

THE Oklahoma Bar JOURNAL

Volume 86 ♦ No. 11 ♦ April 18, 2015

LAW

Law Day 2015

Foundations of
the Law:
The Magna Carta
and Beyond

ALSO INSIDE

Tort Reform and Jury Instructions
Oklahoma Product Liability Law
Diversity Awards • JNC Elections



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Get the answers to the questions you get at cocktail parties! This diverse group of practitioners will gather from their wealth of experience and practical knowledge to deliver a compelling and informative seminar.

OKLAHOMA CITY PROGRAM

- 8:30 a.m. Registration and Continental Breakfast
- 9:00 Rachel Pappy, Law Office of Roderick H Polston, P.C.
Unique Cases Before the IRS
- 9:50 Break
- 10:00 Noel Tucker, The Tucker Law Firm
Hot Topics in Family Law
- 10:50 Joe Balkenbush, Oklahoma Bar Association
Hot Topics in Ethics
- 11:40 Networking lunch (included in registration)
- 12:10 p.m. Christopher Papin, Burnett & Brown, PLLC
Hot Topics in Trusts & Estates
- 1:00 Elaine Dowling, Dowling Law Office
Hot Topics in Bankruptcy
- 1:50 Break
- 2:00 Billy Coyle, Coyle Law Firm Topic
Hot Topics in Criminal Law
- 2:50 Adjourn

TULSA PROGRAM

- 8:30 a.m. Registration and Continental Breakfast
- 9:00 Ashlee Crouch & Meilssa Purvis, Law Office of Roderick H Polston, P.C.
Unique Cases Before the IRS
- 9:50 Break
- 10:00 William "Bill" Kellough
Character Evidence: When and How to Use it
- 10:50 Ashlee Crouch & Meilssa Purvis, Law Office of Roderick H Polston, P.C.
Defending Your Client Against the IRS
- 11:40 Networking lunch (included in registration)
- 12:10 p.m. Carrie Luelling, Law Office of Carrie Luelling
Opening Statements and Impeachment: New Techniques for Teaching Your Case
- 1:00 Rod Yancy, RTY Law
Tools You Need to Sharpen Your Estate Planning Skills
- 1:50 Break
- 2:00 Gene Thompson, Denney & Stinnett, PLLC
Bankruptcy: Annual Update of the Annual Update: What You Need to Know Without Spending 2 days at the Oklahoma Bar Center
- 2:50 Adjourn



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Oklahoma Bar Center, 1901 N. Lincoln Blvd.

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contents

April 18, 2015 • Vol. 86 • No. 11



Cover Art: A 3-D rendering of the Magna Carta Memorial by Austin Buchanan, 3rd grade, Clara Reynolds Elementary, Harrah

FEATURES

- 775 FOUNDATIONS OF THE LAW:
THE MAGNA CARTA AND BEYOND
By Jennifer Prilliman and Richard Vreeland
- 779 LAW DAY 2015 CONTEST WINNERS
- 808 COUNTY LAW DAY CHAIRPERSONS
- 810 COUNTY BAR ASSOCIATION ACTIVITIES
- 816 CHIEF JUSTICE ISSUES LAW DAY DIRECTIVE
- 817 OKLAHOMA'S STATE LAW DAY
PROCLAMATION



pg. 844
MOCK TRIAL



pg. 842

BOMBING
ANNIVERSARY

DEPARTMENTS

- 772 FROM THE PRESIDENT
- 859 FROM THE EXECUTIVE DIRECTOR
- 860 EDITORIAL CALENDAR
- 861 LAW PRACTICE TIPS
- 865 OBA BOARD OF GOVERNORS ACTIONS
- 868 OKLAHOMA BAR FOUNDATION NEWS
- 871 YOUNG LAWYERS DIVISION
- 873 ACCESS TO JUSTICE
- 876 FOR YOUR INFORMATION
- 879 BENCH AND BAR BRIEFS
- 881 IN MEMORIAM
- 883 IN MEMORIAM: WINFREY HOUSTON
- 884 WHAT'S ONLINE
- 888 THE BACK PAGE

PLUS

- 821 TORT REFORM AND JURY INSTRUCTIONS
By Charles W. Adams
- 830 AN OVERVIEW OF OKLAHOMA PRODUCT
LIABILITY LAW
*By Chris Pearson, Thomas G. Wolfe,
Lyndon Whitmire and Cody J. Cooper*
- 842 THE TIME IS 20 YEARS PAST 9:02 A.M.
By Robert Don Gifford
- 844 MOCK TRIAL PROGRAM CONCLUDES
ANOTHER SUCCESSFUL YEAR
By Daniel Couch
- 848 NEW OBA MASTER LAWYERS SECTION:
BAM! BECOME A MEMBER – BECOME A
MASTER
By Ron Main
- 850 DIVERSITY AWARDS: COMMITTEE
ENCOURAGES NOMINATIONS
- 852 JUDICIAL NOMINATING COMMISSION
ELECTIONS
- 855 LEGISLATIVE REPORT
By Duchess Bartmess

‘Do Better’

Work Remains to Embrace Law Day Principles

By David Poarch

In 1958 President Dwight D. Eisenhower proclaimed the first day of May as Law Day, U.S.A. Three years later, May 1 was designated Law Day, U.S.A. with the enactment of 36 U.S.C. §113, declaring it “a special day of celebration by the people of the United States in appreciation of their liberties and the reaffirmation of their loyalty to the United States and of their rededication to the ideals of equality and justice under law in their relations with each other and with other countries; and for the cultivation of the respect for law that is so vital to the democratic way of life.”

We have celebrated Law Day all across our nation for more than 55 years, and we do so again this year in conjunction with our celebration of the 800th anniversary of the Magna Carta, the foundational document from which our democratic form of government emerged in this country, nurtured by our common reverence and respect for equality, justice and the rule of law — the universal underpinning of our legal system. It is the imperative that neither the ruled nor the ruler is above the law.

*As lawyers,
we are leading
others whether
we want to
or not.*

With such dignified principles at the core of our “nation of laws, and not of men,” why have we not come further along in our relations with one another? Why do we still struggle to first find value in our fellow citizens — before we find fault? And why do we behave as if the company we keep possesses some superior right or entitlement to equality, justice and liberty — more than exists in our neighbors, particularly those we don’t know?

Recent racially charged events on the campus of the University of Oklahoma bring these questions into sharp focus; a sad reminder that although much has changed, much has not over the millennia. With this, and similar recent events across the nation, we are again reminded that in spite of the

fact we profess to “hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness,” we are yet unable to *actually live* that expression of our common ethos first pronounced on July 4, 1776.

Difficult circumstances, like these recent events, pose difficult questions and present difficult issues deserving our singular quiet contemplation, as well as insightful debate in the public square. Seemingly, there are few if any answers that do not begin with the necessary personal resolve in each of us to “do better.” As lawyers, we do better by actually being better and modeling that behavior. As lawyers, we are leading others whether we want to or not.

So, as we join others to celebrate Law Day in appreciation of our liberties, again rededicating ourselves to the ideals of equality and justice under the law, I am reminded of Justice Steven Taylor’s oft-repeated observation that since the founding of this country, when good things happened, when the rights and liberties of its citizens were protected, lawyers were there. With that in mind, as we again celebrate Law Day, I encourage each of you to be there, leading the way in your community.



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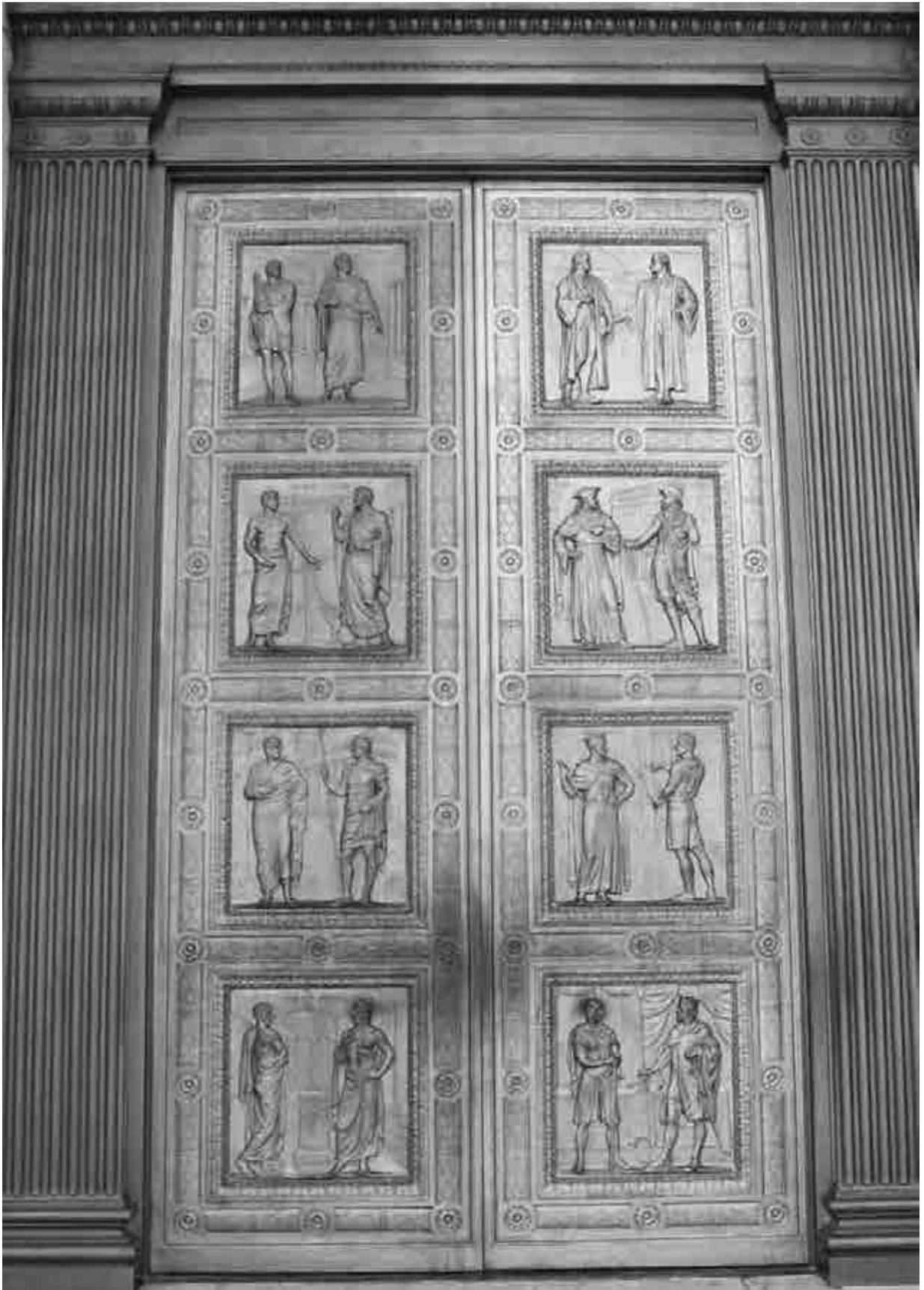
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Law Day 2015

Foundations of the Law: The Magna Carta and Beyond

By Jennifer Prilliman and Richard Vreeland

There is not a more apt theme for Law Day than this year's, "Foundations of the Law: The Magna Carta and Beyond." Eight hundred years ago, the signing of the Magna Carta laid the foundation for the rule of law in England and later the United States and United Kingdom. Law Day, at its core, is a reminder and a celebration of the role the rule of law plays in our country. The checks and balances among the branches found in our Constitution are a direct extension of Magna Carta's core tenet that leaders (lawmakers and enforcers) are subject to the same laws and consequences as the public. Law Day should also make us pause and reflect on the progress still to be made towards true equality for all under the law.

The national observance of Law Day began in Oklahoma. Wewoka attorney and past OBA President Hicks Epton developed the idea for Law Day in the late 1950s, and it has evolved



Oklahoma County Bar Association volunteer lawyers staff the free legal advice hotline at the OETA studio during the 2014 Ask A Lawyer event.

into a national celebration. This year Oklahomans will observe Law Day on April 30 with activities throughout the state. Oklahoma's Law Day theme coincides with the American Bar Association's commemoration of the 800th anniversary of the signing of the Magna Carta. Many activities will highlight the history of Magna Carta.

Law Day provides lawyers an opportunity to reach out to the public and shape a positive view of lawyers and the legal system. Be sure to call your county bar leaders to learn more about the events in your county; a summary of planned activities begins on page 810. If an event is not planned in your county — there is still time! Contact the OBA Law Day committee for ideas and assistance putting together a Law Day event.

Ask A Lawyer

Thursday, April 30

7-8 p.m.

OETA stations

FEATURING
SEGMENTS ON:

- ☆ Immigration
- ☆ Wind Energy
- ☆ Bullying in Schools

Hosted and
Moderated by
Dick Pryor

Special Guests:
Oklahoma Supreme Court
Chief Justice John Reif

OBA President
David Poarch



Immigration lawyer Paola Bennett discusses the legal status of one of her young clients during taping of the Ask A Lawyer TV show.

The Law Day annual art and writing contests for students in kindergarten through 12th grade was a success with more than 1,200 entries. On March 31, contest winners from all over Oklahoma gathered in the Supreme Court's ceremonial chambers at the State Capitol. Students met Chief Justice John Reif, received their awards and toured the Capitol. A traveling exhibit about the history of the Magna Carta and a public discussion of the Magna Carta in the House chambers took place on the same day. It was a great opportunity for students and their families!

ASK A LAWYER TV SHOW

The *Ask A Lawyer* show is in the final stages of production at the time of this writing. Every year the show highlights important legal topics and the impact lawyers make on the lives of individuals. With the help of all our attorney volunteers, we will continue to offer 12 hours of nonstop free legal advice.

The *Ask A Lawyer* television show is set to air Thursday, April 30, at 7 p.m. on OETA stations across the state. This year's show covers a wide range of topics of interest to Oklahomans.



Law Professor Chris Tytanic is interviewed about wind energy during the Ask A Lawyer TV show.

The show will examine civil rights law and its intersection with schools. We will hear from two young men who successfully pursued a civil rights discrimination suit against their high school. We will also hear from lawyers representing schools, the state and individuals. They will share what parents, teachers and schools need to be aware of and learn how to prevent civil rights violations.

Many Oklahomans are directly impacted or have a friend or loved one directly impacted by the Deferred Action for Childhood Arrivals (DACA) program. In this segment you will hear from two young women who have benefited from this program and attorneys representing immigration clients and the United States.

Wind energy is a growing industry in Oklahoma. The show speaks to landowners and attorneys about their experiences with the industry and what you need to know about wind energy leases and production

Chief Justice John Reif and OBA President David Poarch join in the celebration of Law Day. Justice Reif shares his thoughts on the Magna Carta and recognizes the student contest winners and their winning artwork. President Poarch shares with the viewers information about the good work lawyers are doing across the state.

CONTESTS AND ACTIVITIES

This year more than 1,200 students from across the state submitted entries centered on this year's theme, "Foundations of the Law: The Magna Carta and Beyond." This year, the focus continued on writing as we asked first-12th grades to focus on different aspects of the Law Day theme through grade appropriate writing prompts. Oklahoma's students submit-



Viewers of the Ask A Lawyer TV show will hear OBA President David Poarch discuss lawyer provided community service.



Wind energy is a growing industry in Oklahoma, and many of our state's property owners have questions about this developing area of law. The OBA Law Day Committee worked with energy law experts to produce a segment on this topic for the Ask a Lawyer TV show.

ted hundreds of essays demonstrating an excellent grasp of the subject matter. The high quality work made judging the contest a difficult task for Law Day Committee members! The winners have been announced, and the winning entries can be viewed at www.okbar.org and on page 779 of this issue.

FREE LEGAL ADVICE

We are well underway in preparing for the statewide

Ask A Lawyer call-in event, to be held on Thursday, April 30, when the public can call in for free legal advice for 12 nonstop hours. The Ask A Lawyer call-in event is a great way for all Oklahoma lawyers to participate in the celebration of Law Day. This annual event gives us a unique opportunity to provide a valuable

community service while promoting a positive public image of attorneys and the OBA.

Callers statewide will be able to reach an attorney throughout the day on April 30. The OBA and the committee work with each county's Law Day chairperson in setting up a network of local phone numbers during the broadcast. Volunteer attorneys in each participating county staff the phones and answer questions for a predetermined time period. Oklahoma and Tulsa County attorneys work together to staff the toll-free, statewide telephone number from 9 a.m. – 9 p.m.

Your help is needed to make this community service project a success. It takes a total of 30 attorneys for each two-hour shift to fully staff the statewide

number. That effort, combined with the local county bars, creates a huge need for attorneys to step forward. To volunteer, contact your local county Law Day chairperson and the activities planned for each county are listed in a related story in this issue.

The Law Day Committee has again committed to branch out to the Latino community by

offering free legal advice in Spanish. Each shift in Tulsa and Oklahoma City will need Spanish-speaking volunteers. If you speak Spanish or know non-attorneys who would volunteer to translate, we need your help!



OBA President-Elect Garvin Isaacs appears in the Ask A Lawyer TV show to share the story of two young clients whose civil rights were violated during a school bullying incident.

DIRECTIVE AND PROCLAMATION

Continuing an OBA Law Day tradition, Chief Justice John Reif signed the Law Day Directive, encouraging courts to host Law Day events. Gov. Mary Fallin has again this year signed a proclamation designating May 1, 2015, as Law Day in Oklahoma.

GET INVOLVED

As we get ready to celebrate Law Day, the OBA Law Day Committee is already preparing for next year's Law Day activities. If you have ideas for next year's Law Day or just want to be involved then join us on this fun, yet hardworking committee. If you would like to join you can contact Richard Vreeland, 405-360-6631, richard.vreeland@laok.org;

or Jennifer Prilliman, 405-208-5174, jsprilliman@okcu.edu.

We hope that you will participate in Law Day, whether it is volunteering to provide free legal advice in your county or making a presentation to a local school group or organization. With the commitment of the Law Day Committee, county Law Day chairpersons and the help of each and every one of you, this year's Law Day will be a great celebration highlighting the many roles OBA members are involved in our communities.

ABOUT THE AUTHORS



Jennifer Prilliman is the associate director and law library professor for the Oklahoma City University School of Law Library. She serves as co-chair of the OBA Law Day Committee. She is a 2005 graduate of the OU College of Law.



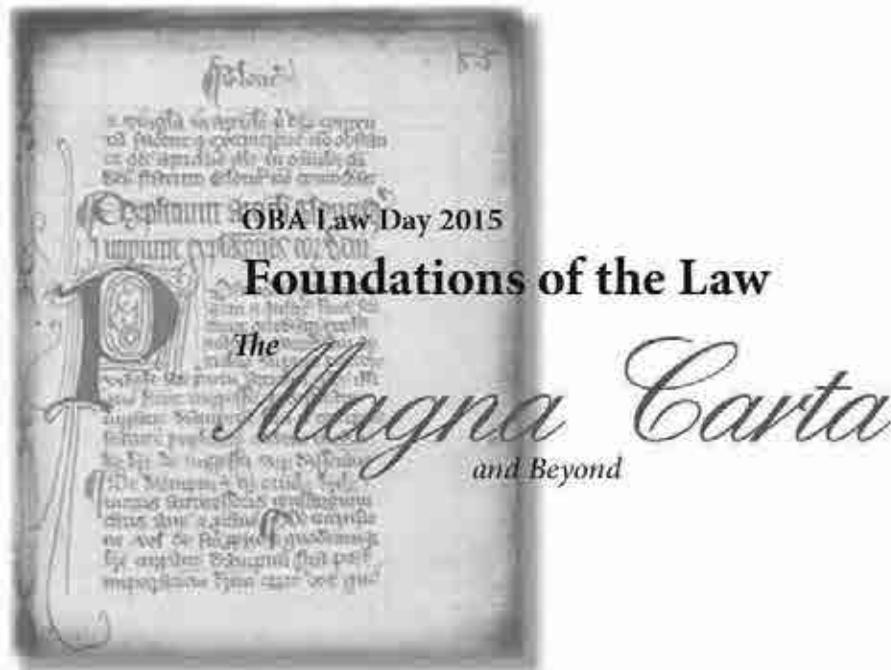
Richard Vreeland is the managing attorney for the Norman and Shawnee offices of Legal Aid Services of Oklahoma. He serves as co-chair of the OBA Law Day Committee. He is a 2006 graduate of the OU College of Law.



Oklahoma Supreme Court Chief Justice John Reif welcomes Law Day contest first place winners to a recognition ceremony at the State Capitol. Also attending were OBA President David Poarch along with Law Day Committee Co-Chairs Richard Vreeland and Jennifer Prilliman.

LAW DAY 2015

CONTEST WINNERS



The OBA Law Day Committee would like to thank Oklahoma educators, students and their families for participating in the 2015 Law Day Contests. More than 1,200 entries were received from Oklahoma students across the state.

This year's theme, "Foundations of the Law: The Magna Carta and Beyond." recognizes the 800th anniversary of a milestone in legal history, the sealing of the Magna Carta at Runnymede, England, in 1215. It encourages Oklahoma students to remember the important role the Magna Carta plays in our civic education, the roots of our freedom, and to continue fighting to advance human rights.

Writing prompts were created for students first through 12th grade. Each prompt was tailored to align with the Oklahoma State Department of Education social studies standards and with the 2015 Law Day theme.

We also continued our art contest with a coloring contest for pre-kindergarteners and kindergarteners and a free-form art contest for first through 12th grade. In the free-form category, students were allowed to enter video productions, mixed media artwork, original music, creative writing, poetry, photography, collage or anything else that relates to the contest theme.

One student was designated the "grand prize winner" for having submitted the best overall entry from all grades. County bar associations will officially present the contest winners in their county with plaques and prize money later this school year.

Grand Prize Contest Winner

Karina Feng

Whittier Middle School, Norman

Teacher: Cindy Castell

Creating the United States: The Foundation, Formation and Transformation of the American Nation

“Honest conviction is my courage; the Constitution is my guide.” These words by Andrew Johnson illustrate the role the United States Constitution plays in our lives. However, many of the principles expressed in the Constitution were drawn from another document that was created nearly six centuries before. The Magna Carta was written by barons of England in 1215 to lower King John’s power and protect the well being of the people. Many of the most important principles expressed in the Magna Carta made its way into the US Constitution when the Founding Fathers wrote it. Without the Magna Carta, the US Constitution wouldn’t be as effective as it is today. The most important principles were the concepts of consent of the governed, higher law, due process, and the separation of the Church from the government for all citizens.



First, the Magna Carta and the US Constitution both incorporate the concept of consent of the governed. In the Magna Carta, “no ‘scutage’ [tax] or ‘aid’ may be levied in our kingdom without its general consent.” One of the Grievances Against the King is “For imposing taxes on us without our consent.” The Declaration of Independence listed the grievances against the King which the Constitution protected the people against. Both of these sections from the two texts takes away the power of the government to tax the people without their consent. Without this law, the government would become oppressive and the democracy would fail. Another example of “consent of the governed” is “For a trivial offense, a free man shall be fined only in proportion to the degree of his offense, and for a serious one correspondingly, but not so heavily as to deprive him of his livelihood” and “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” The punishment fits the crime so that the government can do its job of protecting the people but the law also protects the citizens from unnecessary torture from the government. The Magna Carta protected the Barons from the King’s cruel leadership and set an example for the United States Government.

Next, the Magna Carta also has the principles of due process and a fair trial by jury which influenced the Founding Fathers when they wrote the Constitution. According to the Magna Carta “No free man shall be seized or imprisoned...except by the lawful judgement of his equals or by the law of the land.” The Constitution states “the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State.” Both texts give the people the right to be judged by a jury of their peers. This is also an example of due process. Due process is the most influential part of the Constitution. The Magna Carta also says “In future nothing shall be paid or accepted for the issue of a writ of inquisition of life or limbs. It shall be given gratis, and not refused” which provided the background for the Founding Fathers to place in the Constitution “nor be deprived of life, liberty, or property without due process of law.” The concept of due process in the government ensures that each person is treated equally and fairly. Without due process, the country would be in chaos and the value of the courts would go down. Imagine what the US would be like if the Magna Carta had not had due process; complete mayhem.

Read the rest of Karina’s story at www.okbar.org.

Coloring Contest Winners

Pre-Kindergarten



1st Place

Wyatt Everts

Olive Elementary, Drumright

Teacher: Terisa Clark



2nd Place

Madison Pugh

Temple Elementary, Temple

Teacher: Terri Hooper

Coloring Contest Winners Kindergarten



1st Place

Cali Thomason

Graham-Dustin Elementary, Dustin

Teacher: Barbara Neal



2nd Place

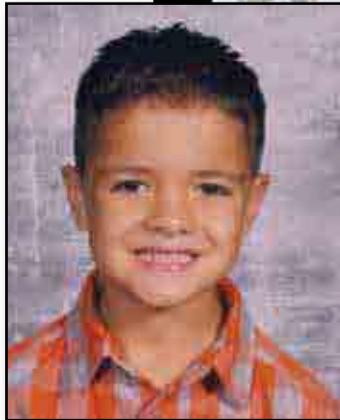
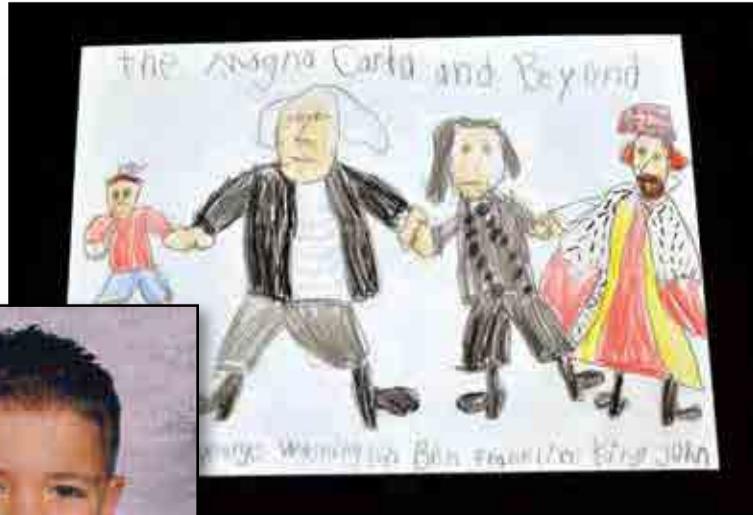
Logan Richards

Seiling Elementary School,
Seiling

Teacher: Vanessa Unwin



Coloring Contest Winners First Grade



1st Place

Camden Villagrana

Horace Mann Elementary, Duncan

Teacher: Kendra Dorrrough

2nd Place

Audrey Trahan

Frontier Elementary School,
Edmond

Teacher: Melissa Estes



Writing Contest Winners First Grade

My Favorite Heroine

My favorite heroine is Betsy Ross. I like Betsy Ross because she made the first United States flag. I also like George Washington because he was the first president, but I chose Betsy Ross. There were not a lot of girls in early history. That's why she is important to me. I think the flag is important because it has states on it. The stars are the states. Making the flag was an important job.



1st Place

Audrey Trahan

Frontier Elementary School,
Edmond

Teacher: Melissa Estes

2nd Place

Cheyenne Vining

Hope Christian Academy, Skiatook

Teacher: Pam Robinson

*To read Cheyenne's story,
go to www.okbar.org.*



Coloring Contest Winners Second Grade



1st place

Hannah Snyder

Frontier Elementary School,
Edmond

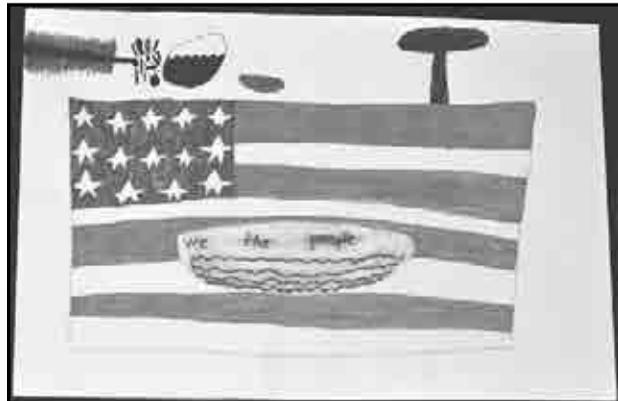
Teacher: Melissa Estes

2nd Place

**Reese
Hollingsworth**

Frontier Elementary School,
Edmond

Teacher: Melissa Estes



Writing Contest Winners

Second Grade

Understanding History is Important

It is important to understand the history of the United States so you can learn from people's mistakes that they made. We can learn about what other people did, and we can tell others about history. When we know history, we can pass on information to those that come after us.

We need to know how we became the United States, how our laws are made, and learn about presidents. We need to learn about people who invented things so we can become smarter. Learning history is about wars and government, and how the government became the government.

We need to learn about the Bill of Rights, so soldiers can't just come and tell you they are going to sleep in your house and you might have to get out.



1st place

Olivia Snyder

Frontier Elementary School,
Edmond

Teacher: Melissa Estes

2nd Place

**Sydney
Dunkleberger**

Frontier Elementary School,
Edmond

Teacher: Melissa Estes

*To read Sydney's story, go to
www.okbar.org.*

Art Contest Winners • Third Grade

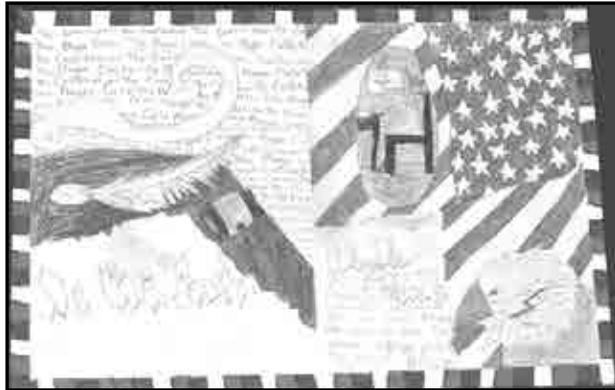


1st Place

Austin Buchanan

Clara Reynolds Elementary, Harrah

Teacher: Susan Underwood



2nd Place

Alice Hsu

Frontier Elementary School,
Edmond

Teacher: Melissa Estes

2nd Place

Rachel Fils-Aime

Frontier Elementary School,
Edmond

Teacher: Melissa Estes



Writing Contest Winners

Third Grade



Why I Think the Constitution is Important

I think the Constitution is important because it gives us our rights. It gives us our freedom and it protects us. We would be a horrible country without it. Who would want to live here if this was a horrible country? But some people do live in horrible countries where they don't have rights and freedom like we do. That's why I'm glad to have the Constitution!

The Constitution gives us freedom. If I didn't have any freedom I would not live a good life. The Founding Fathers of our country thought we should have freedoms. Like freedom of speech, which means that I can say that I agree or disagree about anything. We also have the freedom of press, which means I can write anything I want or feel in a magazine, book, newspaper or the internet. We also have the freedom of religion, which means I can worship any God I want and no one can tell me not to.

I think that the Constitution is also important because it protects us. A long time ago there were slaves here and they couldn't do anything about it. All they did was work. They had to be slaves because they didn't have rights. They were treated like animals. Then people decided to do something about it and they protested. Then they gave African Americans their rights and they protected them from harm.

The Constitution also gives us our rights. Some of those rights are being able to have guns, the right to vote, and the right to assemble. The right to vote is important to me because we get to choose our president. And in other countries if the president was mean then they couldn't do anything about it because they didn't have the right to vote.

And that is why I think that the Constitution is important. It gives us rights, freedom and it protects us. Without it this beautiful country would be messed up and a down right horrible place. When people don't have these rights then people die, people are hurt, or they are sent to prison for little things that we take for granted. That is why I'm so excited to have the Constitution!



1st Place

Callen Villagrana

Horace Mann Elementary,
Duncan

Teacher: Kim Wilcox

2nd Place

Connor Watkins

Covenant Community School, Stillwater

Teacher: Tabatha Watkins

To read Connor's story, go to www.okbar.org.

Art Contest Winners Fourth Grade



1st Place

Griffin Kidd

Horace Mann Elementary, Duncan

Teacher: Susie Benson

2nd Place

Kady Hansen

Covenant Community School,
Stillwater

Teacher: Tabatha Watkins



Writing Contest Winners Fourth Grade

The First Amendment

I believe the first amendment is the most important because it covers most of the freedoms that make us independent from others and our country different from other countries.

The first right the amendment covers is the freedom of speech. This allows you to say your own opinions and beliefs even though it may be negative to the government or anyone else. Other countries are against this. If you went to these countries and said something about their government that they didn't like, you may face consequences and perhaps be killed.

The second right the first amendment covers is the freedom of religion. This allows anyone to be the religion that they choose. This also recognizes that in school or in public no one should be forced to pray at any time. Cases have been into the Supreme Court over the matter of children being forced to pray in school. It was settled that to force a child to pray would be a violation of the first amendment.

The third right that it covers is the freedom of the press. This assures that reporters and anyone that writes can share their opinion in their writing and reporting even though it may be offensive or hurtful. In other countries, books, movies, and other published information must be watched or read by the government before it is published or released.

The fourth right it covers is the freedom of assembly. This lets anyone assemble or gather a group of people. Against or with an opinion, government idea or not, and as long as it does not harm others in any way and it is not a violation of law, you could do it. An example is when a simple winning of a baseball game was celebrated and it got so out of hand police had to get involved. This is what you shouldn't do.

Last but not least, the fifth right the first amendment covers is the freedom of petition. This allows you to have an opinion and then have people sign a piece of paper stating that they agree and that they think this matter should be addressed. You are able to have any opinion you want people to agree with. However, you are not able to force anyone to agree or sign this paper. This cannot lead to violence and you cannot harm others during this activity.



1st Place

Rachel Rayburn

Frontier Elementary School,
Edmond

Teacher: Melissa Estes

2nd Place

Kady Hansen

Covenant Community School, Stillwater

Teacher: Tabatha Watkins

To read Kady's story, go to www.okbar.org.



Art Contest Winners Fifth Grade

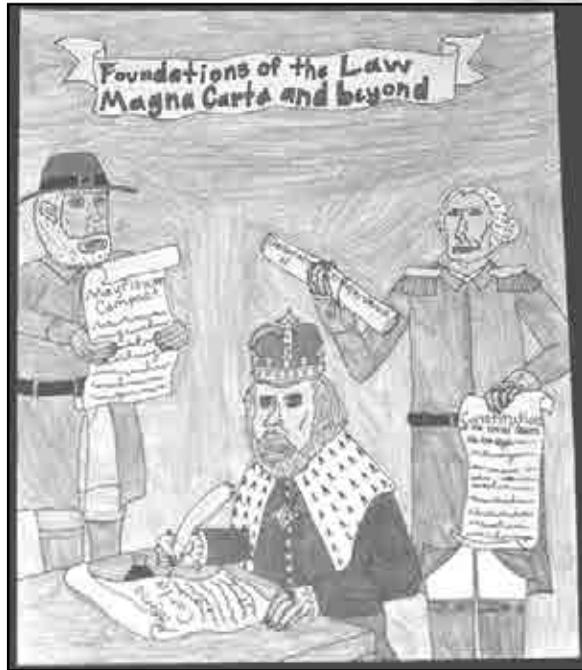


1st Place

Thomas Buchanan

Russell Babb Elementary, Harrah

Teacher: Pam Holland



2nd Place

Zane Gailey

Covenant Community School,
Stillwater

Teacher: Ashlee Mcdaniel



Writing Contest Winners

Fifth Grade

U.S. Constitution

It is important to know about the U.S. Constitution. The U.S. Constitution outlines limited government, the three branches of government, and Separation of government. It is really important to know those things.

The U.S. Constitution outlines limited government. It's important to have limited government because if someone thinks they are stronger than the other they can do hurtful things. Also, it's good to have National and State government share the powers. Another thing is no government has more power than the other. Or it could lead to bad things. That's why it is important to know about limited government.

The U.S. Constitution made the three branches of government. First of all, there are the Legislative, Executive, and Judicial branch. No one branch can be more powerful. They also approve the laws to make sure they are good. So the three branches of government are vital to the United States.



1st Place

Hannah Hardcastle

Nichols Elementary School, Miami

Teacher: Shanna Sanders

Then there is the Separation of power. It separates the three branches of government. It also keeps the three branches from controlling the government. As you can see the Separation of powers are really important to the branches of government. Also every branch has limited power because of the Separation of Power. It is important to know that the Separation of Power is the main idea of the three branches of government.

That's why limited government, three branches of government, and Separation of Power are important to the U.S. Constitution

2nd Place

Lauren Heathcock

Frontier Elementary School, Edmond

Teacher: Melissa Estes

*To read Lauren's story,
go to www.okbar.org.*

Art Contest Winners Sixth Grade

1st Place

Palmer Strubhar

Piedmont Intermediate, Piedmont

*To view Palmer's video,
visit www.okbar.org.*



2nd Place

Seneca Smith

Covenant Community School,
Stillwater

Teacher: Kelly Carman

Writing Contest Winners • Sixth Grade

The Magna Carta and the U.S. Constitution

The Magna Carta is an important document written by King John, Pope Innocent III, and some of the barons that lived in England in 1215. King John actually did not want to make the Magna Carta because he liked having a lot of power over his people and taxing the people excessively. The King John was forced by his people to sign the Magna Carta. This event inspired the story of Robin Hood. The Magna Carta influenced Human rights, allowed nobody to be above the law, and Habeas corpus.

The Magna Carta contained the human rights of women that lived in England. Those rights said that women get more freedom in their wedding. They were given the choice to marry or not. Widows were no longer forced to get married and give up their possessions. This was a major step in women's rights according to Magna Carta Canada 2015. They were free however many times they wanted. In war, noblewomen were not allowed to be captured and taken to be a wife. These rights are important because they have choices and get to be more independent.

Read the rest of Robert's story at www.okbar.org.



1st Place

Robert Dobbins

Hope Christian Academy, Skiatook

Teacher: Cindy Haley

Art Contest Winners Seventh Grade

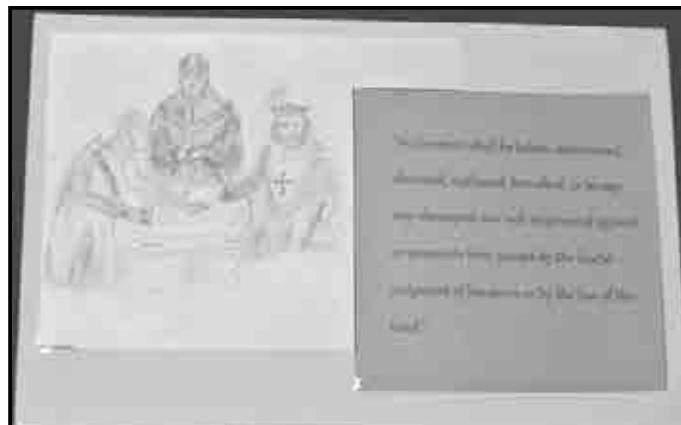


1st Place

Ashley Benjamin

Oklahoma Bible Academy, Enid

Teacher: Charlotte Williams



2nd Place

Hunter Wyatt

Covenant Community School, Stillwater

Teacher: Kelly Carman

Writing Contest Winners

Seventh Grade

Magna Carta and the U.S. Constitution

Both the Magna Carta and the U.S. Constitution are very important documents in the history of England and America. The Magna Carta was signed by King John of England in 1215. Under the Magna Carta, the King was forced to give up specific rights on how the law worked and that the law applied to the King also. The U.S. Constitution was created on September 17, 1787 and is the law of the United States of America. The document replaced the Articles of Confederation. There are many similarities and differences between the two documents.

Both documents that were signed were for the protection and rights of the citizens of each country. The Magna Carta protected the rights of all free people to be able to own and inherit land and to not have to have taxes which were unreasonably high. The Bill of Rights gives protection of the individual liberty and justice for American people and restricts the powers of the government the document creates. Also, King John in the Magna Carta made a promise to his people that he would not abuse his power by putting them in jail unless they were convicted by other people. The U.S. Constitution has the Sixth Amendment, which gives all Americans the right to a fair trial by jury. Both documents give the people the right to Due Process which means all prosecutions and legal action must be fair and the law against them must be understandable. Finally, both prevent Cruel and Unusual Punishment. Section 20 of the Magna Carta states that the King could not inflict cruel punishment against citizens. King John agreed that the punishment should equal the crime. The Eighth Amendment in the U.S. Constitution includes the same law.

There are differences between the Magna Carta and the U.S. Constitution also. First, the Magna Carta was not meant for ordinary people, the Constitution was. The Magna Carta insured the rights of the feudal lords and barons against the power of the King. The U.S. Constitution insured the right of every American citizen and not just the people with a lot of money and gold. Second, the provisions in the U.S. Constitution are different from the Magna Carta. The Magna Carta does not outline rights or freedoms for regular citizens, only a few for lower people and the King to live under the law also. The U.S. Constitution outlines freedoms and guaranteed rights for all citizens including the President and people in government.

In conclusion, both documents began a shift in creating governments that were less one-sided. The Magna Carta influenced the development of common law and the Founding Fathers when they were writing the U.S. Constitution. Both went through many changes over time.



1st Place

Jensen Link

Duncan Middle School, Duncan

Teacher: Stacy Smith

2nd Place

Katie McQuay

Hope Christian Academy, Skiatook • Teacher: Cindy Haley

To read Katie's story, visit www.okbar.org.

Art Contest Winners • Eighth Grade

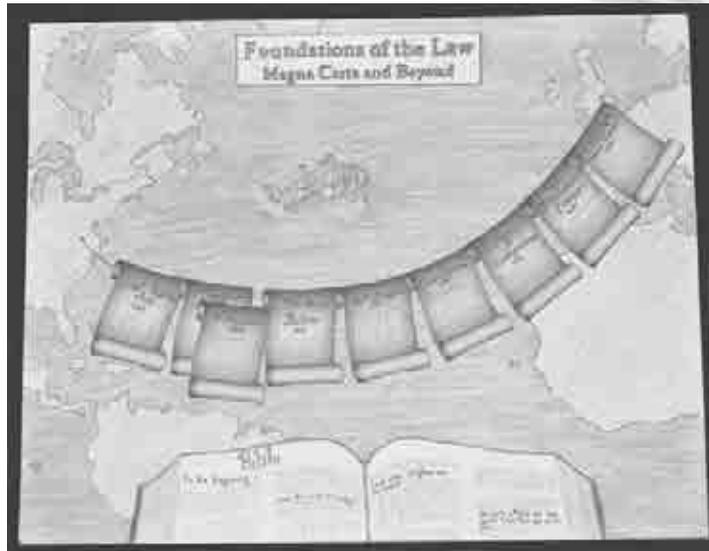


1st Place

Jonathan Tonnell

Classical Conversations
Home School, Enid

Teacher: Brian Tonnell



1st Place

**Gabrielle Jungers,
Maliha Maisha,
Mina Ruyle and
Helena Singleton**

Carver Middle School, Tulsa

Teacher: Anthony J. Cherry

*To view their video,
visit www.okbar.org.*



2nd Place

Emily Moore

Oklahoma Bible Academy, Enid

Teacher: Charlotte Williams



Writing Contest Winners • Eighth Grade

How the Constitution Incorporated the Magna Carta

The Magna Carta, an English charter, inspired sections of the American constitution. It was written in 1215 and contains statements such as “and the city of London shall have all its ancient liberties and free customs, as well by land as by water; furthermore, we decree and grant that all other cities, boroughs, towns, and ports shall have all their liberties and free customs.” And “To no one will we sell, to no one will we refuse or delay, right or justice.” The people of England felt that they were being treated unfairly and that the king was not above the law. They wrote this charter stating the rights that they believed the people should have and how things should be run. These characteristics later influenced the United States constitution and were the materials used to make the building blocks of America.

The Constitution gets its roots from many successful governments and can be traced back to the Magna Carta. Its best known sections are the preamble and the Bill of Rights, both of which impacted history greatly. The rights listed are rights that all citizens were and still are entitled to. They include freedom of speech, the statement that certain, if not most, rights cannot be denied, and state that any right not addressed in the Bill of Rights is left to the state governments. By picking and taking ideas from different governments, we were able to create a near perfect blend of rights and rules.

The principle that everyone has rights and that they cannot be denied these rights has been around for centuries. During the time of the publication of the Magna Carta some citizens were cheated and treated as less than dirt. The writers realized that everyone deserved the same human rights that others were promised by their country and that some people were denied of them. As a colony of Britain, America was seen as a source of income and not a community of actual people. The colonists were treated less than the citizens back home in Britain. They decided that all people had basic rights to life, liberty, and the pursuit of happiness along with other freedoms that a person should not be denied of.

The states wanted some space to govern themselves and originally were going to be more like small countries rather than a whole united nation. The statement that any rights not delegated to the federal government or forbidden to the states were in their control gave them some of this control that they were set on having. This was a bit like the system of governments in the UK. You would have the one large country and then it would be divided into smaller lands owned by lords and dukes. They controlled the laws and enforcement of them in their own lands but also had to follow laws set by the king. This principle has been used from Greece to Britain and everywhere in between.

Read the rest of Caroline's story at www.okbar.org.



1st Place

Caroline Godfrey

Marquette Catholic School, Tulsa

Teacher: Jamie Stoermer

2nd Place

Josiah Roche

Kiefer High School, Kiefer • Teacher: Lorie Quinelle

To read Josiah's story, visit www.okbar.org.

Art Contest Winners Ninth Grade



1st Place

Katelyn Morton

Sequoyah High School, Tahlequah

Teacher: Tonya Fowler

2nd Place

Jackson Walters

Covenant Community School,
Stillwater

Teacher: Linda Wyatt
and Elizabeth Albright



Writing Contest Winners

Ninth Grade

How the Magna Carta Influenced the Formation of the U.S. Constitution

Let us travel back to a time when the latest technology was a catapult, a bathroom was a hole in the ground, and feudalism was the common form of government. The year is 1212, and King John of England has raised taxes on barons. In response to this, the barons begin to argue with John about his methods of ruling the country. This goes on until 1215, and eventually the barons attempt to make King John rule by the old English laws. Soon after, the barons take up weapons against King John and capture London. Taken by surprise, King John agrees to meet them at Runnymede, a meadow alongside the Thames river. There, the barons present a document to the king, forcing him to approve it with his seal. This was one of the most influential documents ever to be made, and it is known as the Magna Carta.

Now, 800 years later, many things have changed. There are cars, computers, and free nations, the forefront of which is the United States of America. The U.S. was founded on many principles, many of which were influenced by the Magna Carta. Without the Magna Carta, America would likely be much different today.

America's founding document, the Constitution, bears many resemblances to the Magna Carta. Such concepts as due process, traveling freely, and no man being above the law (not even the king/leader), found their origins in the Magna Carta. Simply said, the Magna Carta laid some groundwork for the Constitution that was to come.

Due process of law first appeared in the Magna Carta when it stated that "no free man shall be taken or imprisoned...or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land." This means that no person will be thrown in jail or killed without a fair trial. This was taken by the founders of America and used in the Fifth and Fourteenth Amendments. The Fifth Amendment states that "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 be deprived of life, liberty, or property without due process of law." The Fourteenth Amendment says that "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law." Essentially, no one can have property taken, be accused of a terrible crime, or have their rights taken away without due process of law. Sound familiar?

Read the rest of Caleb's story at www.okbar.org.



1st Place

Caleb McQuay

Hope Christian Academy, Skiatook

Teacher: Cindy Haley

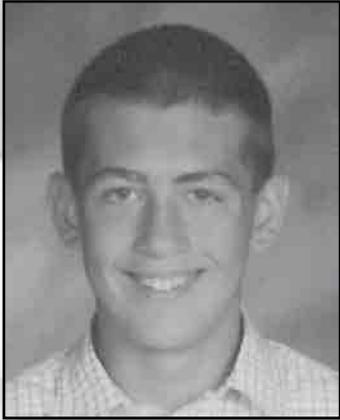
2nd Place

Warren Crouch

Hope Christian Academy, Skiatook • Teacher: Cindy Haley

To read Warren's story, visit www.okbar.org.

Art Contest Winners 10th Grade

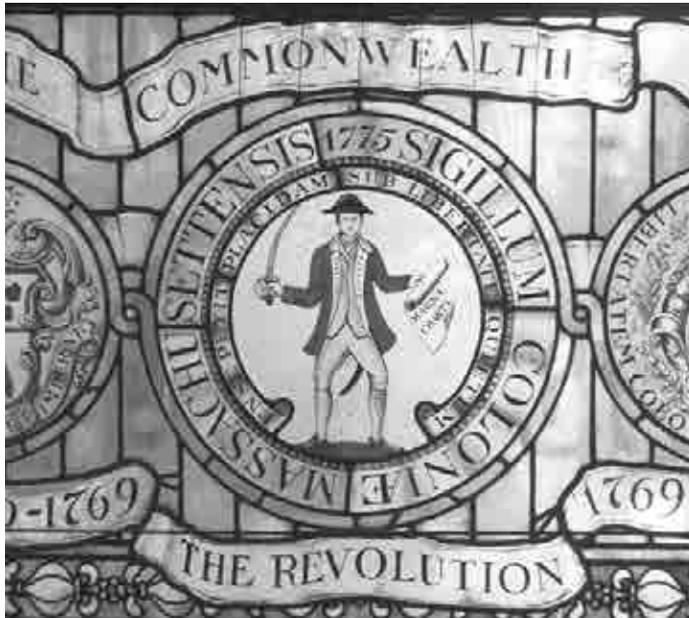
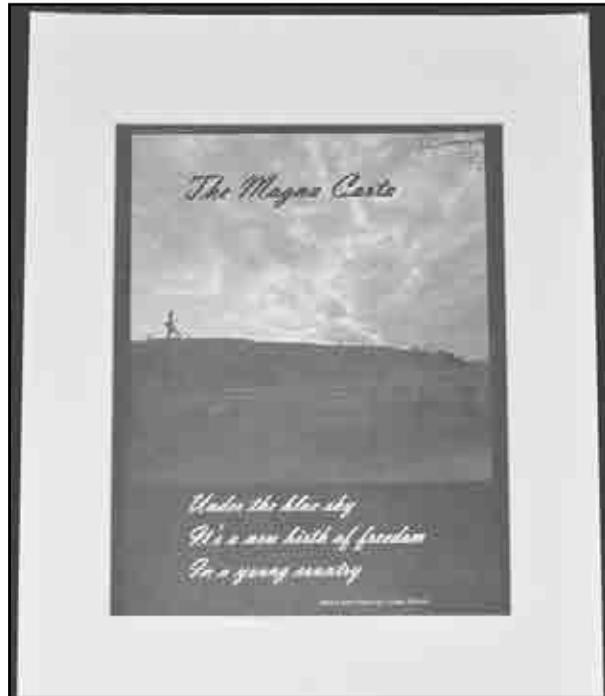


1st Place

Ethan McGill

Barnsdall High School, Barnsdall

Teacher: Wilma Logue



Writing Contest Winners • 10th Grade

Connections Between the Magna Carta and the U.S. Constitution

Thirteen years ago my father worked as Army litigator, someone who defends the Army from lawsuits, in his cases he understood and used court procedures that were given to him from the Constitution of the United States of America. The Constitution provided him rights that allowed him to make arguments and these rights also help facilitate the court process. But these rights are not only found in the Constitution, they are found in a document written 800 years ago by Barons from Great Britain asking their King for very basic rights, this document was called the Magna Carta. In addition to rules about a fair trial, one can tell that the Magna Carta greatly influenced the Constitution by the way they connect on issues such as freedom of religion and the way the Magna Carta lays down the formation for our form government that is very close to our three branches.

In many of my father's cases the decision was made via jury, whose decision was based off of credible witness's testimonies and evidence relevant to the cases. Without these very basic rights of law, false accusations would run rampant in the courthouse, we wouldn't know how to distinguish the credible accusations from the non-credible ones. In addition to being in the Constitution, these rights were also granted in the Magna Carta. The Magna Carta initiated the beginning of trial via due process, which eventually evolved into trial via jury. When our founding fathers wanted to develop a fair justice system, it very obvious that they used ideas from the Magna Carta to aid in their creation. Without the Magna Carta the way we prosecute criminals and handle court cases would be very different than the fair and honest way it is right now.

In addition to creating due process of the law, the Magna Carta also contains the blueprints for our three wing government. The barons who wrote the Magna Carta were tired of having the king impose harsh, unfair laws and the fact that no one could stop him from imposing these laws. In order to prevent this from ever happening the writers of the Magna Carta created an organization of individuals who approval was needed in order to pass laws. This action prevented the king from creating laws that hurt the people but benefitted the king. From this group of individuals came the Senate and the House of Representatives, whose approval is needed to pass laws. The group of individuals from the Magna Carta and the Senate and House of Representatives from the Constitution show a very prevalent link between the two documents and how the Magna Carta influenced the Constitution.

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



1st Place

Aaron Mendelson

Lawton High School, Lawton

Teacher: Doc Freeman



2nd Place

Corey Bell

Lawton High School, Lawton • Teacher: Doc Freeman

To read Corey's story, visit www.okbar.org.

Art Contest Winners 11th Grade



1st Place

Kinsey Mitchell

Choctaw High School, Choctaw



2nd Place

Lillian Swingle

Miami High School, Miami

Teacher: Dawn Hill



Writing Contest Winners • 11th Grade

How the Magna Carta Influenced the Creation of the U.S. Constitution

In past few weeks it has been impossible to escape news of beheadings and other atrocious killings accredited to ISIS in Syria and Iraq. The targeting of men, women, and children solely because they do not conform to the “right” religion horrified me. I thought of my own faith, and how conflicted I would feel if I suddenly wasn’t allowed to go to mass. I took a moment to appreciate just how substantial the United States Constitution is in its assurance of religious freedom. Upon further thinking, I wondered how James Madison came to the idea that religious freedom was so important that it be included in our Bill of Rights. Then I remembered that the Magna Carta contained a relatively similar sentiment all the way back in 1215. After continued analysis of both documents it became clear that religious freedom wasn’t the only thing Madison used for inspiration when writing the Constitution. The Magna Carta also influenced the terms of due process, the basis of limited federal power, and the premise of no cruel or unusual punishment.

Due process, or habeas corpus in the United States, today ensures that no one can be imprisoned without a trial through the Constitution. The Magna Carta had a similar approach to unlawful imprisonment almost 600 years before the U.S. Constitution was even on the horizon. The Magna Carta states that “No Freeman shall be taken, imprisoned, disseised, outlawed, banished, or in any-way destroyed...except by the lawful judgment of his peers or by the law of the land.” The Magna Carta essentially set the precedent for banning unlawful imprisonment that would eventually influence James Madison in his framing of the Bill of Rights.

Another influence can be found in the main reason why the Magna Carta was even thought of by the barons of Runnymede, England in 1215. The barons wanted to limit the power of King John while increasing their own personal liberties. The Magna Carta “embodied the general principle that the King accepted limitations on his rule.” The Constitution limits federal power through checks and balances. Our legislative, executive, and judicial branches of government all keep each other from having too much power over the people, which is exactly what the barons wanted in limiting the power of King John. Thus, it is reasonable to assume that the framers of the Constitution took a page out the barons’ book when limiting the power held by one person.

Read the rest of Jessica’s story at www.okbar.org.



1st Place

Jessica Thompson

Lawton High School

Teacher: Doc Freeman

2nd Place

Rosa Belyeu

Lawton High School, Lawton

Teacher: Doc Freeman

*To read Rosa’s story,
go to www.okbar.org.*

2nd Place

Ronnie Rhodes

Lawton High School, Lawton

Teacher: Doc Freeman

*To read Ronnie’s story,
go to www.okbar.org.*

Art Contest Winners 12th Grade



1st Place

Kirstyn Fitch

Oklahoma Bible Academy, Enid

Teacher: Charlotte Williams



2nd Place

Allexus Childs

Oklahoma Bible Academy, Enid

Teacher: Charlotte Williams



Writing Contest Winners • 12th Grade

The Magna Carta and the Constitution

On June 25, 1225, a group of barons, disenchanted with the unfair and inconsistent application of English laws, stood in front of King John and demanded that the monarch recognize and protect the traditional rights of the English people. Although this list of rights, now known as the Magna Carta, emerged originally to protect only nobility, it eventually shifted to include protection of the rights of lower social classes as well. Over 500 years later, the Magna Carta's significance influenced the creation of the American Constitution and the Bill of Rights. The Magna Carta's impact is still felt largely in the American courts and in concepts such as the rule of law and due process of law.

The Magna Carta was held to be the utmost law of the land, written to establish restrictions on a monarchy for the sake of protecting the citizens of a country from tyrannical rule. It was the first charter of the western world to also recognize the rights of those without status, even going as far as to state that the barons promised to bestow all the rights and freedom that the king was to give them. Similarly, the Constitution is held to be the highest law of the United States. During the American Revolution, the Magna Carta became a symbol of freedom and inspiration for the rebel colonists: since the colonists were under English rule, did they not deserve the same freedoms and rights that Englishmen enjoyed under the protection of the Magna Carta? The writers of the Constitution recognized the importance of everyone in a nation being given individual freedom and rights as well; America had, after all, just recently fought and won a war so that it could retain many of the freedoms described in the Magna Carta.

The Magna Carta's influence can be best seen in the United States' amendments and Bill of Rights, which the Founding Fathers created to ensure that the Constitution would not overstep its boundaries and interfere with Americans' individual rights, many of which are born from the Magna Carta itself. Portions of the Fifth Amendment and Fourteenth Amendment of the Constitution show the influence that the Magna Carta had on the Constitution. As the Magna Carta required due process of law and a trial by jury to protect the accused in the thirteenth-century England, these amendments also describe these rights in their due process clauses. The Eighth Amendment's ban on disproportionate fines and bail proceeds from the Magna Carta's establishment of an injunction on excessive fines. Traces of the Magna Carta's influence is also seen in the Sixth Amendment that allows the right to a speedy trial and the right to confront witnesses.

Read the rest of Kayla's story at www.okbar.org.



1st Place

Kayla Utsch

Edmond Memorial High School,
Edmond

Teacher: Greg Oppel

2nd Place

Chelsea Green

Edmond Memorial High School, Edmond • Teacher: Greg Oppel

To read Chelsea's story, visit www.okbar.org.



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OPENING YOUR LAW PRACTICE

*PRESENTED BY THE OKLAHOMA BAR ASSOCIATION
MANAGEMENT ASSISTANCE PROGRAM*

APRIL 28, 2015

Oklahoma Bar Center, 1901 N. Lincoln Blvd.
Oklahoma City

8:30 am – Registration and Breakfast

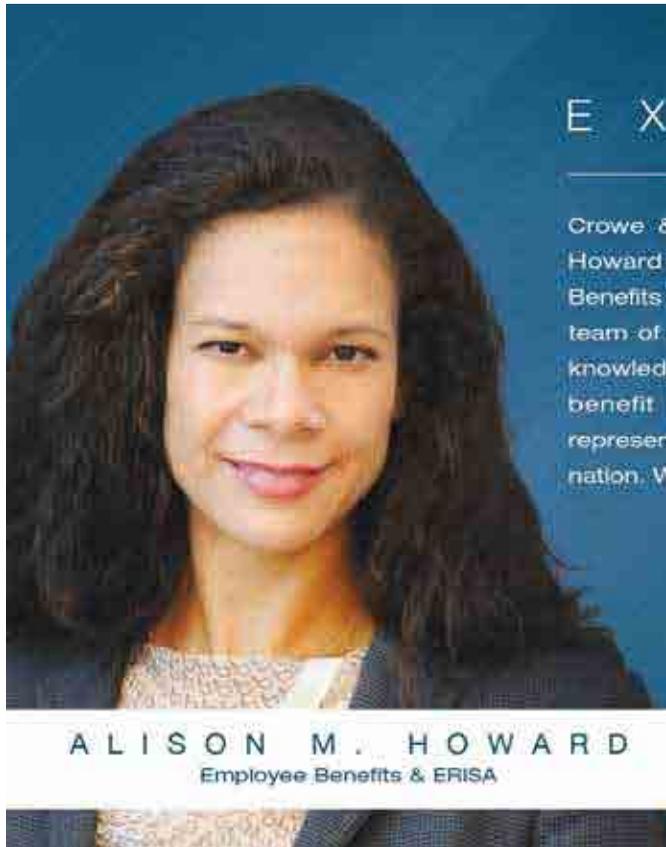
9:00 am – Program Begins

Noon – Lunch provided by Oklahoma Attorneys Mutual Insurance Company

4:30 pm – Program Adjourns

Program Agenda includes — Resources for Starting a Law Practice, Building Client Service & Satisfaction Systems, Client Development & Marketing, Client File Management, Professional Liability Insurance, Professionalism in the Practice of Law, Trust Accounting & Legal Ethics, Equipping the Law Office and Accounting & Tax for Law Firms.

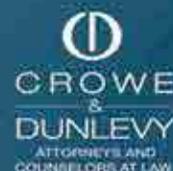
Program is absolutely free! (No MCLE credit) Pre-registration is required. To register email Nickie Day at nickied@okbar.org, 405-416-7050 or register online through MyOkBar.



E X P E R T I S E

Crowe & Dunlevy is proud to announce Alison M. Howard as the new chair of the firm's Employee Benefits & ERISA practice group. Ms. Howard leads a team of experienced attorneys with comprehensive knowledge of pension, health and other employee benefit plans, providing quality and efficient representation to clients across Oklahoma and the nation. We thank her for her leadership.

ALISON M. HOWARD
Employee Benefits & ERISA



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Oklahoma City will be the connecting point for prominent national leaders to gather, reflect and engage. As we look back 20 years to the Oklahoma City bombing, we also seize the opportunity to look forward. To examine the legal issues impacting our nation's safety — from domestic terrorism to cybersecurity to striking the balance between security and liberty — and to strengthen the framework that makes possible the American way of life.

The Summit is open to the public.

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McCurtain

Charlie Wolfe
580-298-2525

McIntosh

Brendon Bridges
918-689-2528

Murray

Becky Johnson
580-622-5666

Muskogee

Chad Locke
918-687-4900

Noble

John Dunivan
405-747-6654

Okfuskee

Don McFarland
918-623-2717

Oklahoma

Curtis Thomas
405-235-9621

Okmulgee

Hilary McKinney
918-758-4384

Ottawa

Matt Whalen
918-540-2199

Payne

Jimmy Oliver
405-624-8383

Pittsburg

Brecken Wagner
918-421-8843

Pontotoc

Jenna Owens
580-559-5603

Pottawatomie

Brandi Nowakowski
405-275-0700

Pushmataha

Charlie M. Rowland
580-298-2525

Seminole

Jack Cadenhead
405-382-6341
and

Judge Tim Olsen
405-257-3386

Sequoyah

Kent Ghahremani
918-775-5900

Stephens

Carl J. Buckholts
580-252-3240

Texas

Catherine Seagraves
580-338-3868

Tulsa

Judge Daman Cantrell
918-596-5390

Wagoner

Richard Loy Gray Jr.
918-485-2889

Washington

Scott Buhlinger
918-336-4132
and

Jim Elias
918-336-4132

Washita

Judge Christopher Kelly
580-832-3226

Woodward

Kate Loughlin
580-256-8616

Is your county missing from this list? Please submit the name of your Law Day chairperson as soon as possible to OBA Law Day coordinator Lori Rasmussen, 405-416-7017, lorir@okbar.org.

THURSDAY, APRIL 30

9 A.M. - 9 P.M.

ASK A LAWYER
FREE LEGAL ADVICE
VOLUNTEER LAWYERS NEEDED



STATEWIDE
HOTLINES

LOCATION:
OETA STUDIOS,
OKC AND TULSA

TULSA SIGNUP

DAN CRAWFORD
539-664-4289
LAWDAYTULSA@OKBAR.ORG

OKC SIGNUP

CONNIE RESAR
405-236-8421
CONNIE@OKCBAR.ORG

OTHER COUNTIES ARE ALSO GIVING LEGAL ADVICE. CONTACT YOUR LOCAL LAW DAY CHAIRPERSON TO VOLUNTEER.

LAW DAY 2015

County Bar Association Activities

★ Adair County Bar Association

The Adair County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone.

★ Beaver County Bar Association

The Beaver County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone.

★ Blaine County Bar Association

Blaine County will celebrate Law Day with Judge Moore speaking to students at the Canton School about the Magna Carta and its role in democracy in the United States. Blaine County attorneys are being encouraged to reach out to schools and make similar presentations for Law Day. The Blaine County drug court will also join in celebrating Law Day by having a poster contest concerning the Magna Carta.

★ Choctaw County Bar Association

The Choctaw County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone.

★ Cleveland County Bar Association

The Law Day theme this year is a celebration of the 800th anniversary of the signing of the Magna Carta. In keeping with that theme, OU College of Law Professor Rick Tepker will make a presentation on “Tracing the Traditions of Due Process” on Tuesday, April 28, at 7 p.m. in Judge Balkman’s courtroom. This presentation is open to the public.

The Cleveland County Bar Association will also be making presentations regarding topics related to due process and the Magna Carta at local schools. The association will be publishing articles related to the Magna Carta and the history of due process in the *Norman Transcript* the week of April 27. Per past tradition the paper will publish one article per day during that week.

The association is selling T-shirts with the Magna Carta theme as a design and will host an end-of-Law Week party for the local bar in appreciation of the volunteers who have assisted with the various activities.

The association will also participate in the Ask a Lawyer event in coordination with the Oklahoma Bar Association. This will be on April 30 from 7 – 8 p.m.

★ Comanche County Bar Association

Comanche County will host its Law Day luncheon on Thursday, April 30, at 11:30 a.m. at the Apache Casino and Hotel in Lawton. OU Professor Rick Tepker is the featured speaker. CCBA scholarship winners will be recognized. Tickets for the luncheon are \$25. The annual Law Day golf tournament will be held May 8 at the Lawton Country Club at 10 a.m. The association will also participate in the Ask A Lawyer program in conjunction with the state wide campaign.

★ Creek County Bar Association

The Creek County Bar, as a part of its reinvigoration as a service organization, has planned multiple events for Law Day 2015. In an effort to celebrate our legal traditions and provide community outreach, the committee members planning the event have put

together a full slate of events that will span the entire day.

The morning event will focus on the children of our community. The Creek County bar has partnered with area schools — more than 250 local children will be guided on tours of the county courthouse. As a part of the tours, our local judges will be giving presentations on our legal system. Additionally, materials will be provided to the schools for further lessons.

The midday and early afternoon will feature a cookout on the courthouse lawn. Hamburgers and soft drinks will be available to courthouse patrons and members of the community. Members of the bar association have also volunteered to be available during this event to spend time speaking with those present.

The day's events will be concluded with a social hour for members of the bar association and their spouses. This event will provide recognition to the attorneys in Creek County who have been in practice more than 30 years, as well as being a fundraiser for a worthy local charity.

★ Custer County Bar Association

The Custer County Bar Association will partner with the Washita County Bar Association to participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone. The Custer County Bar Association will host its annual Law Day banquet on Thursday, April 23, at 6 p.m. at Lucille's Road House in Weatherford. U.S. Magistrate Judge Charles B. Goodwin will be the featured speaker.

★ Garfield County Bar Association

The Garfield County Bar Association has many activities planned for the 2015 celebration of Law Day and will keep its members active throughout the day. The day will begin with Lawyers in the Classroom, where lawyers from the GCBA will speak to middle school students throughout Garfield County about various legal topics. The members of the GCBA will also announce the winners for the Law Day coloring and art contests on this day. The coloring and art contests feature many students throughout Garfield County, and will be judged by the Garfield County district judges. The GCBA will also be participating in the Ask a Lawyer program in con-

junction with the statewide campaign to answer legal questions by phone.

★ Grant County Bar Association

The Grant County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone.

★ Greer County Bar Association

Lawyers in Greer County will be available on Law Day to assist community members in completing simple legal documents at no cost. The service will be available on a walk-in basis near the courthouse.

★ Harmon County Bar Association

The Harmon County Bar Association will partner with the Jackson County Bar Association to participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone. Also being planned is a trial viewing for area high school civics classes.

★ Jackson County Bar Association

The Jackson County Bar Association will partner with the Harmon County Bar Association to participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone. Also being planned is a trial viewing for area high school civics classes.

★ Kay County Bar Association

The Kay County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone. In addition, members of the bar association will give local students a tour of the historic Kay County Courthouse, observe proceedings going on therein, and be available to answer any questions they may have about the law.

★ Kingfisher County Bar Association

The Kingfisher County Bar Association will host its annual Law Day luncheon at noon on Friday, May 1, at the Kingfisher County Courthouse. At the luncheon, the association will present the Liberty Bell Award. The Liberty Bell is presented annually to a local non-lawyer who has contributed to the cause of justice in Kingfisher County.

★ LeFlore County Bar Association

The LeFlore County Bar Association will participate in the Ask A Lawyer program in

conjunction with the statewide campaign to answer legal questions by phone at 7 p.m. on April 30. The Legal Guides for Young Adults in Oklahoma will be distributed by members of the association to high school juniors in LeFlore County throughout the week to help them have a better understanding of their rights after attaining the age of 18.

The next event will occur on May 1 and will be a courthouse tour for fifth grade students attending schools in LeFlore County. In conjunction with the courthouse tour, Judge Sullivan and Judge Fry will preside over mock trials wherein the students will participate as jurors and also as the attorneys. Members of the bar will be witnesses and help the students with their parts in the mock trials. At the conclusion, bar members will answer questions about the legal system. Highway patrol officers and sheriff's deputies will also be present to allow the children to look through their patrol vehicles.

★ Lincoln County Bar Association

The Lincoln County Bar Association will host its annual Law Day picnic on May 1 at 6 p.m. at the Chandler Senior Citizens Center.

★ Mayes County Bar Association

The Mayes County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide effort to answer questions by phone. Also being planned is a Wills for Heroes program to assist first responders in completing wills.

★ McCurtain County Bar Association

In conjunction with the Tri-County (Choctaw, McCurtain and Pushmataha counties), a Law Day banquet will be held May 2 at the Idabel Country Club. Social hour begins at 6 p.m.; 7 p.m. dinner.

★ Muskogee County Bar Association

The Muskogee County Bar Association is sponsoring an art contest for Muskogee seventh and eighth grade students. The theme for the contests echoes the statewide Law Day theme, "Foundations of the Law: The Magna Carta and Beyond." The association encourages educators, parents and others to have students participate in the contest. The association will hold a banquet the evening of April 30. The association will also participate in the Ask A Lawyer program in conjunction with

the statewide effort to answer questions by phone.

★ Noble County Bar Association

The Noble County Bar Association will award \$500 scholarships to a student from each of the schools located in Noble County. Announcement of recipients is scheduled for Law Week. The Liberty Bell awards will be presented during an upcoming association meeting.

The association is planning to assist in a community service project to paint the trash cans around the courthouse. In cooperation with Main Street Perry, NCBA is purchasing the paint for community volunteers who will do the painting.

A Wills for Heroes project will be held in conjunction with the local American Legion Post on April 30 from 10:30 a.m. to 3:30 p.m. Veterans, law enforcement officers and firefighters will receive help in preparing a last will and testament or other basic legal documents.

The association will also participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone from 4 - 8 p.m. on April 30. Community members with questions may also stop by in person at the office of Bryon Will.

★ Okfuskee County Bar Association

The Okfuskee County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone from 7 - 8 p.m. on April 30.

★ Oklahoma County Bar Association

- *Law Day Luncheon – May 1, Skirvin Hotel Grand Ballroom*

The Oklahoma County Bar Association is sponsoring the luncheon this year featuring U.S. District Judge Stephen P. Friot who will be speaking on this year's Law Day theme of the celebration of the 800th anniversary of the signing of the Magna Carta. The *Journal Record* will present this year's *Journal Record* Award as well as recognize the "Leadership in Law" Award recipients. The Liberty Bell Award and the Howard K. Berry Sr. Award will also be presented at this year's Law Day luncheon. Students from the Douglass High School Moot Court Team will be guests of the OCBA and

will be placed at various tables to interact with the attorneys and judges at the luncheon. The centerpiece stuffed animals will be donated to the Oklahoma County Sheriff's Office. Tickets are available by calling the OCBA at 405-236-8421.

- *Ask A Lawyer Program – April 30 at OETA*

Volunteers will be handling phone calls from 9 a.m. to 9 p.m. Matt Blue will be chairing this subcommittee and volunteers may sign up by going on the OCBA website at www.okcbar.org or by calling the bar office at 405-236-8421.

- *COALA Student Program*

The Central Oklahoma Association of Legal Assistants (COALA) will be sponsoring high school students who will tour the Oklahoma County Courthouse and speak with various judges in the morning. Students will then attend the Law Day luncheon.

- *Civic Speakers*

The OCBA Law Day Committee is providing lists of speakers at various civic clubs and other venues in Oklahoma County. These groups have been contacted in an attempt to provide legal speakers during the Law Day week.

★ **Payne County Bar Association**

- *Courthouse Tours*

A class of seventh graders at the Stillwater Middle School will receive tours of the Payne County jail and courthouse on May 12. These tours will include presentations by a judge, assistant district attorney and the court clerk. The students will also watch a drug dog demonstration by the Payne County Sheriff.

- *Bowling Tournament*

PCBA will host a bowling tournament on April 30 to benefit Legal Aid Services in their drive to raise funds for an additional staff attorney for the Stillwater branch.

- *Lawyers in the Library*

A pro bono legal advice clinic organized by the PCBA will be held at the Stillwater Public Library on April 29 from 8 a.m. – 3 p.m. This clinic will be staffed by members of the PCBA who will give consultations to community members on a walk-in basis. Additionally, PCBA will participate in the Ask A Lawyer

program in conjunction with the statewide campaign to answer legal questions by phone.

- *Courthouse Staff Lunch*

An appreciation lunch will be hosted by the PCBA on May 1 for the many people who work in the courthouse. Local attorney James Murray will prepare a barbeque lunch on the courthouse lawn. This event is open to everyone who works in the courthouse including judges, bailiffs, district attorneys, court clerks, sheriff's department and all related staff members.

- *School Presentations*

Local attorneys will speak to high school seniors about the legal responsibilities of turning 18. Lawyers will pass out the "You're 18 Now!" booklets prepared by the YLD and answer questions from the students. These events will take place not only at Stillwater High School but also at the other rural county schools.

- *Honor Docket*

PCBA will hold an Honor Docket on May 7. This docket will allow local attorneys to present awards and prizes to the winners of the youth art and essay contests. The Hert Scholarship will be presented to an outstanding high school senior to assist with college and the Liberty Bell Award will be given to a member of the community for outstanding civic leadership.

- *Art, Essay and YouTube Contests*

PCBA is hosting a coloring contest for the county's first and second graders, a free form art contest for the county's third through fifth graders and an essay and YouTube video contest for high school students. Winners will receive cash prizes and be presented their awards at the Law Day Honor Docket on May 7.

★ **Pushmataha County Bar Association**

In conjunction with the Tri-County (Choctaw, McCurtain and Pushmataha counties), a Law Day banquet will be held May 2 at the Idabel Country Club. Social hour begins at 6 p.m.; 7 p.m. dinner. Pushmataha county lawyers will participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone.

★ Seminole County Bar Association

As its birthplace, Law Day has always been special in Seminole County, and this year will be no different. To open Law Week celebrations, Seminole County's young lawyers will be speaking to county middle school students about the legal profession. Every junior high school in the county will host a presentation by one of our young lawyers. The association is also conducting two essay contests open to all county junior high school students and all county high school seniors who plan on attending Seminole State College. The association is awarding a \$500 scholarship to Seminole State College to the winning senior essay contestant and a gift certificate to the winning junior high school essay contestant. Seminole County will also participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

The association will hold its annual Law Day activities on April 29. There will be CLE beginning at 8:30 a.m. in the Seminole County Courthouse in Wewoka. At noon, a Law Day luncheon will be held at the Rudolph Hargrave Community Center. Supreme Court justices are expected to attend. OBA President David Poarch will be the featured speaker.

★ Stephens County Bar Association

The Stephens County Bar Association will host its annual Law Day luncheon on May 1 at noon at the Duncan Golf and Tennis Club. The guest speaker will be Federal District Judge Timothy D. DeGiusti. The annual Liberty Bell award will be presented during the luncheon. Tickets for the luncheon are \$20. The annual James Patterson Memorial Golf Tournament will be held at the Territory Golf and Country Club on May 1 at 2 p.m.

★ Tulsa County Bar Association

Tulsa County Bar Foundation and the TCBA will hold its annual Law Day luncheon on May 1 at the Tulsa Country Club. Judge Jerome Holmes of the 10th Circuit Court of Appeals will serve as keynote speaker. *Tulsa World* reporter Bill Braun will receive the Liberty Bell award in recognition of his 30 years of reporting on the courts in Tulsa County. A naturalization ceremony was held in honor of Law Day at the federal courthouse. Student art and writing contests awards will be given out to students from Pre K – 12th grade on the

Law Day theme of "Foundations of the Law: The Magna Carta and Beyond." Ask a Lawyer will return once again at the OETA offices on April 30 from 9 a.m. to 9 p.m. An immigration clinic will take place at Catholic Charities on April 26. Legal civics education programs will be conducted at East Central High School, Thoreau Demonstration Academy, Owasso Eighth Grade Center and various elementary schools in the county.

★ Wagoner County Bar Association

In observance of Law Day, local attorney Richard Loy Gray Jr. is speaking to Wagoner senior citizens on various issues of interest.

★ Washington County Bar Association

The Washington County Bar Association has planned a Law Day golf tournament at Hillcrest Country Club in Bartlesville. The WCBA will also be hosting the OBA Board of Governors for a dinner presentation on current legal issues and will be participating in the Ask A Lawyer program in conjunction with the statewide campaign to answer questions by phone.

★ Washita County Bar Association

The Washita County Bar Association will partner with the Custer County Bar Association to participate in the Ask A Lawyer program in conjunction with the statewide program to answer questions by phone. County bar representatives are also planning visits to local schools to discuss Law Day with students.

★ Woodward County Bar Association

In Woodward County, experienced local attorneys will be available to answer questions regarding criminal law, divorce law and other areas on Thursday, April 30, from 6:30-8 p.m. at 580-254-9181, corresponding with the OBA's annual *Ask A Lawyer* TV show on OETA. The following day, Friday, May 1, local attorneys will speak to the students of Woodward High School about the criminal process and what it means to be charged with a crime, how to file for divorce, the process of probate after the death of a loved one, the pros and cons of filing for bankruptcy and more.

If your county is not listed, there is still time to post your local Law Day activities on the OBA website! Contact OBA Law Day coordinator Lori Rasmussen as soon as possible: 405-416-7017; lorir@okbar.org.

OBA Family Law Section Presents:
The Wing-Nuts and Screws of Family Law

DATES & LOCATIONS:	Oklahoma City May 14, 2015 Oklahoma Bar Center 1901 N. Lincoln Blvd	Tulsa May 15, 2015 OSU Tulsa 700 N Greenwood, N. Hall, rm 150
CLE CREDIT:	5 hours of CLE credit (No ethics credit).	
TUITION:	\$150 if received by May 7, 2015 and \$175 from then until commencement of Seminar.	
PROGRAM:	Program Planner/Moderator: Luke Barteaux, Fry & Elder	
8:30-9:00 a.m.	Registration (Continental breakfast, snacks and drinks provided)	
9:00-9:50	Trial Evidence: Foundations & Objections Co-presenters: M. Shane Henry & Aaron D. Bundy, Fry & Elder	
9:55-10:45	Contempt of Court Co-presenters: Rees T. Evans, Law Office of Rees T. Evans & Amy E. Page, DHS	
10:50-11:40	Power of Attorney for Care and Custody of Child OKC Presenter: Phillip J. Tucker, Tucker Law Firm Tulsa Presenter: Jon R. Ford, Jon R. Ford Attorney, INC.	
11:40-1:10	Lunch (On your own)	
1:10-2:00	Indian Child Welfare Act OKC Presenter: Casey Ross-Petherick, Professor, OCU School of Law Tulsa Presenter: Chrissi Ross Nimmo, Assistant AG, Cherokee Nation	
2:05-2:55	Odd Implications of Same Sex Marriage Presenter: Keith A. Jones, Keith A. Jones Law	

Payment Information

Please check the box next to the location you will be attending:

Oklahoma City (May 14, 2015) **or** **Tulsa** (May 15, 2015)

Full Name: _____

Firm: _____

Address: _____

City: _____

Phone: _____ Email: _____

Are you a Member of the OBA? Yes, OBA # _____ No

For Credit Card (Processed through OBA)

Visa Master Card AMEX Discover

Credit Card#: _____

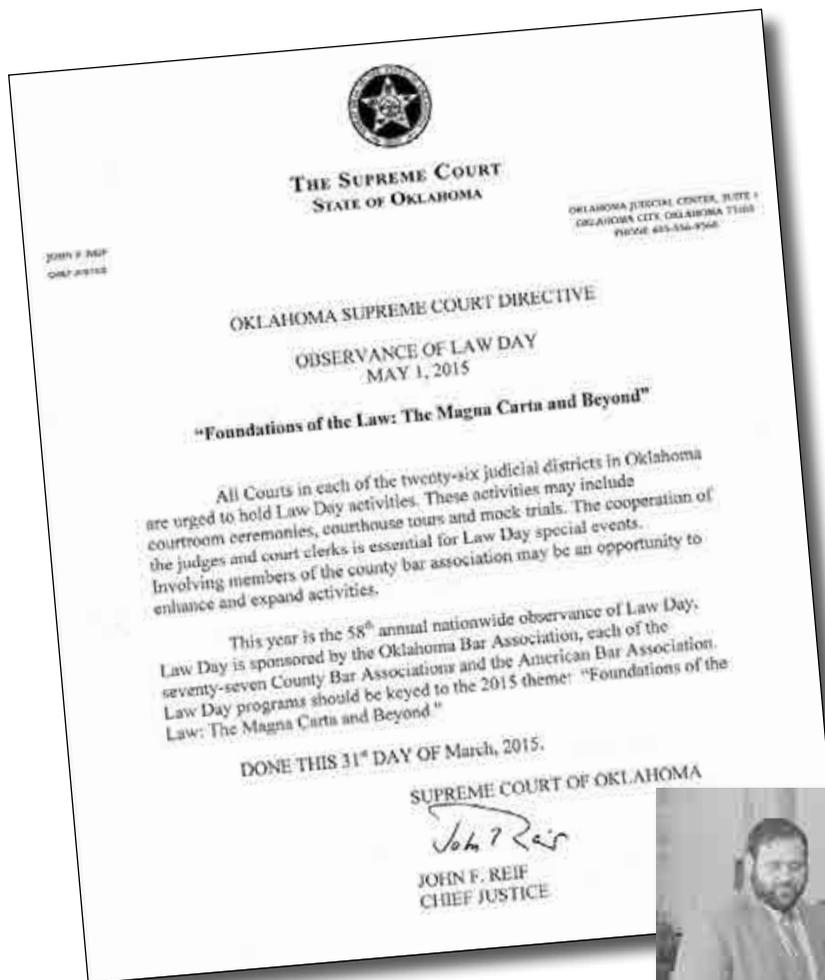
Exp. Date: _____ cvv/cvc# _____

Authorized Signature: _____

Make Check payable to
OBA FLS

Send questions,
complete registration
form, and payment
to: Luke Barteaux,
Fry & Elder
906 S Cheyenne Ave
Tulsa, OK 74119, or
fax: 918-512-4461, or
luke@fryelder.com

LAW DAY 2015



Find ideas for courthouse
Law Day Activities at
<http://goo.gl/AjLg5l>



Oklahoma Supreme Court Chief Justice John Reif (seated) signs the Law Day Directive before presenting awards to contest winners during the annual ceremony at the State Capitol. Witnessing were (from left) OBA Law Day Committee Co-Chair Richard Vreeland, OBA President David Poarch and Co-Chair Jennifer Prilliman.

STATE OF OKLAHOMA



EXECUTIVE DEPARTMENT

Proclamation

Whereas, Law Day is a day of public acknowledgement of our nation's and Oklahoma's heritage of justice, liberty and equality under the law, and May 1st has been declared "Law Day" by the United States Congress; and

Whereas, the Oklahoma Bar Association has declared the theme for Law Day 2015 as "Foundations of the Law: The Magna Carta and Beyond;" and

Whereas, this year's theme recognizes the 800th anniversary of a milestone in legal history, the sealing of the Magna Carta at Runnymede, England, in 1215; and

Whereas, the founders of our nation drew upon the principles of the Magna Carta in drafting our cherished documents of liberty, including the Declaration of Independence, United States Constitution and the Bill of Rights; and

Whereas, this year's Law Day theme, "Foundations of the Law: The Magna Carta and Beyond," calls on all Oklahomans to remember the important role it plays in our civic education, the roots of our freedom and in the continuing fight to advance human rights;

Now, Therefore, I, Mary Fallin, Governor, do hereby proclaim Thursday, May 1, 2015, as

"Law Day"

in the state of Oklahoma.

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



I am at the Capitol, in the City of Oklahoma City, this 8th day of April in the Year of Our Lord two thousand and fifteen, and of the State of Oklahoma in the one hundred and seventh year.

Chris Truise
Assistant Secretary of State

Mary Fallin
Governor

THE OKLAHOMA BAR ASSOCIATION FAMILY LAW SECTION PRESENTS: THE 2015 OKLAHOMA FAMILY LAW TRIAL ADVOCACY INSTITUTE



The OBA Family Law
Section Presents:

THE OKLAHOMA FAMILY
LAW TRIAL ADVOCACY
INSTITUTE

www.FLSTAI.com

A Dissolution of Marriage
Case Involving Custody
and Asset/Debt Division

A GREAT TRADITION- July 13-18, 2015

The goal of the Institute is to provide a unique experience for our OBA FLS members: the opportunity to receive practical assistance from respected, experienced family law attorneys, and to receive direct feedback from the District Judges.

The attendees will receive real-world advice from their mentors and the judges as well as assistance with legal issues.

This is a six-day CLE in which each participant will prepare for and try a complicated Dissolution of Marriage case involving custody of three minor children, the equitable division of a family business, and both parties having significant issues.

Each attendee will be assigned to an experienced family law attorney to mentor and assist in the preparation of the case, including document preparation and strategy.

Attendees will present their case before actual judges and will receive feedback from TAI members and the judges at the conclusion of the hearings.

The OBA FLS is excited to offer its

members a marvelous opportunity to work directly with our judiciary and experienced family law attorneys in order to improve their skills as family law litigators. The Trial Advocacy Institute began with a vision of our FLS leadership. The 2014 Trial Advocacy Institute was a huge success with 19 graduate trial lawyers.

Jon Ford presented the idea to the OBA Board of Governors and requested that the Family Law Section be allowed to conserve the monies received from the sale of our Practice Manual to provide the seed money for this wonderful project. The Board approved his request. After meeting our financial goal we made the Institute a reality.

The OBA FLS through the use of the Practice Manual funds is underwriting a portion of the expenses normally borne by attendees in the other programs. In addition, the attorneys and judges who will be participating in the Institute are donating their time and services.

A Special Thanks to
Our Judiciary
Volunteers
This Event Would Not
Be Possible Without
Their Valuable Time
And Assistance.



Program Itinerary

Oklahoma Bar Center – Monday-Saturday, July 13-18

Monday, July 13th

Introduction to Program

Lectures

- Purpose of Trial/Trial Elements
- Introduction of Exhibits/Impeachment
- What the Judge Wants to Hear
- Developing Your Case/Motion Hearings

Exercises and Demonstrations

- Case Analysis
- Motion Practice
- Closing Arguments

Tuesday, July 14th

Lectures

- Closing Arguments
- Direct Examination / Cross Examination
- Social Media Evidence

Exercises and Demonstrations

- Closing Arguments
- Direct and Cross Examination of the Parties

Wednesday, July 15th

Lectures

- Rules of Evidence
- Psychological Evaluations in Oklahoma
- Deconstructing a Custody Evaluator's Report

Exercises and Demonstrations

- Evidence: Introduction and Objections
- Direct and Cross Examination of a Mental Health Expert

Thursday, July 16th

Lectures

- Cross Examination of a Mental Health Expert
- Ethics

Exercises and Demonstrations

- Direct and Cross Examination of Mental Health Experts
- Direct and Cross Examination of Parties
- Opening Statements

Friday, July 17th

Lectures

- Business Valuation Basics
- Trial Objections
- Family Law Evidence Problems

Exercises and Demonstrations

- Opening Statements
- Evidence

Witness Preparation

Saturday, July 18th

Trial on the Merits

Feedback Session with Judges and Mentors

Institute Luncheon – Presentation of Certificates & Awards

Note: The above schedule is tentative, and is subject to change.

continued on next page

Oklahoma Family Law Trial Advocacy Institute ■ 2015

The OBA Family Law
Section Presents:

THE OKLAHOMA FAMILY
LAW TRIAL ADVOCACY
INSTITUTE

A Divorce Trial using
Expert Custody Evaluators



OKLAHOMA

For more information
Contact
Allison Smith at:
allison@fryelder.com

About the OBA FLS Trial Advocacy Institute

During the OBA FLS Trial Advocacy Institute, attendees will develop their skills in planning and developing a case from intake through trial. By working with an experienced family law mentor and presenting their case to family law judges, attendees will gain the experience and training to represent their client more effectively at trial. Each attendee will prepare for and conduct a pretrial conference and a trial, including opening statement, direct and cross examination of witnesses and experts, and closing arguments. Attendees at this year's OBA FLS Trial Advocacy Institute will learn how to effectively try a Dissolution of Marriage case involving custody and debt/asset division, including direct and cross examination of a mental health care expert witness. This program is limited to 20 attendees. Thirty-seven hours of CLE credit is approved by the MCLE department.

Cost: \$1,500.00 for OBA FLS members

Tuition includes all of the Institute materials, breakfast, lunches and non-alcoholic beverages during the six program days, with a final luncheon on July 18, 2015. Payment is due by June 1, 2015. A \$100.00 fee will be charged for cancellations made before June 15, 2015. A \$500.00 fee will be charged for cancellations made after June 15, 2015. No refunds or transfers will be provided if notice is not provided, by e-mail, to shane@fryelder.com before 5 o'clock p.m. on July 3, 2015. A limited number of spots are available and a waiting list will be kept. Transportation and overnight lodging is at the attendee's own expense, together with any office supplies for their respective motions and trial exhibits. Discounted hotel rates are available through the Homewood Inn and Suites in Bricktown. A portion of the TAI costs are underwritten by OBA FLS Practical Manual funds.

Name (Please Print or Type)

OBA # (For CLE Credit)

Street Address

City, State, Zip

Telephone

Email

For Visa or MasterCard (Processed through OBA) \$_____ (amount to charge)

Credit Card # _____

Expiration Date _____

Authorized Signature _____

I am a 2015 OBA FLS Member

I am not an OBA FLS Member, add \$25.00 to my charge for 2015 membership (required)

Return this form and check payable (if not paying by credit card) to OBA Family Law Section to: Craig Combs, 1901 N. Lincoln Blvd., Oklahoma City, OK 73152 or by fax to (405) 416-7001.

You can also visit our website to register and pay online at www.flstai.com.

Tort Reform and Jury Instructions

By Charles W. Adams

This article discusses two recent statutes and the efforts of the Oklahoma Committee on Uniform Jury Instructions (Civil OUJI Committee) to recommend uniform jury instructions based on these statutes to the Oklahoma Supreme Court. The first statute is Okla. Stat. Title 12, §577.4, which deals with an instruction to juries that awards for damages for personal injuries and wrongful death that are nontaxable. The second statute is Okla. Stat. Title 23, §61.2, which imposes a \$350,000 cap on noneconomic losses for personal injuries.

The Civil OUJI Committee determined that both statutes raised possible constitutional issues, and so, decided to flag these issues in its recommendations to the Oklahoma Supreme Court. The committee comments to the proposed jury instruction on nontaxability of damages awards pointed out that there were instances when damages for personal injury awards were taxable and that there may be a constitutional question whether Okla. Stat. Title 12, §577.4 violated the doctrine of separation of powers. The Civil OUJI Committee presented two alternatives for the proposed jury instruction on the \$350,000 cap on noneconomic losses for personal injuries. The first alternative followed the language of Okla. Stat. Title 23, §61.2 and did not inform the jury of the \$350,000 cap on noneconomic losses, but it noted a constitutional question in the committee comments to the jury instruction. The second alternative informed the jury of the \$350,000 cap on noneconomic losses, contrary to a provision in Okla. Stat. Title 23, §61.2, and it explained the reason for doing so in the committee comments to the jury instruction and verdict form.

The Oklahoma Supreme Court did not adopt the proposed jury instruction on nontaxability

of damages awards or either alternative for the \$350,000 cap on noneconomic losses that the Civil OUJI Committee had proposed. Without having the benefit of actual cases before it, the Supreme Court declined to resolve the possible constitutional issues raised by the two statutes. This article provides a brief discussion of the possible constitutional issues that are raised by the two statutes, and it includes the text of the proposed recommendations that the Civil OUJI Committee presented to the Oklahoma Supreme Court.

NONTAXABILITY OF AWARDS FOR PERSONAL INJURIES AND WRONGFUL DEATH

The only case in which the Oklahoma Supreme Court has addressed the issue of whether a jury instruction on the taxability of an award of damages should be given is *Missouri-K.T.R.R. v. Miller*.¹ The case was brought under the Federal Employers Liability Act (FELA), and on appeal, the defendant argued that the trial court erred by admitting evidence of the plaintiff's gross income without giving instructions on the income tax on future earnings. The Oklahoma Supreme Court held that the income tax consequences of the injury and the award should not be considered by the

jury.² The original edition of the Oklahoma Uniform Jury Instructions (OUJI) provided at Instruction No. 4.17, which was titled “Effect of Income Tax on Award of Damages: ‘No Instruction Should Be Given.’” The comment to Instruction No. 4.17 stated: “In *Missouri-K.T.R.R. v. Miller*, 486 P.2d 630, 636 (Okla. 1971), the Oklahoma Supreme Court ruled that the income tax consequences of injury and award are not a proper consideration for the jury.” Instruction No. 4.17 was not changed until 2014.

The Oklahoma Legislature adopted Okla. Stat. Title 12, §577.4 in 2011. It provides:

The Oklahoma Uniform Jury Instructions (OUJI) applicable in a civil case shall include an instruction notifying the jury that no part of an award for damages for personal injury or wrongful death is subject to federal or state income tax. Any amount that the jury determines to be proper compensation for personal injury or wrongful death should not be increased or decreased by any consideration for income taxes. In order to be admitted at trial, any exhibit relating to damage awards shall reflect accurate tax ramifications.

This statute is unusual because it is directed to the content of the OUJI, rather than the law that governs in the state courts. In addition, it involves the effect of federal income tax law, rather than state law. Although in most cases, damages for personal injuries are not subject to federal income tax, there are circumstances where they may be taxable. For example, if a taxpayer had deducted medical expenses in a previous tax year, a recovery for medical expenses would be taxable.³ In addition, unlike compensatory damages for personal injuries, punitive damages are taxable, but the jury would not be aware of this distinction unless it was instructed on it. Moreover, the statute refers only to the taxability of a damages award to a plaintiff, but it does not address whether a damages award would be deductible by a defendant. The statute is also problematic, because it directs that juries must be informed that damages awards for personal injuries are not taxable, thereby inviting them to consider income taxes, but then it states that juries must not increase or decrease their awards on account of any consideration for income taxes. Finally, instructing juries on the applicable law in a case is a judicial function, rather than a legislative function, and there-

“ The statute is also problematic, because it directs that juries must be informed that damages awards for personal injuries are not taxable, thereby inviting them to consider income taxes, but then it states that juries must not increase or decrease their awards on account of any consideration for income taxes. ”

fore, section 577.4 may violate the separation of powers doctrine in the Okla. Const., Art. 4, §1.

The Civil OUJI Committee submitted the following proposed revisions to Instruction 4.17⁴ to the Oklahoma Supreme Court in 2012:

Instruction No. 4.17

Effect Of Income Tax On Award Of Damages

~~NO INSTRUCTION SHOULD BE GIVEN~~

[Name of Plaintiff] will not be required to pay any federal or state income taxes on any amount that you award for damages for (personal injury)/(wrongful death). [This rule does not apply to [the portion of the claim of [Name of Plaintiff] for [specify those claims that are subject to federal or state income taxes]]. You should not add to or subtract from the amount, if any, you determine to be proper compensation for (personal injury)/(wrongful death) because of income taxes.

Notes on Use

This Instruction should be given only in cases where the damages sought for personal injury or wrongful death are nontaxable. The second sentence that is shown in brackets should be given if there are claims or portions of a claim that are taxable so that the jury instruction will not be inaccurate or confusing to the jury. The trial court should decide what damages are or are not subject to income tax based on the circumstances of the particular case.

Comments

This Instruction is included on account of 12 O.S. 2011 §577.4. *See also* 26 U.S.C. §104(a)(2) (damages for personal physical injuries, other than punitive damages, are not taxable). The exclusion for damages for personal physical injuries covers not only medical bills but also amounts awarded for pain and suffering, loss of enjoyment, and lost earnings. *See C.I.R. v. Schleier*, 515 U.S. 323, 329 (1995) (dictum); Martin J. McMahon, Jr. & Lawrence A. Zelenak, Fed. Inc. Tax'n of Individ. ¶7.03 (2011) ("When the exclusion [for damages for personal physical injuries] applies, it covers all elements of actual damages — nonpecuniary damages (pain and suffering, loss of enjoyment, and the like, medical expenses, and lost wages)."). Amounts received for personal injuries are taxable, however, to the extent that they are attributable to deductions allowed for medical and other similar expenses. *See* 26 CFR Part 1 §1.104-1 (a). In addition, damages for emotional distress are taxable unless the emotional distress is attributable to a physical injury. *Id.* §1-104 (c). This brief summary of the federal and state tax law is not exhaustive.

In *Missouri-K.T.R.R. v. Miller*, 1971 OK 68, ¶38, 486 P.2d 630, 636 (Okla. 1971), the Oklahoma Supreme Court ruled that the income tax consequences of injury and award are not a proper consideration for the jury. There may be a question whether 12 O.S. 2011 §577.4 violates the separation-of-powers doctrine described in *Yocum v. Greenbriar Nursing Home*, 2005 OK 27, ¶13, 130 P.3d 213, 220, as follows:

Legislative power is mainly confined to making law, while the judiciary is invested primarily with an adjudicative function — the authority to hear and determine forensic disputes. A legislative removal of the discretionary component in adjudicative process is a usurpation of the courts' freedom that is essential to the judiciary's independence from the other two branches.

Instructing a jury on the applicable law in a case is a fundamental adjudicative function, rather than a legislative function.

In its order dated March 24, 2014,⁵ the Oklahoma Supreme Court adopted the following revision to Instruction No. 4.17:

Instruction No. 4.17

Effect Of Income Tax On Award of Damages

NO INSTRUCTION SHOULD BE GIVEN

Comments

Title 12 O.S. 2011 §577.4 (Laws 2011, c. 16, §1, eff. Nov. 1, 2011), reads as follows:

Tax Consequences of Award for Damages in Personal Injury and Wrongful Death Actions

The Oklahoma Uniform Jury Instructions (OUJI) applicable in a civil case shall include an instruction notifying the jury that no part of an award for damages for personal injury or wrongful death is subject to federal or state income tax. Any amount that the jury determines to be proper compensation for personal injury or wrongful death should not be increased or decreased by any consideration for income taxes. In order to be admitted at trial, any exhibit relating to damage awards shall reflect accurate tax ramifications.

In *Missouri-K.T.R.R. v. Miller*, 1971 OK 68 ¶38, 486 P.2d 630, 636, the Oklahoma Supreme Court ruled that the income tax consequences of a personal injury award are not a proper consideration for the jury.

While the Supreme Court's order deleted the capitalized direction that no instruction should be given, it did not specify how the trial court should instruct the jury on the effect of income tax on the award of damages. The order quoted Okla. Stat. Title 12, §577.4 in the comments, and it also retained the prior comments, which cited the *Missouri-K.T.R.R.* case and stated that income tax consequences are not a proper subject for the jury. Instead of resolving how trial courts should instruct juries on the tax consequences of damages awards, the Supreme Court gave mixed signals. Thus, it appears that the Oklahoma Supreme Court will require the issues surrounding the giving of jury instructions on the taxability of damages awards to be presented in the context of a justiciable controversy,⁶ instead of in the context of reviewing proposed revisions to Instruction No. 4.17 from the Civil OUJI Committee, in order for it to resolve whether and how juries should be instructed on the tax consequences of damages awards. The standard of review on appeal for jury instructions "is whether the jury was misled to the extent of rendering a different verdict

than it would have rendered, if the alleged errors had not occurred.”⁷ Seeking an extraordinary writ in an original proceeding may be another means to obtain review by the Oklahoma Supreme Court of jury instructions on the taxability of damages awards by the Oklahoma Supreme Court.⁸

THE \$350,000 CAP ON DAMAGES FOR NONECONOMIC LOSS

The original version of Okla. Stat. Title 23, §61.2 was enacted in 2009 as part of the Comprehensive Lawsuit Reform Act.⁹ It provided for a \$400,000 cap on damages, but it was conditioned on the establishment of a Health Care Indemnity Fund, which would be used to pay damages for noneconomic losses in medical malpractice cases that exceeded the cap.¹⁰ The Health Care Indemnity Fund was never established, but the requirement for it was removed when Okla. Stat. Title 12, §61.2 was amended in 2011. In addition, the amount of the cap was reduced from \$400,000 to \$350,000.¹¹ The statute also provides that there is no limit on the amount of noneconomic damages if the judge and jury determine by clear and convincing evidence that the defendant’s actions were in reckless disregard for the rights of others, grossly negligent, fraudulent or intentional or with malice.¹²

Jury instructions on how the jury should allocate damages between economic and noneconomic losses would certainly be needed if the jury’s award were to include noneconomic losses in excess of the \$350,000 cap. The Civil OUJI Committee decided that the jury instructions should not have to be given in every case where a plaintiff sought more than \$350,000 for total compensatory damages, however, because the plaintiff might not actually recover more than \$350,000. The Civil OUJI Committee concluded that jury instructions on the \$350,000 cap should be reserved for a second stage of the trial that would be held if the jury awarded more than \$350,000 for total compensatory damages in the first stage. The Committee recognized, though, that whether to have two stages or a single stage was a matter for the trial court’s discretion.

The next issue that the Civil OUJI Committee considered was whether the \$350,000 cap should be applied to the damages that the jury determined were sustained by the plaintiff, or to the amount of the award after reduction for the percentage of the plaintiff’s comparative fault. The statute did not expressly address this

issue, but the Civil OUJI Committee noted that paragraph B defined the \$350,000 cap in terms of “the amount of compensation which a trier of fact may award a plaintiff for noneconomic loss” and paragraph D required the verdict to specify the “total compensatory damages recoverable by the plaintiff.” The Civil OUJI Committee concluded that this wording favored an interpretation that the \$350,000 cap should be applied to the net amount after reduction for the percentage of the plaintiff’s comparative fault, because that amount was what the trier of fact would award the plaintiff and what would be recoverable by the plaintiff.

The Civil OUJI Committee also addressed the constitutionality of Okla. Stat. Title 23, §61.2(F) of the statute, which provides:

F. In any civil action arising from claimed bodily injury which is tried to a jury, the jury shall not be instructed with respect to the limit on noneconomic damages set forth in subsection B of this section, nor shall counsel for any party, nor any witness inform the jury or potential jurors of such limitations.

Paragraph F appears to conflict with Article 7, §15 of the Oklahoma Constitution, which provides: “In all jury trials the jury shall return a general verdict, and no law in force, nor any law hereafter enacted, shall require the court to direct the jury to make findings of particular questions of fact, but the court may, in its discretion, direct such special findings.” In *Smith v. Gizzi*,¹³ the Oklahoma Supreme Court analyzed how Article 7, §15 applied to the Oklahoma comparative negligence statute,¹⁴ which provided for a plaintiff’s recovery to be diminished in proportion to a plaintiff’s negligence. The Oklahoma Supreme Court decided that a special verdict was characterized by the jury being limited to making special findings and not knowing the legal effect of its answers.¹⁵ The Supreme Court upheld the trial court’s use of a verdict that included special findings concerning the percentage of negligence attributable to both the plaintiff and defendant, because the jury instructions and verdict form informed the jury of the effect that the special findings would have on the outcome. The Supreme Court explained:

The jury not only must know the legal effect of its findings, but must determine the ultimate result, limited only by the special findings as to each parties [sic] degree

of negligence. Such special findings are constitutionally and statutorily permitted. Under a general verdict, a jury must know the effect of its answers or it is not a general verdict.¹⁶

The problem presented by Okla. Stat. Title 23, §61.2(F) is that it states that the jury must not be instructed or informed with respect to the limit on noneconomic damages, and therefore, it appears to conflict with Okla. Const. Art. 7, §15, as interpreted by the Oklahoma Supreme Court in *Smith v. Gizzi*.

As a result of the apparent conflict between Okla. Stat. Title 23, §61.2(F) and Okla. Const. Art. 7, §15, the Civil OUJI Committee submitted to the Oklahoma Supreme Court two alternative versions of proposed jury instructions and verdict forms concerning the \$350,000 cap on noneconomic loss. The first alternative did not refer to the \$350,000 cap on noneconomic loss, but the comments to the jury explained that there was a potential question concerning the constitutionality of not instructing the jury with respect to the \$350,000 cap on noneconomic loss. The text of the first alternative is set out below.

Instruction No. 9.52 (First Alternative)

Supplemental Verdict Form Specifying Economic and Noneconomic Losses Directions

Now that you have returned a verdict in favor of [Plaintiff] in the amount of \$ _____ for the total compensatory damages for [Plaintiff], you must now make additional findings on the Supplemental Verdict Form. [On the Supplemental Verdict Form, you must specify what portion of the total compensatory damages is for economic loss for [Plaintiff] and what portion of the total compensatory damages is for noneconomic loss for [Plaintiff].]

[First, you must decide whether or not you find by clear and convincing evidence that the conduct [was/(amounted to)] [(reckless disregard for the rights of others)/(gross negligence)/fraud/(intentional or malicious)], and then indicate what you have decided with a check mark.]

["Reckless disregard of another's rights" means that the defendant was either aware, or did not care, that there was a substantial and unnecessary risk that his, her or its

conduct would cause serious injury to others. In order for the conduct to be in reckless disregard of another's rights, it must have been unreasonable under the circumstances and there must have been a high probability that the conduct would cause serious harm to another person.]

["Gross negligence" means the want of slight care and diligence.]

["Fraud" consists of the following acts committed with intent to deceive another party: **(the suggestion, as a fact, of that which is not true, by one who does not believe it to be true)/ (the positive assertion in a manner not warranted by the information of the person making it, of that which is not true, though he believe it to be true)/(the suppression of that which is true, by one having knowledge or belief of the fact)/(a promise made without any intention of performing it).**]

["Malice" involves hatred, spite or ill will, or the doing of a wrongful act intentionally without just cause or excuse.]

[If you find by clear and convincing evidence that the conduct [was/(amounted to)] [(reckless disregard for the rights of others)/(gross negligence)/fraud/(intentional or malicious)], you must then specify what portion of the total compensatory damages is for economic loss for [Plaintiff] and what portion of the total compensatory damages is for noneconomic loss for [Plaintiff].]

"Economic loss" means any type of financial harm, past or future, from a bodily injury including:

1. All wages, salaries or other compensation;
2. All costs for medical care or treatment, rehabilitation services, or other care, treatment, services, products or accommodations, and
3. Any other costs on account of a bodily injury.

"Noneconomic loss" means any type of nonfinancial harm from a bodily injury including damages for pain and suffering, loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction,

training, education, disfigurement, mental anguish and any other intangible loss.

Notes on Use

This Instruction and the following Supplemental Verdict Form should be used if the jury has returned a verdict for personal injury to a plaintiff of more than \$350,000 after reduction for any percentage of comparative negligence. The trial court should list only the examples of economic and noneconomic loss and the definitions of fraud, gross negligence, intent, malice, and reckless disregard of another's rights that are applicable. The trial court should include the paragraph of this instruction concerning the finding by clear and convincing evidence with respect to the conduct of the defendant only if the applicable conduct of the defendant has been alleged and supported by proof at trial.

If there have not been allegations of fraud, gross negligence, intent, malice, and reckless disregard of another's rights, or they have not been supported by proof at trial, the trial court should include the sentence of the first paragraph that appears in brackets, omit the next paragraphs that appear in brackets, and then give the definitions of economic and noneconomic loss in the instruction. On the other hand, if there have been allegations of fraud, gross negligence, intent, malice, and reckless disregard of another's rights that have been supported by proof at trial, the trial court should omit the sentence of the first paragraph that appears in brackets, and then give the next paragraphs in brackets that are applicable along with the definitions of economic and noneconomic loss in the instruction.

This instruction and the following Supplemental Verdict Form contemplate a two stage process in which the jury would first return a verdict, and then if the verdict for bodily injury exceeds \$350,000 after reduction for any comparative negligence of the plaintiff, the jury would then allocate the amount of compensatory damages between economic and noneconomic losses. If the verdict was for the defendant or did not exceed \$350,000, it would be unnecessary for the jury to address the allocation between economic and noneconomic losses, and therefore, a two stage process would

be more efficient than a single stage process. Also, a two stage process could be less confusing for the jury if the jury was also determining comparative negligence. A single stage process might be more efficient in some cases, however, and then it would be appropriate for the trial court to exercise its discretion to consolidate the two stages into a single stage by combining the substance of this instruction and the Supplemental Form to the appropriate instructions and verdict forms.

Comments

This instruction and the following Supplemental Verdict Form conform to the requirements of 23 O.S. 2011 §61.2, which applies to actions filed on or after Nov. 1, 2011. *Id.* §61.2(I). Section 61.2 requires the jury to return a general verdict accompanied by interrogatories that specify the plaintiff's total compensatory damages, and the portions of the total compensatory damages for economic and noneconomic loss. *Id.* §61.2(D). In addition, §61.2(E) requires the jury to specify, if alleged, whether the conduct of the defendant was, or amounted to, reckless disregard for the rights of others, gross negligence, fraud, or intentional or malicious conduct. Section 61.2(F) provides that the jury shall not be instructed with respect to the \$350,000 limit on noneconomic loss.

There may be a question concerning the constitutionality of not instructing the jury with respect to the limit on noneconomic damages. The Oklahoma Supreme Court addressed the application of Okla. Const. Art., VII, §15 to Oklahoma's comparative negligence statutes in *Smith v. Gizzi*, 1977 OK 91, 564 P.2d 1009. Art. VII, §15 provides: "In all jury trials the jury shall return a general verdict, and no law in force nor any law hereafter enacted, shall require the court to direct the jury to make findings of particular questions of fact but the court may, in its discretion, direct such special findings." The Supreme Court held that the comparative negligence statutes did not violate Art., VII, §15, because they did not require a special verdict. The Supreme Court reasoned that under a general verdict, the jury must know the effect of its answers to special findings, and that if the jury did not know the effect of its answers, the verdict would be a special verdict that

would violate Okla. Const. Art., VII, §15. 1977 OK 91, ¶11-12, 564 P.2d 1009, 1012-13.

Notes on Use

Instruction No. 9.53 (First Alternative)

**Supplemental Verdict Form
Specifying Economic and Noneconomic
Losses**

IN THE DISTRICT COURT OF _____
COUNTY,

STATE OF OKLAHOMA

_____))
Plaintiff,))
vs.)) CASE NO. _____
_____))
Defendant,))

SUPPLEMENTAL VERDICT FORM

We, the jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find as follows:

1. The amount of total compensatory damages awarded **[after reduction for comparative negligence]** to **[Plaintiff]** is \$ _____ **[to be filled in by the trial court]**.

The portion of total compensatory damages for economic loss is \$ _____; and

The portion of total compensatory damages for noneconomic loss is \$ _____.

The sum of the portions for economic and noneconomic loss must equal the total compensatory damages set out above.

2. We further find by clear and convincing evidence that the conduct of **[Defendant]** (Check any that are applicable):

- ___ was in reckless disregard for the rights of others
- ___ amounted to gross negligence
- ___ amounted to fraud
- ___ was intentional or malicious
- ___ none of the above

Foreperson _____

This Supplemental Verdict Form should be used if the jury has returned a verdict for personal injury to a plaintiff of more than \$350,000 after reduction for any percentage of comparative negligence. The trial court should specify the net award after reduction for any percentage of comparative negligence in paragraph 1. The trial court should include paragraph 2 to the extent that any applicable conduct of the defendant has been alleged and supported by proof at trial.

The second alternative that the Civil OUJI Committee submitted to the Oklahoma Supreme Court differed from the first alternative by including the following language in both proposed Instruction No. 9.52 and the verdict form in Instruction 9.53 to inform the jury of the \$350,000 cap on noneconomic loss:

The law provides that the amount of compensation for noneconomic loss from all defendants is limited to \$350,000, unless you find by clear and convincing evidence that their conduct **[was/(amounted to)] [(reckless disregard for the rights of others)/(gross negligence)/fraud/(intentional or malicious)]**.

The Oklahoma Supreme Court did not include any instruction or verdict form concerning the \$350,000 cap for noneconomic losses in its order dated March 24, 2014, which adopted amendments to the Oklahoma Uniform Jury Instructions — Civil (Second).¹⁷ The Oklahoma Supreme Court eventually will have to resolve how juries should be instructed in personal injury cases where the \$350,000 cap applies, but the Supreme Court will require a justiciable controversy to do so.

CONCLUSION

The statutes dealing with the taxability of damages for personal injuries and the \$350,000 cap on noneconomic losses present challenges for drafting jury instructions because they may involve possible constitutional issues. Resolution of these issues will require attorneys to make appropriate records in the trial courts and then to raise these issues properly on appeal.

1. 1971 OK 68, ¶38, 486 P.2d 630, 636.

2. *Id.* The Oklahoma Supreme Court relied on an annotation at 63 A.L.R.2d 1393, which indicated that the United States Supreme Court and all but one state supreme court had ruled that income tax considerations should not be considered, because they were too conjectural.

After the *Missouri-K.T.R.R.* decision, the United States Supreme Court ruled in *Norfolk & W. Ry. v. Liepelt*, 444 U.S. 490, 497-98 (1980), that a brief jury instruction explaining that damages received on account of personal injuries are not taxable income was required as a matter of federal law for all FELA cases in order to prevent jurors from mistakenly increasing awards to compensate for the effect of income taxes.

3. See 26 CFR Part 1 §1.104-1 (a). Also, an award of damages for emotional distress is taxable if it is not attributable to a physical injury. *Id.* §1.104-1 (c).

4. The Civil OUJI Committee also submitted a proposed revision to Instruction No. 59, which stated that punitive damages were taxable. The Notes on Use to the proposed revision said that the instruction on taxability of punitive damages should be given in the second stage of the trial, only if the trial court instructed the jury that the plaintiff would not be required to pay income taxes on an award for damages for personal injury or wrongful death during the first stage of the trial. The Oklahoma Supreme Court did not adopt the proposed revision to Instruction No. 59, but it did update several citations in the Notes on Use to Instruction No. 59.

5. In re: Amendments to the Oklahoma Uniform Jury Instructions, 2014 OK 17.

6. See *Tulsa Industrial Authority v. City of Tulsa*, 2011 OK 57, ¶13, 270 P.3d 113, 120 (“The term ‘justiciable’ refers to a lively case or controversy between antagonistic demands.”).

7. *Johnson v. Ford Motor Co.*, 2002 OK 24 ¶17, 45 P.3d 86, 93.

8. See Okla. Const. Art. 7, §4; Okla. Stat. Title 12, §1451; Okla. Sup. Ct. R. 1.190-1.191.

9. 2009 Okla. Sess. Laws c. 228, §24. The Comprehensive Lawsuit Reform Act was declared unconstitutional in *Douglas v. Cox Retirement Props.*, 2013 OK 37, 302 P.3d 789, because the Oklahoma legislature passed it through unconstitutional log-rolling in violation of the single subject rule in Okla. Const. Art. 5, §57. Section 24 was not affected by *Douglas*, however, because Okla. Stat. Title 23, §61.2 was amended by a separate statute before *Douglas* was decided.

10. *Id.* at ¶A, J.

11. 2011 Okla. Sess. Laws c. 14, §1.

12. Okla. Stat. Title 23, §61.2(C).

13. 1977 OK 91, 564 P.2d 1009.

14. Okla. Stat. Title 23, §11 (Supp. 1976), *repealed*, 1979 Okla. Session Laws c. 38 §14. .

15. *Smith*, 1977 OK 91, ¶11, 564 P.2d 1009, 1013.

16. *d.*

17. In re: Amendments to the Oklahoma Uniform Jury Instructions, 2014 OK 17.

ABOUT THE AUTHOR



Charles W. Adams has been a professor at the TU College of Law since 1979, where he teaches civil procedure and evidence. He has been a member of the OBA Civil Procedure Committee since 1983, serving as chairman from 1987-1989 and 1994-2001. He co-drafted much of the Oklahoma Pleading Code and its Commentary and co-authored *Civil Procedure* of Vernon's Oklahoma Forms, the *Oklahoma Discovery Practice Manual*, *Oklahoma Lien Laws* and *Oklahoma Civil Pretrial Procedure*.

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF LOUIS J. BODNAR, SCBD #6202 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

Notice is hereby given pursuant to Rule 11.3(b), Rules Governing Disciplinary Proceedings, 5 O.S., Ch. 1, App. 1-A, that a hearing will be held to determine if Louis J. Bodnar should be reinstated to active membership in the Oklahoma Bar Association.

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **Thursday, May 14, 2015**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

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AGENDA

- | | |
|---------------|---|
| 8:30 a.m. | Registration |
| 9:00 - 9:50 | "The Good, the Bad, and the Ugly of Landlord – Tenant Law" Kimberly Moore Waite, Legal Aid Services |
| 9:50-10:05 | BREAK |
| 10:05-10:55 | "Immigration Law – Your Client's Rights and Recent Executive Actions" Jonina Mawby, Law Offices of Mawby & Litz |
| 10:55 - 11:10 | BREAK |
| 11:10 – 12:00 | "As If It Never Happened – Expunging Your Client's Criminal Records" Eric Hallett, Legal Aid Services, and Jimmy Bunn, Oklahoma State Bureau of Investigation |
| 12:00 – 1:00 | LUNCH (on your own) |
| 1:00 – 1:50 | "The Ins and Outs of Guardianship Cases" Sara Cherry, Legal Aid Services, and Special Judge Terry Bitting, |
| 1:50 – 2:00 | BREAK |
| 2:00 – 2:50 | "The Basics of Divorce and Paternity Law – Plus More for the Experienced Attorney" Julie Goree and Sara Cherry, Legal Aid Services |
| 2:50 – 3:00 | BREAK |
| 3:00 – 4:00 | "More Family Law Basics – And Recent Developments" Julie Goree and Sara Cherry, Legal Aid Services |

An Overview of Oklahoma Product Liability Law

By Chris Pearson, Thomas G. Wolfe, Lyndon Whitmire
and Cody J. Cooper

Any discussion of Oklahoma product liability law must start where Oklahoma product liability law started, with the Oklahoma Supreme Court's 1974 opinion in *Kirkland v. General Motors Corp.*¹ In *Kirkland*, the plaintiff was driving her friend's new Buick Opel on Interstate 44 in Tulsa County.² It was alleged that the driver's seat back suddenly collapsed, leaving her unable to control the car. As a result, her vehicle hit the highway median and then struck an oncoming vehicle head-on.³ Approximately one month after the accident, General Motors (GM) issued a recall letter to all owners of Buick Opels concerning the "seat back adjustment mechanism."⁴

The plaintiff's pleadings alleged that her injuries were proximately caused by a defective seat and GM's breach of the implied warranty of fitness.⁵ During the trial, GM contended that the seat was not defective and that the accident was caused by the plaintiff driving while intoxicated and at excessive speeds, which GM claimed constituted a misuse of the product. Plaintiff appealed after the jury returned a verdict for GM.⁶

As Justice Doolin predicted in *Kirkland*, that case "set the pattern" in Oklahoma for product liability litigation. Some 40 years later, most Oklahoma federal and state court product liability opinions cite *Kirkland* at least once and it remains the leading case on various product liability issues. This article (an update on two previous iterations) discusses the developments in Oklahoma product liability law since the issuance of the *Kirkland* opinion.

WHO MAY BE A PLAINTIFF?

In *Moss v. Polyco Inc.*,⁷ an opinion rendered on the same day as *Kirkland*, the court dis-

cussed the reach of the product liability cause of action. In *Moss*, the plaintiff, a customer in a restaurant, was injured when a plastic container of drain cleaner fell from a bathroom shelf, causing the contents to come in contact with the plaintiff's body.⁸ The court noted there was no adequate rationale or theoretical explanation why nonusers and nonconsumers should be denied recovery against the manufacturer of a defective product, and thus expressly included bystanders in the class of potential plaintiffs.⁹ In so doing, the court agreed that the manufacturer who places into commerce a product rendered dangerous to life or limb by reason of some defect is strictly liable in tort to the one who sustains injury because of the defective condition.¹⁰ More than two decades later, Oklahoma extended the right of recovery to bystanders who: 1) are directly physically involved in an incident; 2) are injured from viewing the injury to another as opposed to learning of it later; and 3) had a familial relationship to the injured party.¹¹

In a product liability cause of action involving death, the determination as to who may be a plaintiff is governed by statute.¹²

A significant restriction on the ability of an injured party to pursue a product liability cause of action may arise in “failure to warn” cases.¹³ The duty to warn extends to an ordinary consumer or user, which has been defined as “one who would foreseeably be expected to purchase the product involved.”¹⁴ In *Rohrbaugh v. Owens-Corning Fiberglass Inc.*,¹⁵ the court found that the wife of an insulator, whose only exposure to the asbestos insulation was her exposure to her husband’s clothes, was not a foreseeable purchaser or user of the product. Thus, the court reasoned, the manufacturer had no duty to warn the wife of the danger of exposure to its products.¹⁶

WHO MAY BE A DEFENDANT?

Expanding on its use of the term “manufacturers’ product liability,” the *Kirkland* court included, within the meaning of “manufacturers,” all “processors, assemblers, and all other persons who are similarly situated in processing and distribution.”¹⁷ Later opinions have recognized that product liability causes of action may be brought against a product retailer¹⁸ as well as a commercial lessor,¹⁹ and, in the proper situation, a product liability action may be available against the supplier of a component part.²⁰ In short, Oklahoma courts have recognized that a product liability cause of action may properly be stated against those engaged in the business of buying and selling products who inject a defective product into the stream of commerce, whether through sale or other means.²¹ However, all defendants in the chain of distribution are not automatically liable for a defective product. Responsibility for the defect must be traced to the proper defendants.²² Additionally, a bailor may not be held liable under a product liability theory where the bailor maintains control of the product, and thus, does not inject it into the stream of commerce.²³

Notwithstanding the breadth of *Kirkland* and its progeny, it is incumbent upon the plaintiff, even in a strict liability case, to establish a causal link between the defendant’s acts and/or omissions and the plaintiff’s injuries and damages. As the Oklahoma Supreme Court noted in *Case v. Fiberboard Corp.*,²⁴ the public policy favoring recovery by an innocent plaintiff does not justify the abrogation of the defendant’s right to have “a causative link proven between the defendant’s specific tortious acts and the plaintiff’s

injuries where there is a lack of circumstances, which would insure there was a significant probability that those acts were related to the injury.”²⁵ In *Case*, the court refused to apply the market share liability, alternative liability, concert of action and enterprise liability theories that allow a plaintiff to circumvent the “significant probability” standard.²⁶

It is clear that a product liability cause of action may not be brought against an ultimate consumer of the product in question. In *Potter v. Paccar Co.*,²⁷ the court stated that the product liability theory was not “so expansive that it permits an injured party to require everyone to defend his or her relationship to the defective product.”²⁸ The court thus granted a motion to dismiss filed by the owner of a battery that exploded and caused the plaintiff to lose sight in his right eye. In *Allenberg v. Bentley Hedges Travel Serv. Inc.*,²⁹ the court held that product liability theory does not apply to the commercial seller of a used product if the alleged defect was not created by the seller, and if the product was sold in essentially the same condition as when it was obtained for resale.³⁰ Likewise, a parent company that sold used equipment to a related entity whose employees were later injured using that same equipment was not considered a “seller” for purposes of product liability.³¹ The court defined a “commercial seller” as a seller who is in the business of selling used goods.³²

Like courts in numerous other jurisdictions, the Oklahoma Supreme Court has held that a successor corporation may be liable on a product liability theory for injuries caused by the products manufactured or distributed by the acquired entity. In *Pullis v. United States Electrical Tool Co.*,³³ the court stated that as a general rule, where one company sells or otherwise transfers all its assets to another company, the latter is not liable for the debts and liabilities of the transferor. However, exceptions to the rule exist where there is an agreement to assume such debts or liabilities, where the circumstances surrounding the transaction warrant a finding that there was a consolidation or merger of the corporations, and where the purchasing corporation was a mere continuation of the selling company.³⁴

Similarly, the Oklahoma Supreme Court has held that a claimant, injured by a defective product after the dissolution of the manufacturing corporation, may, under the proper facts, seek recovery against the former shareholders of the corporation to the extent of the assets received by them.³⁵

WHAT ARE THE BASIC ELEMENTS IN A PRODUCT LIABILITY ACTION?

In *Kirkland*, the court noted that the plaintiff must prove three elements to prevail in a product liability action:

Plaintiff must prove the product was the cause of the injury; the mere possibility that it might have caused the injury is not enough.

Plaintiff must prove that the defect existed in the product, if the action is against the manufacturer, at the time the product left the manufacturer's possession and control. [Citation omitted.] If the action is against the retailer or supplier of the article, the plaintiff must prove the article was defective at the time of sale for public use or consumption or at the time it left the retailer's possession and control.

Plaintiff must prove that the defect made the article unreasonably dangerous to him or his property as the term "unreasonably dangerous is ... defined."³⁶

Early post *Kirkland* cases have, in reviewing the elements that the plaintiff must establish to prevail in a product liability case, either restated or rephrased the above quoted passage from the *Kirkland* decision.³⁷ However, more recent decisions have essentially added a "fourth element" requiring the plaintiff to establish personal injury or damage to property other than the allegedly defective product.³⁸

Causation. The causation requirement, the same requirement that has existed in traditional negligence actions, has frequently been cited as a necessary element in the product liability plaintiff's case.³⁹ At least one court has refused to apply the doctrine of *res ipsa loquitur* in an Oklahoma product liability case, but the plaintiff need not exclude all other possible conclusions.⁴⁰ Additionally, at least one court has held that the "but for" theory of causation is illustrative of negligent conduct, but is inapplicable in proving products liability actions.⁴¹

The abnormal use or misuse of a product may serve as a complete defense to the product liability action to the extent that the abnormal use or misuse defeats the causation requirement.⁴² Where it is established that a subsequent modification of the product, rather than a manufacturing or design defect in the product, is the intervening and superseding cause of the injury (as opposed to the concurrent cause), no cause of

action exists against the manufacturer.⁴³ Similarly, the plaintiff's recovery may be barred by a finding that the injuries and damages were caused solely by someone other than the named defendant.⁴⁴

Under the current Oklahoma product liability causation standard, "[a] manufacturer's products liability plaintiff need not exclude all other possible conclusions. However, the mere possibility that a defect caused the injury is not sufficient."⁴⁵ Additionally, Oklahoma courts have rejected the theories of "alternative liability,"⁴⁶ "market share liability"⁴⁷ and other "nonidentification theories."⁴⁸

The causation requirement does, however, become somewhat distorted in a situation where a distributor of a defective product is named as a defendant in a product liability action. In such a case, as the court noted in *Braden v. Hendricks*,⁴⁹ "it is immaterial to the plaintiff's case that the defect in the product was not caused by the distributor."⁵⁰ As noted previously, the liability of the manufacturer and distributor is coextensive even though the distributor was in no way responsible for the presence of the defect.⁵¹

Existence of a Defect. Central to the plaintiff's case in a product liability action is proof that a defect existed in the product either at the time the product left the manufacturer's control⁵² (where the defendant is the manufacturer) or at the time the product was sold for use to the general public.⁵³ As the court noted in *Mayberry v. Akron Rubber Mach. Co.*,⁵⁴ a product may be defective because of: 1) manufacturing defects;⁵⁵ 2) supplier flaws;⁵⁶ 3) design defects;⁵⁷ or 4) a failure to supply proper warnings to the product's dangers.⁵⁸

It is generally recognized that in most product liability cases the existence of a defect must be proved by expert testimony.⁵⁹ In 2004, the Oklahoma Supreme Court adopted the standards set forth in *Daubert v. Merrell Dow Pharm. Inc.*⁶⁰ and *Kumho Tire Co. v. Carmichael*⁶¹ for civil cases.⁶² Hence, when faced with a proffer of expert scientific or engineering testimony, an Oklahoma trial court, acting as the gatekeeper, will determine at the outset whether the reasoning or methodology underlying the testimony rests upon a reliable foundation.⁶³ Moreover, the trial court must also determine whether an expert's testimony is "relevant to the task at hand." That is, the testimony must not only be relevant, but it must "fit" the facts of the case.⁶⁴ It should be noted that the 10th Circuit held that a district

court may reject as untimely a *Daubert* motion raised late in the trial process, stating: “counsel should not ‘sandbag’ *Daubert* concerns until the close of an opponent’s case, thereby placing opposing counsel and the trial court at a severe disadvantage.”⁶⁵ Appellate review of a trial court’s decision, with respect to the admission of expert scientific testimony, is made under the abuse of discretion standard.⁶⁶

Unreasonably Dangerous Defect. The mere proof of a defect does not, per se, when coupled with the causation element, establish a product liability cause of action. Rather, as the court noted in *Kirkland*, the defect alleged and proven must render the product “unreasonably dangerous.” The *Kirkland* court, adopting the standard set forth in Section 402A (comment G) of Restatement (Second) of Torts, defined “unreasonably dangerous” as follows: “the article sold must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics.”⁶⁷ This definition of the term has been adopted in subsequent decisions.⁶⁸ The analysis of whether a product is unreasonably dangerous focuses on the time of manufacture, not on the present day standards.⁶⁹

The importance of properly stating the “unreasonably dangerous” element was emphasized in *Lamke v. Futorian Corp.*⁷⁰ In that case, the Oklahoma Supreme Court affirmed the trial court’s dismissal of the plaintiff’s product liability cause of action because the plaintiff had not sufficiently alleged that the products involved were more likely than would be expected by the ordinary consumer to cause the damages alleged. The court emphasized that a manufacturer may not be held responsible merely because its product is not as safe as other similar products. Rather, it must be shown that the product is less safe than expected by the ordinary consumer.⁷¹

Harm to Something Other Than The Product. In *Waggoner v. Town & Country Mobile Homes Inc.*,⁷² the Oklahoma Supreme Court addressed the issue of whether a plaintiff can pursue a product liability cause of action when there is only economic loss. The court reasoned that there is no need to extend the product liability

theory into an area occupied by the Uniform Commercial Code and held that “no action lies in product liability for injury only to the product itself resulting in purely economic loss.”⁷³ If, however, there is personal injury or damage to other property that resulted from the product defect, the plaintiff may recover damages for the personal injury and/or the other property loss, as well as for the damage to the product.⁷⁴

Limitation on Implied Warranty Claims. Oklahoma Courts uniformly recognize that *Kirkland* “renders it unnecessary in a products liability action to consider a recovery based on implied warranty.”⁷⁵ After *Kirkland*, the only possible recovery based upon “implied warranty” is under a Uniform Commercial Code violation when the same has been properly pleaded.⁷⁶

WHAT IS THE APPLICABLE STATUTE OF LIMITATIONS?

The *Kirkland* court noted that an action based on product liability is an action for injury to personal property or for injury to the rights of another, and thus concluded the two-year statute of limitations generally applicable in Oklahoma for tortious conduct would also apply in product liability cases.⁷⁷ The plaintiff may “extend” the limitations period by one year by filing, then dismissing, the action without prejudice.⁷⁸ In *Ross v. Kelsey Hayes Inc.*,⁷⁹ the court held that this applies so long as the initial action is filed before the limitation period expires. The defendant need not be served in order to activate the one year “extension.”⁸⁰

Oklahoma courts have applied the discovery rule in those product liability actions in which particular hardships, or other circumstances, justify different accrual rules.⁸¹ In *Daugherty v. Farmers Cooperative Ass’n*,⁸² the Oklahoma Supreme Court held that acquisition of sufficient information, which if pursued, would lead to the true condition of things, would start the running of the statute of limitations.⁸³

In *Huff v. Fiberboard Corp.*,⁸⁴ the 10th Circuit held that the statute allowing a personal representative two years from the date of the death of the injured party⁸⁵ to bring an action does not serve to extend the time to sue if the deceased, on the date of his death, had no cause of action against the manufacturer for the injuries which

“The mere proof of a defect does not, per se, when coupled with the causation element, establish a product liability cause of action.”

caused his death. Thus, where the decedent knew, or reasonably should have known, more than two years prior to his death that he had the condition for which the action is ultimately brought, and the defendant caused it, the action is time barred.⁸⁶

Recognition of the discovery rule in product liability actions has raised the question of whether Oklahoma's statute of repose⁸⁷ applies in product liability actions. Early indications from the Oklahoma Supreme Court were that it did apply to manufacturers.⁸⁸ In *Ball v. Harnischfeger Corp.*,⁸⁹ the Oklahoma Supreme Court held that the statute of repose might bar a product liability claim if the manufacturer was acting as a designer, planner, construction supervisor or observer, or constructor of an improvement to real property. Similarly, in *O'Dell v. Lamb - Grays Harbor Co.*,⁹⁰ the court held that a product liability claim involving an allegedly defective conveyor was barred because the conveyor was an "improvement to real property" and the case was filed more than ten years after the conveyor was installed.⁹¹

WHAT DEFENSES ARE AVAILABLE?

The *Kirkland* court noted three defenses available to the product liability defendant: lack of causation, abnormal use and assumption of risk.⁹² Subsequent courts have continually reviewed the availability of these, as well as other defenses.⁹³

Lack of Causation. If some act of the plaintiff caused the injury, rather than the product itself, the plaintiff may not recover. Thus, abnormal use,⁹⁴ subsequent modification,⁹⁵ or events, acts or omissions over which the defendant had no control may serve to defeat the causation requirement.

Abnormal Use or Misuse. The leading case on the issue of what constitutes an abnormal use or misuse of a product is *Fields v. Volkswagen of America Inc.*⁹⁶ In *Fields*, the Oklahoma Supreme Court significantly restricted the applicability of the abnormal use defense. The court noted that the defense of misuse or abnormal use of a product refers to cases where the method of using a product is not that which the maker intended or is a use that could not reasonably be anticipated by a manufacturer. As the court noted, a distinction must be made between use for an abnormal purpose and use for a proper purpose but in a careless manner (contributory negligence).⁹⁷ The court, however, emphasized the latter element of foreseeability, stating that "to determine wheth-

er the use of a product is abnormal, we must ask whether it was reasonably foreseeable by the manufacturer. A manufacturer is not liable for injuries resulting from such use if it is not foreseeable."⁹⁸ Thus, the *Fields* court characterized the plaintiff's alleged drinking and speeding as a "use for a proper purpose, but in a careless manner" and noted that such "contributory negligence" was not a defense unless it caused the accident.⁹⁸

Subsequent cases have acknowledged the existence of the abnormal use or misuse defense in product liability cases under the proper factual circumstances.¹⁰⁰ Oklahoma has expanded the scope of admissible evidence for product liability actions concerning motor vehicles and seat belts by requiring submission of evidence of the nonuse of a seat belt, unless the individual is under the age of 16.¹⁰¹

Comparative Negligence or Fault. In *Kirkland*, the court held that the Oklahoma comparative negligence statute¹⁰² did not apply in product liability actions, and therefore, the plaintiff's contributory negligence or fault is a defense only where it reaches the point where it was the cause of the injury alleged.¹⁰³ Despite a growing trend in other jurisdictions, subsequent Oklahoma decisions have consistently held that the plaintiff's negligence is not used to reduce the plaintiff's recovery in a product liability action.¹⁰⁴

Assumption of Risk. Voluntary assumption of a risk is a complete defense to strict product liability under Oklahoma law.¹⁰⁵ But, general knowledge of a risk is insufficient to bar recovery.¹⁰⁶ Rather, the defendant must establish a "voluntary assumption of a known risk created by a defect which existed in a product at the time it left the manufacturer."¹⁰⁷ In *Smith v. FMC Corp.*,¹⁰⁸ the 10th Circuit stated the parameters of this defense, finding error in giving an assumption of risk instruction "in the absence of direct or credible and sufficient circumstantial evidence that the [defendant was] aware of the danger and voluntarily assumed the risk."¹⁰⁹ It is not, however, necessary that the plaintiff have "specific, technical knowledge of the cause of the product's dangerous, defective condition."¹¹⁰ Rather, the plaintiff's general knowledge of the defective condition is sufficient to create a jury question on assumption of risk.¹¹¹

Lapse of Time/Extended Use. Although the existence of a significant lapse of time between the manufacture of the product and injury is not a defense that can conclusively refute conten-

tions that a product was defective, Oklahoma courts have found such evidence to be persuasive. In *Hawkins v. Larrance Tank Corp.*,¹¹² the court noted that while the existence of a significant lapse of time between the sale of the product and the accident was a “damaging fact — one which frequently prevents any inference that the product was defective when sold ... it does not preclude a finding of defectiveness at the time of sale.”¹¹³ Similarly, the extensive use of the allegedly defective product between its manufacture and the date of the injury, though not an absolute defense, has been held to be persuasive evidence as to the existence or non-existence of a defect at the time the product left the manufacturer’s control.¹¹⁴ Thus, the fact that an aircraft engine operated satisfactorily for 538 flying hours after its sale,¹¹⁵ that bolts were in use three years prior to the date of an injury,¹¹⁶ or that a vehicle was driven 19,500 miles before an accident,¹¹⁷ has been held admissible to refute allegations that the product was defective at the time it left the possession and control of the defendant.

State of the Art. “State of the art,” as used in product liability actions, is construed by Oklahoma courts to mean simply the custom and practice in an industry. Compliance with such standards does not constitute an absolute defense to product liability actions,¹¹⁸ nor does compliance with a federal safety standard, in and of itself, establish a product is not defectively designed.¹¹⁸ However, as the court noted in *Bruce v. Martin-Marietta Corp.*,¹²⁰ state of the art evidence is helpful in determining the expectation of the ordinary consumer, and thus, is relevant in determining whether a particular product is defective.¹²¹ Furthermore, state of the art evidence may be considered relevant to whether the manufacturer is, or should be, aware of various dangers associated with the product.¹²²

Substantial Change in the Product.¹²³ Oklahoma cases have adopted the Restatement (Second) of Torts §402A(1)(b), which imposes liability only when the product “is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.”¹²⁴ Most decisions have stated that the plaintiff must establish a defect existed in the product at the time it left the control of the manufacturer.¹²⁵ In *Saupitty v. Yazoo Mfg.*,¹²⁶ however, the court noted that while the general rule is that a manufacturer is not liable when an unforeseeable subsequent modification alone

causes the plaintiff’s injury, the manufacturer may be held liable where the subsequent modification was foreseeable.¹²⁷

Learned Intermediary. Oklahoma courts have recognized that the duty to warn may be abated or lessened in cases where the user is not an “ordinary consumer” but is someone who does, or reasonably should, possess special skills or knowledge regarding the safe use of the product.¹²⁸ The Oklahoma Supreme Court held in *Duane v. Oklahoma Gas & Electric Co.*,¹²⁹ where a product is used in an industrial setting by one supposedly skilled at his job, a manufacturer has “no duty to warn of dangers inherent in the task or which are created by the oversight or negligence of the contractor or fellow employees.”¹³⁰ In *Hutchins v. Silicone Specialties Inc.*,¹³¹ the court distinguished between products marketed toward the ordinary consumer and those distributed to professionals and reasoned that a product that might be unreasonably dangerous in the hands of a home handyman may not be defective when used at a commercial work site by professionals.¹³²

Similarly, a drug or medical device manufacturer may, in most cases, warn the physician, rather than the patient/consumer, of dangers associated with the product.¹³³ This creates the ability, in the proper factual scenario, to argue that the duty to warn is abrogated, or at least delegated, to the knowledgeable purchaser.¹³⁴ In a failure to warn case with a learned intermediary, the plaintiff is entitled to a rebuttable presumption that the learned intermediary will heed any warnings given.¹³⁵ However, the assumption is that the intermediary will heed the warnings, not that the warnings will ultimately be passed on to the patient. The defendant can rebut this presumption by “establishing that although the prescribing physician would have read and heeded the warning . . . this would not have changed the prescribing physician’s course of treatment.”¹³⁶ The learned intermediary standard is a subjective standard that looks at what that particular physician would determine, not what an objective physician would determine.¹³⁷

Obvious Defect. In the context of a duty to warn case, whether in negligence or product liability, the duty to warn exists only when those to whom the warning is to be communicated can reasonably be perceived to be ignorant of the dangers disclosed in a warning. That is, if the dangers or potential dangers are known, or should reasonably be known to the user, no duty to warn exists.¹³⁸

Unavoidably Unsafe Product.¹³⁹ In *Tansy v. Dacomed Corp.*,¹⁴⁰ the court recognized the principles of comment K of the Restatement (Second) of Torts, Section 402A. Under these principles, some products that otherwise create a significant risk, but have great utility, may be deemed “unavoidably unsafe.” Comment K serves as an affirmative defense where the product is incapable of being made safe under present technology, but the social need for the product warrants its production.¹⁴¹ The defense is available only when the product is properly manufactured and contains adequate warnings.¹⁴² With Oklahoma Tort Reform discussed below, this defense has since been codified into Oklahoma law.¹⁴³

Government Contractor Defense. This defense, originally articulated by the United States Supreme Court in *Boyle v. United Technologies Corp.*,¹⁴⁴ provides product manufacturers with insulation from tort liability under state law for injuries allegedly caused by equipment manufactured according to specifications dictated by the military. The elements of the government contractor defense are as follows: 1) the United States approved reasonably precise specifications; 2) the equipment conformed to those specifications; and 3) the supplier warned the United States about the dangers and the use of the equipment that were known to the supplier but not to the United States. In *Andrew v. Unisys Corp.*,¹⁴⁵ Judge Russell, noting a split of authority concerning whether the government contractor defense applied to nonmilitary contracts, found that a manufacturer of a nonmilitary product is entitled to assert the government contractor defense so long as it meets the threshold test established in *Boyle*.¹⁴⁶

Preemption. Oklahoma product liability claims against products that are subject to federal regulations may be barred by preemption. In *Riegel v. Medtronic*,¹⁴⁷ the United States Supreme Court held that “state requirements are preempted under the MDA only to the extent that they are ‘different from, or in addition to’ the requirements imposed by federal law.”¹⁴⁸ Each product will be subject to a case-by-case analysis that will consider whether the federal regulations applicable to the product simply set a minimum standard or are meant to govern the field of the product at issue.¹⁴⁹ Where federal law is intended to govern the entire field of the product at issue, the claim will be preempted. However, where the federal statutes and regulations merely set a minimum standard for products (such as automobile standards), compliance

with those statutes is not an absolute defense to liability.¹⁵⁰ While claims against medical devices approved under the Medical Devices Act may be preempted, the Supreme Court has not taken the same stance for warnings on prescription pill containers.¹⁵¹ In reviewing the preemption arguments of the parties related to the adequacy of a warning placed on a pharmaceutical drug, the Supreme Court opined, “it has remained a central premise of federal drug regulation that the manufacturer bears responsibility for the content of its label at all times. It is charged both with crafting an adequate label and with ensuring that its warnings remain adequate as long as the drug is on the market.”¹⁵² The court held, “[w]e conclude that it is not impossible for Wyeth to comply with its state and federal law obligations and that [the] common law claims do not stand as an obstacle to the accomplishment of Congress’ purposes.”¹⁵³ Ultimately, as demonstrated by the cited case law, preemption will be both on a product-by-product basis as well as a case-by-case basis.

On May 2, 2014, the Oklahoma Legislature enacted a law that creates a “rebuttable presumption that [a] product manufacturer or seller is not liable for any injury to a claimant” caused by a product that is subject to federal or agency safety standards or regulations so long as the product manufacturer can show that it “complied with or exceeded” those standards.¹⁵⁴ This same rebuttable presumption applies where a manufacturer can show by a preponderance of the evidence that the product was subject to “premarket licensing or approval by the federal government, or an agency of the federal government.”¹⁵⁵ The statute explicitly states that the protection does not extend to manufacturing defects regardless of compliance with federal standards or premarket approval.¹⁵⁶ This statute essentially codifies the preemption rulings addressed above.

WHAT DAMAGES ARE RECOVERABLE?

The *Kirkland* decision was considered by the court as an appeal from a defendant’s verdict and it did not address the issue of what damages are recoverable in a product liability action.

Compensatory Damages. Oklahoma courts have generally, without discussion, followed the general tort principle that one injured by the wrongful act or omission of another is entitled to fair and just compensation commensurate with the loss or damage sustained.¹⁵⁷ Damages may be recovered for personal injuries arising out of

a product liability action by an adult,¹⁵⁸ a minor child,¹⁵⁹ the parent or guardian of a minor child,¹⁶⁰ and a spouse of an injured plaintiff.¹⁶¹ Damages caused by a product failure are also recoverable in a wrongful death action.¹⁶² The proper plaintiffs to a wrongful death action are determined by Oklahoma wrongful death and probate statutes.¹⁶³ A survival action may be brought by the personal representative of the decedent.¹⁶⁴

Punitive Damages.¹⁶⁵ In *Thiry v. Armstrong World Industries*,¹⁶⁶ the Oklahoma Supreme Court held that plaintiffs may allege and prove exemplary or punitive damages as an element of damage in a product liability action. The court, reasoning that such awards were authorized by Oklahoma statute,¹⁶⁷ stated that “punitive damages may be assessed against the manufacturer of a product injuring the plaintiff if the injury is attributable to conduct that reflects a *reckless disregard* for the public safety.”¹⁶⁸ “Reckless disregard” for public safety is shown when the evidence indicates: 1) the defendant was aware of the defect and the likelihood that the injury would result from it; 2) the defendant could either remedy the defect or prevent the injury caused by it; and 3) notwithstanding the above, the defendant deliberately failed to take action to remedy the defect or prevent the injury.¹⁶⁹ Under the applicable Oklahoma statute,¹⁷⁰ a jury in an action for the breach of an obligation not arising from contract may award punitive damages for the sake of example and by way of punishing the defendant. Under Oklahoma law, awarding punitive damages is a two-stage process.¹⁷¹ In order to award punitive damages, the jury must first make a determination that there is clear and convincing evidence that the defendant is guilty of conduct evincing reckless disregard for the rights of others or the defendant acted intentionally and with malice.¹⁷² In *Moore v. Subaru of America*,¹⁷³ the 10th Circuit held that absent presentation of such evidence, the court may properly refuse to instruct on the issue of punitive damages.

“...the Oklahoma Supreme Court held that plaintiffs may allege and prove exemplary or punitive damages as an element of damage in a product liability action.”

TORT REFORM, NEW OKLAHOMA PRODUCT LIABILITY LAWS AND THE EFFECT ON PRODUCT LIABILITY ACTIONS

In 2009, the Oklahoma Legislature passed “tort reform” legislation by enacting a number of laws vastly changing the landscape of tort law in Oklahoma. The original Oklahoma “Tort Reform Act” was passed in 2009, but was subsequently followed by a 2011 statute amending many parts of the 2009 act. Several of these provisions have a direct impact on Oklahoma product liability actions. These provisions include capping noneconomic damages in cases of bodily injury to \$350,000 (this does not apply to wrongful death actions or Governmental Tort Claims and there are other limitations),¹⁷⁴ doing away with joint and several liability,¹⁷⁵ no longer allowing a separate tort action for breaching the UCC duty of good faith,¹⁷⁶ providing immunity against product liability actions for manufacturers and distributors for products that are inherently unsafe and known to be unsafe by an ordinary consumer (creates an affirmative defense that must be pled like any other affirmative defense),¹⁷⁷ and requiring plaintiffs claiming physical or mental injuries to provide the defendants with releases for medical records, employment records and scholastic records.¹⁷⁸ These statutes were enforceable law until the Oklahoma Supreme Court addressed them in two separate opinions.

In 2013, the Oklahoma Supreme Court struck down the 2009 Oklahoma Tort Reform Bill, H.B. 2818, as being unconstitutional. *See generally Douglas v. Cox Retirement Props.*, 2013 OK 37, 302 P.3d 789 (striking down H.B. 2818 for violating the “single subject” rule); *see also Wall v. Marouk*, 2013 OK 36, ¶27, 302 P.3d 775, 787 (finding that requiring an “affidavit of merit” for professional negligence cases “creates a monetary barrier to access the court system, and then applies that barrier only to a specific subclass of potential tort victims”). In response to *Douglas v. Cox and Wall v. Marouk*, the Oklahoma Legislature, through a September 2013 special session, revived essentially all of the laws struck down by the Oklahoma Supreme Court, including the notorious “affidavit of merit” in cases where

"plaintiffs shall be required to present the testimony of an expert witness to establish breach of the relevant standard of care . . ."179 The special session laws, coupled with the Oklahoma Supreme Court rulings, leave Oklahoma attorneys attempting to look at the tea leaves to determine the future of Oklahoma tort law.

In addition to Oklahoma's tort reform statutes, the Oklahoma Legislature enacted legislation on May 2, 2014, providing greater protection to product sellers. The legislation expressly states that "[n]o product liability action may be asserted against a product seller other than a manufacturer unless . . ." the statute then sets forth six separate bases upon which a plaintiff can establish to bring a claim against a product seller.¹⁸⁰ These include showing that the seller had "substantial control" over the product design, testing or manufacturing,¹⁸¹ demonstrating that the seller altered or modified the product and that alteration or modification was a "substantial factor" in causing harm to the plaintiff,¹⁸² bringing a claim against the seller where after a good faith exercise of due diligence, the plaintiff is unable to locate the manufacturer,¹⁸³ asserting a claim against a seller is limited in its discovery to information related to these bases,¹⁸⁴ and a seller is only liable to a plaintiff for negligence if the plaintiff can establish the following: the seller actually sold the product involved, the seller did not exercise reasonable care in assembling, maintaining, inspecting, and passing on the warnings and instructions, and the seller's failure to exercise reasonable care was the proximate cause of the plaintiff's injuries.¹⁸⁵ Because this statute did not become effective until Nov. 1, 2014,¹⁸⁶ Oklahoma courts have not yet applied it to product liability actions. Although this statute has not yet been applied, it is clear the statute will have a substantial impact on plaintiffs' product liability claims against product sellers by affording sellers stronger defenses against product liability actions.

1. 1974 OK 52, 521 P.2d 1353.
2. *Kirkland*, 521 P.2d at 1356.
3. *Id.*
4. *Id.*
5. *Id.* at 1357.
6. *Id.*
7. 1974 OK 53, 522 P.2d 622.
8. *Id.* at 624.
9. *Id.* at 626.
10. *Id.*
11. *Kraszewski v. Baptist Medical Ctr. of Okla. Inc.*, 1996 OK 141, 916 P.2d 241.
12. See Okla. Stat. Title 12, §§1051-55.
13. See *McKee v. Moore*, 1982 OK 71, 648 P.2d 21, 23.
14. *Woods v. Fruehauf Trailer Corp.*, 1988 OK 105, 765 P.2d 770, 774.
15. 965 F.2d 844 (10th Cir. 1992), *aff'd following remand*, 53 F.3d 1181 (10th Cir. 1995).

16. *Id.* at 846.

17. *Kirkland*, 521 P.2d at 1361. The same test was later restated by the court in *Fields v. Volkswagen of America Inc.*, 1976 OK 106, 555 P.2d 48, 53.
18. *Robinson v. Volkswagen of America Inc.*, 803 F.2d 572, 574-75 (10th Cir. 1986); *Braden v. Hendricks*, 1985 OK 14, 695 P.2d 1343, 1350; *Moss v. Polyco Inc.*, 1974 OK 53, 522 P.2d 622, 626. The liability of the manufacturer and distributor/retailer is coextensive, even though the latter is not responsible for the presence of the defect. *Braden*, 695 P.2d at 1350. Where the defect is attributable solely to the manufacturing process, the distributor/retailer may seek indemnification from the manufacturer. *Shuman v. Lavern Farmers Cooperative*, 1991 OK CIV APP 2, 809 P.2d 76, 77-78; *Friend v. Eaton Corp.*, 1989 OK CIV APP 74, 787 P.2d 474, 476-77; *Braden*, 695 P.2d at 1349. Conversely, a verdict for the manufacturer in such a case absolves the distributor/retailer from liability on a product liability theory.
19. *Dewberry v. La Follette*, 1979 OK 113, 598 P.2d 241, 242 (action available against commercial lessors of a mobile home that supplied allegedly defective steps); *Coleman v. Hertz Corp.*, 1975 OK CIV APP 5, 534 P.2d 940, 945 (action available against company that leased truck to plaintiff).
20. This is implicit in the decision of *Mayberry v. Akron Rubber Mach. Corp.*, 483 F.Supp. 407 (N.D. Okla. 1979); *cf.*, *Scott v. Thunderbird Indus. Inc.*, 1982 OK CIV APP 31, 651 P.2d 1346, 1349.
21. *Kating v. ONEOK Inc.*, 1997 OK CIV APP 88, 953 P.2d 66, 68; *Dewberry v. La Follette*, 1979 OK 113, 598 P.2d 241, 242. A hospital has been held to be primarily in the business of rendering health care, not selling implants, and thus was not a member of the manufacturer's marketing chain. *Van Downum v. Synthes*, 908 F. Supp. 2d 1179 (N.D. Okla. 2012). For additional information, see *infra* "Tort Reform" discussion in Section 7 and accompanying endnotes.
22. *Edwards v. Pepsico Inc.*, 268 Fed. App'x 756 (10th Cir. 2008) ("There is no legal support, however, for Mr. Edwards' attempt to extend this principle and make all defendants within the chain of distribution automatically liable for a defective product. Rather, responsibility for the defect must still be traced to the proper defendant. Thus, which defendant is responsible for an alleged defect [is] determined in the trial court.") (quotations and citations omitted).
23. *Gosner v. Decker*, 1991 OK CIV APP 64, 814 P.2d 1056, 1057-58. In *Gosner*, the defendant was neither a seller nor lessor, but merely used and allowed the use of its own equipment in providing a service.
24. 1987 OK 79, 743 P.2d 1062.
25. *Case*, 1987 OK 79, 743 P.2d at 1067; see also, *Blair v. Eagle-Picher Industries Inc.*, 962 F.2d 1492, 1496 (10th Cir. 1992); *Dillon v. Fiberboard Corp.*, 919 F.2d 1488, 1491 (10th Cir. 1990).
26. *Case*, 743 P.2d at 1067. The court's opinion was in response to certified questions regarding an "asbestos related injury" case where the plaintiff is unable to identify specific tortfeasors. *Id.* A similar conclusion was reached by the court in *Wood v. Eli Lilly & Co.*, 38 F.3d 510 (10th Cir. 1994), a case involving diethylstilbestrol (DES). *But see infra* note 45.
27. 519 F. Supp. 487 (W.D. Okla. 1981).
28. *Id.* at 488. "The defendant neither manufactured the battery, nor did it process the battery.... Rather, [the defendant] stands in the shoes of an ultimate consumer...." *Id.* at 489.
29. 2001 OK 22, 22 P.3d 223.
30. *Id.* at 224-25.
31. *Spence v. Brown-Minneapolis Tank Co.*, 2008 OK CIV APP 90, 198 P.3d 395.
32. *Allenburg*, 22 P.3d at 224.
33. 1977 OK 36, 561 P.2d 68.
34. *Id.* at 69.
35. *Green v. Oilwell*, 1989 OK 7, 767 P.2d 1348. This is known as the "equitable trust fund doctrine."
36. *Kirkland*, 521 P.2d at 1363.
37. See e.g., *Wheeler v. HO Sports Inc.*, 232 F.3d 754, 756 (10th Cir. 2000); *Gaines-Tabb v. ICI Explosives, USA Inc.*, 160 F.3d 613, 624 (10th Cir. 1998); *Holt v. Deere & Co.*, 24 F.3d 1289, 1292 (10th Cir. 1994); *McMurray v. Deere & Co.*, 858 F.2d 1436, 1439 (10th Cir. 1988); *Hurd v. American Hoist & Derrick Co.*, 734 F.2d 495, 499 (10th Cir. 1984); *Sterner Aero AB v. Page Airmobile Inc.*, 449 F.2d 709, 713 (10th Cir. 1974); *Woulfe v. Eli Lilly & Co.*, 965 F. Supp. 178, 1482 (E.D. Okla. 1997); *Dutsch v. Sea Ray Boats Inc.*, 1992 OK 155, 845 P.2d 187, 190; *Lamke v. Futorian Corp.*, 1985 OK 47, 709 P.2d 684, 688 (Doolin, J. dissenting); *Lee v. Volkswagen of America Inc.*, 1984 OK 48, 688 P.2d 1283, 1285; *Stuckey v. Young Exploration Co.*, 1978 OK 128, 586 P.2d 726, 730; *Bohnstedt v. Robscon Leasing L.L.C.*, 1999 OK CIV APP 115, 993 P.2d 135, 136; *Attocknie v. Carpenter Mfg.*, 1995 OK CIV APP 54, 901 P.2d 221, 227; *Tigert v. Admiral Corp.*, 1979 OK CIV APP 41, 612 P.2d 1381, 1383.
38. *Dutsch v. Sea Ray Boats Inc.*, 1992 OK 155, 845 P.2d 187; *Waggoner v. Town & Country Mobile Homes Inc.*, 1990 OK 139, 808 P.2d 649.
39. See e.g., *Blair v. Eagle-Picher Industries Inc.*, 962 F.2d 1492, 1495 (10th Cir. 1992), *cert denied*, 506 U.S. 974, 113 S. Ct. 464 (1992) ("The mere

possibility that the product caused the injury is not enough.”); *Dillon v. Fibreboard Corp.*, 919 F.2d 1488, 1491 (10th Cir. 1990); *McMurray v. Deere & Co.*, 858 F.2d 1436, 1439 (10th Cir. 1988); *Hurd v. American Hoist & Derrick Co.*, 734 F.2d 495, 499 (10th Cir. 1984); *Cunningham v. Charles Pfizer & Co.*, 1974 OK 146, 532 P.2d 1377, 1379; *Messler v. Simmons Gun Specialties Inc.*, 1984 OK 35, 687 P.2d 121, 125; *Kaye v. Ronsom Consumer Products Corp.*, 1996 OK CIV APP 57, 921 P.2d 1300, 1302.

40. *Freeman Family Ranch, Ltd. v. Maupin Truck Sales Inc.*, 2010 WL 908665 (W.D. Okla. 2010); *Dutsch v. Sea Ray Boats Inc.*, 1992 OK 155, 845 P.2d 187, 191.

41. *Minter v. Prime Equip. Co.*, 356 F. App'x 154, 159-61 (10th Cir. 2009).
42. *Kirkland*, 521 P.2d at 1367 (plaintiff's intoxication as misuse if the intoxication caused the injury); see also *Black v. M&W Gear Co.*, 269 F.3d 1220, 1236 (10th Cir. 2001) (“in a product liability case in which contributory negligence is not a defense and misuse is not an issue, the only relevant causation issue is whether a defect in the defendant's product was the cause of the injury.”); *Saupitty v. Yazoo Mfg.*, 726 F.2d 657, 659 (10th Cir. 1984); *Stuckey v. Young Exploration Inc.*, 1978 OK 128, 586 P.2d 726, 730; *Fields v. Volkswagen of America Inc.*, 1976 OK 106, 555 P.2d 48, 56; *Stewart v. Scott-Kitz Miller Co.*, 1981 OK CIV APP 3, 626 P.2d 329, 331.

43. *Messler v. Simmons Gun Specialties Inc.*, 1984 OK 35, 687 P.2d 121, 125; *Prince v. B. F. Ascher Co.*, 2004 OK CIV APP 39, 90 P. 3d 1020 (Okla. Civ. App. 2004).

44. See *Hinds v. General Motors Corp.*, 988 F.2d 1039, 1049 (10th Cir. 1993).

45. *Dutsch v. Sea Ray Boats Inc.*, 1992 OK 155, 845 P.2d 187, 191 (Okla. 1992); see also *Abercrombie & Fitch Stores Inc. v. Broan-Nutone LLC*, 2012 U.S. Dist. LEXIS 166947, 3-4, 2012 WL 5906552 (W.D. Okla. Nov. 26, 2012). In asbestos related cases, however, the causation standard is heightened and Oklahoma courts require “[t]his causative link [] be established through ‘circumstances which would insure that there was a significant probability that [the defendant's] acts were related to the [plaintiff's] injury.’” *Dillon v. Fibreboard Corp.*, 919 F.2d 1488, 1491 (10th Cir. 1990) (quoting *Case v. Fibreboard Corp.*, 1987 OK 79, 743 P.2d 1062, 1067).

46. *Wood v. Eli Lilly & Co.*, 38 F.3d 510, 512-13 (10th Cir. 1994).

47. *Id.* at 513-14.

48. *Id.* at 512-13; *Case v. Fibreboard Corp.*, 1987 OK 79, 743 P.2d 1062, 1067.

49. 1985 OK 14, 695 P.2d 1343.

50. *Id.* at 1350.

51. *Id.*; see *Robinson v. Volkswagen of America Inc.*, 803 F.2d 572, 574-75 (10th Cir. 1986) (verdict in favor of manufacturer absolves distributor where alleged defect is attributable solely to manufacturing process). See *supra* note 18. For additional information, see *infra* “Tort Reform” discussion in Section 7 and accompanying endnotes.

52. *Holt v. Deere & Co.*, 24 F.3d 1289, 1292 (10th Cir. 1994); *McMurray v. Deere & Co.*, 858 F.2d 1436, 1439 (10th Cir. 1988); *Lamke v. Futorian Corp.*, 1985 OK 47, 709 P.2d 684, 688 (Doolin, J., dissenting); *Hurd v. American Hoist & Derrick Co.*, 734 F.2d 495, 499 (10th Cir. 1984); *Barber v. General Electric Co.*, 648 F.2d 1272, 1276 (10th Cir. 1981); *Scott v. Thunderbird Indus.*, 1982 OK CIV APP 31, 651 P.2d 1346, 1348; *Kirkland*, 521 P.2d at 1363; *Bohnstedt v. Robsco Leasing, L.L.C.*, 1999 OK CIV APP 115, 993 P.2d 135.

53. *Mayberry v. Akron Rubber Mach. Corp.*, 483 F. Supp. 407, 412 (N.D. Okla. 1979); *Kirkland*, 521 P.2d at 1363; *Hawkins v. Larrance Tank Corp.*, 555 P.2d 91, 94 (Okla. Ct. App. 1976).

54. 483 F. Supp. 407 (N.D. Okla. 1979).

55. *Id.* at 412; see e.g., *Wheeler v. HO Sports Inc.*, 232 F.3d 754, 757 (10th Cir. 2000); *Messler v. Simmons Gun Specialties Inc.*, 1984 OK 35, 687 P.2d 121.

56. *Mayberry v. Akron Rubber Mach. Corp.*, 483 F. Supp. 407 (N.D. Okla. 1979).

57. *Id.* at 412. See e.g., *Wheeler v. HO Sports Inc.*, 232 F.3d 754, 757 (10th Cir. 2000); *Rohrbaugh v. Owens-Corning Fiberglass Corp.*, 965 F.2d 844 (10th Cir. 1992); *McMurray v. Deere & Co.*, 858 F.2d 1436 (10th Cir. 1988); *Saupitty v. Yazoo Mfg.*, 726 F.2d 657 (10th Cir. 1984); *Blood v. R&R Engineering Inc.*, 1989 OK 10, 769 P.2d 144; *Messler v. Simmons Gun Specialties Inc.*, 1984 OK 35, 687 P.2d 121. In the automotive context, design defects may be alleged in the context of crashworthiness. See e.g., *Hinds v. General Motors Corp.*, 988 F.2d 1039, 1049 (10th Cir. 1993); *Lee v. Volkswagen of America Inc.*, 1984 OK 48, 688 P.2d 1283.

58. See e.g., *McPhail v. Deere & Co.*, 529 F. 3d 947 (10th Cir. 2008); *Wheeler v. HO Sports Inc.*, 232 F.3d at 757 (10th Cir. 2000); *Daniel v. Ben E. Keith Co.*, 97 F.3d 1329, 1332 (10th Cir. 1996); *McMurray v. Deere & Co.*, 858 F.2d 1436 (10th Cir. 1988); *Rohrbaugh v. Owens-Corning Fiberglass Corp.*, 965 F.2d 844 (10th Cir. 1992); *Smith v. FMC Corp.*, 754 F.2d 873 (10th Cir. 1985); *Woulfe v. Eli Lilly & Co.*, 965 F. Supp. 1478, 1482 (E.D. Okla. 1997); *Mayberry v. Akron Rubber Mach. Corp.*, 483 F. Supp. 407 (N.D. Okla. 1979); *Barber v. General Electric Co.*, 648 F.2d 1272 (10th Cir. 1981); *Smith v. United States Gypsum Co.*, 1980 OK 33, 612 P.2d 251; *Bohnstedt v. Robscon Leasing, L.L.C.*, 1999 OK CIV APP 115, 993 P.2d 135; *Shuman v.*

Lavern Farmers Cooperative, 1991 OK CIV APP 2, 809 P.2d 76; *Spencer v. Nelson Sales Co. Inc.*, 1980 OK CIV APP 58, 620 P.2d 477.

The court noted in *Smith v. FMC Corp.*, 754 F.2d 873, 877 (10th Cir. 1985), “a manufacturer has a responsibility to warn of a defective product at any time after it is manufactured and sold if the manufacturer becomes aware of the defect.” The duty to warn arises only when the manufacturer “knows or should know that the use of the product is hazardous” *Rohrbaugh v. Owens-Corning Fiberglass Corp.*, 965 F.2d 844, 847 (10th Cir. 1992). However, plaintiff has the burden of proving that the lack of adequate warnings caused his or her injuries. *Black v. M&W Gear Co.*, 269 F.3d 1220, 1231 (10th Cir. 23001). A rebuttable presumption exists that an adequate warning would have been heeded. For a discussion of the inference and its rebuttal, see *Eck v. Parke, Davis & Co.*, 256 F.3d 1013 (10th Cir. 2001); *Daniel v. Ben E. Keith Co.*, 97 F.3d 1329, 1332-33 (10th Cir. 1996); *Woulfe v. Eli Lilly & Co.*, 965 F. Supp. 1478, 1483-86 (E.D. Okla. 1997).

59. *Harrington v. Biomet Inc.*, 2008 WL 2329132 (W.D. Okla. 2008) (“[T]he Court will assume that the plaintiff herein can prove the existence of a defect without identifying what the defect is and exclusively by circumstantial evidence, even though the product - the prosthetic hip - was not destroyed and/or there are numerous prosthetic hips of the same type and size available. However, the court observes that there is obvious tension between the principle that a plaintiff may prove the existence of a defect, without identifying it, by circumstantial evidence and the principle recognized by the Oklahoma Supreme Court in *Kirkland* and its progeny, adhered to by the 10th Circuit, that ‘we do not infer that the injury is itself proof of the defect, or that proof of injury shifts the burden to the defendant.’”).

60. 509 U.S. 579 (1993).

61. 526 U.S. 137, 147 (1999).

62. See generally 2003 OK 10, 65 P.3d 591.

63. The following factors are among those to be considered to determine the reliability of scientific or engineering evidence: 1) whether the expert's theory or technique has been subject to peer review; 2) whether there is a known or potential rate of error; 3) whether the scientific methodology has been generally accepted in its field; and 4) whether it can be tested. *Christian*, 2003 OK 10, ¶8, 65 P.3d at 597-98; *Daubert*, 509 U.S. at 592-593; *Hollander v. Sandoz Pharm. Corp.*, 95 F. Supp. 1230, 1234 (W.D. Okla. 2000); see also, *Tyler v. Sterling Drug Inc.*, 19 F. Supp. 1239 (N.D. Okla. 1998).

64. *Christian*, 2003 OK 10, ¶9, 65 P.3d at 598; *Daubert*, 509 U.S. at 592-593.

65. *Alfred v. Caterpillar Inc.*, 262 F. 3d 1983 (10th Cir. 2001).

66. *Gen. Elec. Co. v. Joiner*, 522 U.S. 136 (1997); *Black v. M&W Gear Co.*, 269 F.3d 1220, 1227 (10th Cir. 2001).

67. *Kirkland*, 521 P.2d at 1363.

68. See e.g., *Smith v. Cent. Mine Equip. Co.*, 876 F. Supp. 2d 1261 (W.D. Okla. 2012); *McMurray v. Deere & Co.*, 858 F.2d 1436, 1439 (10th Cir. 1988); *Brown v. McGraw-Edison Co.*, 736 F.2d 609, 613 (10th Cir. 1984); *Hurd v. American Hoist & Derrick Co.*, 734 F.2d 495, 500 (10th Cir. 1984); *Bruce v. Martin-Marietta Corp.*, 544 F.2d 442, 447 (10th Cir. 1976); *Lamke v. Futorian Corp.*, 1985 OK 47, 709 P.2d 684, 686; *Smith v. United States Gypsum Co.*, 1980 OK 33, 612 P.2d 251, 253; *Attocknie v. Carpenter Mfg.*, 1995 OK CIV APP 54, 901 P.2d 221.

69. *Estate of Wicker v. Ford Motor Co.*, 393 F. Supp. 2d 1229 (W.D. Okla. 2005).

70. 1985 OK 47, 709 P.2d 684.

71. *Id.* at 686; see also *Gaines-Tabb v. ICI Explosives, USA Inc.*, 160 F.3d 613, 624 (10th Cir. 1998).

72. 1990 OK 139, 808 P.2d 649.

73. *Id.* at 653; see also *Okla. Gas & Electric Co. v. McGraw-Edison Co.*, 1992 OK 108, 834 P.2d 980, 982. See also *United Golf LLC v. Westlake Chem. Corp.*, 05-CV-0495-CVE-PJC, 2006 WL 2807342 (N. D. Okla. August 15, 2006).

74. *Waggoner*, 1990 OK 139, 808 P.2d at 652; *Dutsch v. Sea Ray Boats Inc.*, 1992 OK 155, 845 P.2d 187, 193-94. See also *Agape Flights Inc. v. Covington Aircraft Engines Inc.*, No. CIV-09-492-FHS, 2012 WL 2792452 (E.D. Okla. 2012).

75. *O'Neal v. Black & Decker Mfg. Co.*, 1974 OK 55, 523 P.2d 614, 615; *Mittapalli v. Ford Motor Co., Inc.*, No. 06-CV-61-GKF-SAJ, 2007 WL 2292697, at *2 (N.D. Okla. Aug. 7, 2007).

76. *Black & Decker Mfg. Co.*, 1974 OK 55, 523 P.2d at 615.

77. *Kirkland*, 521 P.2d at 1361; see Okla. Stat. Title 12, §95.

78. Okla. Stat. Title 12, §100.

79. 1991 OK 83, 825 P.2d 1273.

80. *Id.* at 1276-79.

81. See e.g., *Huff v. Fiberboard Corp.*, 836 F.2d 473 (10th Cir. 1987); *Williams v. Borden Inc.*, 637 F.2d 731 (10th Cir. 1980); *Daugherty v. Farmers Cooperative Ass'n.*, 1984 OK 72, 689 P.2d 947.

82. 1984 OK 72, 689 P.2d 947.

83. *Id.* at 951; see also *Huff v. Fiberboard Corp.*, 836 F.2d 473, 479 (10th Cir. 1987).

84. 836 F.2d 473 (10th Cir. 1987).
85. Okla. Stat. Title 12, §1053.
86. *Huff*, 836 F.2d at 475-480.
87. Okla. Stat. Title 12, §109-113.
88. *Loyal Order Of Moose, Lodge 1785 v. Cavaness*, 1978 OK 70, 563 P.2d 143, 147.
89. 1994 OK 65, 877 P.2d 45, 50.
90. 911 F. Supp. 490 (W.D. Okla. 1995).
91. *Id.* at 493-94; but see *Durham v. Herbert Olbrich GMBH & Co.*, 404 F.3d 1249 (10th Cir. 2005) (holding manufacturing machinery was not an "improvement of real property" and therefore the defendant could not escape a claim for product liability by claiming the action was barred by Okla. Stat. Title 12, §109).
92. *Kirkland*, 521 P.2d at 1366.
93. "Defense" here is used in the broad sense of the word, indicating matters of proof that either serve as affirmative defenses or serve to rebut the plaintiff's *prima facie* case.
94. See *supra* note 42 (cases cited therein).
95. See *supra* note 43 (cases cited therein).
96. 1976 OK 106, 555 P.2d 48.
97. *Id.* at 56.
98. *Id.* The court, perhaps realizing the inconsistency with *Kirkland*, noted that while drunkenness could be misuse of a product, the facts in the present case did not establish such misuse. See also, *Black v. M&W Gear Co.*, 269 F.3d 1220, 1235 (10th Cir. 2001) (holding that evidence that plaintiff's alcohol consumption might have caused the accident is irrelevant because it did not rebut plaintiff's evidence that a defective product caused plaintiff's injuries); *Prince v. B.F. Asher Co. Inc.*, 2004 OK CIV APP 39, 90 P.3d 1020 (summary judgment for defendant on wrongful death claim where medical inhaler only became dangerous after extracting and ingesting an ingredient therefrom).
99. *Id.*; see also, *McMurray v. Deere & Co.*, 858 F.2d 1436 (10th Cir. 1988) (party injured when bypassing a neutral start switch was carelessly using product for a proper purpose).
100. See e.g., *Farrell v. Klein Tools Inc.*, 866 F.2d 1294, 1296 (10th Cir. 1989); *Stuckey v. Young Exploration Co.*, 586 P.2d 726, 730 (Okla. 1978); *Stewart v. Scott-Kitz Miller Co.*, 1981 OK CIV APP 3, 626 P.2d 329; *Basford v. Gray Manufacturing Co.*, 2000 OK CIV APP 106, 11 P.3d 1281, 1293.
101. Okla. Stat. Title 47, §12-420 ("[T]he use or nonuse of seat belts shall be submitted into evidence in any civil suit in Oklahoma unless the plaintiff in such suit is a child under sixteen (16) years of age.").
102. Okla. Stat. Title 23, §§12, 13, 14. Okla. Stat. Title 23, §11 has since been repealed and now Okla. Stat. Title 23, §§12, 13, 14 govern contributory negligence and comparative negligence.
103. *Kirkland*, 521 P.2d at 1367. The court noted that the referenced statute applies to "negligent actions" and not product liability actions.
104. *Black v. M&W Gear Co.*, 269 F.3d 1220, 1234 (10th Cir. 2001) ("In Oklahoma, use of a product for a proper purpose, but in a careless manner is merely contributory negligence, which is not a defense to a products liability suit."); *McMurray*, 858 F.2d at 1439; *Saupitty v. Yazoo Mfg.*, 726 F.2d 657, 660 (10th Cir. 1984); *Bingham v. Hollingsworth Mfg.*, 695 F.2d 445, 454 (10th Cir. 1982); *Hogue v. A.B. Chance Co.*, 1979 OK 2, 592 P.2d 973, 975; *Fields v. Volkswagen of America Inc.*, 1976 OK 106, 555 P.2d 48, 55.
105. *Holt v. Deere & Co.*, 24 F.3d 1289, 1295 (10th Cir. 1994).
106. *Hogue*, 592 P.2d at 975.
107. *Smith v. FMC Corp.*, 754 F.2d 873, 876 (10th Cir. 1985). See also, *Holt v. Deere & Co.*, 24 F.3d 1289, 1292 (10th Cir. 1994); *Bingham v. Hollingsworth Mfg.*, 695 F.2d 445, 452 (10th Cir. 1972); *Barber v. General Electric Co.*, 648 F.2d 1272, 1277 (10th Cir. 1981).
108. 754 F.2d 873 (10th Cir. 1985).
109. *Id.* at 877; *McMurray v. Deere & Co.*, 858 F.2d 1436, 1440 (10th Cir. 1988).
110. *Holt*, 24 F.3d at 1293.
111. *Id.*
112. 555 P.2d 91 (Okla. Ct. App. 1976).
113. *Id.* at 94. In *Hawkins*, there was a three year lapse from the time of sale to the date of injury. See also *Hurd v. American Hoist & Derrick Co.*, 734 F.2d 495 (10th Cir. 1984) (30 year lapse of time does not preclude finding of defectiveness at time of sale).
114. See e.g., *Stern Aero AB v. Page Airmotive Inc.*, 449 F.2d 709, 714 (10th Cir. 1974); *Hawkins v. Larrance Tank Corp.*, 555 P.2d 91, 94-95 (Okla. Ct. App. 1976).
115. *Stern Aero AB v. Page Airmotive Inc.*, 449 F.2d 709, 714 (10th Cir. 1974).
116. *Hawkins*, 555 P.2d at 94-95.
117. *Braden v. Hendricks*, 1985 OK 14, 695 P.2d 1343, 1350.
118. *O'Banion v. Owens-Corning Fiberglass Corp.*, 968 F.2d 1011, 1016 (10th Cir. 1992). See also, *Smith v. FMC Corp.*, 754 F.2d 873, 877 (10th Cir. 1985); *Robinson v. Audi NSU Auto Union Aktiengesellschaft*, 739 F.2d 1481, 1485 (10th Cir. 1984); *Smith v. Minster Mach. Co.*, 669 F.2d 628, 633 (10th Cir. 1982).
119. *Attocknie v. Carpenter Mfg.*, 1995 OK CIV APP 54, 901 P.2d 221, 228; *Edwards v. Basel Pharm.*, 933 P.2d 298, 301 (Okla. 1997). Issues concerning federal preemption as affecting a state common law product liability claim are discussed in *Johnson v. G.M. Corp.*, 889 F.Supp. 451 (W.D. Okla. 1995) and *Bokis v. American Medical Systems Inc.*, 875 F.Supp. 748 (W.D. Okla. 1995).
120. 544 F.2d 442 (10th Cir. 1976).
121. *Id.* at 447.
122. *Obanion* at 968 F.2d 1011, 1016 (10th Cir. 1992); *Smith*, 669 F.2d at 634.
123. See *infra* "Tort Reform" discussion in Section 7 and accompanying endnotes.
124. *Saupitty v. Yazoo Mfg.*, 726 F.2d 657, 659 (10th Cir. 1984).
125. *McClaran v. Union Carbide Corp.*, 26 Fed. App'x 869 (10th Cir. 2002); *Hurd v. American Hoist & Derrick Co.*, 734 F.2d 495, 499 (10th Cir. 1984); *Mayberry v. Akron Rubber Mach. Corp.*, 483 F.Supp. 407, 412 (N.D. Okla. 1979); *Dutsch v. Sea Ray Boats Inc.*, 1992 OK 155, 845 P.2d 187, 191-92; *Manora v. Watts Regulator Co.*, 1989 OK 152, 784 P.2d 1056, 1059; *Messler v. Simmons Gun Specialties Inc.*, 1984 OK 35, 687 P.2d 121, 125; *Stuckey v. Young Exploration Co.*, 1978 OK 128, 586 P.2d 726, 730; *Cunningham v. Charles Pfizer & Co.*, 1974 OK 146, 532 P.2d 1377, 1379; *Hawkins v. Larrance Tank Corp.*, 555 P.2d 91, 94 (Okla. Ct. App. 1976).
126. 726 F.2d 657, 659 (10th Cir. 1984).
127. *Id.* at 659.
128. *Akin v. Ashland Chemical Co.*, 156 F.3d 1030, 1037 (10th Cir. 1998); see also *Ingram v. Novartis Pharms. Corp.*, 888 F. Supp. 2d. 1241 (W.D. Okla. 2012).
129. 1992 OK 97, 833 P.2d 284.
130. *Id.* at 287.
131. 1993 OK 70, 881 P.2d 64, 67.
132. *Id.*
133. *Woulfe v. Eli Lilly Co.*, 965 F. Supp. 1478, 1482 (E.D. Okla. 1997). Exceptions to the rule are discussed in *Edwards v. Basel Pharmaceuticals*, 933 P.2d 298, 300-03 (Okla. 1997); *Tansy v. Dacomed Corp.*, 1994 OK 146, 890 P.2d 881, 886.
134. *Duane*, 1992 OK 97, 833 P.2d at 287.
135. *Stafford v. Wyeth*, 411 F. Supp. 2d 1318, 1320-21 (W.D. Okla. 2006).
136. *Id.*
137. *Id.*
138. *Mayberry v. Akron Rubber Machinery Corp.*, 483 F. Supp. 407, 413 (N.D. Okla. 1979); *Graves v. Superior Welding Inc.*, 1995 OK 14, 893 P.2d 500, 503-04; *Travelers Indemnity Co. v. Hans Lingl Anlagenbau Und Verfahrenstechnik GMBH & Co. KG*, 189 Fed. App'x 782 (10th Cir. 2006).
139. See *infra* "Tort Reform" discussion in Section 7 and accompanying endnotes.
140. 1994 OK 146, 890 P.2d 881.
141. *Id.* at 885.
142. *Id.* at 886; *Littlebear v. Advanced Bionics LLC*, 896 F. Supp. 2d 1085 (N.D. Okla. 2012); *Reed v. Smith & Nephew Inc.*, 527 F. Supp. 2d 1136 (W.D. Okla. 2007).
143. Okla. Stat. Title 76, §57.1 (this statute does not provide a defense for manufacturer's defect or breach of warranty suits).
144. 487 U.S. 500, 507-508 (1988).
145. 936 F. Supp. 821 (W.D. Okla. 1996).
146. *Id.* at 830.
147. 552 U.S. 312 (2008).
148. 552 U.S. at 330.
149. *Compare Riegel v. Medtronic*, 552 U.S. 312 (2008) (preemption of state common law claims for certain medical devices) with *Moody v. Ford Motor Co.*, 506 F. Supp. 2d 823, 830-31 (N.D. Okla. 2007) (finding compliance with a governmental standard for the minimum strength of a roof was insufficient to establish an absolute defense to a claim of products liability).
150. *Moody v. Ford Motor Co.*, 506 F. Supp. 2d 823, 830-31 (N.D. Okla. 2007) (finding compliance with a governmental standard for the minimum strength of a roof was insufficient to establish an absolute defense to a claim of products liability).
151. *Wyeth v. Levine*, 555 U.S. 555, 570-571 (2009).
152. *Id.* at 570-71.
153. *Id.* at 581.
154. 2013 OK H.B. 3365(1)(A) and (C).
155. *Id.*
156. *Id.* at (1)(D).
157. This principle is codified in Okla. Stat. Title 23, §61.
158. The elements that may be considered by the jury in fixing an amount to be awarded to an adult for personal injuries are enumerated in OUII – Civ. No. 4.1.
159. The elements that may be considered by the jury in fixing an amount to be awarded to a minor child for personal injuries are the same as set out in endnote 142 above, except for loss of earnings, which are not considered. OUII – Civ. No. 4.2.

160. In a derivative action brought by the parent or guardian of a minor child who has suffered personal injuries, the jury is allowed to consider the elements set out in OUJI – Civ. 4.3.

161. In order for a plaintiff to recover on a claim of loss of spousal consortium, the jury must make findings as set out in OUJI – Civ. 4.5. The measure of damages for loss of spousal consortium is the amount of money which will reasonably and fairly compensate the plaintiff for the value of the loss of consortium he or she has sustained, and for the value of the loss of consortium he or she is reasonably certain to sustain in the future. Any award to the plaintiff will be reduced by the court in proportion to the percentage of negligence the jury attaches to the injured spouse. OUJI – Civ. 4.6.

Children may also have a cause of action for loss of parental consortium, which is defined as the love, care, companionship and guidance given by a parent to a minor child. For a child to recover on a loss of parental consortium claim, the jury must make findings set out in OUJI – Civ. No. 4.7. The measure of damages for loss of parental consortium is based upon the amount of money which will reasonably and fairly compensate the child for the loss of the value of the parental consortium that he or she has lost, and for the value of the loss of parental consortium he or she is reasonably certain to sustain until he or she reaches the age of eighteen. Any award to the child will be reduced by the court in proportion to the percentage of negligence the jury attaches to the injured parent. OUJI – Civ. No. 4.8.

162. An action for wrongful death is derivative, brought in the name of the decedent. Elements that may be considered by the jury in determining the amount of damages are described in OUJI – Civ. No. 8.1. Damage items which may be considered as a result of the wrongful death of a minor child are enumerated in OUJI – Civ. No. 8.2.

163. Okla. Stat. Title 12, §§1053-1055; Okla. Stat. Title 84, §213.

164. The personal representative may recover damages the decedent might have otherwise sustained had he or she lived. Okla. Stat. Title 12, §1053(a).

165. See *infra* “Tort Reform” discussion in Section 7 and accompanying endnotes.

166. 1983 OK 28, 661 P.2d 515.

167. Okla. Stat. Title 23, §9.1.

168. *Thiry*, 661 P.2d at 518.

169. *Id.* at 517-18; see also, *Johnson v. General Motors Corp.*, 889 F. Supp. 451, 454 (W.D. Okla. 1995).

170. Okla. Stat. Title 23, §9.1.

171. Okla. Stat. Title 23, §9.1.

172. *Id.* For an absence of such a finding on the record, the court in *Shuman v. Laverne Farmers Cooperative*, 1991 OK CIV APP 2, 809 P.2d 76, 79 reduced the punitive damage award to equal the compensatory damages awarded.

173. 891 F.2d 1445 (10th Cir. 1989). The court rejected the argument that a defendant’s resistance in producing material in discovery constitutes an implied admission of punitive guilt, and reasoned that such evidence, if admissible, is relevant to liability, not damages.

174. Okla. Stat. Title 23, §61.2 (there is no limit on economic loss and the “cap” is lifted if the judge and jury find by clear and convincing evidence that the defendant’s acts or failures to act were in reckless disregard for the rights of others; grossly negligent; fraudulent; or intentional or with malice).

175. Okla. Stat. Title. 23, §15.

176. Okla. Stat. Title 12A, §1-304.

177. Okla. Stat. Title 76, §57.1 (does not provide a defense for manufacturer’s defect or breach of warranty suits).

178. 2013 OK H.B. 3375. This bill was enacted on April 28, 2014, and amends Okla. Stat. Title 12, §3226(A)(2)(a) by adding the following language: “Subject to subsection B of this section, in any action in which physical or mental injury is claimed, the party making the claim shall provide to the other parties a release or authorization allowing the parties to obtain relevant medical records and bills, and, when relevant, a release or authorization for employment and scholastic records.”

179. The Legislature revived the “affidavit of merit” requirement that was struck down in *Wall*, but provided an exemption for indigent plaintiffs. See Okla. Stat. Title 12, §19.1. The future application of this statute remains uncertain.

180. Okla. Stat. Title 76, §57.2(E)(1-6).

181. Okla. Stat. Title 76, §57.2(E)(1).

182. Okla. Stat. Title 76, §57.2(E)(2).

183. Okla. Stat. Title 76, §57.2(E)(4).

184. Okla. Stat. Title 76, §57.2(F).

185. Okla. Stat. Title 76, §57.2(G).

186. 2013 OK H.B. 3365(2).

ABOUT THE AUTHORS



Chris Pearson is a partner at the Law Firm of Germer, Beaman & Brown in Austin, Texas. He is licensed in Oklahoma and Texas and regularly defends automobile and heavy truck manufacturers in product liability litigation.



Tom Wolfe is a trial attorney whose practice is focused on complex business cases, including product liability, oil and gas, mass tort and class action defense. He served on the board of directors and as chair of the Trial Practice Section of the Oklahoma Association of Defense Counsel. He is Master of the William J. Holloway, Jr. American Inn of Court. He co-authored the *OBJ* articles, “*Kirkland v. General Motors Co. and Beyond: An Overview of Twenty Years of Oklahoma Product Liability Law*” and “*An Overview of Oklahoma Product Liability Law*,” the latter of which won the Oklahoma Bar Association Golden Quill Award.



Lyndon Whitmire is a trial attorney and Litigation Practice Group Leader. He represents clients in a wide range of complex litigation matters, including product liability, commercial litigation, class actions, various UCC and consumer protection related disputes, first and third party insurance disputes, general tort and personal injury claims, intellectual property and appellate advocacy. He co-authored the *OBJ* article, “*An Overview of Oklahoma Product Liability Law*,” which won the Oklahoma Bar Association Golden Quill Award. Other distinctions include recipient of the International Academy of Trial Lawyers Award.



Cody J. Cooper is a litigation associate at the firm of Phillips Murrah P.C. He represents clients in a wide range of civil complex litigation matters. His practice concentrates on intellectual property, product liability and commercial litigation. He graduated from OU College of Law with honors. While in law school, he served as the managing editor of the *American Indian Law Review*. He has published articles on both “*E-Discovery*” and “*Bring Your Own Device Policies*” in the workplace.

The Time is 20 Years Past 9:02 a.m.

By Robert Don Gifford

As the flight attendant finishes the instructions, I adjust my seatbelt and prepare to spend my time reading or maybe napping as I depart from Boston on my way to Baltimore to catch the final leg back home. After an exchange of pleasantries with a seatmate, we discover we are both attorneys and discussion ensues of our respective final destinations. I have come to notice a pattern in passing discussions with strangers in the past two decades; the odds are that if my fellow passenger has never been to the Heart-

land, the discussion leads to what happened one cool, spring morning at 9:02 a.m. in Oklahoma City.

As the somber anniversary of April 19, 1995, hits 20 years, one can stand where the Murrah Building once existed. Its shadow is still there for us. It stands in our memories between two stoic walls serving as the "Gates of Time" with the times 9:01 and 9:03 inscribed, while 168 empty chairs glimmer in a reflecting pool and the "Survivor Tree" still stands.

To write something on the anniversary of 9:02 a.m. is a challenge. There are a lot of areas to discuss — the realization of home grown terrorism, the legal issues over the course of the case that could be re-hashed in the bar journal, the trial itself, the intense press coverage it garnered, and the tell-all books published after the execution. But, I seem to keep coming back to the question of, "what has mattered

most since 9:02 a.m. on April 19, 1995?" Clearly, the individuals who were involved in committing one of the most cowardly events in history should be relegated to nothing more than a footnote of history. What mattered most was, quite simply, the legacy.

The legacy of 9:02 a.m. is most likely personal to each of us. It spans the chasms of life,



Photo courtesy of Oklahoma City National Memorial & Museum

We search for the truth, we seek justice. The courts require it. The Victims cry for it. And God demands it!

Team 5, 4-19-95 (Graffiti painted on wall)

We Remember

Susan Jane Ferrell
Jules Alfonso Valdez
Michael D. Weaver
Clarence Eugene Wilson Sr.

*Oklahoma Bar Association
members who lost their lives
in the Alfred P. Murrah
Federal Building bombing
on April 19, 1995.*

justice and survival. Despite 20 years, the bombing still labels us as Oklahomans and as Americans. Whether I am in Boston, Barcelona or Bokchito, the discussion still turns to April 19, 1995, when I mention I hail from Oklahoma. The legacy represents the memories of 168 lives lost, the hundreds injured, the dust covered emergency workers, the city of Oklahoma City, the people of Oklahoma and the American system of justice. The legacy of that spring morning shows that the ideals, courage and

pride will overcome the evil of others.

Platitudes aside, the echoes of 9:02 a.m. remain. The passage of time has not made mourning any easier for many victims' family members. The legacy is not about trying to forget, it is remembering the true legacy and honoring those who are most important. When the clock strikes 20 years past 9:02 a.m., what will be your reflections as we all stand between 9:01 and 9:03 of history?

ABOUT THE AUTHOR



Robert Don Gifford serves on the OBA Board of Governors and is an Assistant United States Attorney in Oklahoma City serving as the Human Trafficking

Coordinator for the Western District of Oklahoma.

NOTICE OF JUDICIAL VACANCY

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

**Associate District Judge
Twenty-third Judicial District
Pottawatomie County, Oklahoma**

This vacancy is due to the retirement of the Honorable John Gardner on August 1, 2015.

To be appointed an Associate District Judge, an individual must be a registered voter of the applicable judicial district at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, the appointee must have had a minimum of two years experience as a licensed practicing attorney, or as a judge of a court of record, or combination thereof, within the State of Oklahoma.

Application forms can be obtained on line at www.oscn.net by following the link to the Oklahoma Judicial Nominating Commission or by contacting Tammy Reaves, Administrative Office of the Courts, 2100 North Lincoln, Suite 3, Oklahoma City, OK 73105, (405) 556-9300, and should be submitted to the Chairman of the Commission at the same address **no later than 5:00 p.m., Friday, May 1, 2015. If applications are mailed, they must be postmarked by midnight, May 1, 2015.**

Stephen D. Beam, Chairman
Oklahoma Judicial Nominating Commission

Mock Trial Program Concludes Another Successful Year, Sends State Champ to Nationals

By Daniel Couch

A small town subjected to an aggravated armed robbery. Witnesses to the crime bound and held at gunpoint in a local holistic food store with a suspicious name, "Herb World." One witness with a history of drug use and hallucinations who could not positively identify the perpetrator. Another witness was present the night of the incident but was never interviewed by the police. An employee of a next door business did not report anything out of the ordinary, but did see certain people leaving the back of the building before police arrived.

So who would dare commit such an offense? Was it the manager with a financial motive who produced an inconclusive lie detector test? Was it the employee who was found following the incident with a significant amount of money and electrical tape in his car? Or was it some random third-party predator just breezing through town? The only person who knew for sure was the unknown perpetrator who certainly was not admitting to the crime. The police, whose work left a little to be desired, settled their sights on the Herb World's employee found with

the money and tape following the incident. It was then up to the local district attorney to prove that the accused was guilty beyond a reasonable doubt — while the accused's lawyers were tasked with keep-

preparing their arguments as both the prosecution and the defense. The schools were then entered into a tournament-style competition, in which they could be asked to advocate as the prosecution or the defense.



Mock Trial Committee members are (front row, from left) Marsha Rogers, Jennifer Bruner, Coordinator Judy Spencer and Melissa Peros, (back row) Dan Couch, Todd Murray, Kevin Cunningham, Nathan Richter and Tai Chan Du.

ing their client out of jail and ensuring a fair administration of justice.

This story reads much like something from the local news, but it served as the backdrop for this year's Oklahoma Bar Association's High School Mock Trial Competition: the case of *State v. Jessie Chandler*. Thirty-seven teams from 32 schools spent several months

AND THE TOP TEAMS ARE...

This year's finals matched Moore High School against Owasso High School Team Darrow. The trial, held on March 3, 2015, in the Bell Courtroom at the University of Oklahoma, was presided over by retired Judge Edward Cunningham. The distinguished scoring panel was comprised of retired

Judge Glenn Adams, retired Judge Kenneth Dickerson, Judge Shon Erwin of the U.S. District Court for the Western District of Oklahoma, Judge David Lewis of the Oklahoma Court of Criminal Appeals and Judge Mark Osby of the Union City Municipal Court. After a zealously advocated trial by both finalists, Moore High School prevailed as this year's state champion. The rest of the top eight finishers were Owasso High School Team Williams in eighth, Broken Arrow High School in seventh, McAlester High School in sixth, Ada High School in fifth, Southmoore High School in fourth and Jenks High School in third. Moore will move on to compete at the national competition in May with an entirely new case that will be released in early April.

The program is organized and coordinated by the OBA High School Mock Trial Committee. It begins by preparing a case for competition by either modifying a prior case from another state's competition or creating a new case from scratch. Once the case materials are prepared, including witness statements, affidavits, reports, photographs and the other evidence to be used at trial, the committee releases the case to the teams to begin their preparation.

The committee's focus then shifts to organizing and coordinating the competition. This includes working with our local state and federal courthouses to secure courtrooms for competition, recruiting volunteer presiding judges and scoring panelists, and bracketing the teams within the different competition sites. The committee also recently added an in-person workshop open to the schools



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

at which the committee presents instruction and tips for various aspects of trial procedure, evidentiary issues, witness examination and other presentation issues in order to help the students better prepare for the competition. This year's workshop was held in Oklahoma City at the Oklahoma Bar Center and broadcast simultaneously in Tulsa at Jenks High School. Workshop segment videos are available on the mock trial program's website.



PROGRAM SUPPORT

The committee receives an overwhelming amount of support from many persons and entities, all of which are needed for a successful competition. The committee cannot thank them enough:

- the Oklahoma Bar Foundation for its generous program funding,
- the Oklahoma Bar Association for its support and encouragement of the program,
- the state and federal courthouses that provide a venue for the competition and give the students the enhanced experience of being in an actual courtroom,
- the numerous volunteers within our legal community who give us their time to serve as the judges and scoring panelists,
- the communities, coaches, teachers and parents of the team members who support and encourage their students and
- the students themselves for bravely entering into the unknown world of law, working tirelessly to study and learn the case, evidentiary code, rules of competition and presenting a compelling argument in front of complete strangers with decades of legal experience.

I would also like to personally thank the committee for their hard work this year: Karolina Roberts, Nathan Richter, Todd Murray, Andrea Medley, Nicole Longwell, Tai Du, Kevin Cunningham, Joe Carson, Christine Cave, Julie Austin, Jennifer Bruner, last year's Chair Melissa Peros and next year's Chair Marsha Rogers. Their dedication to the competition was tremendous. And, of course, I have to thank and recognize the heart and soul of the program, Mock Trial Coordinator Judy Spencer. Although it requires the effort of many to successfully run this program, without Judy the program would not be where it is today. Judy, we truly cannot thank you enough for championing this program for so many years.

GET INVOLVED

Every year I am more impressed by the enthusiasm of the students, caliber of the competition and support of the schools, teachers, parents and our legal community. I encourage anyone who is interested to become involved in this competition in some manner, whether as a volunteer scoring panelist, a committee member or even an attorney coach for one of the schools. For more information regarding the OBA's High School Mock Trial program, check out the website at www.okbar.org/public/MockTrial and to sign up as a volunteer, please email mocktrial@okbar.org.

ABOUT THE AUTHOR



Mr. Couch practices in Oklahoma City and serves as chairperson for the High School Mock Trial Committee.

TRIAL SITE COORDINATORS

Christine Cave
 Deresa Clark*
 Joe Carson
 Dan Couch
 Tai Du
 Rob Duncan III
 Patrick Layden
 Andrea Medley*
 Regina Meyer
 Anne Mize*
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 Chris Szlichta
 Leah Terrill-Nessmith*
 Jessica Ward
 John Young

*denotes hosting qualifying and quarter final rounds

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David Wilkie
Betty Williams
Franklin Willis
Allison Wilson
Michael Wilson
Heather Wright*
Grace Yates
John Young
*served twice
**served three times
***served four times
****served five times
*****served six times
*****served seven times

Are you a former high school mock trial team member?

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

BAM! Become a Member – Become a Master

By Ron Main

BAM! We told you it would happen, and it has! The Master Lawyers Section of the Oklahoma Bar Association is up and running. We invite you to join!

Let me first remind you what we are and who we are. The Master Lawyers Section is a new section open to OBA members who are 60 years or older, or OBA members who have practiced 30 years or more, for an annual section fee of \$20. The section is designed to develop programs that will enhance and improve the lives of eligible lawyers, who fall into three basic categories: 1) those who are still working, 2) those who are still working but thinking about cutting back and 3) those who have already retired from the active practice of law.

Contrary to the beliefs of some, this section is *not* a group for lawyers who have been “put out to pasture.” The section’s goal is to offer something for all lawyers who meet the criteria and want to enhance their lives and careers in new ways by using their legal skills and knowledge.

The advances in health care over the years have had the happy consequence of permitting lawyers to live longer and practice longer. The practice of law, however, has so greatly changed that there are many new opportunities that attorneys may not be aware of — as well as challenges. Our section will seek to arm our members with knowledge of these opportunities and ways to meet the challenges.

Our first meeting was held Feb. 12 in Oklahoma City at the bar center and in Tulsa at the University of Tulsa College of Law through vid-

eoconferencing. We decided our first order of business would be to recruit new members. There is no shortage of prospects. Believe it or not, the majority of OBA members are over 50 years of age and 4,533 are 60 or over. In fact, more than 3,300 OBA members are eligible to join the Master Lawyers Section, and to date, 149 of that number have joined.



We are also initially concentrating on developing the Community Contribution Committee and the Service to Senior Lawyers Committee. The Community Contribution Committee will work on opportunities for members to use their skills and knowledge through community projects and pro bono work. The service committee is in charge of developing relevant programs for our section members, such as CLE, career change and public service programs.

SECTION BENEFITS

Our next meeting is scheduled for noon Thursday, May 14, 2015, at the TU law school Dean’s Conference Room and Oklahoma Bar Center Room 131. At that meeting Management Assistance Program Director Jim Calloway will conduct a one-hour CLE on “Technology Tips” that

How to Join the Master Lawyers Section

Mail a \$20 check (payable to the OBA) for 2015 section dues to the OBA, P.O. Box 53036, Oklahoma City, OK 73152. Include the section name on the check’s memo line.

is free to section members, with the section providing lunch. Send your RSVP (indicate Tulsa or OKC) to debraj@okbar.org by May 11. Or call her at 405-416-7042; 800-522-8065.

Perhaps I can give some examples of how this section can help different individuals. I am a "Category 2" master section member. By that I mean I have been practicing law for 50 years and still practice, but my intent was to slow down gradually until that day I close my office at the Skelly Drive location in Tulsa, where I have been for over 20 years. Shortly before our first section meeting, however, I was notified by my landlord that the office building is closing, and I have only one month to clear out and find a new space. Can you imagine how hard it is to suddenly have to deal with a current caseload, find new office space and clear out 40 years of practice in one month? I can tell you, it is not easy.

Suddenly, I was forced to consider retirement. I quickly discovered that although I had the practice of law to retire "from," I had not adequately prepared something to retire "to." I am already receiving tips from sharing this story at our first Master Lawyers Section meeting, and I will be better prepared in the future to help lawyers who deal with similar issues. I still have the ability to make a difference and contribute. I believe that the work of the Master Lawyers Section will furnish possible solutions.

Another example of a Master Lawyers Section member is Barbara Sears, a soon-to-be Category

3 member. Barbara is retiring from her position as executive director of the Tulsa Lawyers for Children organization, but she remains passionate about helping children in need and intends to continue working as a volunteer lawyer with this amazing nonprofit group. As a member of the Master Lawyers Section, she can do that and easily reach out to other master lawyers who may also be willing to serve as volunteers.

All kinds of interesting opportunities are available to skilled and seasoned lawyers, and this new section will help its members find them and take advantage of them. Perhaps one of the best opportunities is the chance to help shape this new OBA section from the ground floor up and take it in directions that will benefit not only section members, but also our entire bar and those Oklahoma citizens who need the help only lawyers can give.

So...BAM! Become a member — become a master. We look forward to welcoming you soon!

ABOUT THE AUTHOR



Ron Main practices in Tulsa and chairs the OBA Master Lawyers Section. He can be reached at rmainbt@aol.com.

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Diversity Awards: Committee Encourages Nominations Deadline June 8

Dr. Martin Luther King Jr. once said, "I can never be what I ought to be until you are what you ought to be, and you can never be what you ought to be until I am what I ought to be." The Oklahoma Bar Association's Diversity Committee will be honoring those in our profession and community making tremendous strides toward ensuring that "We Are What We Ought to Be."

The Diversity Committee is now accepting nominations for the Ada Lois Sipuel Fisher

Diversity Awards to be given during the Ada Lois Sipuel Fisher Diversity Awards dinner on Oct. 15, 2015. The award categories are: members of the judiciary, licensed attorneys, and groups and/or entities that have championed the cause of diversity. All nominations must be received by June 8, 2015.

The OBA Diversity Committee's awards honor the courage of Ada Lois Sipuel Fisher, who was the first African-American woman to attend an all-white law school, the OU College of



*Ada Lois Sipuel Fisher
Photo credit: OU College of Law*

Law. The award recognizes her actions in championing the causes of diversity.



Information regarding the selection criteria and nomination process may also be accessed at www.okbar.org. For additional information, please contact OBA Diversity Committee Chair Tiece Dempsey at 405-609-5406.

NOMINATIONS AND SUBMISSIONS

- Include name, address and contact number of the nominee.
- Describe the nominee's contributions and accom-

plishments in the area of diversity.

- Identify the diversity award category (business/group/organization, licensed attorney or judiciary) in which the nominee is being nominated.

The submission deadline is June 8, 2015.

Submissions should not exceed five pages in length. Submit nominations to diversityawards@okbar.org.

“ I can never be what I ought to be until you are what you ought to be, and you can never be what you ought to be until I am what I ought to be. ”

Dr. Martin Luther King Jr.

SELECTION CRITERIA AND NOMINATION PROCESS

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

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

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

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

Judicial Nominating Commission Elections: Nomination Period Opens

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 non-lawyers 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 lawyers of this state play a very important role in the selection of judges since six of the members of the commission are lawyers elected by lawyers. The lawyer members are elected from each of the six congressional districts as they existed in 1967. (As you know, the congressional districts were redrawn in 2011.) Elections are held each odd numbered year for members from two districts.

2015 ELECTIONS

This year there will be elections for members in Districts 5 and 6. District 5 includes all of Oklahoma County except for those portions described as State Senate District No. 42 and House District No. 96. District 6 is composed of 23 counties in the northwestern part of the state. (See the sidebar for the complete list.)

Lawyers desiring to be candidates for the Judicial Nominating Commission positions have until Friday, May 15, 2015, at 5 p.m. to

DISTRICT 5 COUNTIES

- Oklahoma*

DISTRICT 6 COUNTIES

- Alfalfa
- Beaver
- Beckham
- Blaine
- Canadian
- Cimarron
- Custer
- Dewey
- Ellis
- Garfield
- Grant
- Harper
- Kay
- Kingfisher
- Lincoln
- Logan
- Major
- Noble
- Payne
- Roger Mills
- Texas

continued on next page

- Woods
- Woodward

** District Number 5 shall include all of Oklahoma County except that portion thereof described as State Senate District No. 42 and that portion of House District No. 96 not otherwise included in State Senate District No. 42, as now defined and described in Title 14, Oklahoma Statutes, Section 79 (as they existed in 1967).*

submit their Nominating Petitions. Nominating petition forms can be found online at www.okbar.org/member/JNC/Elections. Ballots will be mailed on June 5, 2015, and must be returned by June 19, 2015, at 5 p.m.

It is important to the administration of justice that the OBA members in the Fifth and Sixth Congressional Districts become informed on the candidates for the Judicial Nominating Commission and cast their vote. The framers of the constitutional amendment entrusted to the lawyers the responsibility of electing qualified people to serve on the commission. Hopefully, the lawyers in the Fifth and Sixth Congressional Districts will fulfill their responsibility by voting in the election for members of the Judicial Nominating Commission.

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 his 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 his designee, the ballots shall be opened, tabulated and certified at 9 a.m. on the Monday following the third Friday of June.

8. Unless one candidate receives at least 40 percent of the votes cast, there shall be a runoff election between the two candidates receiving the highest number of votes.

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 his 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 his 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 his designee, shall take possession of and destroy any ballots printed and unused.

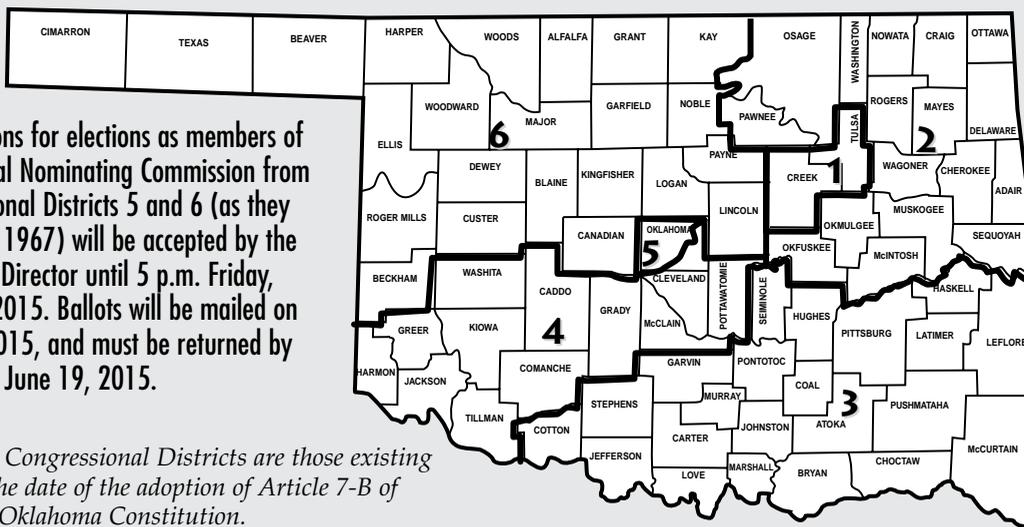
13. The election procedures, with the specific dates included, shall be published in the *Oklahoma Bar Journal* in the three issues immediately preceding the date for filing nominating resolutions.

NOTICE

JUDICIAL NOMINATING COMMISSION ELECTIONS CONGRESSIONAL DISTRICTS 5 AND 6

Nominations for elections as members of the Judicial Nominating Commission from Congressional Districts 5 and 6 (as they existed in 1967) will be accepted by the Executive Director until 5 p.m. Friday, May 15, 2015. Ballots will be mailed on June 5, 2015, and must be returned by 5 p.m. on June 19, 2015.

Note: The Congressional Districts are those existing at the date of the adoption of Article 7-B of the Oklahoma Constitution.



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Jasen Chadwick, JD – Staff Attorney, Muscogee (Creek) Nation Supreme Court

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Watch List Bill Status Report

By *Duchess Bartmess*

Members of the Oklahoma Legislature are working in high gear on the more than 650 measures still considered active. Of the over 2,000 introductions, a large number of 505 introductions designated to be reviewed and monitored by the Legislative Monitoring Committee during this session are no longer considered active. Of course, it should be remembered that some of them may be able to be brought up in the 2016 2nd Session of this 55th Legislature.

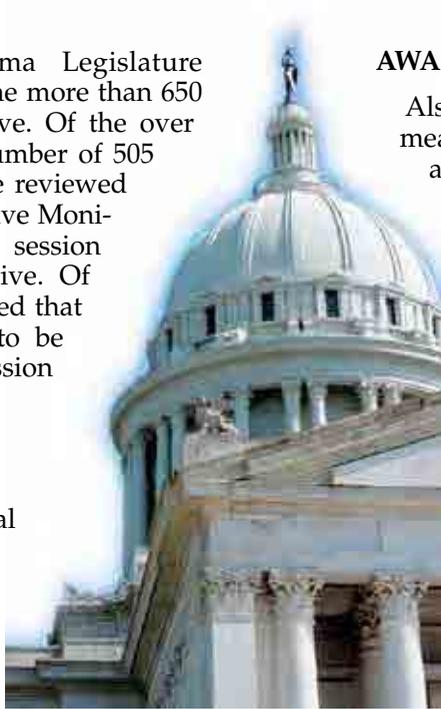
APPROVED BY THE GOVERNOR

Enrolled measures, the official copy prepared by the house of origin after passage in both houses in the exact same language and form, are forwarded to the governor for action. As of April 6, the following measures have been approved by the governor:

HB 1749 Adds new law making it unlawful for a state agency to make payroll deductions on behalf of a state employee for membership dues in any public employee association or organization or professional organization that collectively bargains on behalf of its membership pursuant to any provision of federal law.

HB 1948 Prohibits director of the State Bureau of Narcotics and Dangerous Drugs Control to assess some administrative fines; expands access to information collected at the central repository pursuant to the Anti-Drug Diversion Act.

SB 111 Increases amount of fine to authorize appeal from final judgment of municipal court from \$200 to \$500.



AWAITING ACTION

Also, as of April 6, the following measures sent to the governor were awaiting action:

SB 55 Adds language defining assault and battery on law officers and provides for entire section to be cumulative to other laws.

SB 109 Amends durable power of attorney provisions regarding accountability; authority of fiduciary; adds new law regarding revocation.

SB 215 Adds language regarding requirements for application for a notary commission; adds new language providing conditions which authorizes the Secretary of State to deny, refuse to renew, or revoke a notary commission.

SB 725 Adds new language regarding limitations limiting the benefitting from victim by person convicted of murder or manslaughter.

IN VARIOUS STAGES OF PROGRESS

The remaining active bills and joint resolutions still making their way through the process are in various stages of progress. There are several procedures which provide an opportunity for the amending house to have another opportunity to review the measure or to have the measure go to a conference committee. The most commonly used method, which is noted in many of the measures being reported on here, is to strike the title or enacting clause or both. This alters the form and language of the measure, thereby assuring the amending house another look before final approval in compliance with

constitutional requirements. [See Oklahoma Constitution, Article V, Section 3 and Article V, Section 57, subjects and titles.]

Those measures on general order are measures that have been reported out of committee and are eligible to be considered on the floor subject to debate and amendment. It is also often referred to as being “on the calendar.”

The following is an update on measures previously reported on which are still considered active:

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

HB 1119 Relates to recording and release of mortgages. On general order in Senate with stricken title.

HB 1125 Relates to marriage licenses and marriage certificates. Referred to Senate Rules Committee.

HB 1149 Addresses in terrorem clause prescribing burden of proof in action to contest a will. Referred to Senate Judiciary Committee.

HB 1457 Relates to child custody procedure requiring home study and education review. Referred to Senate Judiciary Committee.

HB 1681 Adds new language to Governmental Tort Claims Act excluding employee of state or political subdivision from being named in action alleging tort liability based on constitutional or state law provision other than the act. On general order in Senate with title stricken.

HB 1918 Relates to custody of presumed father. On general order in Senate.

SB 356 Authorizing recovery of reasonable attorney fees, costs and litigation expenses by prevailing party in any action subject to the provisions of the Energy Litigation Reform Act. Referred to House Environmental Law Committee, title stricken.

SB362 Regards recording activity of law enforcement officer and obstructing an officer. On general in House.

SB 765 New law, sets two-year statute of limitation on recovery in an action based on tort, contract or otherwise, for damages for injury or death against a health care provider for alleged professional negligence, for the performance of health care services without consent, or for error

or omission in the practice of the health care provider's profession. Repeals Section 18 of Title 76. Referred to House Judiciary & Civil Procedure Committee, title stricken.

STILL ACTIVE

OBA members should be aware of the following additional active measures regarding the general practice of law still considered active:

SB 23 Adds institutions within the Oklahoma State System of Higher Education to agencies who may keep confidential business plans, feasibility studies, financing proposals, marketing plans, financial statements or trade secrets submitted by a person or entity seeking economic advice, business development or customized training from such departments or school districts. On general order in House.

SB114 Amends voter registration records procedures. On general order in House.

SB126 Allows Department of Health to contract for private entity to maintain Advanced Directive registry. On general order in the House.

SB 128 Fees for requests for medical records regardless of where the copies or electronic versions of such records are actually produced. On general order in House.

SB 211 Amends enhanced punishments for second and subsequent offenses. On general order in House with title stricken.

SB 218 Adds confidentiality provision to complaints regarding protective services for vulnerable adults, allows Oklahoma Health Care Authority to take over control to provide for the care of the vulnerable adult. On general order in House with title stricken.

SB 269 Community intervention centers, transfers of juveniles. On general order in House with title stricken.

SB 293 Adds new language for providing state benefits for military personnel. On general order in the House.

SB 299 Increases penalty for theft of domestic animal or implement of husbandry and distribution of fines. On general order in House.

SB 372 Modifies motorcycle drivers licenses requirements. On general order in House with title stricken.

SB 443 New law regarding title insurance authorizing release of mortgage affidavit. On general order in House.

SB 745 Transfer on death deeds. On general order in House.

SB774 Modifies power of suspension of absolute power of alienation. On general order in House.

HB 1079 Allows foster parents to submit report on placement of children. On general order in Senate.

HB 1120 Authorizes title insurance company to bring action on behalf of the mortgagor to recover the penalty for failure to release mortgage. On general order in House with title stricken.

HB 1438 Adds continuing education requirements for hospice administrators. On general order in Senate.

HB 1714 Authorizing revocation of driver license for being in physical control of a vessel while under the influence of intoxicating substance. On general order in Senate.

HB 1772 Right of minor to obtain funds held by financial institution. On general order in Senate.

HB 1902 Provides for immunity from civil liability for any damage resulting from the forcible entry of a motor vehicle for the purpose of removing a child. On general order in Senate.

HB 1920 Amends discovery code to require when answering each interrogatory, the party shall restate the interrogatory then provide the answer. Referred to Senate Judiciary Committee.

HB 1965 Prohibits operating motor vehicle on any street or highway while using a hand-held electronic communication device to manually compose, send or read an electronic text message while the motor vehicle is in motion. On general order in Senate.

HB 2157 Family Support Accountability Act. On general order in Senate with title stricken.

May is the last month of the legislative session. It will be busy and fast moving. Any OBA member interested in one or more item of legislation with amendments and votes can check the current status by going to the Legislative Services Bureau website at www.oklegislature.gov/billinfo.aspx. Every member should take advantage of this opportunity to become aware of the change in current laws and new laws they will be dealing with in the future.

ABOUT THE AUTHOR



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



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What Now?

By John Morris Williams

It is not news that there are many predictions regarding the changing nature of the practice of law. Washington state has blessed the concept of non-lawyers providing legal services. That has been a headliner in bar circles for several months. They are called "limited licensed legal technicians." There are requirements of education, training and testing before being granted a license. The main reasoning behind this concept is the unmet legal needs of people without means to afford traditional legal services from a licensed attorney. I suspect, as with all things that start out "limited," what that term includes will grow over time. One only need look to the medical profession and the advent of physician assistants and nurse practitioners for alternative ways to provide some services at a lower cost.

This may all seem novel and far removed. However, a closer examination of the legal profession reveals a large amount of legal work being performed by non-lawyers. Real estate agents, certified public accountants and the familiar yard sign advertising "Divorce Services \$200" are all performing services that easily can fall into a general definition of the practice of law. Add to this the ever growing list of online legal service providers, and we have at our very doorstep various alternatives to the

traditional "real" law office. Just to be clear, real estate agents filling out legal documents are licensed and lawfully operating. Certified public accountants representing tax clients are licensed and lawfully operating; paralegals operating independently and selling unsupervised legal services are not licensed and lawfully operating. The OBA does prosecute the unauthorized practice of law when a complaint is made. The avenues of unregulated practice appear to grow continually.

“ Now what? That is the question that should be on the mind of every lawyer. ”

If that is not enough, several states have come together to participate in a uniform bar examination that has the ability to grant multiple licenses with a single examination. The long discussed trend of national licensure has experienced a "limited" start. Additionally, at least one state has amended the ABA-approved law school requirement to sit for the bar examination. Alabama allows graduates of law schools outside

the United States to sit for its bar examination if certain requirements are met. Other states have mechanisms to accommodate foreign lawyers and certain U.S. treaties speak to legal services as a component. Thus, multistate licensure and multinational practices are very much on the upswing.

Oklahoma has been rated as the least among the states in yet another category. A recent survey has indicated that Oklahoma has the fewest resources being made available to give access to justice to low income individuals. As a result, the Oklahoma Supreme Court has created an Access to Justice Commission that is researching solutions to meet the unmet legal needs of thousands of Oklahomans.

To put the icing on the cake, this year the trend continues with law schools having decreased enrollments, admission criteria in some places being lessened and the cost of a law degree well into the six figures of student debt. It would be ideal if the new graduates who are without clients could be paired up with clients who cannot afford a lawyer. The problem is obvious; you cannot support a six figure student debt and do legal work for free or at very reduced rates.

There are few simple answers to the future of the practice of law and fewer simple answers in making sure that every Oklahoman has access to justice.

Now what? That is the question that should be on the mind of every lawyer. Not only about their individual practice but about sustaining our justice system in a fashion that allows everyone access to justice. If

lawyers are not diligent in staying abreast of these issues, someone else outside of the profession will chart the course, and the reparative question may become "what now?" in response to federal and international regulation and non-lawyers providing an increasing amount of legal services.

It's either we answer the question of "what now?" or we will

be chanting a frustrated "what now?"



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

OKLAHOMA BAR JOURNAL EDITORIAL CALENDAR

2015 Issues

- **May**
Education Law
Editor: Megan Simpson
simpson@gungolljackson.com
Deadline: Jan. 1, 2015
- **August**
Opening a Law Office
Editor: Dietmar Caudle
d.caudle@sbcglobal.net
Deadline: May 1, 2015
- **September**
Bar Convention
Editor: Carol Manning
- **October**
Family Law
Editor: Leslie Taylor
leslietaylorjd@gmail.com
Deadline: May 1, 2015
- **November**
President's Topic
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2015

- **December**
Ethics & Professional Responsibility
Editor: Shannon L. Prescott
shanlpres@yahoo.com
Deadline: Aug. 1, 2015

2016 Issues

- **January**
Meet Your OBA
Editor: Carol Manning
- **February**
Probate
Editor: Judge Allen Welch
allen.welch@oscn.net
Deadline: Oct. 1, 2015
- **March**
Criminal Law
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Oct. 1, 2015
- **April**
Law Day
Editor: Carol Manning

- **May**
Indian Law
Editor: Leslie Taylor
leslietaylorjd@gmail.com
Deadline: Jan. 1, 2016
- **August**
Bankruptcy
Editor: Amanda Grant
Amanda@spiro-law.com
Deadline: May 1, 2016
- **September**
Bar Convention
Editor: Carol Manning
- **October**
Real Property
Editor: Shannon Prescott
shanlpres@yahoo.com
Deadline: May 1, 2016
- **November**
President's Topic
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2016
- **December**
Ethics & Professional Responsibility
Editor: Renée DeMoss
rdemoss@gablelaw.com
Deadline: Aug. 1, 2016

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

Those Timesheets, Those Hated Timesheets: Are You Still Using Them?

By Jim Calloway

A common complaint among lawyers is the painful necessity of filling out timesheets so that the clients can be accurately billed. On its face, this is a simple exercise that should be a part of the daily routine and should be happily done for the direct rewards it provides. (You don't bill, you don't get paid.) The reality is that it is sometimes hard to maintain this discipline when a client is holding on line 1, another is here for their appointment, and you have a deadline to file a pleading this afternoon.

Oklahoma City attorney Mark Robertson and I have spent time discussing alternatives to completing timesheets. We co-authored two books on alternative billing including *Winning Alternatives to the Billable Hour – Strategies That Work*, Third Edition (2008) and in 2014, Mark published *Alternative Fees for Business Lawyers and Their Clients*. Sadly, while others disagree, Mark and I believe alternative fee agreements do not necessarily do away with the necessity for recording time or tasks on a daily basis. Hours invested by a lawyer working on a client file may not always directly correlate with value to the client, but they do directly

correlate with cost of production for the law firm. That makes it hard to know how well a different fee structure is working without any accounting for time invested.

But I hope by now most lawyers reading this are not filling out timesheets by pen and ink on paper regardless of the fee structure arrangement that they may have with clients.

“You need to enter your time digitally. This means you.”

It is hard to adjust to changes in technology and standard business practices. It may be hard to determine between a great new idea that deserves adoption and something that sounds good but may not work well in practice.

But there's one observation that I can make today with a great deal of certainty. A lawyer

entering their time by using pen and ink on a paper timesheet is employing an inefficient practice that should no longer be used. You need to enter your time digitally. This means you.

I am willing to concede that there are probably hundreds, maybe even thousands, of high-powered, high-billing non-typing lawyers across the country for whom this does not hold true. For these lawyers, the traditional model of quickly jotting down their time on a paper timesheet by hand never to be considered again may make sense. After all, you don't want to keep the attorney general on hold a second longer than necessary.

But one big difference between that lawyer and the other 99 percent of the profession is that lawyer has a support system where it may really be true that timesheets leave and never trouble him again.

But for other lawyers, those timesheet entries do reappear, sometimes several times. A billing clerk may tentatively tap on your door asking you to decipher some scribbling that seems to say you were riding a horse and want to bill the client

for that. But usually they don't bother you with such queries. You will just have a pre-bill or a draft of a bill delivered to you for your proofreading pleasure where some misinterpretations of your handwriting are now transcribed and poised to be sent to the client. Most of these are not as entertaining as the idea you might have ridden a horse for the client's benefit. So you make your edits and send them off. But unless your edits are very brief, the pre-bills will return to you for a final proofreading.

In my view, it is critical to review the bills before they are sent to your client. These are an important client communication that the client will certainly read. Any billing error, even a typographical one, may reflect on the quality of your legal work, and if the error appears to reflect an overcharge, this will likely result in an awkward conversation with the client.

Making handwritten billing entries very quickly may seem more efficient, but not only are you paying someone to transcribe them, you may end up losing more of your non-billable time in the proofing and revision process that you could possibly have saved by a handwritten entry as opposed to a digital one.

Lawyers who do not type well may consider speech recognition tools. But most billing entries are brief enough that there is not much difference in the data entry time for a two-fingered typist.

And if you believe for whatever reason that there is absolutely no way you or your firm can shift away from handwritten timesheets, at least do the following: 1) take a deep breath before you write each timesheet

entry, 2) print the words carefully rather than using cursive and 3) when you have completed a timesheet, carefully proof it (just like you would any other important document) before placing it in your outbox.

WHERE DOES THE TIME GO?

Where does one make a time entry, if not on paper?

For the majority of lawyers, the answer is either directly in the billing software or in your practice management software service. There are also apps that capture your time entries for later transfer to your billing system.

Practice management software (including the cloud-based systems) is the best solution for most lawyers because you cannot only capture your time, but you can also record and access all client information including attorney notes and documents in the same place. The ability to organize and store all of this information, including those "timesheet" entries, has gone from convenient to critical for today's law firm operations.

But in today's busy environment, it is not enough to be able to enter your time by keyboard on the office computer. Today's lawyers need to be able to record their time and access their client data at any time through their smart phones and other mobile devices.

Our "Practice Management Shootout at the OK Bar" at the 2015 OBA Solo & Small Firm Conference will showcase great products to fulfill all of these needs. See the sidebar and conference website at www.okbar.net/solo2015 for more information. The five practice manage-

ment packages showcased in our Shootout are MyCase, Firm Central from Thomson Reuters, Clio, RocketMatter and PracticeMaster/TABS3.

All of these products allow you to directly enter your time while at your workstation and hopefully avoid much of the proofing and reproofing that often accompanies handwritten time entries.

REMOTE TIME ENTRY

But what about remote access? After all, as the marketing material for these types of products *always* emphasizes, just capturing a few time entries per month that would have otherwise been lost can soon add up to enough money to cover the expense of the service.

Let's see how our Shootout participants handle remote time entry.

MyCase is a cloud-based service, and as with all cloud-based services, that means a lawyer can log in from a home computer or laptop as easily as they can log in at the office. My Case provides free mobile app options for iOS and Android. Your clients can also install the apps at no charge to access information that you choose to provide them.

Firm Central from Thomson Reuters is also a cloud-based service. As a part of Thomson Reuters, they tout their service's ability to integrate with other products and services from the company, including legal research. Their Time and Billing service is powered by eBillity and has Outlook integration. It is compatible with iPhone, Android and BlackBerry smartphones. There is an additional charge for Time and Billing.

Clio is also cloud-based. It has downloadable iOS and Android apps for mobile access so you can enter your time from a mobile device. All billing functions are included as a part of the service. It also has integration with your OBA-supplied Fastcase service. One can open a new time record while doing research, selecting among your clients and matters from within Fastcase.

RocketMatter is cloud-based. RocketMatter has both iPhone and Droid phone mobile editions (aka apps) at no additional charge. They are quite proud of their recently released iPad edition, which is specially designed for the iPad to offer full access to your data using the iPad, also at no additional charge.

PracticeMaster and TABS3 are a pair of traditionally installed software products from Software Technology Inc. and not cloud-based. TABS3 does the time capture and billing functions while PracticeMaster is the practice management piece. Many, but not all, law firms purchase both. TABS3 Connect is their mobile tool, and it works with all major mobile platforms. You must have the Platinum version of the software to use TABS3 Connect, and there is a small monthly charge if you only use TABS3 and not PM. (Since it is installed on your machines, any remote access service can also be used.)

Don't forget that there is much more that all of these products do. We are just focusing on time capture and recording for this review.

There are other practice management software and service vendors. They feature various methods of capturing time.

Shoot Out!

Our "Practice Management Shoot Out at the OK Bar" program will feature five great products for solo and small firm lawyers (and for larger firms, too). Have you been delaying the purchase of a practice management tool even though you know you need it? Are you concerned some things don't seem to work smoothly on the tool you do use? Are you ready to switch solutions?

You will never have a better chance to compare shop than at our 2015 OBA Solo & Small Firm Conference. See the demonstrations and then visit the vendor's booths afterwards with your questions. The conference is June 18-20, 2015, at the Hard Rock Casino Resort. See the conference website at www.okbar.net/solo2015.

Our Shoot Out participants are:

- **MyCase**
- **Firm Central (Thomson Reuters)**
- **Clio**
- **RocketMatter**
- **PracticeMaster/TABS3**



There are also different types of stand-alone time keeping and time capture utilities.

THE APP WE REALLY WANT WOULD JUST FILL OUT OUR TIMESHEETS FOR US

Chrometa is one tool that not only helps you record your time but helps you out when you fail to record it. Attorney Isaac Warren of Choctaw is a fan.

"Chrometa automatically tracks your time by logging the current window you are using," Mr. Warren stated in a post on OBA-NET. "For instance, if I spend 12 minutes typing an email memo to my client and then use Alt+Tab to switch to a Word document and spend 35 minutes to finalize an agreement, Chrometa

logs the 12 minutes on the email and tags the entry with the subject line of the email. Then it will log the time revising the agreement by tagging the file name of the agreement."

These "automatic entries" are then synchronized with the Chrometa website where one can log in to clean up or remove the entries before exporting them to Clio, Rocket Matter or Quickbooks. He also noted that the Android app for Chrometa will log phone calls, but the iPhone app does not and is much more limited. Mr. Warren uses the Mac version of the software, but there is a PC-based version as well.

There are many stand-alone time keeping apps for mobile devices. North Carolina lawyer

Brian Focht recently updated his blog post "6 Excellent Time-keeping Apps for Lawyers" on his Cyber Advocate blog. (Note: With the updates, he now has more than six apps.) The products he profiled are:

- 1) iTimeKeep by Bellfield Systems
- 2) Time Master + Billing by On-Core Software
- 3) Bill4Time by Broadway Billing Systems
- 4) Hours Tracker by cribasoft LLC
- 5) Timewerks Pro by Sorth LLC
- 6) Gleo Time Tracker by Gridvision Engineering GmbH
- 7) OfficeTime by OfficeTime Software
- 8) TimeClock Pro by Spotlight Six Software

You are directed to his post to see all of the details on these apps like features, price and whether they are for iOS, Android or both. The post is online at <http://goo.gl/1GfBor>.

CONCLUSION

Even though the task sounds simple on its face, recording one's time each day task by task, six minutes by six minutes, is a tedious task many lawyers are not fond of doing. It is a necessity if you are charging clients an hourly rate. Certainly an app where you can quickly enter the time on your phone when you leave the courthouse at the end of the day instead of remembering to do it the next morning at the office makes a lot of sense. A lawyer who spends an hour talking with a client at home on the weekend or evening will benefit, too – either by recording the time spent via the app or being able to log into their

practice management system from home.

The lawyer of a few decades ago would have not understood the concept of entering the time on a mobile phone, much less being able to pull up client documents on the mobile phone. This is just one of the many ways the practice of law (and the world) is being changed by technological innovations. Spending less time dealing with the mechanics of billing is a good thing. So keep that in mind if your firm needs to upgrade the way it captures billable time.

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

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At Home



At Work



And on the Go

Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Association on Feb. 20, 2015.

REPORT OF THE PRESIDENT

President Poarch reported he attended the inauguration of Chief Justice John Reif and Vice Chief Justice Douglas L. Combs, OBA Board of Governors swearing-in ceremony, Legislative Monitoring Committee meeting to review over 2,100 bills introduced in the Oklahoma Legislature, Oklahoma's Promise program at Clinton Middle School, Master Lawyers Section meeting, Bench and Bar Committee meeting, hearing on HB 2214 before the House Rules Committee and Board of Governors new member orientation and dinner. He participated in an interview with the Oklahoma Bar Foundation consultant and also attended the ABA midyear meeting, National Conference of Bar Presidents and Southern Conference of Bar Presidents, all in Houston, Texas.

REPORT OF THE VICE PRESIDENT

Vice President Devoll reported he attended the board has been dinner, inauguration of Chief Justice Reif and Vice Chief Justice Combs, Garfield County Bar Association meeting and Bench and Bar Committee meeting by phone. He also worked on arrangements

for the board meeting to be held in Enid.

REPORT OF THE PRESIDENT-ELECT

President-Elect Isaacs reported he attended the inauguration of Chief Justice Reif and Vice Chief Justice Combs, OBA Board of Governors swearing-in ceremony, Legislative Reading Day to review bills introduced in the Oklahoma Legislature, has been party and new board member orientation. He also attended the ABA midyear meeting, National Conference of Bar Presidents and Southern Conference of Bar Presidents, all held in Houston.

REPORT OF THE PAST PRESIDENT

Past President DeMoss reported she attended the swearing-in ceremony for Board of Governors members, Master Lawyers Section meeting, meeting with the consultant for the Oklahoma Bar Foundation and Board of Editors meeting. She reviewed proposed bills in the Legislature and attended the Southern Conference of Bar Presidents, National Conference of Bar Presidents and served as a delegate at the ABA midyear meeting, all in Houston.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended a meeting with technology auditors,

meetings on new HVAC systems and potential MCLE reporting software, YLD board meeting, Legislative Reading Day, National Conference of Bar Executives, National Conference of Bar Presidents, IT governance meeting, House judiciary meeting, new board member orientation and Diversity Committee meeting. He participated in ethics counsel interviews and in an Oklahoma's Promise presentation at a Clinton Middle School student assembly.

BOARD MEMBER REPORTS

Governor Dexter reported she attended the swearing-in ceremony for Chief Justice Reif and Vice Chief Justice Combs, Board of Governors swearing-in ceremony, has been party and Tulsa County Bar Foundation meeting. She also served as presiding judge for a round of the OBA High School Mock Trial Program competition. **Governor Gotwals** reported he worked on the Tulsa County Bar Foundation lease/construction project in which a contract was signed for construction and a new lease between the Tulsa County Bar Association and the foundation. He attended the TCBF meeting, inauguration of new Chief Justice Reif and Vice Chief Justice Combs, OBA Board of Governors swearing in, 14th Judicial District judges and legislators' reception at Tulsa University law school, ABA midyear meeting in

Houston, Master Lawyers Section meeting and board orientation and dinner. **Governor Jackson** reported he is working with the Civil Procedure and Evidence Code Committee that is monitoring legislation pending in the Oklahoma Legislature, including the discovery master legislation. **Governor Kinslow** reported he worked with county bar leadership on programs for 2015, including Law Day, contacted House Rules Committee members regarding HB 2214 and requested help from Comanche County lawyers. **Governor Knighton**, unable to attend the meeting, reported via email he attended the February Cleveland County Bar Association meeting, Lawyers Helping Lawyers Committee meeting, Law-related Education Committee meeting, inauguration of new Chief Justice Reif and Vice Chief Justice Combs, and the OBA Board of Governors swearing in. He also called House Rules Committee members and encouraged them to vote against HB 2214. **Governor Marshall** reported he attended the swearing in of Chief Justice Reif and Vice Chief Justice Combs, farewell dinner for board members leaving office, Legal Intern Committee meeting by telephone and board orientation session at the Oklahoma Bar Center. **Governor Porter** reported she attended the retirement party for Oklahoma County ADA Gary Ackley, has been party, board orientation and dinner. She introduced General Counsel Hendryx before her CLE presentation at the Oklahoma County Bar Center and served as a scoring panelist for two rounds of the High School Mock Trial Program in Canadian County. **Governor Sain**

reported he attended the McCurtain County Bar Association luncheon and McCurtain Memorial Hospital Foundation board meeting. He served as the auctioneer for a Pros for Africa fundraising event that raised \$150,000 and served as the auctioneer for a Big Brothers and Sisters event in Oklahoma City that raised \$22,000. **Governor Stevens** reported he attended the has been party, swearing-in ceremony for Chief Justice Reif and Vice Chief Justice Combs, swearing-in ceremony for the OBA Board of Governors, February Cleveland County Bar Association meeting, OBA Legislative Reading Day and the county bar's "Justice is Sweet" baking competition. **Governor Tucker** reported he attended the board's has been dinner, Law Day Committee meeting, new governor orientation and YLD roast of Kaleb Hennigh.

YOUNG LAWYERS DIVISION REPORT

Governor McGill reported she attended the swearing in for new board members, orientation for new members of the YLD board, YLD committee meetings, roast of past YLD Chair Kaleb Hennigh, Solo & Small Firm Conference Planning Committee meeting, Oklahoma County Bar Association YLD chili cook off, Legislative Reading Day, ABA midyear meeting in Houston, OCBA YLD February board meeting and Kick it Forward Kickball Tournament planning meeting. She announced five Kick it Forward applications were approved for members to receive funds to help pay their OBA annual dues.

BOARD LIAISON REPORTS

Governor Marshall reported the Legal Intern Committee met recently for administrative purposes. Various forms have been "scrubbed" by the committee at its December meeting. Revised forms include the removal of the SSAN requirement and modification of form 1 and form 4 from the affidavit to verification and eliminating the requirement for notarization. Future meetings will be held in June, September and December. Governor Tucker reported the Law Day Committee has received more than 1,200 contest entries. The committee is looking for lawyers to interview for the TV show for a cyberbullying segment and searching for teen parents to interview. The committee is working on expanding ways people can submit questions for the Law Day free legal advice. Executive Director Williams reported the Diversity Committee is working on its mission statement and beginning planning for its annual awards event. They are also planning social events in conjunction with the Solo & Small Firm Conference and the OBA Annual Meeting. Governor Porter reported the Women in Law Committee is discussing kick off ideas for its annual event. President Poarch reported the Bench and Bar Committee is continuing its work.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported annual reports for the Professional Responsibility Commission and Professional Responsibility Tribunal were compiled, filed and will be published in the March 14, 2015, *Oklahoma Bar Journal*. She said the patterns in attorney discipline remain steady.

GOVERNMENT RELATIONS

Clay Taylor, OBA legislative liaison, was introduced. He briefed the board on basic legislative facts and reported the biggest issue facing the Legislature is the \$611 million budget shortfall. He identified 10 bills to watch. President Poarch reported Mr. Taylor is keeping the OBA updated on fast moving activity at the Capitol.

PROPOSED RULES OF PROFESSIONAL CONDUCT AMENDMENTS

Rules of Professional Conduct Committee Chair Paul Middleton explained that when the Rules of Professional Conduct were drafted in 2008, people were not using smart phones. He said the OBA Rules of Professional Conduct Committee looked at the ABA rules that reference technology. He reviewed the committee's suggested changes to:

Rule 1.0 – Terminology

Rule 1.1 – Competence

Minority Report Comment (6) Rule. 1.1

Rule 1.4 – Communication

Rule 1.6 – Confidentiality of Information

Rule 3.8 – Special Responsibilities of a Prosecutor – para. (g) & (h)

Proposed Comments for Rule 3.8 (g), (h) & (i)

Rule 4.4 – Respect For Rights Of Third Persons.

Management Assistance Program Director Jim Calloway shared his comments about

the impact of technology and how integral it has become to the legal profession. The board voted to table action on the proposed RPC amendments until they are published in the *Oklahoma Bar Journal* and bar members are given a 60-day comment period. It was decided that comments should be sent to Executive Director Williams.

MCLE COMMISSION REAPPOINTMENT

The board reappointed Mark Hixson, Yukon, to the Mandatory Continuing Legal Education Commission.

OKLAHOMA'S PROMISE

President Poarch reviewed the program's purpose to offer free college tuition to qualifying students. Executive Director Williams reported that 160 eighth graders attended the school assembly at Clinton Middle School. The local newspaper covered the event and published a large photo of the students holding their backpacks. About 60 parents showed up for parent-teacher conferences in the computer lab where local attorneys stayed busy helping parents sign up for the program. He said the Custer County Bar Association is thinking about doing this every year as a Law Day project. President Poarch, who participated in the presentation to students, said the program was well received. He said testimonials from teachers about the program benefits were a real boost to

increase student enthusiasm and motivation.

LEGISLATIVE READING DAY

President Poarch said the Legislative Monitoring Committee and other volunteers met on a Saturday at the bar center. They reviewed the more than 2,000 bills and joint resolutions introduced. Lists of bills to be watched were created. Executive Director Williams said the watch lists are available on the OBA website.

OETA FESTIVAL

Communications Director Manning briefed the board on the annual community service project that will take place the evening of March 11 at OETA, Oklahoma's statewide public television station. OBA volunteers take pledges from viewers and raise individual donations to support OETA, which co-produces the *Ask A Lawyer* TV show. Metro-area board members were asked to volunteer.

EXECUTIVE SESSION

The board voted to go into executive session, met in executive session and voted to come out of executive session.

NEXT MEETING

The Board of Governors met March 23, 2015. A summary of those actions will be published after the minutes are approved. The next board meeting will be Friday, April 24, 2015, in Enid.

Celebrate Law Day with the OBF

By Jack L. Brown

Law Day, celebrated on May 1, has been defined as: “A national day set aside to celebrate the rule of law that underscores how the law and the legal process have contributed to the freedoms that all Americans share.” For the Oklahoma Bar Foundation, it is Law Day every day. The OBF works hard to provide access to the law and legal process to thousands of low-income families and individuals, who would otherwise go without representation, in hopes that they too might find equality and justice under the law.

To help the OBF grow in its ability to serve the citizens of our state, the Board of Trustees hired experienced consultant, Dennis Dorgan, to assist in cre-

ating a fundraising plan of action. Mr. Dorgan began by conducting a feasibility study which assessed the potential for the development and implementation of an annual fundraising program. Mr. Dorgan’s feasibility study concluded that a revitalized OBF fundraising program is sustainable and very likely to continuously be successful in the future. He based his conclusions on, in part, the previous fundraising success of the OBF, the strong support from the legal community and the respect the courts and organized bar membership have for the OBF.

The feasibility report did stress that in order to have continued success, it was important to further educate members of the legal community about the OBF and its important work. The report also noted that the OBF will need to work on identifying, recruiting and mentoring new OBF members and leaders. Other suggestions from the study include the OBF providing opportunities for net-



working with peers, offering CLE classes and providing high-profile public recognition for individuals, firms and corporations supporting the OBF.

FEASIBILITY REPORT PROVIDES GUIDANCE

The feasibility report provided guidance to the OBF Trustees who attended a retreat March 26 and 27 at Postoak Lodge, north of Tulsa. The Trustees were divided into working groups to address many topics that are elements of the new fundraising plan. The working groups included making grantees the center piece, donor recognition, increasing the visibility of the OBF, marketing the OBF, focus



Congratulations and thank you to our newest OBF Fellows:

William Baxter Buxton, *Duncan*
William C. “Chad” McLain, *Tulsa*
Megan M. Carothers, *Chattanooga*

Congratulations and thank you to our newest Sustaining Fellow:

Doneen Douglas Jones, *Oklahoma City*

on young and older lawyers, corporate counsel strategy and *Cy Pres* strategy.

The Trustees discussed each of these areas in detail and many excellent ideas evolved that will be incorporated into the OBF's development initiative. The strategies which evolved from the retreat will be the centerpiece of the fundraising plan of action currently being written by consultant Dennis Dorgan. The OBF intends to implement the fundraising plan through its new director of development and communications as well as the Development Committee of the board and all Trustees and Fellows of the Oklahoma Bar Foundation.

“As Law Day is almost upon us, the OBF looks forward to a bright future and increased fundraising that will help so many low-income Oklahomans gain access to representation in our legal system.”

As Law Day is almost upon us, the OBF looks forward to a bright future and increased fundraising that will help so many low-income Oklahomans gain access to representation in our legal system. The OBF will continue educating the legal community and others about the important work the OBF does and encouraging their involvement either through contributions and/or becoming an OBF Fellow.

ABOUT THE AUTHOR



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

He can be reached at jbrown@jonesgotcher.com.

Tributes and Memorials



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

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

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Or if you prefer, please make checks payable to:

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Email: foundation@okbar.org • Phone: 405-416-7070



OKLAHOMA BAR FOUNDATION

OBF Fellow and Community Fellow Enrollment Form

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Mailing and Delivery address _____

City/State/Zip _____

Phone _____ Email _____

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Attorney Non-attorney

- I want to be an OBF Fellow now – Bill me later \$100 enclosed and bill annually
- Total amount enclosed \$1,000 New lawyer 1st year, \$25 enclosed & bill annually as stated
- New lawyer within 3 years, \$50 enclosed and bill annually as stated I want to be recognized at the higher level of Sustaining Fellow and will continue my annual gift of \$100
(initial pledge should be complete)
- I want to be recognized at the highest Leadership level of Benefactor Fellow and annually contribute at least \$300
(initial pledge should be complete)) My charitable contribution to help offset the Grant Program Crisis

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THANK YOU FOR YOUR GENEROSITY AND SUPPORT!

Planning for Fundraising Tournament Underway

By LeAnne McGill

Many young lawyers choose to venture out on their own and start their own law practice after passing the bar. This is a very brave and exciting move, however, the financial constraints that come with opening your own practice can be great. Many solo practitioners (particularly young attorneys) find themselves struggling to keep up with all of their expenses, climbing further into debt while still trying to provide legal services to their clients.



The Young Lawyers Division saw a need for a financial assistance program for attorneys who are struggling to pay their annual bar dues. In response to this need, we started the “Kick It Forward Fund,” which provides financial assistance to attorneys who cannot afford to pay their bar dues. Attorneys must apply to receive this assistance and the OBA reviews those applications on an annual basis. The number of attorneys that receive assistance depends on the funding available. That is where you come in!

The Kick It Forward Fund is very near and dear to the YLD’s heart, since many of the attorneys who benefit from this program are YLD members. This year, the YLD is hosting its first Kick It Forward Kickball Tournament, which will become an annual event. The tournament will be held on Saturday, Aug. 29,

2015, in Oklahoma City and will help raise funds for the Kick It Forward Fund. The YLD is currently looking for sponsors for this tournament. All funds raised will go straight to the Kick It Forward Fund, so ask your law firms, colleagues and friends if they would be interested in making a donation.

We are also looking for people who are interested in playing in the tournament. This event is open to everyone, lawyers and non-lawyers alike. Teams must consist of a minimum of eight players and a maximum of 12. You can also sign up as an individual, and we will compile a team out of those individual players. You do not have to be an expert kickball player in order to participate. We are looking for players who want to have a good time while supporting a great cause. Registration forms will be coming out soon, so watch the bar journal, E-News



**Kickball
Tournament Under
Construction**

Needed:

Sponsors — law firms,
companies & individuals

Individual players of
all ages

Teams of players

and Facebook (www.facebook.com/obayld) for more information. Entry fee for players will be \$25 per person, and spectators will be \$10 per person. And not that you'd need any extra incentive to play, but there will be prizes for the first-place team.

We anticipate having food and drink vendors present, so

there will be plenty of activities for spectators as well. This will be a great fundraiser for the Kick It Forward Fund and also a way to network, socialize and have a good time with other lawyers. If you would like more information regarding the kickball tournament or the Kick It Forward Fund, please contact me. We hope to see you in August!

ABOUT THE AUTHOR



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

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LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM

It's Not an 'Ozzie and Harriet' World Any More

By Gary W. Dart

For that matter, it's not even a "Brady Bunch" world either. In 1960, 72 percent of all Americans were married, but by 2010 only 51 percent had tied the knot. Starting in the 1970s, more and more marriages ended in divorce, and now, only about half of all marriages survive. In addition to divorce taking its toll, fewer couples are choosing to get married at all. Today, only about 46 percent of all American children live in what we used to call a "traditional family" with two parents who are married to each other. In 1960, 73 percent of all kids had this stability to come home to, while by 1980, only 61 percent did.

Even back in the darkest days of the Depression, American families stuck together and having children born to unmarried parents was virtually unheard of. In 1940, only 3.8 percent of American babies were born to unmarried mothers, and 20 years later, in 1960, it was still only 5.3 percent. Then things began to change. By 1965 the out-of-wedlock birth rate was 7.7 percent, by 1969 it was 10 percent, by 1975 it was 14.3 percent and by 1992 it was 32.6 percent. Nationally, the unwed birth rate topped 40 percent in 2011, and now, in Oklahoma, about 42 percent of all births are to

unmarried parents. Today, census data shows that 34 percent of all American children are growing up in a household headed by an unmarried parent; only 19 percent of our kids lived this way in 1980 and just 9 percent did back in 1960.

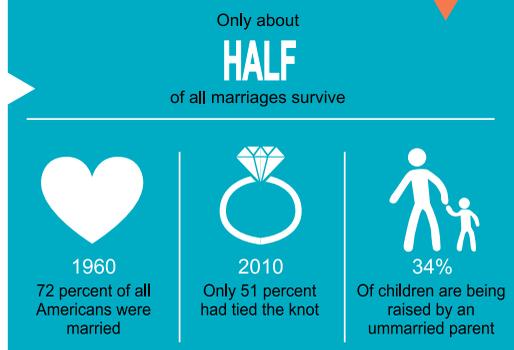
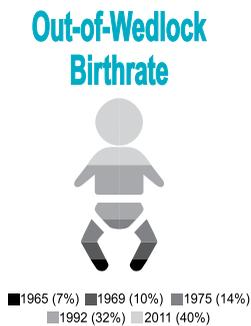
Our world has changed and not necessarily for the better. Researchers mostly agree that children of unmarried parents have a tougher time in life — more poverty, more instability and more problems in school. We should be concerned about their lives, not just because we care about children, but also because we care about America — these kids will very quickly become tomorrow's citizens.

These families have lots of needs and each of us can help in some way. Most single parent families are low income, and our attorneys in the 40

local offices of the Child Support Services (CSS) division of the Department of Human Services are working on their financial needs. CSS has a caseload of more than 200,000 and collected approximately \$1 million a day for families last year. Child support represents about 45 percent of the income of low income families with children who receive it. Our highest goal is to get regular support flowing when we can. We work hand-in-hand with the private bar to try to make that a reality for as many Oklahoma families as we can.

So what can you do? Studies have shown that half of all unmarried couples are no longer together by the time their child turns five. Parents who have never been married do not have divorce decrees that have settled their affairs,

For a list of ways you can help, please call 918-439-2483.



including custody and parenting time arrangements. Here is where you come in.

One of the complaints we frequently hear is, "Why should I pay support when I never see my child?" What that father may really be saying is that he feels like all the system wants is for him to be a cash register when he wants to be more than that. Studies have shown that dads who are involved with their children are much more likely to voluntarily pay their support and be a real part of their children's lives. Research has also shown that kids who grow up with involvement of both their parents and in a household where support is dependable have higher self-esteem, do better in school, form healthier relationships with others, commit fewer delinquent acts and tend to not have as many out-of-wedlock children themselves when they grow up.

“ Studies have shown that half of all unmarried couples are no longer together by the time their child turns five. ”

YOU CAN HELP

As attorneys, we hold the keys to the justice system. If you can work with a couple on mediating a parenting plan or visitation schedule they can follow, you may be able to change the life of a child. Please help. Volunteer for Early Settlement or Legal Aid Services, or at your local legal clinic, through your county bar association or with us at CSS. Even if all you are doing is supplying a couple with a modified copy of your local court's

standard visitation schedule, you may be giving structure to a broken family that didn't have any before. Call us at 918-439-2483 if you need other ideas on how you can help.

One study has determined that more than one-third of all young men and women turning 21 this year grew up without a dad in the home. We may not be able to change that statistic, but we can change its impact one family at a time.

ABOUT THE AUTHOR



Gary W. Dart is the director of Child Support Enforcement for the state of Oklahoma.

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Moyers Martin is proud to announce that **Scott V. Morgan** is now a partner with the firm. Scott is a trial attorney that focuses his practice on representing the firm's oil and gas clients in civil litigation and administrative proceedings. In addition to his oil and gas practice, Scott also represents corporate and individual clients in litigation and business transactions. Scott has conducted both jury and non-jury trials as a first and second chair attorney.

Scott is a graduate of the University of Tulsa College of Law where he received certification in the Resources, Energy, and Environmental Law program.

Tweet?

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OBA Welcomes New Ethics Counsel

Oklahoma City lawyer Joseph P. Balkenbush Jr. recently joined the OBA staff as the association's new ethics counsel, replacing Travis Pickens, who went into private practice in February. As ethics counsel, Mr. Balkenbush will be responsible for answering ethics questions from OBA members, working with the Legal Ethics Advisory Panel, monitoring diversion program participants, teaching classes and writing articles.

Mr. Balkenbush has been in private practice since 2001. From 1996-2001, he served as a judge of the district court in Oklahoma County assigned to a domestic docket. Prior to that, he worked as a sole practitioner, associate attorney and legal intern in various Oklahoma City law firms. He served in the U.S. Marine Corps from 1976 - 1980, then earned a B.B.A in accounting from National University in San Diego before completing his J.D. at OCU School of Law in 1986.



Joe Balkenbush Jr.

He has served the OBA as a volunteer for several committees and as a member of the Family Law Section. He is also an active member of the Oklahoma County Bar Association, serving on its board of directors and as co-chair of the Lawyers Against Domestic Abuse Committee.

He may be reached at 405-416-7055, 800-522-8065, joeb@okbar.org. All inquiries to the OBA ethics counsel are confidential, and most questions can be answered by telephone. See ethics tips and opinions online at www.okbar.org/members/ethicscounsel.

Judge Hudson appointed to Court of Criminal Appeals

Gov. Mary Fallin recently announced the appointment of Judge Robert Hudson of Guthrie to the Court of Criminal Appeals, succeeding Judge Charles Johnson. A former longtime prosecutor for Payne and Logan counties, Judge Hudson has served as a special district judge in Payne and Logan counties since 2012.



Judge Robert Hudson

In that role, he handles both civil and criminal litigation.

He previously served as first assistant Oklahoma attorney general, a role in which he oversaw approximately 80 lawyers working in the state Attorney General's Office.

While serving as district attorney, he helped establish Oklahoma's first drug court to provide an alternative punishment for offenders convicted of non-violent drug offenses. Prior to his time as district attorney, he owned a private law practice in Guthrie.

He served as president of the Oklahoma District Attorneys Association in 2000 and 2008, served nine years on the Oklahoma State Bureau of Investigation Commission and is a former president of the Guthrie Rotary Club.

He is a graduate of OSU and the OU College of Law.

LHL Discussion Group Hosts Upcoming Meeting

The Lawyers Helping Lawyers monthly discussion group will meet May 1 when the topic will be "Co-Dependency." Each meeting, always the first Thursday of each month, is facilitated by committee members and a licensed mental health professional. The group meets from 6 - 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th St. Oklahoma City. There is no cost to attend and snacks will be provided. RSVPs to Kim Reber; kimreber@cabainc.com, are encouraged to ensure there is food for all.

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



Grau, OBA President David Poarch, Legislative Liaison Clay Taylor and OBA Executive Director John Morris Williams.

OBA Day at the Capitol a Success

OBA member and State Rep. Chris Kannady participates in OBA Day at the Capitol March 24. Those attending the event at the bar center heard from several speakers on a variety of legislative topics before meeting with legislators at the Capitol during the afternoon. Speakers were Chief Justice John Reif, Judge James B. Croy, Sen. Kay Floyd, Sen. Clark Jolley, Rep. Randy

Tulsa Attorney Appointed to OBA Board

Tulsa attorney James R. Hicks has been appointed to the Oklahoma Bar Association Board of Governors, filling the member-at-large seat formerly held by Deirdre O. Dexter, who resigned to accept an administrative law judge position.

As one of three at-large representatives, Mr. Hicks will represent all Oklahoma counties on the 17-member board. His term begins immediately and will expire Dec. 31, 2016.

Mr. Hicks is of counsel with the Barrow & Grimm law firm in Tulsa. He concentrates his practice in the areas of civil litigation, family law, probate and estate planning. He recently served as Tulsa County Bar Association president.

"Jim Hicks is a welcome addition to our governing board," said OBA President David Poarch of Norman. "His distinguished track record of service to both the county and state bar associations, in addition to many community organizations, makes him a proven leader."

He currently serves as senior warden at St. John's Episcopal Church and has served as president of Legal Services of Eastern Oklahoma and the Tulsa Auxiliary of the Gladney Center. He chaired the OBA Young Lawyers Division and TCBA Young Lawyers Committee. He is the recipient of the American Bar Association's First Place Award of Achievement for Service to the Public.

He is a 1985 graduate of the TU College of Law. He earned his bachelor's in business administration from OU in 1982.



James R. Hicks

OBA Member Resignations

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

Barry Lockwood
Babcock
OBA No. 395
760 Kent Road
St. Louis, MO 63124

Hilary Eileen Cohen
OBA No. 22383
568 Rock Road
Glen Rock, NJ 07452

Brian Jeffrey Hansford
OBA No. 31076
4529 Briggs Dr. S.E.,
#302
Olympia, WA 98501

George Chester
Jacques
OBA No. 10079
69 S. Big Star Lane
Eagle, ID 83616

Bar Supports Public Television

The OBA raised more than \$4,200 in private donations as part of its volunteer effort to support the state's PBS-TV station during the annual OETA Festival. The donation kept the OBA at one of the top sponsorship levels that is recognized in the station's monthly programming guide.

Bar members turned out in force the evening of March 11 taking pledges by phone during the fundraiser. This year's volunteers were Melinda Alizadeh-Fard, Reagan Barham, Emily Coughlin, Stephanie Cox, Jerrod Geiger, Samuel Glover, Allison Hart, Donna Jackson, Mark Koss, Marty Ludlum, LeAnne McGill, Miles Mitzner, Aaron Morrison, Ernest Nalagan, Ed Oliver, David Poarch, Robert Powell, Faye Rodgers, Charles Rouse, Kim Stevens, Richard Stevens, Peggy Stockwell, Mary Travis, Chris Tytanic, Todd Waddell and Timothy Wallace.

Photos from the event are available for viewing at www.okbar.org/members/photogallery.



President David Poarch presents a check to on-air personality and lawyer Kim Brasher during the OETA Festival March 11.



Connect With the OBA Through Social Media

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



Aspiring Writers Take Note

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

OBA Member Reinstatement

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

Gordon Lee Miller
OBA No. 6204
Allen & Overy LLP
1101 New York Ave., N.W.
Washington, DC 20005

Kudos

Crowe & Dunlevy director **Vicki Behenna** was recently honored at the Oklahoma City Chapter of the Association for Women in Communications' 57th By-liner Awards. The award recognizes Oklahoma women who have made a significant impact or contribution to their community. She graduated from OCU School of Law in 1984.

Ken Bellmard of Oklahoma City was inducted into the Northern Oklahoma College Distinguished Alumni Hall of Fame. He is a member of the Kaw Nation and has practiced Native American law since 1990. He graduated from the OU College of Law in 1989.

UCO legal counsel **Dr. Elizabeth Kerr** has been named to the 2015-2016 National Behavioral Intervention Team Association board. The association brings together professionals from multiple disciplines who are engaged in the essential function of behavioral intervention in schools, on college campuses, and in corporations and organizations for mutual support and shared learning. She graduated from OCU School of Law in 1986.

Richard McKnight of Enid was honored with the North Star Award at the

annual Cimarron Council Good Scout Luncheon for his support of scouting as well as other organizations in Enid and the surrounding area. The North Star Award is the highest award a local Boy Scout council can bestow on a non-registered volunteer for significant contributions to scouting. He graduated from the OU College of Law in 1963.

Brad West, a partner with The West Law Firm in Shawnee, has been named secretary for the Oklahoma Chapter of the American Board of Trial Advocates (ABOTA) for 2015. ABOTA is a nationwide invitation-only advocacy group whose primary goal is to educate the public about the importance of the trial by jury system in America. He graduated from the OU College of Law in 1989.

Sam P. Daniel of Tulsa celebrates 50 years with Doerner, Saunders, Daniel & Anderson in April. He graduated from the OU College of Law in 1959.

Douglas J. Sorocco, who was born with spina bifida, was one of 15 minority rainmakers recently selected by MCCA (Minority Corporate Counsel Association) for inclusion in its annual, nationwide list and featured in *Diversity & The Bar*. MCCA was founded in 1997 to advocate for the expanded hiring, retention, and promotion of minority attorneys in corporate law departments and the

law firms that serve them. He graduated from the University of Dayton in 1995.

On The Move

Robert Don Gifford was recently promoted to colonel in the U.S. Army Reserves Judge Advocate General's Corps, and has been also selected to be the commander of the 3rd Legal Operations Detachment in Boston, Massachusetts. He will be responsible for overseeing operations to provide legal support to deploying soldiers, their families and veterans, and he will deploy judge advocates worldwide to assist in the development of the rule of law in foreign countries. He graduated from the OU College of Law in 1996.

The Boeing Company promotes **Jeb Boatman** to site director and chief counsel for its Oklahoma City operations. He will oversee significant site initiatives, including external affairs, and will oversee the legal needs of Boeing's worldwide defense aircraft modernization and sustainment division. He graduated from the OU College Of Law in 2003.

Timothy L. Rogers has been elected a preferred shareholder at Barrow &

Grimm P.C. in Tulsa, where he focuses on business litigation, construction litigation, employment and surety law. He graduated in 2008 from the TU College of Law.

McAfee & Taft has named **lawyers Mary Quinn Cooper and Charles Greenough** from its Tulsa office and **Barrett Ellis and Erin Van Laanen** from its Oklahoma City office to serve as new practice leaders for the 2015 term. Ms. Cooper was appointed to co-lead the firm's litigation practice with returning co-leader **Brad Donnell**. She serves as trial counsel for a number of Fortune 500 corporations and defends product liability claims and class actions across the country. Mr. Ellis was named leader of the firm's Banking and Financial Institutions Group, advising corporate and financial institution clients in a wide range of transactional matters, with a particular emphasis on finance transactions and regulatory compliance. Mr. Greenough was appointed leader of the firm's Business Restructuring, Workouts and Bankruptcy Group and has extensive experience in financial, debtor/creditor, and bankruptcy matters, representing both lenders and borrowers, as well as serving as a trustee and as a liquidating agent in complex bankruptcy estates. Ms. Van Laanen is the new leader of the firm's Aviation Group and her practice is concentrated in the areas of aircraft title, registration, financing and leasing and related matters concerning the United States Federal Aviation Act, the FAA Aircraft Registry in Oklahoma City, and the Cape Town Convention on International Interests

in Mobile Equipment and the Aircraft Protocol.

Crowe & Dunlevy recently named director **Alison M. Howard** of Oklahoma City as chair of the firm's Employee Benefits & Employee Retirement Income Security Act (ERISA) practice group. In this role, Ms. Howard leads a team of experienced attorneys concentrated in employee benefits and ERISA litigation. She graduated from the University of Notre Dame in 2003.

Stacy M. Brklacich joins **GableGotwals** as an of counsel attorney in the Tulsa office where she will focus on health care law. She is a former Tulsa County assistant district attorney and earned her J.D. from TU College of Law in 2008.

Casey Cooper joins **GableGotwals** as a new shareholder in the Tulsa office. His primary focus will be complex litigation, corporate services, environmental services, oil and gas matters and the law of higher education. He is a former attorney in the U.S. Navy's Judge Advocate General's Corps and received his J.D. from the TU College of Law.

Crowe & Dunlevy announces that **Jon Croasmun** has joined the firm as a director in the Aviation/Aircraft practice group. Mr. Croasmun has concentrated his career in the practice of commercial and business aviation law. He received his J.D. from the University of Utah S.J. Quinney College of Law in 2003.

Doerner, Saunders, Daniel & Anderson announced that former **Judge William C. Kellough** has joined its Tulsa

office. Kellough served as a district judge in Oklahoma's 14th Judicial District in Tulsa County for eight years. He will concentrate on dispute resolution, litigation and healthcare. He graduated from the University of Texas at Austin in 1975.

Katherine R. Morelli of Tulsa has joined the firm of Rhodes, Hieronymus, Jones, Tucker and Gable as an associate attorney. Her areas of emphasis include civil litigation and appellate practice. She graduated with honors from the OU College of Law in 2010.

James Scears has joined **Baker & McKenzie** as an associate in the firm's Zurich, Switzerland, office. His practice focuses on international taxation, wealth management, and estate and trust planning. Prior to joining the firm, Mr. Scears served as a federal judicial law clerk for **Judge David L. Russell** in the U.S. District Court for the Western District of Oklahoma. Mr. Scears graduated from New York University School of Law with an LL.M. in taxation in 2013, and prior to that, graduated from the OU College of Law in 2012.

Guy Thiessen announces the opening of The GT Law Firm in Tulsa. Mr. Thiessen was formerly with Carr & Carr Attorneys as their lead trial lawyer in the Tulsa office. He will continue to handle all types of plaintiff personal injury cases, with a special emphasis in the areas of nursing home/assisted living neglect, trucking cases, wrongful death and all matters involving catastrophic injuries. He graduated from OCU School of Law in 1989.

At The Podium

Tulsa lawyer **Jeff Curran** spoke April 17 in New York City at the national HB Litigation Conference regarding product liability litigation and expert witnesses.

Paul R. Foster of Norman was a featured speaker at the recent Community Bankers Association of Oklahoma Winter Leadership Conference held at South Lake Tahoe, Nevada. He spoke on the topic of "Your Bank: Buy, Sell, Recapitalize or Play Defense?" and also coordinated and moderated the presentation of the federal bank regulatory panel which focused on recent legal and regulatory issues throughout the region and emerging capitalization

issues. **Carrie L. Foster** of Norman presented on the topic "An update: The Oklahoma Financial Privacy Act — Civil Subpoenas" during the conference.

Eric L. Johnson recently spoke at the National Alliance of Buy Here, Pay Here Dealers Best Operating and Compliance Practices Conference in Dallas. He spoke on the topic of GPS and Payment Assurance Technology.

Mark Sanders spoke at the OBA CLE Revocable Asset Preservation Trust in March. His presentation focused on the U.S. Bankruptcy Court's role with the trust.

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 promo-

tion or an award, or given a talk or speech with statewide or national stature, we'd like to hear from you. Sections, committees, and county bar associations are encouraged to submit short stories about upcoming or recent activities. Honors bestowed by other publications (e.g., *Super Lawyers*, *Best Lawyers*, etc.) will not be accepted as announcements. (Oklahoma-based publications are the exception.) Information selected for publication is printed at no cost, subject to editing, and printed as space permits.

Submit news items via email to:

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

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

IN MEMORIAM

Thomas E. Bennett of Oklahoma City died Feb. 26. He was born Oct. 10, 1920, in Durant. He earned a bachelor's degree in history from OSU, a J.D. from Harvard University and did postgraduate studies at Georgetown University. **He was an infantry officer in World War II, often leading behind-the-line rescue and recovery teams through enemy territory, served at the Pentagon during the Korean Conflict and the Maritime Administration.** He was an administrative law judge with the Social Security Administration. He was an adjunct professor at the International School of Law in Washington, D.C. Prior to his

retirement in 2011, he was honored for 50 years of federal government service. He was active in a variety of community activities including chairing the Oklahoma County Election Board, serving as American Legion post commander and trustee for Oklahoma Baptist University, 32nd degree Mason and several Oklahoma political campaigns.

Melissa Marie Chase of New Bern, North Carolina, died Feb. 22. She was born Nov. 10, 1969. She received a B.S. in criminal justice from the University of Central Florida before earning her J.D. from Regent University in 2000. She practiced in the area

of immigration law representing employers, employees, families and individuals. She was a frequent speaker and author on the topic of immigration law. She was a Boy Scout troop leader and had a passion for children, education, humanitarian issues and animal welfare.

Jeremy Broc Cumbie of Ardmore died Feb. 28. He was born on April 17, 1985, and graduated from Ardmore Public Schools in 2003. He graduated from East Central University with a double major in criminal justice and legal studies and received his J.D. from OCU School of Law in 2011. Jeremy had a true love of the law and interned

for Judge Walker in Ardmore, Judge Landrith in Ada, the Department of Agriculture in Oklahoma City, and the District Attorney's Office in Ada. He was a member of the Carter County Bar Association, and was on the board of the Ardmore Children's Shelter. Among his survivors is his brother, OBA member Jon Gores.

Jeffrey Price Feuquay of Nevada, Missouri, died Dec. 29, 2014. He was born July 6, 1949, in Enid. He graduated from OCU School of Law in 1995. He was a professor at OSU, worked as an Assistant Administrator for the State of Oklahoma Office of Personnel Management, and served as an international consultant representing OSU with the World Bank and the Ministry Education in Amman, Jordan. He practiced law in Perry, Guthrie and Nevada, Missouri. He demonstrated his commitment to community through his services in Rotary Club, the Children's Center and many other organizations and civic clubs and acted upon his strong faith in God by his work with the Nevada United Methodist Church. Memorial donations can be made in his name to the United Methodist Church.

Jerry Fraley of Oklahoma City died Nov. 4, 2014. He was born on Oct. 9, 1959, and graduated from Muskogee High School. He graduated from the OU College of Law in 1984 and went on to work for Bill Cathcart and Micky Walsh. He was an avid sports

fan as well as an Oklahoma City history enthusiast.

John Robert Greenstreet of Tulsa died March 1. He was born July 1, 1929, in Tulsa and graduated from Will Rogers High School in 1947. He earned his J.D. from Southern Methodist University in 1961. After his graduation, he worked for Proctor & Gamble in Cincinnati, Ohio, for six years. He then returned to Tulsa and worked in the First National Bank Trust Department and later worked for MAPCO, from which he retired in 1993. He was a member of Christ United Methodist Church and its Friendship-Wesley Class and helped to develop the church's scholarship program.

Sidney M. Groom Jr. of Edmond died Feb. 22. He was born Jan. 27, 1925, in Oklahoma City and graduated from Bristow High School in 1942. **He attended Oklahoma Military Academy before beginning his service in the U.S. Army in 1943. During World War II, his unit, the 69th Infantry Division, was committed to the European Theater in November 1944. He was awarded the Bronze Star Medal of Honor for his service.** In 1946, he returned from Germany and resumed his education at OU, studying physics. He graduated from the OU College of Law in 1951. After completing law school, he began his career as a landman for Standard Oil Company of California in Ardmore. He later, relocated to Washington D.C. where

he was a lawyer for the U.S. Department of the Interior Solicitor's Office and then to New Orleans, Louisiana, where he was the first lawyer and director of the new Bureau of Land Management-Outer Continental Shelf leasing office. Two years later, he returned to his home state of Oklahoma to work as a lawyer for Magnolia Petroleum Company (later Mobil Oil Corporation). After 17 years, he left Mobil and opened a small law office in downtown Edmond and became an adjunct professor of business law at UCO (then Central State University). He retired at age 80. He was a longtime member of the First Christian Church (Disciples of Christ) of Edmond and was active in many benevolent outreach efforts and civic endeavors his entire life. Among his survivors is his son, OBA member Marshall Thad Groom.

Page Price Morgan of Oklahoma City died Feb. 27. She was born on May 13, 1953. She graduated from OSU and received her J.D. from OCU School of Law in 1980. She was active in many civic and philanthropic activities and served more than 20 years as an Oklahoma City municipal judge. She respected and admired her judicial colleagues and friends and appreciated everyone who made the Oklahoma City Municipal Courts operate effectively. Memorial donations may be made to the OSU Foundation Scholarship Fund or to the Oklahoma City Animal Shelter.



1969 OBA President Winfrey Houston 1926-2015

Winfrey David Houston of Stillwater died Monday, March 23. He was born June 1, 1926, in Stillwater. He graduated from Oklahoma A&M with a degree in history and political science and received his J.D. from the OU College of Law in 1950.

When he was a senior in high school, he volunteered for service in the Army Air Corps. While completing training in Seattle as a B-29 flight engineer in May 1945, the war ended. He shipped out in November and served in the Allied Occupation of Germany for 10 months. For many years he was Stillwater School Board attorney and Perkins city attorney while maintaining an active private practice.

He served as president of many legal organizations including the Payne County Bar Association, Oklahoma Bar Association and Oklahoma Bar Foundation. He also served as a member of the House of Delegates of the American Bar Association.

In 1987, he received the OBA's Outstanding Lawyer Award in Practice for More Than 35 Years and in 2003, he was recognized as one of only a few practicing attorneys who had

been members of the Oklahoma Bar for 50 years. In 2007, the OBA honored him with the Joe Stamper Distinguished Service Award.

He was also extremely active in the community, having served on the Mayor's Human Relations Committee, Chamber of Commerce Board of Directors, Stillwater Medical Center Board, Public Housing Board, Downtown Neighborhood Planning Team, Community Center Board, Main Street Board and Main Street's Design and Economic Restructuring Committee and as Stillwater's city commissioner.

Memorial contributions may be made in his name to First Presbyterian Church, 524 S. Duncan, Stillwater, OK 74074 or Stillwater Community Foundation to the Winfrey Houston Memorial Fund, P.O. Box 425, Stillwater, OK 74076 or www.cfok.org/donate.



Fighting ransomware

What can a law firm do to fight ransomware? Sharon Nelson provides some answers.



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

OFFICE SPACE FOR RENT: NW Classen, OKC. Telephone, library, waiting area, receptionist, telephone answering service, Desk, Chair, file cabinet, included in rent one for \$290 and \$490 per mo. Free parking. No lease required Gene or Charles 405-525-6671.

POSITIONS AVAILABLE

GROWING EDMOND LAW FIRM seeks entry level Legal Administrative Assistant. Excellent writing skills, attention to detail, and organization skills required. Willingness to learn and eager to excel in the legal field essential. Paralegal certificate a plus, but not required. Qualified candidate who shows talent and potential will have opportunity to advance to a Legal Assistant/Paralegal position. Please send résumé and writing sample to "Box E," Oklahoma Bar Association; PO Box 53036; Oklahoma City, OK 73152.

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

MID-SIZED EDMOND LAW FIRM seeks civil litigation associate with minimum of three years of experience. The successful candidate will have excellent academic record and writing ability. Excellent compensation package commensurate with experience. Please send résumé and writing sample to "Box J," Oklahoma Bar Association; PO Box 53036; Oklahoma City, OK 73152.

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DEBEE GILCHRIST, AN AV RATED FIRM SEEKS ATTORNEY FOR AVIATION PRACTICE AREA IN OKLAHOMA CITY. The ideal candidate is a person of character (organized, determined, humble and loyal) with 3-5 years of experience in commercial transactions. Background in real estate or oil and gas title work may be beneficial. Bonus opportunity is available and salary is commensurate with experience. Applications will be kept in the strictest confidence. Under cover letter, send résumés to: DeBee Gilchrist Attention: HR 100 North Broadway, Suite 1500, Oklahoma City, OK 73102 or email to HR@DeBeeGilchrist.com.

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CHRISTENSEN LAW GROUP, an AV rated law firm in north Oklahoma City, is seeking an attorney to practice in workers compensation, tort and business litigation. Applicants to join this growing firm must be of high character, organized, self-motivated, loyal and enjoy working in a team atmosphere. Bonus opportunity is available and salary is commensurate with experience. Previous workers compensation and/or litigation experience is preferred. Our firm offers full benefits, paid vacation, personal days and a matching 401k. Applications will be kept in strict confidence. Please send résumé and cover letter to Christensen Law Group Attention HR, Parkway Building, 3401 N.W. 63rd Street, Suite 600, Oklahoma City, OK 73116. No phone calls, please.

MUNICIPAL JUDGE: Salary \$92,707. The City of Oklahoma City seeks full-time Municipal Judge. Must be a resident of Oklahoma City with a minimum of four years' experience in Oklahoma as a licensed, practicing attorney. Additional requirements are listed in the application. Pick up and return application to the Department of Court Administration, 700 Couch Drive, Oklahoma City, OK 73102. Direct all inquiries to Court Administrator Stacey Davis at 405-297-2780. Applications with résumés will be accepted until April 23, 2015, at 5pm.

POSITIONS AVAILABLE

A/V RATED LAWYER seeks associate to help out with busy practice. Background in Immigration strongly desired. The area of service would be Mayes/Rogers County. Salary commensurate with experience. Please send résumé to "Box P," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

THE OKLAHOMA TAX COMMISSION, LEGAL DIVISION seeks an attorney for an opening in its OKC office. Applicants must be licensed to practice law in Oklahoma and have a current OK driver's license. 0-5 years preferred. Submit cover letter, résumé, and writing sample to applicants@oktax.state.ok.us. The OTC is an equal opportunity employer.

The Oklahoma Corporation Commission has an opening for an Attorney in the Office of General Counsel to represent the Oil and Gas Conservation Division. Responsibilities include enforcement of Commission rules and regulations, representing the Division in administrative hearings, advising technical staff and field inspectors, assisting with rulemakings, and advising the Division on legal matters under the Commission's oil and gas jurisdiction. This is an unclassified position with a salary of \$65,000 annually. Applicants must be admitted to the Oklahoma bar and have 3 years of litigation experience. Send résumé and writing sample to: Oklahoma Corporation Commission, Human Resources Division, P.O. Box 52000, Oklahoma City, Oklahoma, 73152-2000. For inquiries, contact Lori Mize at 405-521-3596 or at HR3@occcemail.com. Deadline: April 25, 2015.

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WWJD: What Would Jayne Do?

By Suzanne Snell

I was lying face down in the black dirt and high grass on the bank of the Innoko River in the Innoka National Wildlife Refuge in Alaska. I did not know whether to laugh or cry. The river is glacier-fed, wide, deep and fast-moving, and the refuge is one of America's most remote landscapes. With no inhabited human settlements, no roads and a lack of easy access, human visitors are few and far between. So how did I wind up in my predicament?

The short answer is because I was on a 16-day moose hunt with my husband. We were brought into camp on a float plane — camping in a big open tent with complete strangers, no running water or electricity. I was not a spectator to the hunt; I was a participant. To fully convey the depth of my immediate dilemma, you must know I was wearing a first layer of wool longhandles underwear (top and bottom). Next, insulated camo pants and a long-sleeve shirt.

The final layer, before coat and gloves, chest waders, made of a stiff neoprene. The design is a combination of bib overalls and footy pajamas. Chest waders are like seatbelts. They can be annoying if you don't need them but when you need them you are really, really thankful you took the time to put them on. The final accessory is river boots, designed to keep you upright walking in the river. That means rough

soled and rigid ankles. Walking on dry land in river boots is like walking with concrete blocks for shoes. There is no flex in the ankles.

When nature calls in the outdoors, there is no indoor plumbing, and toilet paper can be a luxury. The only concerns for privacy are the moose, eagles, wolves and bears. My choice of location was on the side of the steep river bank. All of the above mentioned attire was wrapped around my ankles. The waders were like a giant rubber band holding my feet together. When I got ready to stand up, I realized the full limitation of the "no flex ankles" of the river boots. I could not get my feet under me. If I leaned back to sit on my bottom, I envisioned doing back somersaults into the frigid river. So, there I was face-down in the black dirt with all my dignity out the window. What would Jayne do?

Mrs. Jayne Montgomery Looney was a "heavyweight" as an Oklahoma lawyer and a pioneer for all women lawyers. I had the great fortune of growing up with Mrs. Montgomery as a mentor, my Girl Scout leader from grade school to high school. She taught us to setup and take down tents, build fires, craft complete kitchens and bathrooms with sticks and twine. We back-packed and canoed for miles. Mrs. Montgomery taught us this while she was neatly dressed in perfectly pressed

slacks and blouse, wearing a thin chiffon headscarf that coordinated with her outfit. But on this day, 40 plus years later, I am the lady that had a mani-pedi before I left civilization and carried lip gloss in my pocket during the hunt, WWJD?

Jayne Montgomery graduated from the University of Oklahoma College of Law, where she was a member of the First Law Review, Kappa Beta Pi and the Order of the Coif. She was the first woman associate professor at the OU law school, first woman Supreme Court special justice, first woman elected OBA Board of Governors officer (vice president) and Oklahoma Women's Lawyer Association president.

The list of her accomplishments is endless. She and her husband, Henry, established Montgomery & Montgomery Law Firm in Purcell, where it existed for more than 50 years. Jayne, the Girl Scout leader, taught us to be fair, be prepared, good manners, handwritten thank you cards, don't be afraid of the competition and never give up.

Finally, I felt a big bear hug. My husband lifted me up and put me on my feet. I dusted off my dignity, picked up my rifle and trudged on because I knew what Jayne would do.

Ms. Snell practices in Purcell.



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