jenks*
Alan Leon Will, *Tulsa*
Gerald George Williams, *Tulsa*
James Allen Williamson, *Tulsa*
Raymond L. Yasser, *Tulsa*
Stephen R. Young, *Broken Arrow*

WASHINGTON COUNTY
Bruce Alan Peabody, *Bartlesville*

WOODWARD COUNTY
Donald C. Gaston, *Woodward*
John D. Loughlin, *Woodward*

OUT OF STATE
Charles Robert Teal, *Bella Vista, AR*
Glenn Martin Ford, *Cave Creek, AZ*
Christine Taylor, *Surprise, AZ*
G. Keith Roberts, *Beaumont, CA*
Sylvia Marks-Barnett, *Long Beach, CA*
John Paul Dratz Jr., *Los Angeles, CA*
Robert Rainbolt, *Nipomo, CA*
Charles Scott Beuch, *Pauma Valley, CA*
Nancy C. Schwebel Carter, *San Diego, CA*
John Daniel Munkacsy Jr., *Santa Rosa, CA*
Stephen Mark Williams, *Sierra Madre, CA*
Richard W. Schelin, *Centennial, CO*
Roland V. Harris, *Colorado Springs, CO*
James M. Mitchell, *Florissant, CO*
Mary Susan Earley, *Lakewood, CO*
Carl Garland Stevens, *Lakewood, CO*
Barbara F. Geffen, *Washington, D.C.*
Phyllis Elaine Feibus, *Wilmington, DE*
Norman Edwin Gamble, *Jacksonville, FL*
Connie Louise Walker Fuller, *Naples, FL*
Frank Thompson Read, *Ocala, FL*
Michael Lee Sparkman, *Panama City Beach, FL*
Larry Norton, *Pompano Beach, FL*
Tom Quinn, *St. Pete Beach, FL*
William Patton Simmons, *Tallahassee, FL*
David Roger Cerchie, *Vero Beach, FL*
Gary R. Morris, *Lahaina, HI*
Patricia Ann Fowler Jischke, *Lafayette, IN*
Steven G. Cooper, *Manhattan, KS*
Sarah Jane Graber, *McPherson, KS*
Paul D. Hogan, *Wichita, KS*
Judith Lenobel Elder, *Auburndale, MA*
Michael Morgan Gibson, *Rockville, MD*
William Eric Culver, *Bozeman, MT*
D. W. Boyd, *Denver, NC*
Donna H. Garner, *Dublin, NH*
William S. Ruggierio, *Parsippany, NJ*
Roderick A. Dorr, *Albuquerque, NM*
Julia Tondaleah Brown, *Mesilla Park, NM*
Richard F. Campbell III, *Santa Fe, NM*
James Donald Bednar, *New York, NY*
Mary M. Zellmer, *Vandalia, OH*
Eileen Bernadete McGovern, *Portland, OR*
Gary R. Mason, *Englewood, TN*
Patricia L. Stubblefield, *Allen, TX*
Ronald J. Stubblefield, *Allen, TX*
Gary Lewis Jackson, *Aubrey, TX*
Charles L. Hill, *Austin, TX*
Carolyn E. Shellman, *Austin, TX*
Gerard J. Rothlein Jr., *Corinth, TX*
Gregory Ernest Simmons, *Cypress, TX*
Charles Allen Gall, *Dallas, TX*
Curtis N. Culver, *Houston, TX*
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Clyde Wain Lea, *Houston, TX*
Steven P. Metheny, *McKinney, TX*
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Albert C. Metrailer, *Plano, TX*
Danna Kay Archer Brady, *San Antonio, TX*
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Phyllis Garbe Merrill, *Sugar Land, TX*
Richard Allen Mize, *Sugar Land, TX*
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Robert Michael Rogers, *Waco, TX*
Shelley J. Himel, *Roanoke, VA*
David Keith McCurdy, *Kingshill, VI*
Robert Moore Murphy Jr., *Spokane, WA*
Harry E. VanCamp, *Madison, WI*
Sterling Lee Hansen, *Cody, WY*

In 1975, *Wheel of Fortune* premiered, Bill Gates and Paul Allen founded Microsoft, the U.S. Embassy in Cambodia was evacuated during Operation Eagle Pull, *Jaws* was released in theaters and the U.S. spacecraft Apollo 18 and the Soviet spacecraft Soyuz 19 rendezvoused and docked in space as part of a mission aimed at developing space rescue capability.

SHOW YOUR CREATIVE SIDE ON THE BACK PAGE

We want to feature your work on "The Back Page" of the *Oklahoma Bar Journal*! Submit articles related to the practice of law, or send us something humorous, transforming or intriguing. Poetry, photography and artwork are also welcomed.

Email submissions of about 500 words or high-resolution images to OBA Communications Director Lori Rasmussen at lorir@okbar.org.

CONGRATULATIONS TO THE FOLLOWING OUTSTANDING OKLAHOMA ATTORNEYS FOR BEING AUTHORS OF "WEST OKLAHOMA REAL ESTATE FORMS"

The 2024-2025 Edition of the West Oklahoma Real Estate Forms Book Pocket Part (**KRAETTLI Q. EPPERSON**, General Editor) is now available! Order the full book or the pocket part at https://bit.ly/3XJcC2c or by scanning the QR code.

Here are the Oklahoma attorneys who contributed their expertise to this year's Pocket Part (2024-2025):

In the 2024-2025 updated Pocket Part: (1) the Residential Contract of Sale of Real Estate Section 1.10 was updated by **MONICA WITTROCK** (OKC); (2) a new subchapter was added as Section 5.2 Guardianship by **ROBYN OWENS** (Tulsa); (3) revisions were made to subchapter Condemnation Sections 5.80 to 5.99 by **CRAIG M. REGENS** (OKC), **LEWIS T. LENAIRE** (OKC), and **ALYSSA SLOAN** (OKC), to delete several parts to avoid redundancy, and to improve formatting and consistency, and to update several legal authorities; and (4) the Title Examination Chapter 8 was revised in the text of Sections 8.2 and 8.4 by **BARBARA CARSON** (Tulsa), and she removed Section 8.11 Worksheet, and **HARVEY C. GRAUBERGER** (Tulsa) provided a replacement Title Opinion Form for Section 8.13.

Jenks High School Named Mock Trial State Champion

By Todd A. Murray

Jenks High School's Team Legal Lions was named the Oklahoma High School Mock Trial state champion and will represent our state at the National High School Mock Trial Championship in May.

FOR MORE THAN 40 YEARS, Oklahoma high school students have assumed the roles of attorneys and witnesses through the Oklahoma High School Mock Trial program and honed their listening, speaking and persuasion skills. The participants used a fictional case drafted by the Mock Trial Committee, which is funded by the Oklahoma Bar Foundation. Forty-two teams competed this year, the most in Oklahoma Mock Trial history.

On March 4, the top two teams met at the OU College of Law Dick Bell Courtroom for the final round of competition. Two Jenks High School teams were pitted against each other for the championship. Team Legal Lions bested Team Suits to claim the state title and the privilege of virtually representing Oklahoma at the National High School Mock Trial Tournament in May in Phoenix. Following the round, the judges noted that there was no need to offer any verbal critique as both teams performed so well that only accolades were due.

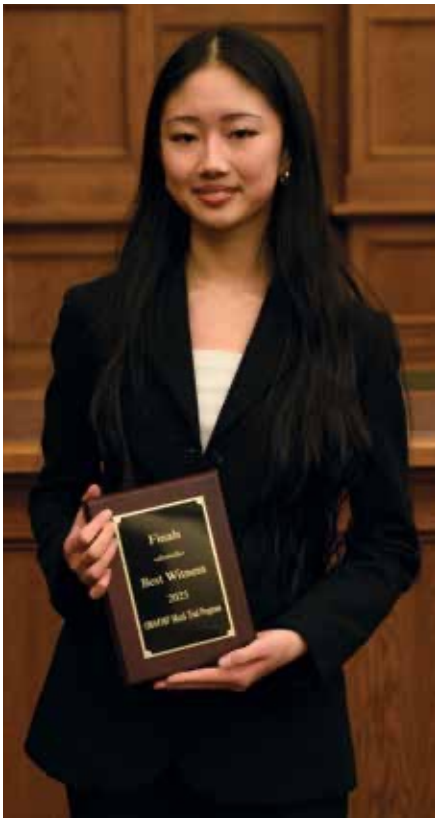
The mock trial program is a unique extracurricular activity that develops reasoning, listening and speaking skills, among others. Students are given fictional sworn statements with often contradictory testimony from both fact and expert witnesses, not unlike real legal situations. Jury instructions and trial exhibits are included in the case materials. The students

Both teams gather with scoring judges (from left) Judge Charles B. Goodwin, retired Judge Howard R. Haralson, Magistrate Judge Shon T. Erwin and Judge Mark Schwebke and (front) Mock Trial Coordinator Judy Spencer.

Adam Humphrey of Team Legal Lions receives the Award for Best Attorney.

Din Dai of Team Suits receives the Award for Best Attorney.

Emily Seo of Team Suits receives the Award for Best Witness.



Ester Chen of Team Legal Lions receives the Award for Best Witness.

must analyze the materials from all perspectives and filter through information, determining what is not important or relevant to reach the facts needed to present each side of the controversy before volunteer judges and scorers culled from the legal community across the state.

Students also practice acting skills, creating characters for the witnesses. They think on their feet, work as a team and gain insight into the legal world. Courtroom etiquette, not to mention basic advocacy skills, is learned through participation in the program. Participants also serve as bailiffs and timekeepers. The ability to critically think through an issue from multiple perspectives is a skill that will serve the competitors throughout their futures in both their careers and personal lives. Many former mock trial participants attend law school to become not only attorneys but also judges.

The 2025 Oklahoma High School Mock Trial program, now in its 44th year, involved a criminal case from a teenager's death that may have been caused by illicit substances in a vaping pen. The defendant, a sibling of the decedent, purchased vaping pens for a party and may have permitted the decedent to imbibe illegal substances, which might have caused death. The prosecution won the day in the final round.

The case was released Oct. 31. Scrimmages were permitted before January, when the qualifying rounds were held. The top 24 teams then competed in quarterfinals, with the top eight teams advancing to the semifinals during February. Throughout the competitive season, students honed their skills, impeaching witnesses with their respective statements and making and arguing objections. Students also gave opening and closing statements as well as direct

MOCK TRIAL COMMITTEE

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Michael Nesser
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Maggie White

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Judge Mindy Beare
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Howard Berkson*
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Thomas Hull*
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Judge Jaquita Napoli*
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Drew Nichols
Vivid Niroula*
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Kathryn Walker
Lori Walkley
Jill Weedon
Lucas West*
Ashley Weyland
AshLynn Wilkerson*
Lauren Willoughby

**Denotes more than one trial date*

and cross-examinations on three witnesses for each side. Awards for Best Attorney and Best Witness were offered for each team.

The final round was presented to a distinguished panel of judges. The presiding judge was Magistrate Judge Shon T. Erwin, a former mock trial participant. Scoring panelists were Judge Charles B. Goodwin, retired Judge Howard R. Haralson and Judge Mark Schwebke.

Both teams were coached by Michael Horn, Justin McCracken, Levi Applegate and MacKenzie French. Jenks High School's Team Legal Lions consisted of Mustafa Siddiqui, Adam Humphrey (Best Attorney), Isabel Martin, Madalyn Strawn, Valery Gutierrez, Athena Gadiwalla, Todd Sterling, Thomas Kezia, Ester Chen (Best Witness), Jordan Webb and Aiden Hoskins.

Jenks High School's Team Suits consisted of Eva Hahajan, Emily Seo (Best Witness), Parker Minor, Din Dai (Best Attorney), Isla Walker, Elisha Dalmedia, Marissa Williams, Akshita Vermula, Matthew Livingston, Samantha Kotas, Benjamin McCullough and Harini Sentil.

THANK YOU TO OUR VOLUNTEERS

This program would not exist without the hard work of hundreds of volunteers. Each year, more than 100 judges and attorneys donate time to work with mock trial teams directly, score and judge the teams throughout the competition and, as members of the Mock Trial Committee, plan, prepare, write, conduct and oversee the competition.

The Oklahoma Bar Foundation is the principal financial supporter of this competition, and without its generosity, the generational impact this program has developed since its inception simply would not exist. If you are interested in being a part of the committee or volunteering for the Oklahoma High School Mock Trial program next year, email mocktrial@okbar.org.

ABOUT THE AUTHOR

Todd A. Murray serves as chair of the Mock Trial Committee and is a state's attorney with Child Support Services, serving Jackson, Greer, Kiowa, Harmon and Tillman counties.

VOLUNTEER LAWYERS NEEDED!

Law Day 2025 | Thursday, May 1

ASK A LAWYER

STATEWIDE FREE LEGAL ADVICE

Phone banks located at the Oklahoma Bar Center in Oklahoma City, the Tulsa County Bar Association or local lawyers' offices in nonmetro counties. Volunteers may also answer questions by email.

Oklahoma City:
Christina Drake
405-236-8421
christina@okcbar.org
www.okcbar.org/events

Tulsa:
Mary Clement
918-805-2352
mary@clementlegalok.com

Other counties:
Contact your Law Day chairperson for details. See the list of chairs at www.okbar.org/lawday.

OKLAHOMA BAR ASSOCIATION

SOLO & SMALL

FIRM CONFERENCE • 2025

JULY 16-18 | OKANA RESORT | OKLAHOMA CITY

The OBA Solo & Small Firm Conference is back for 2025! Mark your calendars now for Wednesday, July 16, through Friday, July 18, at the brand-new OKANA Resort near downtown Oklahoma City.

This mid-year event offers CLE and networking opportunities related to solo and small firm practice management, all in a fun, relaxed, resort-casual environment. Plus, celebrate the summer! Satisfy your appetite at one of the restaurants, relax at the spa and go swimming at the pool or waterpark, all without having to leave the comfort of the resort.

You won't want to miss out on this year's conference, so register today! Visit the conference website at www.okbar.org/solo for the complete schedule plus online conference registration. The early-bird registration deadline ends June 13.

SOLO & SMALL FIRM CONFERENCE
REGISTRATION FORM

A wide range of substantive law and law practice management CLE sessions are featured, with a focus on tools for and frequent challenges encountered by small firm lawyers. The conference provides social events with plenty of time to meet and network with lawyers from across the state who can provide you with advice, friendship and possible referrals. Held in conjunction with the Young Lawyers Division Midyear Meeting.

ONLINE REGISTRATION
www.okbar.org/solo

MAIL FORM
CLE Registrar, P.O. Box 53036
Oklahoma City, OK 73152

FAX FORM
405-416-7088

REGISTRANT INFORMATION

Full Name: _____ OBA #: _____

Address: _____

City/State/Zip: _____

Phone: _____ Fax: _____

Email: _____

Name and city as it should appear on your badge if different from above:

_____

Please list any diatary restrictions:

_____

GUEST INFORMATION

Guest name: _____

Guest name: _____

Guest name: _____

Guest name: _____

Guest name: _____

FORM CONTINUED ON THE NEXT PAGE – INCLUDE BOTH PAGES WHEN FAXING OR MAILING

STANDARD RATES FOR OBA MEMBERS

	NUMBER OF GUESTS	CIRCLE ONE
Early Attorney Only Registration **(on or before June 13)**		**$300**
Late Attorney Only Registration **(on or after June 14)**		**$350**
Guest Registration **(on or before June 13)**	_____	**$275** *each*
Late Guest Registration **(on or after June 14)**	_____	**$300** *each*
Guest Registration *(for children 12 and under)*	_____	**$150** *each*

PAYMENT INFORMATION

Make checks payable to the Oklahoma Bar Association and mail the registration form to CLE Registrar, P.O. Box 53036, Oklahoma City, OK 73152; or fax the registration form to 405-416-7088.

For payment using: ☐ Visa ☐ Mastercard ☐ Discover ☐ American Express

Total to be charged: $ _____ Credit Card #: _____

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** A 6.5% processing fee will be added to all credit card payments*

REGISTRATION AND POLICIES

CANCELLATION POLICY

Cancellations will be accepted at any time on or before June 14 for a full refund; a $50 fee will be charged for cancellations made after June 14. **No refunds after June 20.**

REGISTRATION

Registration fee includes 12 hours of CLE credit, including up to two hours of ethics. Includes dinner Wednesday, breakfast Thursday and Friday and lunch Thursday and Friday.

HOTEL RESERVATIONS

Hotel room block information will be announced soon! Visit www.okbar.org/solo for more information.

SPONSORS & VENDORS

Sponsorship and vendor opportunities are still available for the 2025 Solo & Small Firm Conference.

Contact Gigi McCormick at 405-416-7028 or gigim@okbar.org for more information.

FOR MORE INFORMATION AND TO REGISTER ONLINE, VISIT WWW.OKBAR.ORG/SOLO

SECOND ANNUAL

Oklahoma Chief Justice Colloquium

On Civility and Ethics

TUESDAY, MAY 6

1:30 P.M. TO 3 P.M.

OKLAHOMA JUDICIAL CENTER AUDITORIUM
2100 N. LINCOLN BLVD., OKLAHOMA CITY

GUEST SPEAKER

PROFESSOR LEAH JACKSON TEAGUE
BAYLOR UNIVERSITY LAW SCHOOL

The Oklahoma Supreme Court invites you to attend the second annual Oklahoma Chief Justice Colloquium on Civility and Ethics. This year's guest speaker is Baylor University Law School Professor Leah Witcher Jackson Teague. She will speak on the critical role of all generations of lawyers, legal traditions and ethical standards, how to mentor for success and balancing new tech tools with strong ethical responsibility.

REGISTER TODAY AT OK.WEBCREDENZA.COM

OBA SECTIONS

DID YOU KNOW?

You can get professional development tailored to your practice area and make new contacts across the state in one of the 28 substantive law sections. Benefits vary by section, with many offering free or discounted CLE to section members.

CHECK IT OUT

Find a list of sections, their annual dues and a membership registration form at www.okbar.org/sections.

FIND MORE MEMBER BENEFITS AT WWW.OKBAR.ORG/MEMBERBENEFITS

THE FUTURE OF THE WORK

NONPROFIT LAW AND FINANCE CONFERENCE

Presented by the Oklahoma Center for Nonprofits and Philanthropy Southwest

May 28-29, 2025
Oklahoma City University School of Law

- Economic Viability & Sustainability
- Intentional Resource Development
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- Adaptable Employee Engagement & Retention

Register today at **okcnp.org/nplfc** or scan here

FREE CONFIDENTIAL ASSISTANCE

"My fear of failing, malpractice and bar complaints was unbearable, and all I could do was keep opening new cases in order to put food on the table and pay all the debt I had just incurred. The pressure was intense, and I felt like I was suffocating, gasping to stay alive just a few more moments.

– Scott B. Goode, Oklahoma Bar Association Member

Get help addressing stress, depression, anxiety, substance abuse, relationships, burnout, health and other personal issues through counseling, monthly support groups and mentoring or peer support. Call 800-364-7886 for a free counselor referral.

If you are in crisis or need immediate assistance, call or text 988, Oklahoma's Mental Health Lifeline.

Oklahoma Bar Association
Lawyers Helping Lawyers
Assistance Program

WWW.OKBAR.ORG/LHL

30 Years Later – Remembering Those Lost

By Janet Johnson

On April 19, 1995, the United States witnessed one of its deadliest acts of domestic terrorism when a truck bomb exploded outside the Alfred P. Murrah Federal Building in Oklahoma City. The attack killed 168 people, including 19 children, and left hundreds more injured. Three decades later, the memory of those lost remains central to the nation's collective consciousness. Honoring their lives means not only remembering their stories but also acknowledging the profound changes in law and security that followed this tragedy.

Among those lost were government employees, military personnel, children and citizens simply going about their daily lives. The impact on families and the Oklahoma City community was immeasurable. In the wake of the bombing, the Oklahoma City National Memorial & Museum was established, serving as a solemn tribute to the victims, survivors and first responders who risked their lives in the aftermath. The annual remembrance ceremony ensures that their stories are never forgotten and that the lessons learned continue to shape future generations. Among the victims were four Oklahoma lawyers. I encourage you to read the tributes honoring our fallen fellow OBA members published on page 38-39 of this journal.

The Survivor Tree is an American elm tree with roots stretching back to the early days of Oklahoma statehood. After surviving the bomb's blast, it is seen as an iconic symbol of hope in downtown Oklahoma City. Photo courtesy of the Oklahoma City National Memorial & Museum.

Beyond physical memorials, the legal community also sought to honor the victims through justice and reform in ways that can still be felt today. One notable example is the implementation of the OBA Disaster Response Legal Services, which still works to provide assistance for disaster victims in our state 30 years later. OBA members representing numerous practice areas stepped up in a big way to lend a hand to fellow Oklahomans. The impact was so significant that even the state of New York reached out after the 9/11 attacks to model the framework that had been developed here. The support provided by these volunteer lawyers demonstrates just one notable example of what has come to be known as "the Oklahoma standard."

The bombing also changed how terrorism cases were prosecuted. The trials of Timothy McVeigh and Terry Nichols required careful legal strategy, balancing the demand for justice with constitutional

protections. The proceedings set important legal precedents for handling terrorism-related cases and reinforced the necessity of due process even in emotionally charged situations. Some of you may already be aware that 2023 OBA President Brian Hermanson was assigned as a prosecutor during the state trial of convicted co-conspirator Terry Nichols, a seven-year trial that made a major impact on his legal career. You can read more about Mr. Hermanson's experiences in the January 2023 issue of the *Oklahoma Bar Journal* at https://bit.ly/4iCdZIi.

The event's reverberations can still be felt three decades later when we experience heightened security at federal buildings, courthouses and government facilities. In 2025, the legal community continues to draw lessons from this event, ensuring that justice, security and remembrance remain at the forefront of national discussions. Through these efforts, the memory of the 168 lives lost endures, guiding the nation's commitment to justice and resilience.

The attack emphasized the critical role lawyers play in upholding justice, balancing security with individual rights and ensuring that legal systems remain fair and effective. As domestic terrorism remains a concern, legal professionals continue to study the case, drawing lessons on prosecution strategies, victim advocacy and the evolving intersection of law and national security.

In remembering the tragedy, the legal community honors not only the victims but also the resilience of those who sought justice, reinforcing the enduring importance of law in times of national crisis.

Janet

To contact Executive Director Johnson, email her at janetj@okbar.org.

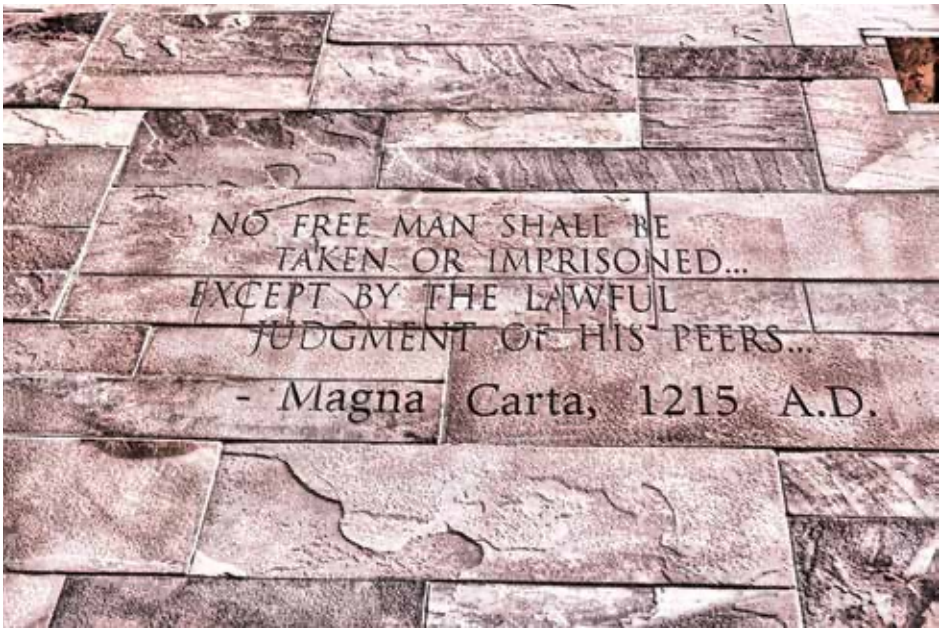
(continued from page 4)

> No free man is to be arrested, or imprisoned, or disseised, or outlawed, or exiled, or in any way destroyed, nor will we go against him, nor will we send against him, save by the lawful judgement of his peers or by the law of the land.

In this context and the language of the time, "disseised" means dispossessed of property, and "go against" means taking action against them by force of arms. "Law of the land" requires a bit more explanation.

According to Mr. Hannan, the Magna Carta's reference to "the law of the land" recognized the concept of common law.

> Being the law of the land, rather than of the King, Anglo-Saxon common law had four further properties that have served, to this day, to distinguish it from most civil law systems. First, it laid particular emphasis on private ownership and free contract. ... Second, *common law is based on the notion that anything not expressly prohibited is legal*. There is no need to get the permission of the authorities for a new initiative. Third, the invigilation [keeping watch over or enforcement] of the law of the land was everybody's business. The policeman was and is a citizen in uniform, not an agent of the state. He has no more legal powers than anyone else, except to the extent that those powers have been temporarily and contingently bestowed on him by a magistrate. ... Finally, and most importantly, the fact that the law was national rather than monarchical implied the need for an ultimate popular tribunal to determine it. [Emphasis added]



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This last concept is based upon the principle that only a representative body, such as an elected parliament, should be allowed to determine the common law of England. Mr. Hannan quoted William Blackstone regarding common law:

> Since the law is in England the supreme arbiter of every man's life, liberty, and property, courts of justice must at all times be open to the subject, and the law be duly administered therein. The common law depends not upon the arbitrary will of any judge; but is permanent, fixed, and unchangeable, unless by authority of parliament.

So how has the Magna Carta influenced the United States of America? William Penn, the founder of Pennsylvania, wrote *The Excellent Privilege of Liberty and Property: being the birth-right of the Free-Born Subjects of England*, where he stated:

> In other nations, the mere will of the Prince is Law, his word takes off any man's head, imposeth taxes, or seizes any man's estate, when, how and as often as he lists. In England, each man has a fixed Fundamental Right born with him, as to freedom of his person and property in his estate, which he cannot be deprived of, but either by his consent, or some crime, for which the law imposed such a penalty or forfeiture.

The final declaration of the first Continental Congress in 1774 listed many of the same grievances addressed by the Magna Carta, such as entitlement to life, liberty and property; freedom from arbitrary taxes; freedom from arrest and trial without due process; taking of property without

due process; and most tellingly, entitlement to the common law of England and to the principles of the English constitution, *i.e.*, the Magna Carta.

According to Justice William Brennan:

> The first eight amendments to our Federal Constitution, our explicit Bill of Rights, owes its parentage to Magna Carta; and Americans regard the enforcement of those amendments as the Supreme Court's most important and demanding responsibility.[1]

Specifically, a portion of the Fifth Amendment to our Constitution – "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, ... nor shall be deprived of life, liberty, or property without due process of law" – seems to echo Chapter 39 of the Magna Carta.

Even though King John repudiated the Magna Carta shortly after its creation in 1215, the Great Charter was revised and reissued in 1217 and again in 1297. Even so, 1215 is remembered and celebrated as the birth of the Magna Carta, which is considered by many to be a predecessor or precursor of our U.S. Constitution.

This brings us to the theme of our 2025 celebration of Law Day: "The Constitution's Promise: Out of Many, One." The preamble to the Constitution boldly asserts that the framers established the Constitution as representatives of "We the People of the United States, in Order to form a more perfect Union." The American Bar Association has suggested, and our association has concurred, that Law Day this year will be a celebration and a reminder that: "The Constitution establishes a framework for government that unites us as one citizenry, through means such as our representative government, jury service, and a regular Census. And through this commitment to our Union, we each provide for the common good through government responses to national crises and natural disasters, and through community and advocacy programs for students and adults."

Our hardworking OBA Law Day Committee and its co-chairs, Ed Wunch and Mary Clement, have planned a great event this year! Please help the committee make this Law Day one of the best ever by and through your personal involvement in the planned activities (and through encouraging citizens with whom you have contact to be involved as well). Visit www.okbar.org/lawday to learn more.

Thank you for your service!

This article was adapted from content that was originally published in the April 2015 issue of the Tulsa Lawyer.

ENDNOTE

1. 1985 Rededication Speech at the American Bar Association's Memorial at Runnymede.

ONE ASSOCIATION MANY OPPORTUNITIES

JOIN AN OBA COMMITTEE TODAY!

Get more involved in the OBA, network with colleagues and work together for the betterment of our profession and our communities. More than 20 active committees offer you the chance to serve in a way that is meaningful for you.

Now is your opportunity to join other volunteer lawyers in making our association the best of its kind!

ABA Formal Opinion 514

Duties to Organizational Clients and Constituents

By Richard Stevens

THERE ARE TIMES WHEN a lawyer may be required to give legal advice to their organizational clients about conduct that may create legal risk for nonclient constituents of the organization. Both in-house and outside counsel advise organizations about contracts, regulatory requirements and many other issues up to and including potential criminal liability. When a lawyer does this, they communicate advice to individuals who are likely to implement and act on that advice. Except for extraordinary circumstances, such as when a constituent of the organization becomes a co-client, the organization remains the client. Recently released ABA Formal Opinion 514 provides ethical guidance to lawyers about such a situation. The opinion describes its application as follows:

(1) a lawyer – in-house or outside counsel – is giving advice to an organization client through a constituent about future action the organization may choose to take;
(2) the lawyer knows or reasonably should know that the constituents are likely to have their own legal interests at stake – for example, where the lawyer is advising the organization about possible future conduct for which the constituents may be subject to personal civil or criminal liability; and
(3) the lawyer does not intend to create a client-lawyer relationship with the constituent or otherwise to assume fiduciary or contractual duties to the constituent.

ADVICE TO THE ORGANIZATION

ABA Formal Opinion 514 makes it clear that lawyers who work for an organization can only give advice to their clients by relaying that information to nonclients who are constituents of the client. This may create uncertainty about the lawyer's role and application of legal advice. That uncertainty may not be present in representations of all organizations. In cases where the lawyer or firm is pursuing an investigation of misconduct allegations, the lawyer's role is to gather information and later present it to one or more representatives of the organization. The opinion continues by stating:

> In the context of a formal internal investigation of alleged wrongdoing, the divergence of the organization's interests and those of the individual constituents who are suspected of wrongdoing should ordinarily be clear. However, such divergence of interest in other contexts may often be less clear.

In most cases, the interests of constituents in the organization itself may be aligned, but in many cases, they may not be identical. ABA Formal Opinion 514 acknowledges that the lawyer generally does not owe duties under the Rules of Professional Conduct to constituents of an organization unless the lawyer also represents those constituents. This opinion addresses the question of "whether the professional responsibilities of a lawyer representing the organization require the lawyer to inform the organization when proposed future conduct may pose legal risk for the organization's constituents." The opinion concludes that Model Rule 1.4(b) (identical to Oklahoma's rule) and Model Rule 2.1 (also identical to Oklahoma's rule) allows and, in some situations, may require a lawyer to provide such information.

ORPC 1.4(b) outlines "the duty of an attorney to advise the client promptly whenever he has any information to give which it is important the client should receive." ORPC 2.1 provides, as follows:

> In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

ADVICE TO CONSTITUENTS

The opinion also addresses the lawyer's responsibility to nonclient constituents of the organization. As noted earlier, lawyers representing an organization do not owe nonclient constituents the same duties owed to the organizational client. But lawyers representing organizational clients may have obligations to nonclient constituents of the organization under the Rules of Professional Conduct. For example, ORPC 4.1 requires the lawyer to be truthful when dealing with others on their client's behalf. Further, ORPC 4.3 prohibits a lawyer from giving legal advice other than advice to secure counsel to an unrepresented person "if the lawyer knows or reasonably should know that the interests of such person are or have a reasonable possibility of being in conflict with the interests of the client."

ORPC 4.3 also requires a lawyer to correct misunderstandings about the lawyer's role in a particular matter. This is particularly important, given that the constituents who have received the lawyer's advice for the organization may believe they are clients of the lawyer when they are not. The opinion summarizes the lawyer's duty as:

> The Model Rules do not provide any particular formula for avoiding or dispelling constituents' possible misunderstandings. Under the circumstances, the lawyer may need to discuss with the nonclient constituent that: the lawyer represents only the organization, and not the constituents; the constituents may have a personal legal risk if the constituents act on behalf of the organization in the matter under discussion; the lawyer is rendering advice to the organization through the individual constituents, not to, or for the benefit of, the individual constituents; in giving advice to the organization, the lawyer is taking account of the interests of the organization, not necessarily those of the individuals; and if individual constituents want legal advice about how a proposed course of conduct will affect their personal legal interests, the constituents must seek that advice from their own counsel, not from the organization's lawyer.

There is much more information in ABA Formal Opinion 514. I recommend that lawyers who advise organizational clients take a look at the opinion for the guidance it provides.

Mr. Stevens is OBA ethics counsel. Have an ethics question? It's a free member benefit, and all inquiries are confidential. Contact him at richards@okbar.org or 405-416-7055. Ethics information is also available online at www.okbar.org/ec.

Microsoft 365: A Lawyer's Guide to Subscription Plans and Document Management

By Julie A. Bays

MOST LAWYERS USE Microsoft 365 (MS 365); however, between Microsoft's propensity to rename its products frequently and the rapid pace of upgrades and improvements, many lawyers are unclear about which MS 365 subscription is best for their practice and the best way to take advantage of dozens of features they may have never tried. For law firms, selecting the right subscription plan is crucial to meeting their productivity, security and compliance needs. Additionally, understanding the differences between OneDrive and SharePoint can help firms manage documents more effectively.

MICROSOFT 365 SUBSCRIPTION PLANS

In the modern legal landscape, technology is integral to productivity, data security and collaboration. MS 365 offers various subscription plans suited for small law firms, each with distinct features and benefits.

Business Basic Plan

The MS 365 Business Basic plan is the most affordable option, providing web and mobile versions of Microsoft Office applications. It includes Microsoft Teams, OneDrive and SharePoint for file storage and collaboration. However, it does not include desktop versions of Office apps, making it unsuitable for intensive document work. This plan also does not have the important security measures offered by the other plans.

Business Standard Plan

The MS 365 Business Standard plan offers desktop versions of Office applications – like Word, Excel and Outlook – along with all the features of the Business Basic plan. This plan provides 1 terabyte (1 TB) of OneDrive storage per user, which is crucial for document management and collaboration. It also includes Microsoft Teams for communication, SharePoint for team collaboration and Exchange for email hosting. The Business Standard plan is useful for small firms that require comprehensive tools for productivity, but it lacks the advanced security features found in the higher-tier plans.

Business Premium Plan

The MS 365 Business Premium plan is highly recommended for most lawyers. This subscription is approximately $10 more per month than the Business Standard plan. It includes not only the desktop versions of key Office applications – such as Word, Excel and Outlook, along with 1 TB of OneDrive storage – but also advanced security features and device management. Enhanced features, like MS Defender for Office 365 and MS Intune, ensure robust data security, which is crucial for law firms handling sensitive client information. This plan is ideal for small firms seeking comprehensive tools and enhanced security.

Visit microsoft.com for plan details.

IB Photography - stock.adobe.com

E3 Plan

The MS 365 E3 plan is suitable for firms with stringent compliance and security needs. It builds on the Business Premium plan by adding additional compliance tools, advanced security features and device management capabilities meant for larger businesses with over 300 employees. It requires more IT knowledge or IT specialists to set up and manage compared to lower-tier plans.

Personal and Family Plans

The MS 365 Personal and Family plans are not suitable for law firms. These plans are designed for individual and family use, offering basic features that do not meet the professional requirements of a law firm. They lack the advanced security measures, business services and compliance tools that are essential for legal practices.

The choice of an MS 365 subscription should be based on the specific needs of the law firm. For most small firms, the Business Premium plan offers a comprehensive set of tools and enhanced security at a reasonable cost. Solo attorneys may find the Business Standard plan sufficient for their needs. Firms with higher security and compliance demands may find the E3 plan a more appropriate option, while the Personal and Family plans should be avoided for professional use.

ONEDRIVE VS. SHAREPOINT: KEY DIFFERENCES AND USE CASES

For legal professionals, understanding the differences between OneDrive and SharePoint is key to effective document management and collaboration.

Ownership and Accessibility

OneDrive is designed for personal storage and file sharing, functioning as each user's personal online filing cabinet. Files in OneDrive are owned by the individual user and can be shared with others for specific tasks. In contrast, SharePoint stores files in a shared document library that is accessible to a group, a department or the entire firm, with ownership

belonging to the organization rather than an individual.

OneDrive is ideal for individual workspaces, where drafts, notes and personal documents are saved before they are finalized and shared. This platform allows easy file access across multiple devices, supporting a mobile and flexible work style. When a document is ready to be reviewed or collaborated on, it can be shared with specific individuals who can then edit or comment on the file.

SharePoint, on the other hand, is built to manage and organize files in a collaborative environment. It provides structured storage by categorizing documents according to specific cases, clients or projects, ensuring everyone on the team has access to the most up-to-date information. SharePoint supports document storage and integrates workflows that help automate processes, track progress and manage tasks within the legal team.

SharePoint offers advanced document management features – such as metadata tagging, custom views and access permissions – which help organize large volumes of documents. This is useful for law firms that deal with extensive documentation and require robust search functionalities to retrieve information quickly and efficiently.

Integrating SharePoint with Microsoft Teams enhances its collaborative capabilities, allowing teams to communicate in real time, schedule meetings and manage projects without switching platforms. This seamless integration streamlines workflow and boosts productivity by providing a centralized hub for all communication and document management needs.

While OneDrive serves as an excellent tool for personal document management and initial drafting, SharePoint stands out as the preferred solution for collaborative efforts, sophisticated document organization and enhanced team productivity within legal practices.

Sharing Scope

OneDrive is most suitable for storing personal work files, drafting documents before sharing them with a team or client and securely sharing a single document or requesting a file from someone. SharePoint excels in matter-centric storage by organizing documents according to cases, clients or legal projects, facilitating team collaboration on shared documents like court filings, contracts and pleadings.

Collaboration Style

OneDrive is ideal for one-to-one or small-group collaboration, while SharePoint supports large-scale collaboration. SharePoint enables firms to create intranet sites for document management, making collaboration between attorneys, paralegals and administrative staff more efficient.

Document Versioning and Co-Authoring

Both OneDrive and SharePoint offer document versioning, allowing users to track changes and restore previous versions. However, SharePoint provides more advanced controls. Additionally, both platforms support co-authoring in Word, Excel and PowerPoint, with SharePoint offering deeper integration with Teams.

Integration With Teams

While OneDrive has limited integration with Teams, SharePoint is integrated, allowing seamless transitions between tasks and reducing the need for multiple

applications. This integration also extends to Outlook, enabling streamlined scheduling and email communication.

CONCLUSION

Selecting the right Microsoft 365 plan and mastering document management is essential for any law firm. Whether you choose the Business Standard plan for its tools, the Business Premium plan for its enhanced security features or the E3 plan for its large law firm capabilities, making an informed choice will ensure your firm's productivity and security. Use OneDrive for personal storage and SharePoint for collaborative efforts to keep your documents organized and accessible. By doing so, you can ensure that your firm's digital infrastructure is both efficient and secure.

Ms. Bays is the OBA practice management advisor, aiding attorneys in using technology and other tools to efficiently manage their offices.

Meeting Summary

The Oklahoma Bar Association Board of Governors met Jan. 17.

REPORT OF THE PRESIDENT

President Williams reported he attended the Legislative Monitoring Committee meeting, the orientation meeting for OBA section and committee leadership, his final Oklahoma Attorneys Mutual Insurance Co. Board of Directors meeting and the Tulsa County Bar Association Municipal Law Section December meeting. He presented on civility and professionalism during the Garfield County Bar Association monthly meeting. He also drafted his monthly president's message for the February bar journal; reviewed and approved outside counsel invoices; prepared for the National Conference of Bar Presidents/ABA Midyear Meeting; planned, prepared and delivered a pupilage group CLE presentation for the American Inns of Court; and prepared for and attended the 2025 swearing-in ceremony for OBA officers and new board members.

REPORT OF THE PRESIDENT-ELECT

President-Elect Peckio reported she attended the ABA new delegate orientation, reviewed legal expenses and attended the Board of Governors has-been party.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Johnson reported she attended LegisOK trainings, the Garfield County Bar Association monthly meeting and the Jan. 16 Legislative Monitoring Committee meeting. She attended and facilitated the orientation meeting for OBA section and committee leadership. She met with the strategic planning consultant regarding plans for implementation this year and with the Supreme Court's director of judicial education to discuss plans for the 2025 Chief's Colloquium on Civility and Ethics. She discussed pending litigation with OBA legal counsel, worked on her monthly column for the February bar journal and prepared initial legislative tracking lists for the Legislative Monitoring Committee to prepare for the OBA Legislative Kickoff set for Jan. 31. She also worked on scheduling the upcoming CLE movie night with retired Justice Kauger.

REPORT OF THE IMMEDIATE PAST PRESIDENT

Past President Pringle reported he reviewed potential legislation affecting the practice of law, and he reviewed and approved OBA legal bills. He also attended the Board of Governors has-been party.

BOARD MEMBER REPORTS

Governor Barbush reported by email he attended the Bryan County Bar Association Christmas party, the Choctaw Nation Judicial Branch Christmas party and the Board of Governors has-been party. **Governor Cooper** reported he attended the Oklahoma County Bar Association December meeting and Christmas party. He also attended the Board of Governors has-been party. **Governor Hixon** reported he attended the Board of Governors has-been party, the holiday party for the Tulsa office of the Oklahoma Court of Civil Appeals and the Tulsa County Bar Association Board of Directors meeting. He virtually attended the Law Day Committee meeting, and he reviewed and voted on the Smirk New Media proposal for 2025 Law Day digital content promotion activities. **Governor Knott** reported she attended the Legislative Monitoring Committee meeting. **Governor Locke** reported he attended the Membership Engagement Committee meeting, the Muskogee County Bar Association meeting and Christmas party, the January Membership Engagement Committee meeting and the Board of Governors has-been party. **Governor Rogers** reported he attended the Board of Governors has-been party. **Governor Thurman** reported he attended the Board of Governors has-been party. **Governor West** reported he attended the Cleveland County Bar Association monthly meeting and executive meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Venus reported he attended the Board of Governors has-been party. He said the division will meet in January and plans to fill its open board seats at the February meeting after reviewing candidates.

REPORT OF THE GENERAL COUNSEL

A written report of PRC actions and OBA disciplinary matters for the month was submitted to the board for its review.

BOARD LIAISON REPORTS

President Williams reported the **Section Leaders Council** orientation meeting for section and committee chairs was well attended. Governor Barker reported the **Awards Committee** will meet virtually March 7. Governor Hixon reported the **Law Day Committee** met and approved a proposal from Smirk New Media to produce digital content to support 2025 Law Day activities, and the committee is discussing additional funding mechanisms to enhance law-related education as part of Law Day. Governor Locke said the **Membership Engagement Committee** met and is continuing to work on reviewing the consumer legal information brochures the OBA makes available as a public resource. Governor Knott reported the **Legislative Monitoring Committee** recently met and is preparing for 2025 activities. Governor Dodoo said the **Bench and Bar Committee** has a meeting planned for February.

PRESIDENT WILLIAMS' APPOINTMENTS

The board approved a motion to approve the following appointments:

Governor Hixon reported the Law Day Committee met and approved a proposal from Smirk New Media to produce digital content to support 2025 Law Day activities, and the committee is discussing additional funding mechanisms to enhance law-related education as part of Law Day.

- **Professional Responsibility Commission (PRC):** President Williams appoints Molly Aspan, Tulsa, to a three-year term beginning Jan. 1, 2025, and expiring Dec. 31, 2027.
- **Court on the Judiciary – Trial Division:** President Williams reappoints Charles W. Chesnut, Miami, to a new term beginning March 1, 2025, and expiring Feb. 28, 2027.

President Williams also made the following appointments that did not require board approval:

- **Investment Committee:** President Williams appoints Chairperson Miles Pringle, Oklahoma City, to a term beginning Jan. 1, 2025, and expiring Dec. 31, 2025. He also reappoints members Renee DeMoss, Oklahoma City, and Kendra M. Robben, Oklahoma City, to terms beginning Jan. 1, 2025, and expiring Dec. 31, 2027.
- **Standing Committee – Bar Association Technology:** President Williams appoints Chairperson Collin Walke, Oklahoma City, to a term beginning Jan. 1, 2025, and expiring Dec. 31, 2025.
- **Standing Committee – Disaster Response and Relief:** President Williams appoints Chairperson Molly Aspan, Tulsa, to a term beginning Jan. 1, 2025, and expiring Dec. 31, 2025.

- **Standing Committee – Law Day:** President Williams appoints Chairperson Ed Wunch, Norman, and Co-Chair Mary Clement, Tulsa, to terms beginning Jan. 1, 2025, and expiring Dec. 31, 2025.
- **Standing Committee – Awards:** President Williams appoints Chairperson LeAnne McGill, Edmond, to a term beginning Jan. 1, 2025, and expiring Dec. 31, 2025.
- **Standing Committee – Legislative Monitoring:** President Williams appoints Chairperson Teena Gunter, Oklahoma City, to a term beginning Jan. 1, 2025, and expiring Dec. 31, 2025.
- **Standing Committee – Access to Justice:** President Williams appoints Chairperson Melissa Brooks, Oklahoma City, and Vice Chair Brian Candelaria, Norman, to terms beginning Jan. 1, 2025, and expiring Dec. 31, 2025.
- **Standing Committee – Lawyers Helping Lawyers Assistance Program:** President Williams appoints Chairperson Scott Goode, Tulsa, to a term beginning Jan. 1, 2025, and expiring Dec. 31, 2025.
- **Standing Committee – Military Assistance:** President Williams appoints Chairperson S. Shea Bracken, Edmond, and Vice Chair John P. Cannon, Edmond, to terms beginning Jan. 1, 2025, and expiring Dec. 31, 2025.

UPCOMING OBA AND COUNTY BAR EVENTS – 2025

President Williams reviewed upcoming bar-related events and activities, including upcoming board meetings.

NEXT BOARD MEETING

The Board of Governors met in March, and a summary of those actions will be published in the *Oklahoma Bar Journal* once the minutes are approved. The next board meeting will be held Friday, April 18, in Tulsa.

Sign up to anonymously answer a pro bono legal question for a low-income Oklahoman. A little bit of your time can make a big difference.

Visit Oklahoma.FreeLegalAnswers.org to learn more

OKLAHOMA FREE LEGAL ANSWERS IS A PROJECT OF:
Oklahoma Bar Association,
Oklahoma Access to Justice Commission
and American Bar Association

Oklahoma Bar Foundation Launches New Scholarships

THE OKLAHOMA BAR FOUNDATION IS pleased to announce the creation of two new scholarships that honor the legacies of distinguished legal professionals and further the OBF's mission of making justice accessible to all Oklahomans. These scholarships aim to support aspiring attorneys who demonstrate exceptional ethics, dedication to community service and commitment to the legal profession.

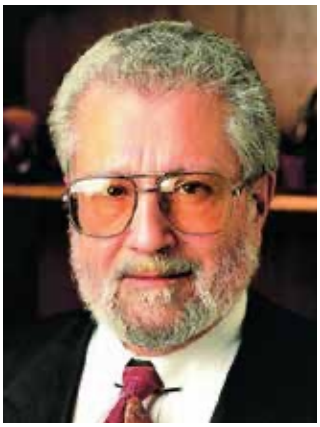
JUDY HAMILTON MORSE MEMORIAL SCHOLARSHIP

Judy Hamilton Morse

This scholarship celebrates the memory of Judy Hamilton Morse, an esteemed attorney, leader and mentor. Starting this year, it will be awarded annually to second- or third-year law students who exemplify high ethical standards, involvement in pro bono work and a strong commitment to serving their communities.

Ms. Morse dedicated her career to the pursuit of justice and played a pivotal role during her 11 years on the OBF Board of Trustees, including her tenure as president in 2005. One of her significant achievements was transforming the Oklahoma Interest on Lawyers' Trust Accounts (IOLTA) program from voluntary to mandatory participation. This change greatly increased funding for legal services, expanding access to justice for countless Oklahomans.

Marvin C. Emerson



Robert G. Spector

MARVIN C. EMERSON AND ROBERT G. SPECTOR AWARD

This award honors Marvin C. Emerson and Robert G. Spector by recognizing their outstanding leadership and contributions to the field of family law. This award will be presented annually, starting this year, to the top-performing family law students at the OCU School of Law, the OU College of Law and the TU College of Law.

Marvin C. Emerson, former executive director of the OBA, was instrumental in expanding the Oklahoma Bar Center in 1991, enhancing resources for legal professionals. His role in unveiling the Lady of Justice statue in the atrium of the bar center that same year symbolized his commitment to justice and equality.

Robert G. Spector, an emeritus professor at the OU College of Law, has dedicated his career to educating future attorneys and advancing family law practice. His contributions include authoring numerous books and articles on family law and serving as a consultant to the OBA Family Law Section. In 2021, he was honored with the Robert G. Spector Award for Influence and Transformative Work in Family Law, recognizing his profound impact on the field.

By establishing these scholarships, the OBF not only preserves the legacies of Judy Hamilton Morse, Marvin C. Emerson and Robert G. Spector but also reinforces its commitment to supporting legal education, promoting ethical standards and ensuring access to justice for all.

Partners Programs

Bring Justice Home for over 66,000 Oklahoma families. Here's how:

OKLAHOMA BAR FOUNDATION

COMMUNITY PARTNERS
BRINGING JUSTICE HOME

Partners

You can join as a Partner for Justice. Support starting at $100/year.

Legacy Partners

Join as a Legacy Partner by making a planned gift to the OBF.

Community Partners

Your law firm or organization can join as a Community Partner. Support starting at $1,000/year.

Scan to *give!*

Scan the code to give today!

Contact Candice Pace at 405-416-7081 or candicej@okbar.org for more information.

MORE WAYS TO *support* THE OBF

1. **CY PRES**
Leftover monies from class action cases can be designated to the OBF's Court Grant Fund or General Fund.

2. **MEMORIALS AND TRIBUTES**
Make a gift in honor or someone. OBF will send a handwritten card to the honoree or family.

3. **UNCLAIMED TRUST FUNDS**
Contact the OBF if you have unclaimed trust funds in your IOLTA Account. (405) 416-7070 or foundation@okbar.org.

Thank you TO OUR COMMUNITY PARTNERS

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Benjamin Russ

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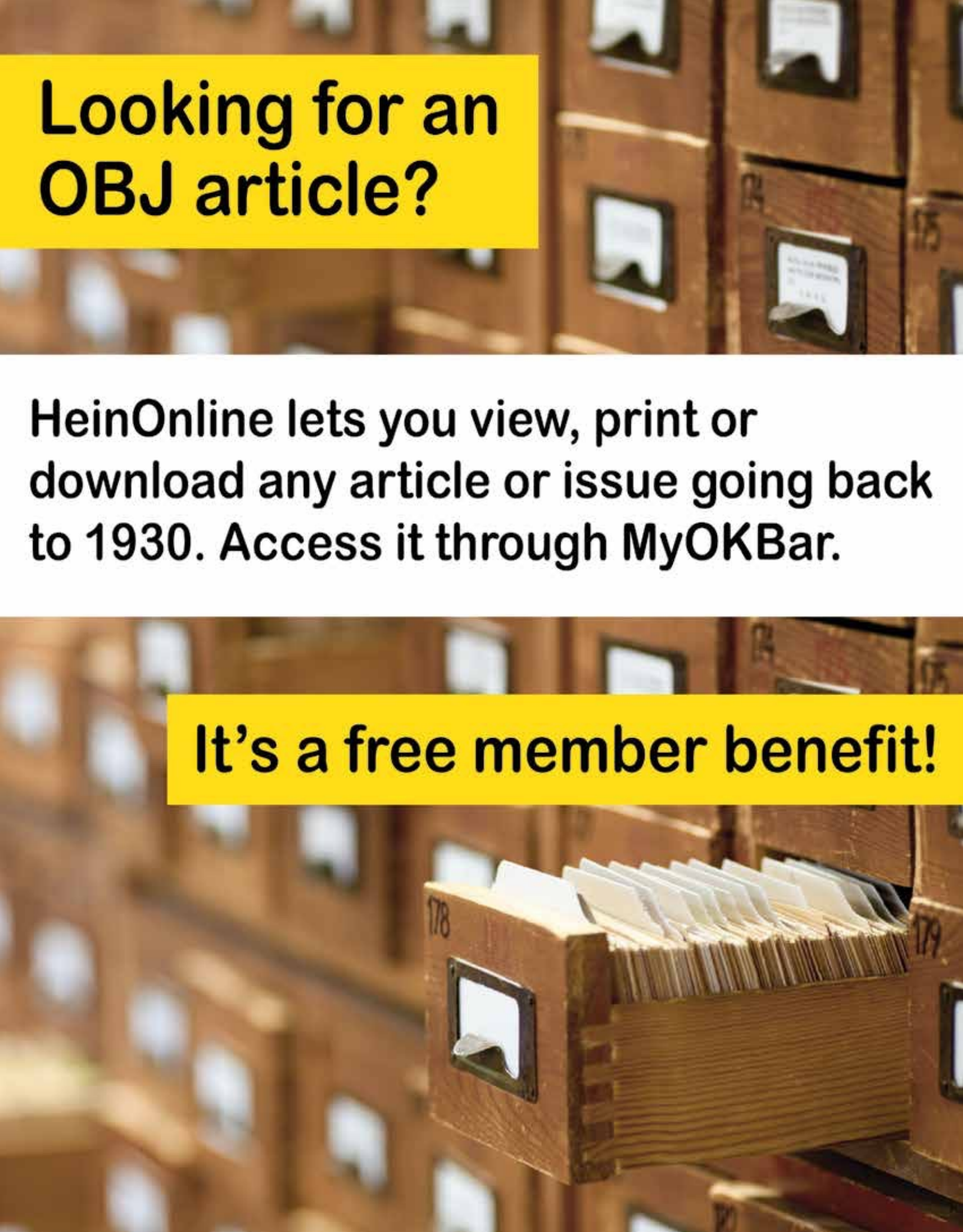
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For Your Information

OKLAHOMA SUPREME COURT JUSTICE DUSTIN P. ROWE SWORN IN AS CHIEF JUSTICE FOR 2025-2026

From left OBA Governor Nicholas E. Thurman, OBA Executive Director Janet Johnson, Supreme Court Chief Justice Dustin P. Rowe and OBA Governor John E. Barbush attended the swearing-in ceremony at the state Capitol.

Oklahoma Supreme Court Justice Dustin P. Rowe was sworn in as chief justice on Feb. 24 at the Supreme Court Courtroom at the state Capitol. Chief Justice Rowe was appointed by Gov. Kevin Stitt to the Oklahoma Supreme Court in 2019. Prior to his appointment, he practiced law in Tishomingo and served as district judge for the Chickasaw Nation District Court.

NOTICE: JUDICIAL NOMINATING COMMISSION ELECTIONS

Nominating petitions for election as members of the Judicial Nominating Commission from Congressional Districts 3 and 4 (as they existed in 1967) will be accepted by OBA Executive Director Janet Johnson until 5 p.m., May 16, 2025. Ballots will be mailed June 6, 2025, and must be received at the Oklahoma Bar Center by 5 p.m. on June 20, 2025. Ballots will be opened, tabulated and certified, and election results will be posted on June 23, 2025. Members can download nominating petition forms at www.okbar.org/jnc. See the article on page 40 for more information.

VOLUNTEER FOR LAW DAY ON MAY 1

Law Day will be celebrated statewide on Thursday, May 1. Ask A Lawyer, as well as other Law Day-related events, will be held across Oklahoma, and volunteers are needed to make the day a success! There is an additional need for Spanish-speaking volunteers in Tulsa and Oklahoma counties for Ask A Lawyer throughout the day. Contact your local Law Day chairperson or county bar president for information on Law Day events and volunteer opportunities in your county. County bar president information can be found at www.okbar.org/cobar, and county Law Day chair information can be found at www.okbar.org/lawday/countychairpersons. County Law Day chairs, email communications@okbar.org with information regarding your Law Day events. Visit www.okbar.org/lawday for more information.

IMPORTANT UPCOMING DATES

The Oklahoma Bar Center will be closed Monday, May 26, in observance of Memorial Day.

Also, be sure to docket these important upcoming events:

New Attorney Swearing-In: New bar admittees will be sworn in Tuesday, April 29, at St. Luke's Methodist Church, 222 NW 15th St., Oklahoma City. OU and OCU graduates will be sworn in at 9 a.m.; TU and out-of-state graduates will be sworn in at 10 a.m.

Law Day: Thursday, May 1. Contact your local county bar Law Day chair for information on Law Day events and volunteer opportunities in your county.

Opening Your Law Practice: Tuesday, May 20. This is a no-cost, semi-annual event for new lawyers. The program will address resources for starting a new law practice, professionalism, client management and much more. Register by emailing Nickie Day at nickied@okbar.org or by calling 405-416-7050. Learn more at www.okbar.org/oylp.

OBA Solo & Small Firm Conference: Save the date for Wednesday, July 16, through Friday, July 18, at the brand-new OKANA Resort near downtown Oklahoma City.

REGISTRATION IS OPEN FOR THE 2025 SOVEREIGNTY SYMPOSIUM

This year's Sovereignty Symposium will be held June 12-13 at the OKANA Resort in Oklahoma City. The event is presented by the OCU School of Law. Reach out to Jennifer Stevenson at jsstevenson@okcu.edu for sponsor information, and visit www.sovereigntysymposium.com to register and learn more about the event.

LHL DISCUSSION GROUPS HOST MAY MEETINGS

The Lawyers Helping Lawyers monthly discussion group will meet Thursday, May 1, in Oklahoma City at the office of Tom Cummings, 701 NW 13th St. The group will also meet Thursday, May 8, in Tulsa at the office of Scott Goode, 1437 S. Boulder Ave., Ste. 1200. The Oklahoma City women's discussion group will meet Thursday, May 22, at the first-floor conference room of the Oil Center, 2601 NW Expressway.

Each meeting is facilitated by committee members and a licensed mental health professional. The small group discussions are intended to give group leaders and participants the opportunity to ask questions, provide support and share information with fellow bar members to improve their lives – professionally and personally. Visit www.okbar.org/lhl for more information, and look at the OBA events calendar at www.okbar.org/events for upcoming discussion group meeting dates.

GOV. STITT APPOINTS JOSEPH A. DOBRY, SEAN KARL HILL AND CHRISTOPHER ANDERSON AS ASSOCIATE DISTRICT JUDGES

Joseph Dobry

Sean Karl Hill

Christopher Anderson

Joseph A. Dobry was sworn in as an associate district judge for Oklahoma's 23rd Judicial District, representing Lincoln and Pottawatomie counties. Judge Dobry graduated from the OU College of Law in 1994. He was appointed by Gov. Stitt in December 2024.

Sean Karl Hill was sworn in as an associate district judge for Oklahoma's 4th Judicial District, representing Alfalfa, Blaine, Dewey, Garfield, Grant, Kingfisher, Major, Woods and Woodward counties. He was appointed by Gov. Stitt in February. He previously served as supervising attorney at the Garfield County district attorney's office. Judge Hill graduated from the OU College of Law in 2009.

In March, Gov. Kevin Stitt appointed Christopher Anderson as an associate district judge for Seminole County. Previously, Judge Anderson served as special judge for Seminole and Hughes counties and was assistant district attorney for Seminole County from 2010 to 2019. He graduated from the OCU School of Law in 2007.

LET US FEATURE YOUR WORK

We want to feature your work on "The Back Page" and the *Oklahoma Bar Journal* cover! Submit articles related to the practice of law, or send us something humorous, transforming or intriguing. Poetry, photography and artwork are options, too. Photographs and artwork relating to featured topics may also be featured on the cover! Email submissions of about 500 words or high-resolution images to OBA Communications Director Lori Rasmussen at lorir@okbar.org.

SAVE THE DATE: SOLO & SMALL FIRM CONFERENCE

The OBA Solo & Small Firm Conference is back for 2025! Save the date for Wednesday, July 16, through Friday, July 18, at the brand-new OKANA Resort near downtown Oklahoma City. This mid-year event offers CLE and networking opportunities related to solo and small firm practice management, all in a fun, relaxed, resort-casual environment. Don't miss out! For more information, see page 56 of this issue or visit www.okbar.org/solo.

CHIEF JUSTICE COLLOQUIUM ON CIVILITY AND ETHICS

The Oklahoma Supreme Court invites you to attend the second annual Oklahoma Chief Justice Colloquium on Civility and Ethics on Tuesday, May 6. This year's event will feature guest speaker Baylor University School of Law Professor Leah Jackson Teague. She will speak on the critical role of all generations of lawyers, legal traditions and ethical standards, how to mentor for success and balancing new tech tools with strong ethical responsibility. Attend the event in person or virtually. Register at ok.webcredenza.com.

CONNECT WITH THE OBA THROUGH SOCIAL MEDIA

Are you following the OBA on social media? Keep up to date on future CLE, upcoming events and the latest information about the Oklahoma legal community. Connect with us on LinkedIn, Facebook and Instagram.

Bench & Bar Briefs

ON THE MOVE

Khadija Ghani has been promoted to partner at the Oklahoma City office of Amundsen Davis in the Transportation & Logistics Service Group. She counsels clients on regulatory compliance, preservation of evidence and risk avoidance. Ms. Ghani handles personal injury claims, contract disputes and property loss. She received her J.D. with high honors from the TU College of Law and is admitted to practice law in Illinois and Oklahoma.

Tyler Self has joined the Oklahoma City office of GableGotwals as a litigation associate. His practice focuses on environmental and natural resources law. Mr. Self has experience handling complex environmental issues across multiple industry sectors, advising clients on regulatory compliance, permitting, litigation and transactional matters. He has advised clients regarding the Clean Air Act; the Resource Conservation and Recovery Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Clean Water Act; and other state regulatory schemes. He received his J.D. from the OU College of Law.

Brian Hill has joined the Oklahoma City office of Stride Bank Wealth Management as the senior vice president and chief fiduciary officer. He leads Stride's fiduciary services, helping clients navigate the complexities of estate and trust planning with a focus on long-term financial security and legacy preservation. He has nearly 20 years of experience in estate planning, trust administration and wealth preservation. Prior to joining Stride, Mr. Hill led the Estate Planning and Probate Division at a law firm and previously held key leadership positions at regional and large financial institutions. He has also served in leadership roles with the Oklahoma City Estate Planning Council and the OBA Estate Planning, Probate and Trust Section.

Nathalie M. Cornett has been named a shareholder at Eller & Detrich PC. Her practice primarily focuses on zoning, land use planning, real estate and alcohol beverage law. Ms. Cornett received her J.D. *cum laude* from the TU College of Law.

Bailey B. Betz has joined Eller & Detrich PC as an associate. His practice primarily focuses on commercial real estate and business transactions, mergers and acquisitions and estate and probate matters. Mr. Betz received his J.D. with highest honors from the OU College of Law in 2020, with a certificate in international law.

AT THE PODIUM

Paul R. Foster and **Carrie L. Foster** presented at the Community Bankers Association of Oklahoma's 2025 Leadership Retreat in Santa Fe, New Mexico, Feb. 5-7. Mr. Foster presented "Dynamic Interactive Question and Answer" on a panel of banking regulators from the Federal Reserve, the Federal Deposit Insurance Corp., the Office of the Comptroller of the Currency and the Oklahoma Banking Department and separately presented "How Federal Bank Regulators Are Upping the Risk for Directors and Officers." Ms. Foster presented "Emerging Bank Risk in Elder Financial Exploitation: A Simple Navigation of Federal & State Law." They practice at Paul Foster Law Offices PC in Norman.

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:

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Articles for the August issue must be received by July 1.

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10:00 a.m.	**How to Manage Everything!** Jim Calloway and Julie Bays, OBA Management Assistance Program
11:00 a.m.	**Break**
11:10 a.m.	**Professional Liability Insurance and Risk Management** Phil Fraim, President, Oklahoma Attorneys Mutual Insurance Company
12:15 a.m.	**Lunch** Provided by Oklahoma Attorneys Mutual Insurance Company
12:30 p.m.	**Tools of the Modern Law Office, Hardware/Software and Fastcase** Julie Bays, OBA Management Assistance Program
12:50 p.m.	**Artificial Intelligence in the Legal Profession** Jim Calloway and Julie Bays, OBA Management Assistance Program
1:50 p.m.	**Break**
2:00 p.m.	**Trust Accounting and Legal Ethics** Gina Hendryx, OBA General Counsel
2:50 p.m.	**Break**
3:00 p.m.	**How to Succeed in Law Practice** Jim Calloway and Julie Bays, OBA Management Assistance Program
4:00 p.m.	**Adjourn**

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In Memoriam

Annette R. Bohling of Gilbert, Arizona, died April 25, 2024. She was born Feb. 3, 1952, in Afton. Ms. Bohling was active in the Wyoming Department of Education and joined the North Central Association Commission on Accreditation and School Improvement in 1998. For the last several years, she served as the chief accreditation and certification officer of Cognia, the umbrella organization for the North Central Association, the Northwest Accreditation Commission and the Southern Association Council on Accreditation and School Improvement. Ms. Bohling received her J.D. from the TU College of Law in 1986. Memorial contributions may be made to the Annette Bohling Doctoral Scholarship at Acacia University.

David L. Boren of Norman died Feb. 20. He was born April 21, 1941, in Washington, D.C. Mr. Boren graduated from Yale University in 1963 with a bachelor's degree in American history and from the University of Oxford, where he was a Rhodes scholar, in 1965 with a master's degree in philosophy, politics and economics. He received his J.D. from the OU College of Law in 1968, where he was named an outstanding graduate in his class by faculty. Mr. Boren began his political career in the Oklahoma House of Representatives, where he served from 1967 to 1975. He was sworn in as the 21st governor of Oklahoma in 1975. He served in the U.S. Senate from 1979 to 1994 and was tied for the longest-serving chair of the U.S. Senate Select Committee on Intelligence. Mr. Boren resigned from his Senate seat in 1994 to assume the role of president of OU. During his time at OU, the university expanded its programs and facilities, including opening an honors college and a college of international studies that was later named in his honor. He served the university for 24 years and retired from the position in 2018.

George Camp of Oklahoma City died Feb. 9. He was born Aug. 15, 1926, outside of Drumright. **Mr. Camp served in the U.S. Army in World War II and was stationed in Gen. MacArthur's headquarters in Tokyo after the war.** He received his J.D. from the OU College of Law in 1950 and was a longtime attorney and public servant. He served as a county attorney of Major County, a first assistant U.S. attorney in Oklahoma City and a member of the Oklahoma House of Representatives for 18 years.

John B. DesBarres of Sand Springs died Feb. 8. He was born Nov. 5, 1961, in Pittsburgh. Mr. DesBarres graduated from Bishop Kelley High School in 1980 and earned a bachelor's degree in business administration from TU in 1984. He received his J.D. from the TU College of Law in 1987 and began his legal career in 1986 as a licensed legal intern at Ungerman, Conner & Little. During his nearly 40 years of practice, he completed client matters ranging from contracts and durable powers of attorney to trial of complex bodily injury cases for both the plaintiff and defense sides. Starting in 2012, Mr. DesBarres became a solo practitioner, focusing on general civil practice, plaintiff personal injury and civil insurance defense in Oklahoma state and federal courts. He was involved in his community, including organizations such as the Rotary Club of Tulsa, the Sigma Chi Fraternity (Delta Omega Chapter) and the Tulsa County Bar Association. Memorial contributions may be made to the American Diabetes Association.

Tom R. Gann of Tulsa died Nov. 13. He was born Nov. 21, 1944, in Tulsa. Mr. Gann graduated from Webster High School in 1963 and from OSU with a bachelor's degree in political science in 1967. He participated in the U.S. Air Force ROTC for all four years and played on the baseball team. He received his J.D. from the TU College of Law in 1970. **Mr. Gann served in the U.S. Air Force and was selected as one of the four members of Shaw AFB 1132nd USAF Field Extension Squadron in 1972**. In 1973, he was selected to attend the University of Virginia School of Law, where he received his judgeship. **He served for seven years, attaining the rank of major, while traveling from North and South Carolina to Southeast Asia, Puerto Rico and the Panama Canal Zone.** During his years of private practice in litigation, he represented the Tulsa Airport Authority and the Oklahoma Department of Transportation, along with various other clients, and served as the city prosecutor of Bixby. Memorial contributions may be made to the Church of Saint Mary.

Gary Matthew Hunt of Norman died Feb. 18. He was born Dec. 30, 1950, in Stillwater. Mr. Hunt graduated from Lawton High School and the University of Arkansas in 1973 with a bachelor's degree in business administration and marketing. **He was commissioned as a second lieutenant in**

the U.S. Army and retired after 20 years of service. His service included additional education at the Officer's Basic and Advanced Field Artillery Training Center and the Command and General Staff College. Mr. Hunt was honored with the Meritorious Service Award (4), Army Commendation Medals (2), Army Achievement Award, National Defense Service Medal (2), Overseas Service Ribbons and the Field Artillery St. Barbara's Medal. During his last assignment as battalion executive officer at the Oklahoma recruiting command, he attended night classes at the OCU School of Law, where he received his J.D. *cum laude* in December 1993. While in law school, he was a member of the Phi Delta Phi legal fraternity for academic achievement. Following 10 years of solo practice, Mr. Hunt accepted a position at the Office of General Counsel with the Oklahoma Child Welfare Services, retiring as chief administrative law judge in 2016. He volunteered as board president of the Sooner Swim Club from 1990 to 2004 and spent many hours at major fundraisers and on deck as a USA Swimming official at swim meets. Memorial contributions may be made to the OU Health Stephenson Cancer Center for metastatic prostate cancer research or the Wounded Warriors Project.

Joseph Emory McKimmey of Shawnee died Nov. 10. He was born June 11, 1937, in Phoenix. Mr. McKimmey received his J.D. from the OCU School of Law in 1974. He served as a politician in the city commission, a restaurateur, an entrepreneur, an attorney and a Sunday school teacher throughout his time in Shawnee. Memorial contributions may be made to your favorite place of worship.

Frederick Heins Miller of Edina, Minnesota, died Feb. 13. He was born June 22, 1937. Mr. Miller graduated from Oakwood High School in Dayton, Ohio, in 1955 and from the University of Michigan with honors in 1959. He received his J.D. with honors from the University of Michigan Law School in 1962. He moved to Columbus, Ohio, and practiced law for several years before becoming a professor at the OU College of Law in 1966. Mr. Miller taught in the areas of commercial and consumer law at OU for 45 years. In recognition of his scholarly work and his dedication to teaching, he was awarded the George Lynn Cross Research Professorship and named the McAfee Professor of Law. In 1975, he was appointed by Gov. Boren to the National Law Conference and the Conference of Commissioners on Uniform State Laws, where he was instrumental in drafting material parts of what has become the Uniform Commercial Code. He served as the executive director for nine years and then as president of the National Law Conference. Mr. Miller received various awards for his work in consumer and commercial law, including the Sen. William Proxmire Lifetime Achievement Award from the American College of Consumer Financial Services Lawyers and the Lifetime Achievement Award from the American College of Commercial Finance Lawyers. He was a member of the American Law Institute, the ABA and the Ohio and Minnesota bar associations. Memorial contributions may be made to the OU College of Law through the OU Foundation.

Phillip Reed Scott of Waurika died March 17. He was born Jan. 14, 1943, in Waurika, where he grew up and played center and linebacker on the football team, participated in 4-H and was on the 4-H National Champion Livestock Judging Team. Mr. Scott graduated from Waurika High School in 1961, attended OSU for two years – where he was a member of the Kappa Sigma fraternity – and graduated from OU in 1965 with a bachelor's degree in business administration. He received his J.D. from the OU College of Law in 1969. **During law school, he joined the Army ROTC, where he became a brigade commander, was named the outstanding ROTC graduate and received the Gen. Hal Muldrow Pistol. He served from 1969 to 1971 in the U.S. Army as a lawyer stationed at Fort Benning, Fort Holabird and Fort Knox and did a tour of duty in Vietnam. Mr. Scott was awarded the Army Commendation Medal and the Bronze Star Medal twice during his service.** He returned to Jefferson County in 1971 and became the assistant district attorney before opening his own practice in 1973. During his legal career, he also served as the city attorney for Waurika, Ryan, Temple, Terral and Randlett. In 2022, he retired after 52 years of legal practice. He actively served on the Waurika School Board, the Master Conservancy Board and the Jefferson County Hospital Board. He was also a member of the First Christian Church, the Rotary Club and the Waurika Chamber of Commerce. Memorial contributions may be made to the First Christian Church in Waurika or a charity of your choice.

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THE LAW FIRM OF COLLINS, ZORN & WAGNER, P.L.L.C. is currently seeking an associate attorney with experience in research and writing. The associate in this position will be responsible for performing discovery, motion practice, and briefing in active cases filed in the Oklahoma Eastern, Northern, and Western Federal District Courts and Oklahoma Courts statewide. This position will also include appellate writing in the 10th Circuit and U.S. Supreme Court. Collins, Zorn and Wagner, P.L.L.C., is primarily a defense litigation firm focusing on civil rights, employment, and constitutional law. Salary is commensurate with experience. Please provide your resume, references and a cover letter including salary requirements to Collins, Zorn & Wagner, PLLC, Attn: Stephen L. Geries, 429 NE 50th, Second Floor, Oklahoma City, OK 73105.

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Going to the Train Station,[1] aka the 'Zone of Death'

By Spencer C. Pittman

"Crime is bad, after all. But so is violating the Constitution."

– Brian C. Kalt,
"The Perfect Crime"[2]

TUCKED AWAY IN THE wilderness of Yellowstone National Park lies a remote, potentially lawless region ominously dubbed the "Zone of Death" – a place where the beauty of nature hides a dangerous legal anomaly. Imagine a 50-square-mile area where jurisdictional oversight and constitutional safeguards coalesce into the perfect storm, allowing someone to theoretically commit a federal crime without fear of punishment.

A majority of Yellowstone National Park lies within Wyoming, but small portions extend into Montana and Idaho. The "Zone of Death" is in the Idaho portion of the park, which falls under the jurisdiction of the U.S. District Court for the District of Wyoming.

The Sixth Amendment guarantees a defendant the right to be tried by an "impartial jury of the State and district wherein the crime shall have been committed." These Sixth Amendment requirements are usually easily met. However, the entire park is governed by a single judicial district (Wyoming), and a small portion of the park falls within Idaho. Since the Idaho portion of the park is governed by the District Court of Wyoming and the Sixth Amendment requires that a jury come from Idaho, a crime committed in the Idaho portion of the park would require a jury of residents from that specific area.

Herein lies the problem: The Idaho portion is *completely uninhabited*,

making it impossible to form a constitutionally valid jury. Hypothetically, if someone commits a crime in the Idaho portion of Yellowstone National Park, there would be no residents to serve on a jury, and the accused could escape prosecution.

In December 2005, a poacher was charged in the District Court of Wyoming for illegally shooting an elk in the Montana section of the park (an area without enough residents to reasonably form a jury). The defendant filed an "Objection to Wyoming Jury Panel," arguing that he "has a constitutional right to demand he be tried within the state of Montana, and that the jury who hears his case hails from Montana."[3]

The court blamed Congress for "create[ing] this anomaly when it placed Yellowstone National Park in the District of Wyoming" and "recognize[d] the conundrum that presents itself, because the literal interpretation of Article III and the Sixth Amendment make it impossible to satisfy both provisions when a crime is committed in the portions of Yellowstone National Park that fall outside of the state of Wyoming."[4] To avoid "creat[ing] a virtual no man's land," the court ruled any criminality occurring within the park, regardless of the state, *must* result in a jury trial in the District Court of Wyoming with jurors selected from Wyoming citizens.[5] The defendant took a plea agreement conditioned on him not appealing the "Zone of Death" issue to the 10th Circuit.[6]

Despite this issue being sensationalized in the media, such as the show *Yellowstone*, Idaho legislators and scholars, such as Brian C. Kalt, have advocated for redrawing judicial districts or other reformation alternatives, but to no avail.

Thankfully, this loophole has remained principally academic rather than applied in actual legal practice, as no known felonies have been committed in the "Zone of Death" – at least not yet.

Mr. Pittman is a shareholder with Winters & King Inc. in Tulsa.

ENDNOTES

1. The "train station" in the show *Yellowstone* is a fictionalized location where the protagonists would dispose of rivals or those who knew too much about the family's business. *Yellowstone*, S3.E9 (Lloyd Pierce: "No one lives within 100 miles. It's a county with no people, no sheriff, and no 12 jurors of your peers.").
2. Brian C. Kalt, "The Perfect Crime," 93 *Geo. L.J.* 675 (2004-2005).
3. *U.S. v. Belderrain*, 2:07-cr-66-WFD, Dkt. 22 (July 2, 2007).
4. *Id.*, at Dkt. 28.
5. *Id.*
6. Brian C. Kalt (2008). "Tabloid Constitutionalism: How a Bill Doesn't Become a Law," *The Georgetown Law Journal*, 96 (6): 1971, 1984.

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