THE Oklahoma Bar JOURNAL
Volume 87 ◆ No. 30 ◆ Nov. 19, 2016

TRIAL BY JURY

ALSO INSIDE

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Movie NIGHT with the Justices

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Co-sponsored by the Oklahoma Supreme Court

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Panelists: Gerry Durbin, Angela Ables and Jay Hannah

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Editor: Melissa DeLacerda

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PLUS

Oklahoma Judicial Funding Shortage Deserves OBA Support

By Garvin A. Isaacs

I have contacted presidents of county bar associations all over Oklahoma to discuss with them what we need to do as a bar association to help the judicial branch of government.

I am alarmed by the number of lawyers who have communicated to me that we have a budget crisis and that the judicial branch of government does not have enough money to pay court reporters, bailiffs and many times lacks the appropriate funding to pay jurors who come to the courthouse to serve as officers of the court and deliver the constitutional rights of trial by jury in both civil and criminal cases.

Under the Sixth Amendment to the U.S. Constitution, trial by jury in criminal cases is a guaranteed constitutional right. Under the Seventh Amendment, trial by jury is guaranteed to litigants in civil cases. These constitutional amendments apply regardless of race, color or creed after the adoption of the 14th Amendment.

President Isaacs practices in Oklahoma City.
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405-232-2060

I have learned there are courthouses that do not have court reporters because there is not enough money to pay the court reporters. I have also learned many court reporters leave Oklahoma and go to other states because of an extremely higher rate of pay in other states. Bailiffs in many courthouses are not available.

Most alarming is that both civil and criminal jury trials are sometimes continued because the courts do not have enough money to pay the jurors who come to the courthouse and serve.

Most alarming is that both civil and criminal jury trials are sometimes continued because the courts do not have enough money to pay the jurors who come to the courthouse and serve.

What will we do about these problems? How will we deal with the shortage of court reporters, bailiffs and jurors?

It is time for us to contact our legislators and advise them of the need for increased funding to the judicial branch of government that is appropriated specifically to pay bailiffs, court reporters and above all jurors who come to the courthouse and serve in both civil and criminal cases.

Let all of us come together and support the judiciary by contacting our state senators and representatives from our districts and request they discuss these issues and appropriate sufficient funds.

As I drive around the state delivering juror appreciation plaques and certificates to the county courthouses, I will talk with lawyers and judges and try to come up with a game plan that we can use in communicating with the Legislature about the financial problems the judicial system suffers at this time. The need is critical!

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THE Oklahoma Bar JOURNAL

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Persuasive Opening Statements

By Terry W. West

For many years I have watched as great trial lawyers sat around the bar late in the evening and discussed, yes forcefully argued, if a powerful opening statement was the most important single aspect of a trial. After the night ended and heads cleared, we were left with the inescapable fact that there can be no generalized statement that will apply in all cases. In any given case a very different part of the trial may be most important. However, it must be stated the opening statement is always extremely important.

Judges will always set a time limit for closing arguments but rarely is a limit mentioned for opening. Does that mean we should spend a lot of time on it? Not necessarily. An opening statement should only be as long as it needs to be. There are limitless ways to do it, but it is important to remember our attention span is notoriously short and soon after you begin minds will start to wander if you don't keep their attention.

THE PRINCIPLE OF PRIMACY

Remember the principle of primacy. Simply stated; that which people learn and believe first they resent changing the most. For example, if in your opening you convince the jury of the rightness of your cause and of a particular important issue, they will subconsciously resist changing their opinion. Numerous studies have shown that 80 percent of jurors form opinions on liability in opening statement. Those studies also reveal that jurors remembered statements made in opening as evidence that some witness gave.

THE THEME

Good openings and closings are set up by a theme that is developed throughout your case. During preparation of your case, you should notice a theme developing — the core issue that you need to prove. If you haven't noticed a theme, you may need to think again. Maybe you're approaching the trial the wrong way—maybe you shouldn't try it at all.

The theme obviously must be about an important issue, but not necessarily the core issue. The core issue may be difficult to clearly prevail on, and you *absolutely* must prevail on your theme issue. If you select an important issue and develop it into your theme and prevail on that point, you may succeed in deflecting attention from more difficult parts of the case.

The purpose of a theme in your case planning and trial is, however, not so much for defensive purposes as it is for providing a clear trail to victory.

Once you have determined the key issue or issues in your case and have determined what evidence you will use to prove them, then you micro organize your trial presentation so that you can return to a portion of your theme or allude to it with virtually every witness.

THE PRESENTATION

You begin setting the stage for the presentation of your theme during *voir dire* and certainly opening statement. Often during a case with several witnesses, there will be some whose testimony does not directly connect with your theme issue, but most of the witnesses will have testimony relative to your theme. They should be sprinkled throughout your presentation so as to come back to that issue frequently with different witnesses.

It is also possible in cross-examination to ask questions relative to your theme and continue to develop it even during the opponent's case. Obviously one must be careful to be certain you will get positive responses with those witnesses, but generally with carefully constructed questions it is not difficult to do so. All of this then sets you up for a complete discussion during closing argument.

> **"Cross-examination of defense experts is the most important issue in some cases and totally unimportant in others."**

Of course there are as many themes as there are cases, and in selecting yours, again you must find an issue that is central to the case and upon which you can almost certainly prevail. Maybe the speed of the opponent's vehicle, the devastating injury of your client or even the winsome, wholesomeness of your petite client.

In some cases your theme issues may be limited, particularly if you are representing the defendant. In any case that actually gets to trial, there will be some topic upon which your position is stronger, and that is the one you must illuminate. In the defense of some cases, you may find yourself in the position of not having much to choose from. As the plaintiff, if you find yourself in that position, you have filed the wrong case.

I believe that defendants benefit from developing a theme on technical issues that are difficult to understand because human nature is such that if they don't understand it, they tend to vote negatively. In those kinds of cases, I think one should select issues that the jury will understand and develop your theme around those things, so that you can continually point the case in the direction of something that is understandable and try to offset the technical issues even if they are positive. I am reluctant to rely on technically difficult issues even if I expect to prevail on them.

In a medical negligence case we tried, medical records indicated that the plaintiff was blue-colored with clammy skin and shortness of breath prior to the Code Blue being initiated. It also reflected she had complained of chest pain radiating into her left arm. Since these symptoms are so universally accepted by lay people to be indicative of heart problems, we developed a theme around that one record entry although it was not the central issue of the case, but it was something that the jury could feel knowledgeable about. We even suggested that if a person had gone into a 7 Eleven and told the cashier that she had those complaints, that person would have suggested immediately that she sit down while he called an ambulance because she was having a heart attack — a decision that was not made by the medical employees.

Since this article is about persuasive opening statements, it may seem questionable why we spent the first portion talking about themes for cases, but I believe you cannot have persuasive and effective openings without a theme to follow, or at least you can certainly have more effective openings when you have organized them to follow throughout the case.

As mentioned, there is no part of a case that is *always* the most important. Cross-examination of defense experts is the most important issue in some cases and totally unimportant in others. An excellent direct examination of the injured plaintiff or abused defendant may be central to one case and of little significance in another.

GETTING TO THE WIN

So now that we have agreed opening is important, what do you want to accomplish in your opening statement? You want to *win your case*, particularly on problem issues such as liability or causation. You want to develop the frame-

work of your theme that will be embellished with later witnesses.

However, you *don't* want to overstate issues or misstate facts. If there is evidence that you are unsure will be admitted, it is best to leave it out of the opening statement, because if you indicate something will occur and it does not get into evidence, a sharp defense lawyer will point out your misstatement, and it will thereby make all of your other statements questionable.

In addition to developing your theme in opening statement, you have the opportunity to talk about a lot of lesser items. You should take the opportunity to explain technical terms and applications that are going to be frequently used. You can personalize your client, refer to him as Joey instead of the plaintiff. You should use positive words such as wreck or crash and not accident. Your clients should never have accidents; they should be rammed. Nowadays it is common for judges to allow you to use demonstrative aides in opening statement, and they should be utilized whenever helpful.

Virtually all cases that go to trial have some bad parts of the case. If there weren't, you probably wouldn't be in trial. The question is, do you want to discuss the bad part of your case in opening statement? Certainly there are different theories and none that are always correct. I tend to believe that I can explain why my client was drinking better than the opponent will explain it, and therefore I typically will mention those negative aspects. Remember there are two opening statements and a sharp opposition attorney will make something of whichever approach you take. For example, if I explain why my client was drinking, a good defense lawyer will suggest in his opening statement that he would never have mentioned that issue at all, but since I have brought it up he would like to point out that my client was drunk as a dog and that was the sole reason for this accident. If I don't mention it, then he will point out I have omitted discussing a significant issue in the case, and that is the fact that my client was knee-walking drunk. Again, I believe I will do a better job explaining it than he will, so I will take that risk.

THE STORY

I like to weave a story into the opening. If you simply state to the jury that the first witness will tell you the plaintiff suffered a very serious injury and the second will tell you that the defendant ran a red light, you will have wasted a lot of drama that should be helpful to your case. The rules only require you state once that the evidence in the case will be that ... and then tell the story.

For example, the evidence in this case will be that the little white house at the corner of Fourth and Sherry Lane looks like most of the houses on the block, but inside it is very different. Billy Smith's bedroom has now been converted into a hospital room. Where once bats and ball gloves and homemade bows and arrows once leaned against the wall, an IV now stands slowly dripping into Billy's pale, withered arm. Taylor Swift is playing on an iPod, but Billy doesn't hear. The Red Sox are playing on the TV, but Billy doesn't see. Billy's mother pats his shoulder but Billy doesn't feel her. Billy is in a coma and has been since that awful evening of March 2. How Billy got this way is why you are here today.

ATTENTION SPAN

If you are going to make a 10-, 20- or 30-minute speech to someone, we have all learned that you must make it interesting or you will have no audience after the first five minutes. Our minds are disinclined to concentrate on anything for an extended period of time, therefore you must use the TV advertising tricks to steal a little more of their interest time if you are going to get your point across. By starting your opening statement with a story, what have you accomplished? You have told the jury that you have a typical boy with a severe injury. You have created sympathy. The people now like Billy. They would like to help Billy, and they are very interested in Billy. They want to know what happened to him and who did it to him. They will want to listen to more about Billy and what they can do to help.

There are an infinite number of ways to dramatically discuss your client's plight in such a way the jury will listen a little longer and perhaps build some subconscious prejudices in your favor. Obviously not every case has a compelling story, but all of them have something interesting. There is some way you can get their attention a little better than simply saying the first witness will say this and that, and the second witness will testify to this, etc.

I was once on a seminar program with Jerry Spence (always speak before him) when he dramatically illustrated great story telling. He first told of a sheep that had gotten out of the pasture and had been run over by a truck, and the reaction was, "so what." Then he told about Jenny's little lamb she had raised and fed with a bottle, and who had slept with her when it was young

and how Jenny's eyes filled with tears each time she thought of the little lamb. In just about two minutes, everyone wanted to go find the truck driver and shoot him.

I am not suggesting that a good story or the ability to tell a good story will win your case, but it does get their interest. They will listen. Juries are stiff when they start, and they are hopefully neutral and will listen to both sides. After an appropriate opening, they will listen to your side with more enthusiasm, more belief and more interest than otherwise. You must always convey that you are confident, sincere, honest, you believe in your cause and that you depend on them to do the right thing. You still must sell what you want bought, whether it's a liability, causation or whatever the primary issue is. There are no tricks to that — just tricks to get people in a better frame of mind.

ABOUT THE AUTHOR

Terry West is the founder of The West Law Firm, a plaintiff litigation firm in Shawnee. His practice, and the firm, focuses on significant injury cases, mass torts and class actions. He is admitted to practice in Oklahoma and numerous U.S. district courts and the U.S. Supreme Court. Mr. West received his law degree from the TU College of Law, where he was managing editor of the *Law Review*.

2016 EMPLOYMENT LAW SEMINAR

Presented by the Oklahoma Employment Lawyers Association

DATE:	Friday, December 9, 2016 from 9:00 a.m. to 5:00 p.m.
LOCATION:	Crabtown in Bricktown, Oklahoma City, Oklahoma, 303 E. Sheridan Ave., Okc, OK
CLE CREDIT:	CLE credit proposed for 8.0 hours including 1.5 hours of ethics
TUITION:	$175.00[1] for registration by Nov. 24, 2016. ***(Buffet lunch included)*** $200.00 for registration Nov. 25 and after $50.00 discount for OELA members & government/public service attorneys
CANCELLATION:	There will be a $25.00 charge for cancellations prior to Nov. 25
POLICY:	No refunds after Nov. 25, however electronic materials will be provided. Materials may be purchased separately from the CLE for $50.00 (CD) or $100 (hard copy)
REGISTRATION:	Register at www.OELA.org or send registration form & payment to: OELA, 325 Dean A. McGee Ave., Okla. City, Oklahoma, 73102; Fax No: (405) 235-6111. Make checks payable to: OELA For more information, contact Amber Hurst, Tara Faulkner or Laurie Hammons at (405) 235-6100

PROGRAM

9:00-10:00	**Federal & State Case Update: Best 2016 Decisions for Plaintiffs & Defendants** (C. Scott Jones, *Pierce Couch Hendrickson* and Leah M. Roper, *Hammons, Gowens & Hurst*)
10:00-11:00	**U.S. Department of Labor: What You and Your Client Should Know About the U.S. DOL and Federal Wage & Hour Laws** (Jessica Parker, *U.S. Department of Labor)*
11:00-11:10	Break
11:10-12:00	**Social Media: How to Find It, Preserve It, and Comply with Amended Fed.R.Civ.P.37(e)** (Nicole Snapp-Hollaway, *Maples, Nix & Diesselhorst*)
12:00-1:00	Lunch (Provided)
1:00-2:30	**Everything You Need to Know About Retrieving Electronically Stored Evidence from an Expert Who Knows** (Dr. Gavin Manes, *Avansic - E-Discovery & Digital Forensics*)
2:30-3:00	**Settlement Agreements – Ethical Questions Answered** (Elaine R. Turner, *Hall Estill*)
3:00-3:10	Break
3:10-4:00	**USERRA - Rights of Military Employees in Employment** (David A. Guten, *Military Law OK)*
4:00-5:00	**Current Status & Strategies of Workers' Comp. Laws** (Bob Burke, *Bob Burke Law*)

REGISTRATION FORM

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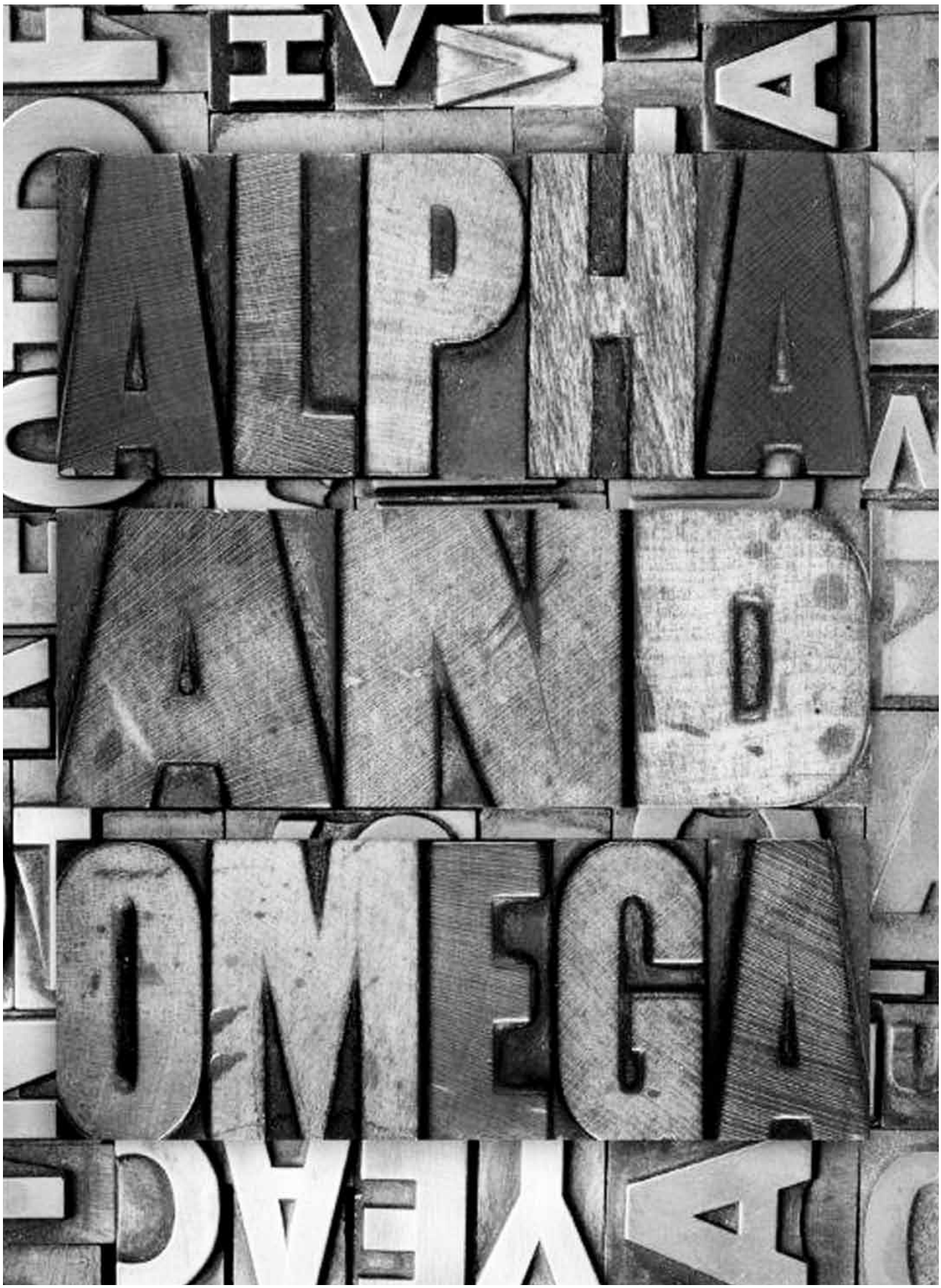
ALPHA
AND
OMEGA

The Alpha and the Omega

Effective Advocacy in Opening Statements and Closing Arguments

By David T. McKenzie and Marcy Fassio

"When planning victory according to my counsel, act according to the situation and make use of external factors. To act according to the situation is to seize the advantage by adapting one's plans … A victorious leader plans for many eventualities before the battle; a defeated leader plans for only a few. Many options bring victory, few options bring defeat, no options at all spell disaster."

– Sun Tzu
The Art of War

"Now, gentlemen, in this country our courts are the great levelers. In our courts all men are created equal. I'm no idealist to believe firmly in the integrity of our courts and our jury system. That's no ideal to me. That is a living, working reality."

– Atticus Finch
To Kill a Mockingbird

The wisdom of Sun Tzu and Atticus Finch is an absolute truism for lawyers who make their living standing in front of a jury advocating for their client, be it in the criminal or civil setting. Not unlike the actor Gregory Peck, in preparing for his Academy Award-winning portrayal of Atticus Finch in *To Kill a Mockingbird*, the key to success is preparation, practice and planning. Equally necessary is the calm contemplation that occurs during that critical alone time we have as lawyers, when we are left with only our thoughts and worries about how to help someone who has entrusted their life to us. Much of a trial lawyer's life is spent in the same position as Rodan's "The Thinker." It is a lonesome, worrisome and difficult existence at times. A jury trial is hard work and demands the utmost focus and analytical thinking. Success with a jury is more likely with aggressive, creative and innovative lawyering.

Great trial lawyers have tried the case in their mind many times before ever setting foot in the courtroom to face a jury. They have critically analyzed the weaknesses in their case and know how to address them. Conversely, they have found all the strengths in their case and know how to exploit them. The question is: How do we prepare to adequately and effectively protect the rights of our clients and develop a strategy so our client's story can be told most efficaciously?

THE ALPHA: OPENING STATEMENT

Studies have shown that up to 80 percent of jurors have made up their minds about how they will vote by the end of opening statements.[1] For this reason, an opening statement is one of the most important aspects of any jury trial, and you must begin framing your case at the outset of representation.

Be frightened by what you do not know because the lack of knowledge of either the law or the facts can cause a disastrous end for your client. Accordingly, from the moment you meet

your client until the time you stand before a jury, setting forth the road map for your case in your opening statement, you are on a constant quest for enlightenment and answers to unanswered questions. In other words, you must first question everything about a case and then seek to answer those questions.

That quest for enlightenment should begin with reading and studying the jury instructions, not on the morning of your closing argument, but immediately after being retained to represent a client. The purpose of the jury instructions is to enable the jury to apply the facts they have heard in the trial to the law and "reach a true verdict."[2]

The jury instructions set forth which party has the burden of persuasion, the standard of proof and the elements which must be proven or defeated to prevail. They are the commencement point to investigate our client's cause, to recognize the strengths and weakness in our case and to deliver a powerful opening statement to the jury.

Opening statements are solely for the purpose of illustrating to the jury the expected evidence they will hear regarding the plaintiff's case or the defense to be offered by the defendant. Be mindful of the term "opening statement." It is not for the purpose of arguing the merits of the cause, but simply a field guide to the evidence. To paraphrase Jules Winnfield in the classic movie *Pulp Fiction*, the judge "will strike down upon thee with great vengeance and furious anger those who attempt to" interject argument into their opening statement. Opening statements should be delivered to evoke in the minds of the jurors a theme and story consistent with the theory of prosecution or the theory of defense.

For example, an appropriate approach for opening statement might include, "During this trial, you will hear from many witnesses who will tell you that John Smith owned a 2012 Honda Accord, and that he was drinking on the night of April 18, 2015. However no witness will testify they saw Mr. Smith driving the vehicle while he was intoxicated." This is a specific, factual statement about what evidence will, or will not, be presented. On the other hand, it would not be proper in opening statement to argue to the jury that, "There is no evidence that Mr. Smith was driving under the influence of alcohol that night and, as such, the state cannot meet the burden to prove Mr. Smith guilty."

Comments during opening statement regarding the strength of the case are argument and improper. Further, an attorney must be vigilant to only comment on admissible evidence.[3] Many pitfalls can be avoided by being well versed in the Oklahoma Evidence Code, the Federal Rules of Evidence and the local rules of the court where a case is being tried. The practice of interpolating personal comments or observations about the facts of the case is strictly prohibited in both civil and criminal proceedings.

Unless an exhibit has been pre-admitted prior to opening statement, it is improper to display it to the jury.[4] However, it is permissible to use demonstrative aids in opening statement if the aid is not misleading and you obtain prior approval from the trial court. Demonstration aids are incredibly useful as a tool to create a vision in the jurors' minds, especially when used in juxtaposition to the words being articulated to describe the event which is the subject of the litigation. For example, showing a weapon to illustrate how an injury was caused, a map to illustrate the relationship of various locations or a DNA chart to help explain the science of genetic identification can prove immensely helpful in getting a jury to view the evidence from your client's perspective at the outset of the trial. Additionally, demonstrative aids can be helpful as a device to keep your opening statement on track, focused and sharp.

The key to giving an effective and influential opening statement is to have complete command of the facts without the assistance of notes. Actualizing an opening statement without notes allows a lawyer to show the jury that he or she completely knows and understands the evidence better than his or her opponent. In an opening statement, we are conveying to the jury that our message is the one to believe and complete knowledge of the facts is the ultimate means to demonstrate we should be trusted. As we all learned as children in the book *The Big Bad Wolf*, if you cannot believe the messenger, you cannot believe the message.

The art of opening statement is the same as the art of storytelling. Tell your client's story in a conversational manner, as if you were recounting a noteworthy event to a friend. In other words, talk to the jurors like people. The

most efficient way to tell your client's story is to do so in a linear manner. Start your opening statement with two to three sentences to grab the jury's attention. Then, tell your client's story from the beginning, avoid jumping around the timeline and progressively advance to the end of the story. Use words that empower and create a visual scenery.

THE OMEGA: CLOSING ARGUMENT

All of the evidence has been delivered to the jury, and the judge has instructed them as to the law to apply to the facts. Now comes the closing argument. What do you say to the jury to prevail? As opposed to opening statement, in a closing argument you are analyzing the evidence and portraying to the jury how your position should prevail based on the evidence presented during trial. It is important to remember a jury trial is a living, breathing thing. Matters that seemed important when you were preparing for trial sometimes become inconsequential. The art of closing argument is the art of observation and adaptation. Most of the time, preparing a closing argument before trial is an exercise in futility. However, preparing a closing argument during trial is a necessity. Each evening, at the end of the trial day, review your notes and begin pondering about your closing argument before you begin preparing for the next day's witnesses.

Closing argument is your opportunity to paint a clear picture to the jury of the verdict they should return. Give your closing argument with a clearly articulated theme. Do not shotgun or throw everything "against the wall" to see what sticks. Your theme has been delivered once to the jury in your opening statement, and closing argument is your opportunity to show them you have delivered on the promise you made in opening statement. Closing argument is also the opportunity to pounce on any unfulfilled promises of the opposing party. For example, if opposing counsel told the jury in opening statement they would present medical evidence showing their client exercised proper care, and they did not deliver this evidence, reminding the jury about this failure to deliver can be very powerful; casting doubt on your opponent's words while highlighting your credibility.

Be mindful of your role as a professional, ethical advocate and exercise the proper decorum. Remember, you are a lawyer, an officer of the court, so act like one. The jury has watched every move you have made, whether you know it or not, since they walked into the courtroom before the beginning of jury selection. Closing argument is not a time to lose the trust you have built over the course of the trial.

One of the primary goals of a successful closing argument is to use the OUJIs (Oklahoma Uniform Jury Instructions) to your advantage. In a trial, the plaintiff/prosecution must prove each element of each allegation. Use the jury instructions, which enumerate the required elements, and apply the evidence to each element to argue and convince the jury the elements either have, or have not, been proven.

The right to deliver a closing argument has limits. A lawyer may not go outside the evidence that was presented to the jury.[5] You are allowed a great deal of latitude regarding the evidence and legitimate inferences,[6] deductions and conclusions that can be drawn from the evidence.[7] Misstating what the evidence is, even inadvertently, is improper and will lead to an objection from your opponent and possibly the trial judge. If you are not sure what the testimony was regarding a particular question or sequence of questions, feel free to ask the court reporter during a break if he or she could recite that portion of the record for you. If you are not sure of the testimony and unable to get clarification from the court reporter, it is best to refrain from that point. Additionally, vouching for the credibility of a witness is improper because the court has instructed the jury twice, once in its opening remarks and once in the final jury instructions, that they, and they alone, determine the credibility of the witnesses.[8] Arguing in a manner which is intended to enflame the jury is improper, as is name-calling.[9] Stay within the evidence and suggest only reasonable conclusions that should be extracted from the evidence. Do not attack the integrity of opposing counsel or express any personal opinion as to the strength or weakness of the case.

Closing argument is your opportunity to utilize the exhibits and show the jury how said exhibits are consistent with your theory. Nothing drives home a point better than the exhibits. They are powerful, they are real and they are yours to use in your closing argument.

It is proper to use notes during your closing argument. However, do not write a script and read from it. Your notes should be limited and ultimately consist of the important points

which promote your theory of the case and your generalized theme. Closing argument is always more heated than opening statement because you have just spent the last few days battling for your client tooth and nail. Notes are important so that crucial points are not missed. As in opening statement, be linear in your delivery. However, you can be linear in one of two ways. You can tell the story as it chronologically developed or you can tell the story as it was presented witness by witness. Both of those methods are equally effective.

Your closing argument will most likely also need to incorporate aspects of rebuttal. The plaintiff/prosecution will deliver the first closing. Then the defense will follow with their closing argument, which will necessarily need to address the things said by opposing counsel. Knowing your case seamlessly will help you in being able to think on your feet to address things that need to be corrected, clarified or given an alternate explanation. The third and final closing will then be delivered by the plaintiff/prosecution. As such, no matter which side you are on, one of your closing arguments will follow the argument of the other side, so a well-crafted rebuttal is necessary.

Closing argument is your very last opportunity to address the jury, so you must make it count. Make your closing argument resonate in the juror's ears as they file into the jury room to contemplate a just verdict. Be sure to make appropriate (do not stare) eye contact with jurors. Tell the jury what you want them to do and how the law and evidence supports that course of action. If you want something specific — a not guilty verdict, a particular sentence or a judgment of a certain dollar amount – tell them. Never assume a juror knows what you want them to do.

Remember jurors are people — and the vast majority of them want to do the right thing. Your job in closing argument is to walk them through the legal field from your client's perspective, showing them why the verdict you are asking them to deliver is the right and just verdict. You may be asking them to do something very difficult, like sentencing a man to death or returning a not guilty verdict on a child abuse charge. Thus, you must use the law and the evidence persuasively to give them the strength and courage to deliver that verdict.

1. www.a2lc.com/blog/bid/50588/6-Reasons-The-Opening-Statement-is-The-Most-Important-Part-of-a-Case.

2. Oath to the Jury — Do you, and each of you, solemnly swear/affirm that you will well and truly try the issues submitted to you in the case now on trial and reach a true verdict, according to the law and evidence presented to you. (so help you God?)/(this you do affirm under the penalties of perjury?) OUJI-CR 1-7, OUJI-CIV 1.3.

3. *Newsted V. State*, 1986 OK CR 82, 720 P.2d 734 (Okla. Crim. App. 1986). Trial practitioners should be mindful of the trial court's rulings on *Motions in Limine*. Any mention of evidence that has been ruled inadmissible by the court or referring to witnesses who will not testify is strictly prohibited. *See also Omalza v. State*, 1995 OK CR 80, 911 P.2d 286 (Okla. Crim. App. 1995).

4. *Cheatham v. State*, 1995 OK CR 32, 900 P.2d 414 (Okla. Crim. App. 1995).

5. *Scott v. State*, 1945 OK CR 48, 158 p.2d 728 (Okla. Crim. App. 1945).

6. Aid jurors by encouraging them to draw inferences of their own and use their common sense, spelling out those inferences that are helpful to you. Every case will have gaps in the evidence. Showing jurors that the law allows them to fill in these holes with reasonable inferences can help you connect necessary dots. OUJI-CR 9-1 provides, "You should consider only the evidence introduced while the court is in session. You are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified when considered with the aid of the knowledge which you each possess in common with other persons. You may make deductions and reach conclusions which reason and common sense lead you to draw from the fact which you find to have been established by the testimony and evidence in the case."

7. *McCauley v. State*, 198 OK CR 25, 750 P.2d 1124 (Okla. Crim. App. 1988).

8. *Charm v. State*, 1996 OK CR 40, 924 P.2d 754 (Okla Crim. App. 1996).

9. *Wilson v. State*, 1998 OK CR 73, 983 P.2d 448 (Okla. Crim. App. 1998).

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A Primer for Ye Ol' Woodshed: Witness Preparation

By Robert Don Gifford

[P]reparation is the mark of a good trial lawyer … to be commended because it promotes a more efficient administration of justice and saves court time.[1]

It is the second week of trial, and the court just released the jurors for lunch. As you have every day of trial, lunch is something you shove in your mouth as you either address a last-minute motion or check in with witnesses who are still waiting to testify. The first witness after lunch is Ms. Harjo. You worked with her for a month prior to trial, but it has been several weeks since you have been able to spend any quality time with her. This is Ms. Harjo's first time to ever testify.

As you walk into the witness waiting area, you immediately see Ms. Harjo. She is in her early 50s, lower-middle class with four children and has worked in the elementary school cafeteria for the past 30 years. She is a good and likable witness.

A cursory scan of Ms. Harjo reveals she followed your instructions. Her appearance is appropriate and conservative ("wear something you might wear to church or a funeral"), and she is not chewing that gum she always seemed to have when you met with her during pretrial preparations. As you give her a reassuring smile, you wryly ask, "Do you have a watch?" Ms. Harjo quickly looks at her wrist at an old wristwatch and nervously tells you it is a few minutes after noon. With a practiced frown you remind her (as you have used this lesson with many witnesses), "I asked if you had a watch, not what time it is. Remember when you take the stand, only answer the question asked." As her eyes widen, you grin at her and tell her everything is going to be fine and to just tell the good folks on the jury what happened. As you trot down the hall to grab your peanut butter and jelly sandwich hidden in your laptop bag, you can only hope you prepared Ms. Harjo enough.

Somebody may beat me, but they are going to have to bleed to do it.
Steve "Pre" Prefontaine, American middle distance runner (Jan. 25, 1951 – May 30, 1975)

The American-style judicial system is generally an adversarial one.[2] In this adversarial system, attorneys on both sides position their respective strengths and weaknesses of a case in the crucible of the courtroom.[3] The trier of fact, whether it be judge or juror, determines the credibility and weight of the evidence that comes through the witness' testimony. If counsel or a witness appears to be unprepared and the truth fails to come out, then the result is unreliable and our system of justice fails.

By its very nature, witness preparation is performed mostly behind closed doors that is often referred to as "woodshedding" a witness.[4] The origins of the term "woodshedding" actually came from the writings of James Fenimore Coo-

per that referenced "horseshedding" as the attempt to gain influence over jurors of a case while in the horseshed.[5] Over time, the "horseshed" became the "woodshed."

Today's jury has evolved even more so in the past few decades. Jurors now tend to be older, include both genders and more diverse both racially and ethnically. Jurors also have developed their own expectations of what they should see and hear and how attorneys and witnesses should be presenting the case. Unlike the jurors of the past (*i.e. Twelve Angry Men*), jurors today are both more demanding and distrustful. Jurors also have been exposed to more television courtroom dramas from *L.A. Law* to *The Practice* to *Ally McBeal* to even the O.J. Simpson trial that creates their perceptions of what to expect from the lawyers and even the witnesses. As a consequence, studies have shown that jurors feel disappointed by the performance of the attorneys and witnesses from a trial. With these let downs come confused jurors who deadlock, acquit or convict when the evidence was to the contrary.[6] Thorough and careful witness preparation can help alleviate this problem.

ETHICAL BOUNDARIES

In courthouse lore around Oklahoma there is the story of a telegram arriving from Chicago to famed defense attorney Moman Pruiett stating, "I am charged with murder. Have $5,000. Will you defend me?" The response wired from Moman Pruiett, "Am leaving on next train with three eyewitnesses."[7] It is still in dispute among many whether that is anecdote or fact, but the point is well taken.

The U.S. Supreme Court and Rule 3.3 of the Oklahoma Bar Association Rules of Professional Conduct have acknowledged that a lawyer is ethically prohibited from improperly influencing witness testimony; however, the court did not define what actually constitutes improper influence.[8] The court noted that the history of the witness sequestration rules were implemented to prevent "improper attempts to influence the testimony in light of the testimony already given."[9] The court also noted that witness "coaching" that crosses the line should be viewed as the same as if an attorney knowingly presented false evidence in court.

The concern is that boundary between witness "coaching" and proper witness "preparation."[10] The majority of cases dealing with witness preparation address overt attempts to suborn perjury or the failure of the prosecutor to turn over inconsistent prior statements of the witness.[11] The difficult issues arise in the nonovert actions by the criminal attorney, when the attorney does not believe what he is doing is suborning perjury but rather merely improving truthful testimony. There is a considerable ambiguity in the boundary between permissible witness "preparation" and impermissible witness "coaching."[12]

KNOW YOUR WITNESS

Everywhere I travel, tiny life. Single-serving sugar, single-serving cream, single pat of butter. The microwave Cordon Bleu hobby kit. Shampoo-conditioner combos, sample-packaged mouthwash, tiny bars of soap. The people I meet on each flight? They're single-serving friends.
Fight Club[13]

Like the "single-serving friends" you meet on an airline flight, our interaction with our witnesses is much like that. For a short period and for a specific purpose, these people become "single serving" vehicles of evidence. Whether the person you are calling to testify is an expert witness, a law enforcement officer or merely a lay person who has ended up being a fact witness for you, you need to know who they are before they take the witness stand. While you may not be able to prevent them from facing a harsh cross-examination, you can prepare the witness for the onslaught and be prepared to address it in closing argument.

Beyond the direct questioning in pretrial preparations, every attorney should be conducting their own investigation of their own witness by searches on the internet for news articles discussing the witness, blogs, tweets, Facebook posts, Instagram, Google+, LinkedIn, YouTube channels, etc. In addition, a thorough review of court records online (*e.g.* OSCN, ODCR, PACER, etc.) is also necessary.

LOGISTICS

Amateurs talk strategy, professionals talk logistics.
General Omar Bradley

While the courtroom can be a second home to many litigators, it is a foreign place to most in the general public. Establishing a level of comfort for a witness is important while his or her credibility is being judged while testifying. Taking a witness to the courtroom prior to trial may not necessarily alleviate all of the nervousness, but it will make it more familiar to some degree. In a recent federal trial in Oklahoma City, sev-

eral small children from another country were not only taken to the courtroom to see it, but each sat on the witness stand and asked simple, nontrial questions to get a feel for what it would be like during trial. In addition, to recreate the atmosphere the attorneys even filled the jury box with observers and fake "opposing counsel" to give a sense of an active courtroom. To help break the ice, the children even had a brief moment to sit as the judge and overlook the courtroom. This simple effort gave these children the confidence to walk into the courtroom and speak more comfortably and openly.

THE WARTS AND ALL

> Maury Levy (defense attorney): You are amoral, are you not? You are feeding off the violence and the despair of the drug trade. You are stealing from those who themselves are stealing the lifeblood from our city. You are a parasite who leeches off...
>
> Omar: Just like you, man.
>
> Levy: ...the culture of drugs. Excuse me? What?
>
> Omar: I got the shotgun, you got the briefcase. It's all in the game though, right?
>
> *The Wire* (HBO TV series 2002-2008)

Failing to prepare a witness to discuss embarrassing facts or the weaknesses in his or her testimony is setting that witness up for failure. Undoubtedly, opposing counsel will have some morsel of information to work with that may range from a prior felony conviction to inconsistencies in the testimony. Any weaknesses in testimony should be explored and the witness should be prepared to address them. More importantly, witnesses should be reminded they are there to testify and to not argue back with opposing counsel. Avoiding the question or being argumentative only detracts from a witness' credibility. Most importantly, explain to the witness the most important thing is to answer the questions honestly, that you will have an opportunity to stand up on redirect examination to give the witness a chance to elaborate and explain and that any argument made in front of the jury is to only come from you.

DRESS AND ATTIRE

A witness must dress specifically for the job in the courtroom.[14] For a "professional" witness such as an expert or law enforcement officer, a witness' attire establishes hierarchy and status — essential for projecting a professional presence. Ample evidence suggests that, for males, the traditional dark blue suit, white shirt and conservative tie projects success, competency and even veracity.[15] Popular television newscasters seldom vary their attire from this combination of colors. There is a difference of opinion as to whether law enforcement officers should refrain from testifying in their uniforms. One line of thought is that juror perceptions and bias have shifted over the years, thus a suit and tie proves the most influential attire, especially in a jury trial. Another view is that a jury likes to see a person in uniform, thus officers should wear their official uniforms.

NONVERBAL AND VERBAL ASPECTS

All kinds of people with various backgrounds, education, socio-economic status and different styles of communication will end up on the witness stand. There are the witnesses who are "the bold, confident teller of falsehoods, and there is the timorous and uncertain teller of truths, and both are almost equally dangerous upon the witness stand."[16] Facial expressions and body language can prove revealing and problematic. An appearance of indifference, antipathy, displeasure or arrogance will shade a jury's perception either on the stand or even in the hallway waiting to testify. Any witness should avoid rolling their eyes as it may be perceived as disrespect, and the furrowing of eyebrows may send a message of strain that a juror will scrutinize.[17] Beyond the lay witness (fact witness), any experts and other professional witnesses should be perceived as confident of their testimony, rather than arrogant, which the jury often perceives and translates negatively.[18]

Honest individuals tend to display more openly than dishonest ones. A witness who appears tense or hides behind objects can appear less open, causing a juror to question that witness' veracity.[19] Witnesses should also be advised not to use hand and arm gestures that could detract from openness.[20] Also, trial experts recommend that expert and other professional witnesses can give emphasis to a point by slightly leaning forward as a gesture of openness and veracity.[21]

IN THE COURTROOM

In a series of juror surveys it has been shown that professional witnesses such as an expert witness or law enforcement officer can lose a jury because there is an appearance they failed to show respect.[22] If court rules allow for it, a witness should stand when jurors enter or leave the

courtroom. In the U.S. District Court for the Western District of Oklahoma, the judges generally state that everyone in the courtroom is to remain seated while the jurors enter or leave the courtroom. Some attorneys recommend that professional witnesses can appear to be respectful by simply preening themselves by pressing down their tie, jacket or dress as a symbol of being attentive to the jury.

OUTSIDE THE COURTROOM

Every witness should be cautioned that their credibility is always being judged whether it is while testifying on the witness stand, waiting in the hallway as the jury walks by and even in the rare circumstance of a chance encounter out of the courtroom. There has been more than one occasion when a juror has seen a witness outside of the courtroom, and lost respect for that witness by observing the witness litter, run a stop light or appear too jovial for the circumstances (laughing and joking during a child rape case), etc. Every witness should be cautioned to assume that someone from the courtroom can see you them, so maintain a proper appearance in public and think twice before cutting off that driver in traffic (who might be a juror).

> **"Every witness should be cautioned that their credibility is always being judged..."**

Where possible, even before court procedures begin, the "professional" witnesses should display warmth and friendliness and smile at others. In many courtrooms, prospective jurors wait in hallways prior to their selection. If the opportunity arises in which a witness passes a juror in the courthouse hallway, or even on the street, that witness should politely greet potential jurors and make eye contact as they walk by, but caution your witness to not make any contact or discuss the case. While a juror may not personally know the witnesses, they will remember politeness.[23] In addition, a witness should not hesitate to make eye contact with jurors from the witness stand, but do so naturally and respectfully.[24]

Jurors usually remember information through visualization. A well-prepared visual supports a witness' testimony, which will resonate with jurors during deliberations.[25] If a witness is not able to discuss the facts of a case in a logical order, then they should explain why before beginning their testimony. Quite simply, a juror will perceive a prepared witness who can speak authoritatively as more credible.[26]

ATTORNEY CHECKLIST FOR WITNESS PREPARATION

- A witness should treat opposing counsel with respect at all times.
- The witness should see the courtroom and get familiar with the courthouse.
- Remind the witness to speak clearly and with confidence. Head shakes and "uh huh" do not show up well in the record on appeal.
- Instruct your witness not to answer a question unless they understand it completely.
- Inform the witness it is acceptable to say, "I don't know" or "I do not remember" as an answer.
- A witness should review all prior statements and documents prior to testifying.
- Remind your witness to answer the question and not to volunteer information or ramble.
- Prepare the witness to discuss uncomfortable facts or be confronted with things to impeach the witness' testimony.
- Remind your witness that the most important thing to do is to tell the truth.

CONCLUSION

Now, it is incumbent upon us lawyers not to just talk about the truth, but to actually seek it, to find it, to live it... Let's take Dr. Bass for example, now, obviously I would have never knowingly put a convicted felon on the stand, I hope you can believe that, but what is the truth? That he is a disgraced liar? And what if I told you that the woman he was accused of raping was 17, he was 23, that she later became his wife, bore his children and is still married to the man today? Does that make his testimony more or less true?[27]

Careful witness preparation is the benchmark of a good trial lawyer, but the theater of the courtroom has changed dramatically since the heyday of Clarence Darrow (or of our own past with Oklahoma City's D.C. Thomas and Tulsa's Patrick Williams). As many trial consultants have found, the performance of the courtroom actors (law enforcement officers, attorneys and

witnesses) in the courtroom impacts the outcome of cases. How a witness will testify and how jurors or judges perceive them are as important as their actual testimony. If any of these courtroom participants, especially a witness, fails to communicate properly or the jury does not believe them, then all of the effort put into the case will prove pointless. Instead, pretrial preparation must be presented properly in court; jurors must understand witnesses; testimonies must be competent and reliable; and everyone must present the truth. Good witness preparation is good advocacy.

1. *State v. McCormick*, 259 S.E.2d 880, 882 (N.C. 1979).
2. Earl J. Silbert et al., "State of the Prosecution: Under Pressure to Catch the Crooks: The Impact of Corporate Privilege Waivers on the Adversarial System," 43 *Am. Crim. L. Rev.* 1225 (Summer 2006).
3. Thomas A. Mauet, *Trial Techniques* 483 (7th ed. 2007).
4. Bryan A. Garner, *A Dictionary of Modern Legal Usage* 408 (2d ed. 1995).
5. *Id. See also* J. Fenimore Cooper, *The Redskins* (Boston, Houghton, Mifflin & Co. 1846).
6. Daren Fonda, "A Real Head Case," *Time*, Nov. 24, 2003, 35.
7. Howard K. Berry, *He Made It Safe to Murder: The Life of Moman Pruiett* (Oklahoma Heritage Association, First Edition ed. 2001).
8. *Geders v. United States*, 425 U.S. 80, 87 (1976).
9. *Id*.
10. *See* Michael Higgins, "Fine Line," 84 *A.B.A. J.* 52, 52-53 (May 1998).
11. *See Kyles v. Whitley*, 514 U.S. 419 (1995); *Walker v. City of New York*, 974 F. 2d 293 (2d Cir. 1992).
12. Roberta K. Flowers, "Witness Preparation: Regulating the Profession's 'Dirty Little Secret,'" 38 *Hastings Const. L.Q.* 1007 (Summer 2011).
13. Chuck Palahniuk, *Fight Club* (Hyperion Books 1996); *see also Fight Club* (Fox Pictures 1999).
14. John T. Molloy, *Dress for Success* (New York, NY: Warner Books, 1975), 12.
15. Judee K. Burgoon, David B. Buller and W. Gill Woodall, *Nonverbal Communication: The Unspoken Dialogue* (Columbus, Ohio: Greyden Press, 1994), 383-385; and Nancy Etcoff, *Survival of the Prettiest: The Science of Beauty* (New York, NY: Anchor Books, 1999), 79-80.
16. Martin F. Conboy, "The Preparation of a Case for Trial," 11 *A.B.A. J.* 310 (1925).
17. John Schafer and Joe Navarro, *Advanced Interviewing Techniques: Proven Strategies for Law Enforcement, Military and Security Personnel* (Springfield, IL: Charles C. Thomas, 2003), 73-80.
18. John A. Call, "Making the Research Work for You," *Trial* 32, No. 4 (1996): 25.
19. Joe Navarro and John R. Schafer, "Detecting Deception," *FBI Law Enforcement Bulletin*, July 2001, 9-13.
20. *Supra* note 14, (Burgoon, et al.), 384.
21. *Supra* note 14, (Burgoon, et al.), 378-379.
22. Amy Singer, "How to Connect with Jurors," *Trial* 35, No. 4 (1999): 22.
23. Jo-Ellan Dimitrius and Mark Mazzarela, *Reading People* (New York, NY: Ballentine Books, 1998), 45-75.
24. *Supra* note 4 (Burgoon, et al), 401.
25. David A. Wenner, "Preparing for Trial: An Uncommon Approach," *Trial* 34, No. 1 (1988): 34-35; and *supra* note 15, 23.
26. *Supra* note 9, 23; and *supra* note 3 (Burgoon, et al), 380.
27. John Grisham, *A Time to Kill* (1989); *A Time to Kill* (Regency Enters. & Warner Bros. Pictures 1996).

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Slaying the Speaking Objection Dragon

By Aaron D. Bundy and M. Shane Henry

Speaking objections are a hallmark of unprofessionalism. A speaking objection occurs when, under the guise of making an appropriate objection, opposing counsel makes improper speech or argument. At trial, speaking objections are a tactic employed to interrupt a line of questioning, distract the factfinder, make inappropriate argument and even coach a witness. At minimum, speaking objections are a waste of precious trial time with no benefit to the judge or jury. In *Brewer v. State*,[1] the Oklahoma Court of Criminal Appeals noted that the trial "was an ugly brawl…that went well beyond what could be considered professional." In a footnote, the appellate court explained, "Time after time, the trial judge instructed the parties to stop using 'speaking objections.' Her instructions were ignored."[2]

THE LAW

Speaking objections can occur during direct and cross-examination, often taking the following form: the lawyer says "objection," followed by a tirade about the question, the questioner, any part of the lawsuit or a personal opinion about the case. On cross-examination, the opposing lawyer may purport to object to a question to coach the witness. "Objection, if he knows." The inevitable response from the witness: "I don't know." On direct examination, frustrated counsel may try to interrupt trial to make a mini closing argument. "Objection, this document should not be relied upon because the court should not consider the contents due to the way it was prepared. Also, this witness isn't even telling the truth so the court should not give this any weight."

A common misconception is that when an objection is made, the nonobjecting lawyer has an automatic right to respond to the objection. Concerning objections, O.S. 12 §2104 says:

> A. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of a party is affected, and:
>
> 1. If the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context…

Although objections are often immediately followed by frantic argument by nonobjecting counsel in support of what he was trying to accomplish, there is no authority supporting a

response. Often unsolicited argument in response to an objection contains as much evil as a speaking objection.

Unless dealt with appropriately, speaking objections and improper responses to objections can improperly influence testimony and the outcome of trial. Fortunately there are several tools available to us to combat this behavior. The following techniques are progressive methods for dealing with speaking objections.

TECHNIQUES

When available, review transcripts from opposing counsel's other trials and depositions. Bad behavior by opposing counsel in other cases or at deposition in the case at issue puts us on notice that speaking objections may be a problem in trial. A pretrial motion helps bring the issue to the court's attention. In addition to the statute concerning objections and *Brewer, supra*, other authorities support a pretrial ruling prohibiting speaking objections include *Damaj v. Farmers Ins. Co., Inc.*,[3] and Rule 8 of Federal Judge Claire Eagan's trial rules.[4] These authorities, combined with a transcript showing counsel's tendencies, strongly support a pretrial ruling against speaking objections at trial. The requested relief may include a proposed order that the objecting lawyer may only state "objection" and nothing more until the witness is allowed to leave the room, whereupon the objecting lawyer may state whatever he wants for as long as needed. While the judge may take such a motion under advisement or even overrule the motion at the pretrial stage, the effect of raising the issue early with supporting legal authority makes us more persuasive when battling speaking objections during trial.

> **"Another tool for dealing with speaking objections at trial is to object."**

Another tool for dealing with speaking objections at trial is to object. When the lawyer starts coaching and arguing, object to counsel's speaking objection. "Objection, counsel is making improper argument." "Objection, improper commentary on the evidence." If the court requests an explanation, ask for a sidebar conference and highlight the distinction between a proper objection and counsel's improper argument. Make a point that speaking objections are improper and will make the trial take much longer, then move to strike opposing counsel's statements as improper commentary and coaching of the witness rather than a proper objection.

A third technique is to "loop" off the speaking objection.[5] Speaking objections are generally improvised monologues made out of desperation. Counsel will often unwittingly give information in a speaking objection that supports your theory of the case and can be looped back on the witness. The speaking objection can provide valuable information and guidance as trial continues.

The following techniques are controversial because they involve engaging in the bad behavior. When the court continues to permit speaking objections after the first three techniques have been employed, a fourth, advanced technique is to fight fire with fire. Respond to each speaking objection with argument to level the playing field. During your opponent's examination of witnesses, emphasize each objection with argument. Often, when both counsel engage, the judge will realize what is happening and shut down all speaking objections from that point forward.

The final, drastic measure is exercising the nuclear option, a weapon of last resort after all the foregoing tools have been used. The nuclear option for dealing with speaking objections is to interrupt each speaking objection and loudly start talking over counsel. "Your Honor, I object. This is an improper speaking objection and it is taking away trial time. Counsel has done this several times and should be admonished…" One may expose the lack of an evidentiary basis for an objection with the following remark: "Would counsel please state the rule upon which he bases his objection?" The nuclear option is extremely disruptive, and it should only be employed if opposing counsel's speaking objections are influencing the outcome of trial.

CONCLUSION

Credibility is everything at trial. A calculated approach for addressing speaking objections can enhance our credibility with the court while neutralizing our opponent's bad behavior. Like many aspects of trial practice, the

exercise of discretion is key. The nuclear option is not necessary if simple diplomacy will resolve the issue. "If you bite and devour each other, watch out or you will be destroyed by each other."[6]

1. 2006 OK CR 12, ¶9, 133 P.3d 892, 894.
2. *Id*. at n. 7.
3. 164 F.R.D. 559 (1995)
4. *Trial Rules for Judge Claire V. Eagan*, available at www.oknd.uscourts.gov/docs/834029f6-6b75-4725-9265-c5d5e28de143/Trial_Rules_Eagan.htm, Rule 8.
5. On looping and cross-examination, *see* Pozner, L.S., & Dodd, R.J. (2004). "Cross-examination: Science and techniques," Charlottesville, VA: LexisNexis.
6. Galatians 5:15 (NIV).

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Leading the Way

By Aaron D. Bundy and M. Shane Henry

By calling a witness who is hostile, an adverse party or identified with an adverse party, we can tell our client's story on direct using leading questions. Our job as trial lawyers is to present information to judges and juries that helps them reach a decision. The attention span of our decision-maker is something we must consider in every trial. Judges and juries reasonably expect an efficient presentation of important information to help them reach their conclusion. In today's society, 30-minute TV shows and 30-second commercials have conditioned our attention spans. Most shows provide seven minutes of content before breaking for a commercial. Seven minutes is generally the maximum time we can plan to hold the attention of the judge or jury on a single topic. Perceived importance of each topic is associated with when the topic is brought up and how much time is devoted to discussion of the topic. With advance preparation, leading questions are a powerful tool for us to efficiently deliver key facts and keep the decision-maker's attention.

In trial, we ask questions very differently to friendly witnesses than to hostile witnesses, because we have different goals for those witnesses. We ask open-ended questions to friendly witnesses, and we ask leading questions to witnesses against us. 12 O.S. §2611(D) tells us:

> Leading questions should not be used on the direct examination of a witness except as may be necessary to develop the witness's testimony. Leading questions should ordinarily be permitted on cross-examination. When a party calls a hostile witness, an adverse party, or a witness identified with an adverse party, leading questions may be used on direct examination.

This rule helps our witnesses tell their story in response to open-ended questions, and the rule recognizes what we all know, "Cross-examination is the greatest legal engine ever invented for the discovery of truth."[1] The goal with friendly witnesses is for the story to be told, facts to be communicated and a connection to be made between the witness and the factfinder. Open-ended questions are the best method to accomplish these goals. Conversely, with adverse and hostile witnesses, our goals are to establish facts that help our case or hurt theirs, impeach the witness or show bias. These goals are best accomplished through the use of leading questions.

By permitting us to lead hostile witnesses on direct, 12 O.S. §2611(D) gives us a powerful tool for dealing with witnesses who may not want to fully cooperate in telling our client's story even though the facts of our client's story are true. The Oklahoma Supreme Court endorsed this approach in strong terms in the case of *Three M Investments, Inc., v. Ahrend Co*.[2] Three M was the plaintiff in the lawsuit.[3] Three M's lawyer recognized and took advantage of the benefit of 12 O.S. §2611(D), calling defendant Ahrend on direct in Three M's case-in-chief.[4] Because Ahrend was the defendant, the trial court allowed Three M's lawyer to use leading questions.[5] This made Ahrend's lawyer very upset because he did not understand the rule or its purpose.[6] Once Three M's lawyers were finished, Ahrend's lawyer was even more upset when he was not allowed to lead Ahrend's client on cross-examination.[7] Ahrend appealed the issue.

The Oklahoma Supreme Court firmly upheld the trial court and gave a detailed analysis of the purpose and policy behind 12 O.S. §2611(D). Concerning calling the opposing party in direct and leading them, the Oklahoma Supreme Court said we are entitled to do it:

> The intent of the statute is that litigants are entitled to call the opposing party as a witness in the former's case in chief. Inherently, that witness will be adverse to the case the litigant is trying to prove. Thus, the litigant is entitled to use leading questions to elicit the testimony from the witness.[8]

The Oklahoma Supreme Court went on to say that when we take the initiative and call the opposing party and use leading questions, the opposing party's lawyer may not use leading questions of their client.[9] "[T]he statute's intent is not to allow counsel for one litigant to use leading questions to steer that litigant in the direction counsel wants them to go. The Evidence Subcommittee's Notes clearly indicate that §2611 was not intended to allow such a result."[10]

The rule helps everyone. When we are able to use leading questions, we can deliver facts efficiently rather than in a narrative, open-ended manner. The judge and jury benefit because efficiency means we are not wasting their time. We benefit because we can deliver facts quickly for our decision-makers' short attentions spans, and our story is told through adverse witnesses with a higher degree of credibility — they wouldn't admit the fact unless it were true. Finally, we benefit when the opposing party's lawyer must present their facts in a narrative way, using open-ended questions, rather than the unfair use of leading questions for their client.

Deciding whether or not to call the opposing party in our case-in-chief is one of many options we may consider before trial. A justifiable fear about doing so is that the opposing party may be able to tell its version of the facts and take over the case. We may use leading questions to minimize that risk and empower us to establish important, favorable facts through adverse witnesses on direct examination.

1. John H. Wigmore quoted in *Lilly v. Virginia*, 527 U.S. 116 (1999).
2. *Three M Investments, Inc., v. Ahrend Co.*, 827 P.2d 1324, 1992 OK 33.
3. *Id.* at ¶4.
4. *Id.* at ¶17.
5. *Id.*
6. *Id.* at ¶23.
7. *Id.* at ¶¶17-18.
8. *Ahrend* at ¶21.
9. *Id.* at ¶22.
10. *Id.*

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Mr. Teicher is a Supreme Court appointee to the New Jersey District Ethics Committee where he investigates and prosecutes grievances filed against attorneys, an adjunct Professor of Law at Rutgers Law School in Camden, New Jersey where he teaches Professional Responsibility and an adjunct Professor at Rutgers University in New Brunswick where he teaches undergraduate writing courses.

9 A.M. - NOON
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Oftentimes there is a disconnect between what parents say and what their children think they say. In addition, sometimes kids aren't exactly as forthcoming as we'd like them to be. When you think about it, aren't those issues replicated in the lawyer/client relationship? Join internationally recognized speaker Stuart Teicher, Esq. as he shows how our interaction with teenagers teach us valuable lessons about the rules on communication (1.6) and candor (4.1 and 3.3). Stuart will also show how these rules can be used to rehabilitate relationships with your clients — but he makes no promises about improving the relationship with your teenagers!

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'Your Witness, Counsel' — Cross-Examination

By Robert Don Gifford

The right of cross-examination is more than a desirable right of trial procedure. It is, indeed, 'an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal.'

Justice Lewis F. Powell[1] (Sept. 19, 1907 – Aug. 25, 1998)

Your cross-examination was brilliant. Like a skilled surgeon you dissected witness after witness. Their expert witness admitted she is a fraud, and their star witness broke down, recanted and admitted this was all a set up to destroy your client. It was Hollywood courtroom drama that came to life. Then, disappointedly, your alarm clock goes off. You do all that you can to remember what you did in your dream that was so incredible to work out like that.

Cross-examination is often referred to as the greatest legal engine for the discovery of the truth, as well as one of the most valuable rights given by law.[2] While some courts have ruled that cross-examination is an absolute right,[3] cross-examination is a safeguard to truthfulness and accuracy and may be used to discredit a witness or develop facts favorable to the cross-examining party. However, prime-time television has skewed the realities and expectations of an actual cross-examination in a trial. Fictional images and popular imagination have caused jurors to expect more out of cross-examination than it can usually deliver. On television, such fierceness is equated with effectiveness, but not so in real life. Cross-examinations by the famed (and fictional) television lawyer Perry Mason would routinely crack a witness into a confession.

For the lawyer who stands in the crucible of the courtroom, the art of persuasion is often best demonstrated during cross-examination. If no harm has been done to your case on direct examination and this particular witness cannot advance your theory of the case, announce, "No questions, your honor," and sit down. At times the best cross and what sends a strong message is doing no cross-examination at all. However, should you decide to approach the lectern to begin an inquiry, there are only two considerations: the style and method of questioning and the purpose.

Thirty years ago, an Oklahoma case made it clear that "cross-examination is available to achieve two things: 1) develop relevant truth related to matters covered on direct examination and 2) impeach the veracity or credibility of a witness."[4]

The method of cross-examination is the "how" of cross-examination. It is the manner in which the questions are put to the witness. The first lesson is to only ask leading questions. Some say to never ask a question to which you do not know

the answer. A "leading" question is one that suggests a preferred answer to the witness:

Q. You live on Greenwood Ave.?
A. Yes.
Q. Near the four-way stop by the high school?
A. Yes.
Q. At approximately 4:20 p.m. you were outside in your front yard?
A. Yes.
Q. You saw the red hay truck hit the blue Ford Pinto?
A. Yes.

Next, limit your question to get a single fact at a time. Use short and pointed leading questions asking only for facts, not generalized information, guesses or opinions. The form of the question can give the jury the impression that the witness is free to answer the question as he chooses, yet still limit the witness:

Q: After the red hay truck hit the Pinto, did you see the Pinto catch fire?
A. Yes, I saw the blue car ignite.
Q. Did you see the driver of either vehicle get out?
A. Yes, I saw both of them get out.

"The experienced trial lawyer always knows in advance the answers to his or her questions through formal and informal discovery."

The experienced trial lawyer always knows in advance the answers to his or her questions through formal and informal discovery. This line of questioning permits the interrogator to maintain control of the witness without asking a leading question. Moreover, this illusion not only controls the witness but promotes a lawyer's credibility and sense of fairness. Keep in mind that your choice of words can affect not only the witness's answers but the juror's impressions.

Third, control of both content and direction is the key to successful cross-examination.

Again, cross-examination is not for the witness, it is for you. It is your opportunity to present your side of the witness's story. The object is to get the answer you want and not one word more. But, what do you do when you get an evasive or unresponsive answer? For example:

Q: You are married, correct?
A: I guess you could say that.

While it would be tempting, do not ask the judge to instruct the witness to answer the question. You can control the evasive witness by repeating the question.

Q. Are you married?
A. Yes.

Or, better still, tell the witness you are repeating the question.

Q. Dr. Smith, my question was, "You examined the plaintiff only once?"
A. Yes, that's correct.

Undoubtedly a witness will attempt to explain or qualify the answer with a rambling narrative. When this happens, control the witness with a common and understandable gesture by slightly raising your hand, palm out directing the witness to stop. By controlling the courtroom, the witness is being silenced. Of course, this signal should be used with caution as the attorney does not want to appear to be a bully and generate juror sympathy for the opposing witness.

LEADING THE JURY THROUGH THE STORY WITH A SEGUE

Finding a transitional phrase as a segue to another topic prevents a witness from avoiding a line of questioning. A strong transition gives a juror notice of the new subject, plants a seed of your theory of the case and will highlight the theme of your case. An example of a transition phrase is "Mr. Darrow, let's talk about the night of December 5th ..." or "Now, let's move on to the day of the bank robbery — where were you at noon that day?"

TRAPS AND AVOIDING A QUAGMIRE

When you have no basis for argument, abuse the plaintiff.
Cicero[5]

Every cross-examination must have a purpose. Not every witness needs to be questioned. Cross-examination for the sake of asking questions that do not have a goal wastes precious time and risks losing the attention of a juror. Asking one question too many, or asking at all, risks getting snagged in a trap and stuck. Every courtroom advocate must evaluate the testimony for its impact. If the witness has no effect on

the jury and cannot help promote your case, let the witness go home.

PREPARATION

As it is said, hard work beats talent when talent doesn't work hard. Every trial is a test of a trial lawyer's ability to persuade. An effective cross-examination is one that is strategically organized to follow the theory of the case. Every single part of a trial lawyer's preparation is by developing a theory of the case with evidence to support it.

The theory, as opposed to the "theme," is the underlying idea that explains and ties the factual background with the legal issue into a coherent whole. Every theory must be reasonable and plausible to the finder of fact, and be persuasive. The theory in any case is the basic fundamental concept that everything in the case, the evidence and witnesses revolves. The theory should weave the theme throughout the trial, including cross-examination. Included in the preparation of building around the theory are the questions for cross-examination.

Also, every case needs a theme. Your theme should simply be a one-sentence summary of your theory that might sound like a telegraph, such as "corporate truck runs light and baby dies." It is said that some attorneys will answer the phone with opposing counsel by touting their theme of the case. A persuasive theme must be kept plain and simple, and flow logically from the facts. The best themes are those that a common juror may be able to relate to as based on a juror's own life experiences.

CONCLUSION

It's a Commando Raid, not the Invasion of Europe.
Professor Irving Younger [6]

Cross-examination has been celebrated in the writings of Irving Younger, romanticized on television with Perry Mason and Matlock and excited movie audiences with Jack Nicholson telling Tom Cruise he "could not handle the truth!" in *A Few Good Men*. As one well-known attorney once stated, "Perry Mason never gave a closing argument — because he did not have to with his cross-examinations."[7] If cross-examination was only as easy as Hollywood portrayed it.

While not the topic of much case law, Justice Byron White in a dissent[8] celebrated cross-examination in discussing the role of defense counsel: "Our system assigns [a defense attorney] a different mission. ... [M]ore often than not, defense counsel will cross-examine a prosecution witness and impeach him if he can, even if he thinks the witness is telling the truth, just as he will attempt to destroy a witness who he thinks is lying. In this respect, as part of our modified adversary system and as part of the duty imposed on the most honorable defense counsel, we countenance or require conduct which in many instances has little, if any, relation to the search for truth."[9]

Counsel, you may take the witness.

1. *Chambers v. Mississippi*, 410 U.S. 284, 295 (1973) (citations omitted).
2. 5 Wigmore, *Evidence* (Chadborn Rev. 1794) §1367. *See also Flo-Bend, Inc. v. Pullam*, 570 P.2d 1165, 1166 (Okla. 1977).
Francis L. Wellman, *The Art of Cross-Examination* 216 (4th ed. 1936); Larry S. Pozner and Roger J. Dodd, *Cross Examination: Science and Techniques* (Michie 1993).
3. *See Dorsey v. Parks*, 872 F.2d 163 (6th Cir. 1989) (Court restricted defendant's cross examination designed to expose witness's demeanor and not to elicit facts).
4. *Ark. La. Gas Co. v. Bass*, 698 P.2d 947, 949 (Okla. Civ. App. 1985).
5. *The Quotable Lawyer* 74 (1986).
6. Videotape: Irving Younger: The Art of Cross-Examination (Cornell University, 1975) (on file with the author).
7. 16 Practical Litigator 39, *It Doesn't Have to be a "Cross" to Bear Cross-examination*, (May 2005).
8. *United States v. Wade*, 388 U.S. 218 (1967).
9. *Id.* at 256-58 (White, J., dissenting in part and concurring in part) (footnotes omitted).

ABOUT THE AUTHOR

Robert Don Gifford has tried cases in federal, state and military courts for more than 20 years. He is chief judge for the Kaw Nation District Court and an associate justice for the Iowa Tribe. A colonel in the Army Reserves, he also serves as an adjunct law professor at the OU College of Law, OCU School of Law and University of Arkansas School of Law. He chairs the OBA Military Assistance Committee and will serve as the 2018 chair-elect for the OBA Criminal Law Section.


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Social Media Evidence

By Darla Jackson

Social media permeates our society today. Nearly two-thirds of Americans today use social media, with the figure climbing to 90 percent for younger Americans.[1] "With the increasing number of individuals routinely posting information on social media websites, it is inevitable that someone involved in the case you are preparing is going to be directly or indirectly involved in communications through social media outlets."[2]

Because social media is relatively new,[3] there are many attorneys who are not familiar with the "benefits and risks" associated with the use of social media by their clients, opposing parties or themselves.[4] It is essential that competence and knowledge regarding the discovery and admissibility of such evidence be developed. As former OBA President Renee DeMoss explained:

> Oklahoma lawyers cannot afford to ignore the impact of social media on their practices. Older lawyers who prefer not to engage stand to lose clients through online marketing and face sanctions or even malpractice claims by failing to keep up. Younger lawyers well-versed in the ways of online communications may be so cocky that they run afoul of ethical issues that can likewise lead to sanctions.[5]

ADMISSIBILITY OF SOCIAL MEDIA EVIDENCE

The hurdles to admissibility for social media are similar to the hurdles for other forms of traditional evidence. They include:

- Is social media content relevant?
- Is the probative value of the social media content substantially outweighed by the danger of unfair prejudice, such that it should be excluded despite its relevance?
- If the social media content is offered for its substantive truth, is it hearsay? If so, does the content fall within one of the hearsay exceptions?
- Is social media content authentic?[6]

The admissibility of social media as evidence in Oklahoma courts is governed by the Oklahoma Evidence Code, which sets forth "hurdles" similar to those described earlier.

The trial lawyer has to meet the requirement of relevancy set forth in 12 O.S. §2401 by demonstrating that the social media evidence has the "tendency to make the existence of a fact … more probable or less probable than it would be without the evidence." While Oklahoma state appellate courts have not yet issued determinations regarding the threshold for admissibility of social media, the relevancy standard for social media, when applied by other courts, appears to be relatively easy to meet.[7] However, it has been suggested that the insistence on relevancy is often the source of difficulty when analyzing authentication issues for social media evidence. "Courts placing an excessively high bar on [authentication of] social media evidence … are

simply recognizing that evidence must be relevant before it may be presented to the jury.[8]

In accordance with 12 O.S. §2403, the probative value of the social media content must outweigh the danger of unfair prejudice, confusion or misleading of the judge or jury.

In addition, statements on social media sites may be hearsay, but multiple exceptions could apply, such as an admission by a party-opponent, admissible under 12 O.S. §2801(B)(2)(a) or present sense impression, admissible under 12 O.S. §2803(1).[9]

It has been opined that the "standard for authentication," under 12 O.S. §2901(A), "is relatively low."[10] Similar to the authentication requirement set forth in Federal Rule of Evidence 901, 12 O.S. §2901(A) provides that the "requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims it to be." Applying this rule, unless there is uncontroverted testimony or evidence, the proponent of the social media evidence must rely on other means to establish a proper foundation for authentication. Electronically stored information, including social media, pursuant to 12 O.S. §2901(B)(4) may be authenticated with circumstantial evidence that reflects the "contents, substance, internal patterns, or other distinctive characteristics" of the evidence.[11]

> "…the state of the law regarding social media evidence authentication and admissibility has been described as 'murky at best.'"

APPROACHES TO AUTHENTICATION

Due to varying application of the rules, the state of the law regarding social media evidence authentication and admissibility has been described as "murky at best."[12] Courts and academic legal analysts have characterized the case law as fitting into one of two approaches.[13] These two approaches are referred to as the Maryland approach and the Texas approach.[14]

Courts adopting the Maryland approach are branded as "skeptical of social media evidence" because of the courts' focus on the possible likelihood that someone other than the alleged author of the evidence may be the actual creator.[15] As a result, courts following the Maryland approach require the proponent to disprove the existence of a different creator in order for the evidence to be admissible. *Griffin v. State*[16] is often cited as a leading example of the Maryland approach.

Citing *Griffin v. State*, an unpublished Kansas Court of Appeals opinion recognized three non-exclusive methods attorneys can use to meet the requirements for social media authentication:

> 1) Presentation of testimony of a witness with knowledge; 2) Results of an examination of the Internet history or hard drive of the individual who is claimed to have created the social media material; 3) Presentation of information from an appropriate corporate employee of the social networking website that would link the profile to the individual.[17]

Courts adopting the Texas approach are seen as "more lenient in determining what amount of evidence a 'reasonable juror' would need to be persuaded that the alleged creator did create the evidence." In accordance with the Texas approach, after initial offerings by the proponent of the social media evidence, the burden of production then transfers to the objecting party. The evidence will be admitted if the objecting party fails to demonstrate that the evidence was created or manipulated by a third party.[18] *Tienda v. State*[19] is often cited as an example of the Texas approach.

However, at least one commentator suggests that the approaches are not dissimilar.[20] Rather, the different treatment reflects that while the offered evidence may be found to accurately reflect the content of a particular social media webpage or profile, there must also be evidence regarding authorship of the content for the evidence to be both relevant and authentic.

Other practitioners acknowledge that authorship is often the primary issue in authentication. As a result, they suggest that:

> If authorship is an issue, consider whether anyone saw the purported sender write the post or message, whether the message was sent from a device associated with the purported sender, and whether only the purported sender had access to the relevant account or device, and whether the state-

ments at issue contain information known only to the purported sender or otherwise suggest that they came from that individual. Even in a less stringent jurisdiction, the mere fact that a social media post came from a particular account, without more, may be insufficient.[21]

AUTHENTICATION CONSIDERATIONS DURING DISCOVERY AND COLLECTION

Most practitioners agree that "because courts have not yet reached a consensus on the authentication of social media content, counsel should carefully consider authentication issues during discovery."[22]

Practitioners ought to understand that proper collection of social media content or examination of devices on which the social media content was prepared and posted should produce metadata. Preservation of the metadata, which may be done with the assistance of a vendor or collection software, can help minimize authentication challenges.[23]

CONCLUSION

Because the hurdles to admissibility for social media are similar to the hurdles for admissibility of more traditional forms of evidence, attorneys should be familiar with the rules and procedures governing use of social media as evidence. Additionally, attorneys need to develop an understanding of the nature of social media and its effect on the differing approaches to authentication adopted by courts in a variety of jurisdictions.

While the legal profession has come a long way from viewing evidence from the internet as "adequate for almost nothing." there are still concerns about the ubiquitous and dynamic nature of social media evidence.[24] In some jurisdictions, these concerns have led to heightened standards for authentication of social media evidence.

Attorneys must become more familiar with the technology tools available for collection and preservation of social media content and the metadata produced in the creation of social media. With this knowledge they can better address the standards for authentication of social media evidence.

1. Martin Beck, *Pew Survey: Nearly Two-Thirds of All Americans Use Social Media*, www.marketingland.com/pew-survey-nearly-two-thirds-of-all-americans-use-social-media-146026.

2. Christopher Parker & Travis Swearingten, "'Tweet' Me Your Status: Social Media in Discovery and at Trial," Jan./Feb. 2012 *FED. LAW.* 34, www.millermartin.com/sites/default/files/documents/Parker_Tweet_Me_Your_ Status_Social_Media_in_Discovery_and_at_Trial.pdf.

3. Michael R. Holt & Victoria San Pedro, "Social Media Evidence: What You Can't Use Won't Help You – Practical Considerations for Using Evidence Gathered on the Internet," 88 *FLA B.J.* 8 (2014), tinyurl.com/mqegx48, indicating that social networking is an "emerging" area that began approximately 10 years ago with the development of MySpace and LinkedIn.

4. Despite the relative recent emergence of social media evidence, it has been suggested that "failure on the part of the attorney to seek out possible harmful posts can result in loss of a substantially greater bargaining position, or even loss of a case that might have been won" and could result in a professional liability claim. Jennifer Ellis, "Social Media for Law Firms: An Overview," www.americanbar.org/content/dam/aba/events/professional_responsibility/2015/May/Conference/Materials/session11_print_all.authcheckdam.pdf. The "benefits and risks" language is derived from the American Bar Association Model Rules of Professional Conduct Rule 1.1 Comment 8. In September 2016, the Oklahoma Supreme Court amended the Oklahoma Rules of Professional Conduct to include a duty of technology competence. *In Re:* Oklahoma Rules of Professional Conduct, 2016 OK 91, www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=479331.

5. Alison A. Cave and Renée DeMoss, "The Impact of Social Media on the Practice of Law," 85 *OKLA. B.J.* 2289 (2014), www.okbar.org/members/BarJournal/archive2014/NovArchive14/OBJ8529CaveDeMoss.aspx. In some cases, advice may result in both sanctions and suspension of a license to practice. Debra Cassens Weiss, *Lawyer Agrees to Five-Year Suspension for Advising Client to Clean Up His Facebook Photos*, bit.ly/ABA_Clean_Facebook.

6. Parson, Behle & Latimer, *Admissibility of Social Media Evidence* (2014), www.slideshare.net/Parsons_Behle_Latimer/the-admissibility-of-social-media-evidence.

7. Cave and DeMoss, *supra* note 4, en 6 details cases in federal district courts located in Oklahoma that have considered social media evidence.

8. Wendy Angus-Anderson, "Authenticity and Admissibility of Social Media Website Printouts," 14 *DUKE L. & TECH. REV*. 33, 47, (2015) www.scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1282& context=dltr.

9. M. Shane Henry, "Social Media, Internet and E-Mail Evidence at Trial: Admissibility of Electronic Evidence," Oklahoma Bar Association Solo & Small Firm Conference 2014 (unpublished manuscript) (on file with author).

10. *Id*.

11. Henry, *supra* note 9.

12. Angus-Anderson, *supra* note 8, at 34.

13. Grimm, Lisa Yurwit Bergstrom & Melissa M. O'Toole-Loureiro, "Authentication of Social Media Evidence," 36 *Am. J. of Trial Advocacy* 433, 441 (2013) www.mcdaa.org/images/downloads/Resource_Misc/grimm_article.pdf.

14. Angus-Anderson, *supra* note 8, at 37

15. *Id*.

16. 19 A.3d 415 (Md. 2011)

17. Cave & DeMoss, *supra* note 5, citing *State v. Jones*, 318 P.3d 1020 (Kan. 2014) (unpublished).

18. *Id*.

19. 358 S.W.3d 633 (Tx. Ct. Crim. App. 2012)

21. Angus-Anderson, *supra* note 8, at 47.

20. Paul Ragusa & Lauren Emerson, "The Pitfalls and Perils of Social Media in Litigation," in *Understanding the Use of Social Media in Litigation: Leading Lawyers on New Evidence Collection Methods and Necessary Precautions for Clients* 2014 (Aspatore, Inside the Minds Ser.), www. files.bakerbotts.com/files/Uploads/Documents/SMLitigationChapter.pdf.

22. Norman C. Simon & Samantha V. Ettari, "Social Media: What every Litigator Needs to Know," *PRACTICAL LAW*, June/July 2014 at 34, 43, available at bit.ly/SM_Pract_Law.

There is disagreement among practitioners as to the proper discovery tools or at what stage of the discovery process to use tools to address authentication issues. Some practitioners suggest the use of tools such as interrogatories, request for production, litigation hold documentation and third-party subpoenas. Swearingten & Parker, *supra* note 2. Other practitioners subscribe to the view that inquiry about social media "would be risky … within interrogatories and requests for production because this offers an opposing party the opportunity to delete harmful blog entries." Laura M. Merritt, *How Facebook, Twitter, LinkedIn and Other Social Networking Sites Can Impact Your Case*, State Bar of Texas Business Torts Institute, (2009) www.documents.jdsupra.com/ec2b1f6f-570f-4d5c-8589-8c95e37f986f.pdf. Attorneys advocating for discovery during depositions suggest that attorneys should confront the deponent with the social media evidence and ask the deponent questions "related to the origins and authorship … to establish, on the record, that the [social media] was written by the deponent. Such questions should offer protec-

tion from any arguments opposing counsel might make regarding origin, author and access. *Id*.

23. Services and products, such as X1 Social Discovery and Page Vault, to capture the metadata and content from social media are discussed in Mark Hindelang, Mark Rosch & Courtney Ward-Reichard, *Social Media as a Sword and a Shield in Today's Litigation Battles*, in 2015 A.B.A. TECHSHOW MATERIALS, www.techshow.com/materials/2015-conference-materials/ (Password required).

24. Jennifer Ellis & Sarah B. Herlihy, *Social Media is Key to Effective Discovery* in 2015 A.B.A. ABA TECHSHOW MATERIALS, www.techshow.com/materials/ (Password required).

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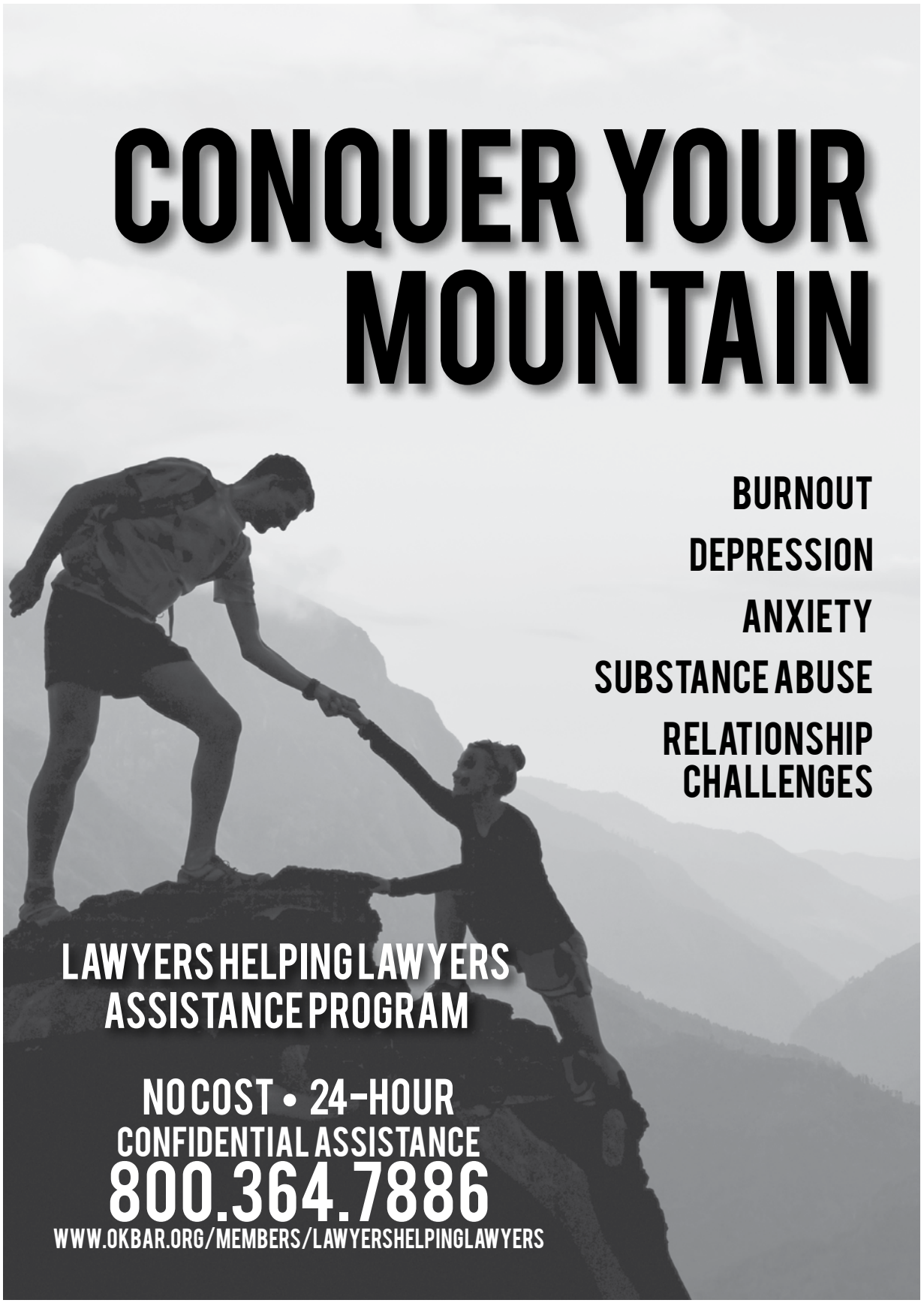
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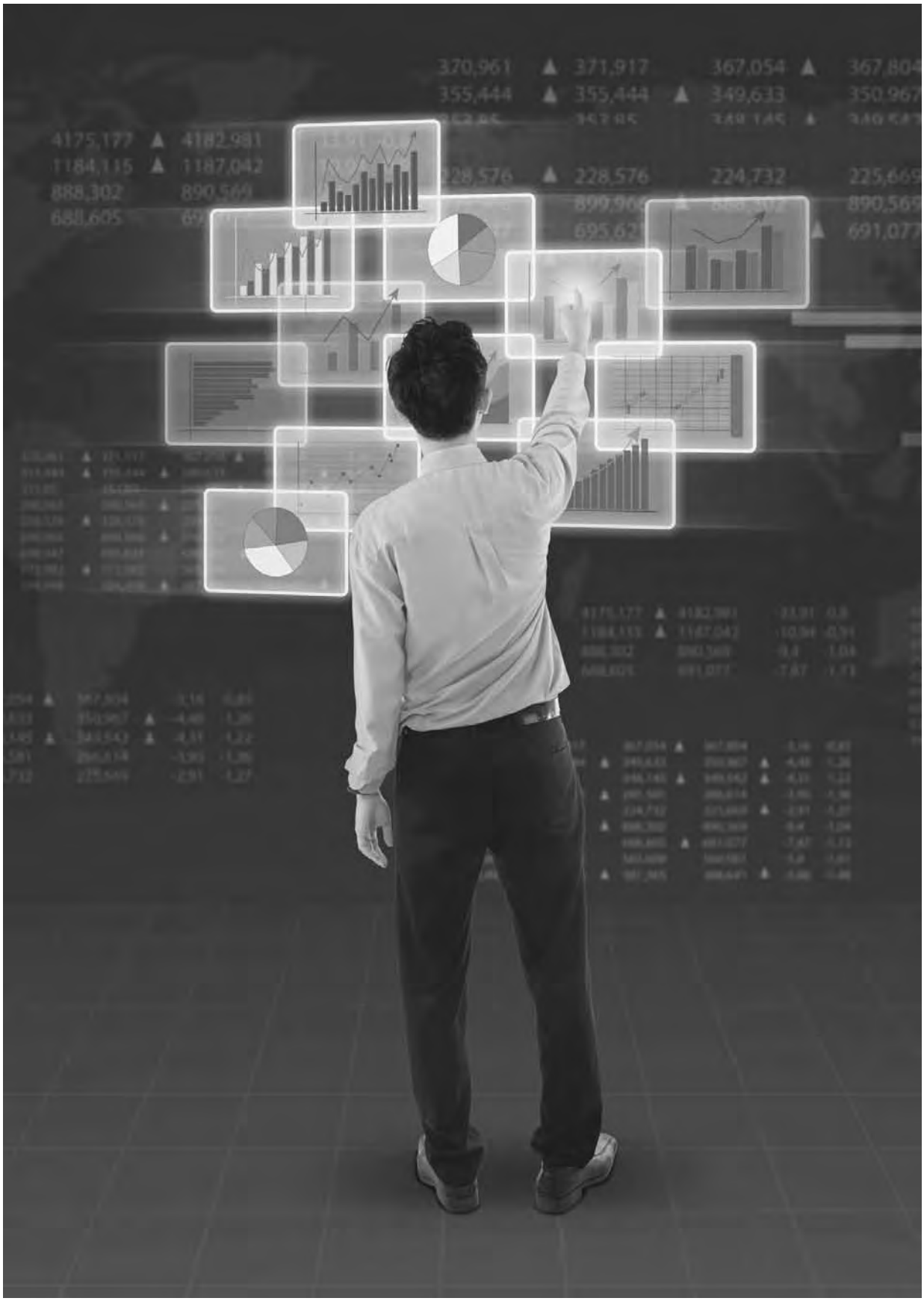

A Few Thoughts on Technology in the Courtroom

By Craig Fitzgerald, Cheryl Anderson and Don Lovy

Billy Flynn, the mythical attorney from the musical *Chicago*, summed up his approach to trial in song. How else would one do it in a musical? For the trial attorney contemplating technology in the courtroom, a portion of the lyrics are worth a read:

> Give 'em the old razzle dazzle
> Razzle dazzle 'em
> Give 'em an act with lots of flash in it
> And the reaction will be passionate
>
> Give 'em the old hocus pocus
> Bead and feather 'em
> How can they see with sequins in their eyes?
> What if your hinges all are rusting?
> What if, in fact, you're just disgusting?
>
> Razzle dazzle 'em
> And they'll never catch wise[1]

We all know that razzle dazzle will not (usually) carry the day, but in today's technological world, we often find ourselves obsessed with flashy presentations, as if we wholeheartedly believe Flynn's words. Of course there are good reasons to use technology and having some degree of glitz may be important, almost expected, as jurors are becoming more accustomed to receiving communication through polished, high-tech media.

That leads us to this article, admittedly just one of many that addresses technology in the courtroom, a topic so broad that one article, or even several articles, cannot cover it all. Perhaps the few thoughts in this article will be helpful as you prepare for your next trial.

HIGH-TECH VS. LOW-TECH

Before using the latest technology, stop and consider whether a fancy, highlighted call-out using the latest trial presentation software is the most effective way to make your point. Your use of technology should be guided by your primary trial objective, to win. To win, you must effectively communicate your message to the jury. In other words, do not use technology simply to be flashy. Use it to be credible. Use it to communicate, emphasize and get your point across. Of course these thoughts are not new, but sometimes we are guilty of using new gadgets and software just because we have them. We should always pause to think about whether our new technology is the best tool to communicate with the jury.

Paper vs. Pixels

How you use technology might depend on the composition of the jury and may warrant a combined approach. Older jurors usually comprehend and retain information better when they can put their hands on the documents in question. Reading from a screen can be more of a chore for them. Younger jurors, however, are often more accustomed to getting all their information from a screen. Most juries will

likely be comprised of jurors at both extremes and some in the middle. Consider how you can appeal to both with a combination of paper and panache.

The more traditional approach to trial presentation may also have benefits beyond the juries' processing faculties. Consider the simple blown-up, hard-backed, paper exhibit displayed on a wooden easel. That exhibit can usually remain in the juries' sight much longer than a presentation on a screen, continuing to communicate long after the attorneys have changed topics. A savvy trial attorney will figure out how to keep that key exhibit displayed for much of the trial, even when other pieces of evidence are on the screen. In fact, it can be comical to watch opposing counsel go out of their way to remove a damaging blow-up from the juries' view, only to have the sponsoring attorney display it again.

Traditional illustrative tools can sometimes be without a technological equal. Years ago, our firm tried a case against a fiery attorney from a rural Oklahoma county who used an oversized paper notepad for demonstrating to the jury. Demonstrating is perhaps too bland of a word for a key point in the trial when the attorney angrily grabbed the notepad, threw it on the floor, got on his knees and furiously scribbled on the paper. Everyone in the courtroom, judge, jury and counsel, stood up and strained their necks as far as possible to see what the attorney was writing. You can bet the jurors remembered those words when they deliberated. Try that with trial presentation software.

Video Depositions vs. Paper Transcript Only

In the not too distant past, only "trial" depositions were videotaped, but it is becoming increasingly common to videotape all depositions. Indeed videotaping depositions has transitioned from 1970s VHS tapes to the more current digital formats, namely mpeg3 and mpeg4 formats, which can be played on almost any computer or device. In fact, we should probably drop the term videotape in favor of simply "video." Video depositions have become more affordable and more efficient, which allows for almost all clients to benefit from its advantages, whether in the pretrial process or in the courtroom.

Using trial presentation software or other video editing software, clips of deposition segments can be played to the court, in any order, to make a much more compelling argument than simply reading words on paper. The video will preserve for the viewer the witness' looks of surprise, long pauses or sudden outbursts, none of which will be evidenced in a paper-only transcript. This increased effectiveness will most certainly outweigh the added expense of video recording.

Perhaps the most important and persuasive use of video testimony is impeachment. No matter how damning the witness' prior statement, it loses some effect when the prior testimony is simply read to the jury. It is much better for the jury to actually see the witness make the statement with their own eyes and hear the witness' voice with their own ears. Many trial presentation software products allow testimony to be organized in such a way that allows for split-second clipping to enable immediate impeachment of a witness. The attorney simply needs to work with the trial support team to have the appropriate testimony clipped and ready to play at a moment's notice.

"After the build-up, you cue the video operator and, to your horror, the jury stares intently at a blank screen."

BE PREPARED

If modern technology will be part of your trial presentation, and in most cases you probably will use it to some degree, it must work as intended. Otherwise tools intended to enhance your communication and credibility will instead inhibit communication and undermine your credibility. Imagine setting up the jury to hear damning video testimony straight from the mouth of the opposing party. After the build-up, you cue the video operator and, to your horror, the jury stares intently at a blank screen. The video played perfectly during a pretrial test, but not with the jury in the box. And after repeated attempts by the operator to identify and correct the problem, some of which were during a recess graciously suggested by the judge, the video never played. Obviously, we should have been better prepared.

Backups are Boring. Or are They?

The "nonvideo video deposition," could have been avoided with adequate backup. When we go to trial, we now maintain two laptops, each loaded with the same data, and use an A/B switch giving us the ability to immediately switch between devices in the event of a lockup or system failure. During witness questioning, as a document is requested and a paragraph called out, we duplicate the same steps on the second laptop. This should make a switch of laptops practically transparent to anyone but the operator. This system proved invaluable during a witness questioning where the image zoom became unstable on the primary laptop. We simply switched to the second laptop and continued on without a glitch, allowing the primary laptop time to reboot.

In addition, we keep the trial data backed up on an external hard drive that allows sharing or delivering of key exhibits to counsel and the opposition's tech operator. The other obvious backup is the paper that supports the document. In the event of a power outage (which has happened in court), the judge may decide to continue the case since the jury has been impaneled and time is of the essence.

If the parties are sharing a projector, it is wise to setup multiple layers of A/B switching and assign one of the techs to be the gatekeeper to make the current presenter "hot" when appropriate. A spare projector bulb should be in your tech case as well.

Previewing the Courtroom

Backing up your systems is only part of being prepared. You should also evaluate the courtroom in advance to determine what will be needed to utilize your technology. Some courtrooms present special challenges, such as one trial we had in Phoenix. Upon entering the courtroom, we were impressed with its size, but immediately saw a problem. The entire ceiling was glass, which allowed a lot of ambient light into the courtroom. Phoenix tends to be known for a lot of sunshine, so you can imagine how bright this room was without any artificial lighting. After some initial tests with some decent quality projectors, we quickly determined that we needed much more candlepower to make the video and document presentation visible. We engaged a stadium technology team, which brought in two high-powered, long-throw projectors. Both beams from the projectors were needed to make the image bright enough, which meant that the displays had to be overlapped and perfectly aligned. Obviously, this was not the type of problem that could have been readily solved if we had first discovered it on the first day of trial.

Pre-Highlighting vs. On the Fly

Being prepared usually means having everything "presentation ready" before leaving for the courthouse. Witness outlines are in the appropriate places. Paper exhibits are marked and in notebooks. Deposition transcripts are tabbed for easy location of impeaching testimony. But how should you prepare for the called out or highlighted portions of exhibits that will be electronically displayed? The answer goes back to your primary goal of effectively communicating with the jury.

With a competent operator, it is easy to emphasize selected portions of exhibits using modern trial software. It takes only seconds to enlarge particular language in a document, and add any desired highlighting or other emphasis. Doing so in front of the jury can help underscore the significance of the called-out portion, making it more memorable. It also can help them better see where the language fits in the overall document. However, the process must be seamless. Substantial delays or glitches will communicate a lack of competence to the jury and could undermine your credibility. In sum, your approach will likely depend on your confidence in the software operator.

When the Attorney Goes Off Script

It is not uncommon for trial attorneys to have a carefully planned outline of witness examination, or cross-examination, then jettison the outline when the action heats up. Or it may be that trial counsel does not use an outline at all (a skill that is becoming more rare). The software operator must be prepared to keep up when the attorney has gone off script.

Ideally the operator should know the exhibits well, and know how they fit into the case. One way to accomplish this is to include the operator in witness preparation sessions. The operator will then better understand your expectations during the examination of the witness, including which exhibits and possible video deposition clips will be used. This will also allow the operator to be better familiar with the nuances of the case. For instance, dur-

ing an examination, the attorney asks that "the agreement, Page 2" be published to the trial presentation screen. The operator, having been involved in the trial preparation session, will have an understanding of what "the agreement" is. Additionally, "Page 2" may be the actual Page 2 of the agreement, or it may be the preamble "Page ii" or it may simply mean the second page into the document. Having been included in witness preparation sessions, the trial technologist will be able to make an educated guess (also known as "reading the attorney's mind") as to what is being asked.

Another helpful step is to utilize consistent document management techniques. For instance, trial exhibits should be individually "bates stamped" with the trial exhibit number (as the "prefix") and the page number of the exhibit (as the bates number). As an example, each page of an exhibit will be stamped following a format such as PX-01_1, PX-01_2, and so forth. An attorney should adopt the general practice to request an exhibit by this format, not for simply making a clean record, but to guide the operator into helping you make your case as seamless as possible.

CONCLUSION

The use of technology in the courtroom can be reduced to these simple concepts. Number one, keep communication as your primary goal. If you use technological tools with that goal in mind, your message is more likely to be heard and understood. Number two, think through what can go wrong with your technology and expect those things to happen. If you adhere to these basic concepts, you are sure to razzle dazzle 'em.

1. Razzle Dazzle, words by Fred Ebb, music by John Kander.

ABOUT THE AUTHORS

Craig A. Fitzgerald, a shareholder in the Tulsa office of GableGotwals, has handled a number of high-stakes, complex business litigation matters in state and federal courts during his 23-year career. He has represented a diverse client base of privately held and publicly traded companies in Oklahoma, the Southwest and across the nation. He is a 1989 graduate of Oklahoma Christian College and a 1992 graduate from the Vanderbilt University School of Law.

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Trial by Jury in Indian Country

By Erica R. Mackey

Thomas Jefferson writing a letter to Thomas Paine dated July 11, 1789, stated he considered trial by jury "as the only anchor ever yet imagined by man, by which a government can be held to the principles of its constitution."[1] Jefferson was serving at the time as the United States minister to France and was commenting on the French National Assembly's resistance to instituting a trial by jury. Jefferson seemed to be perplexed and amazed at the resistance to the jury trial. It is important to realize however, this was a short two years after the Constitutional Convention met in Philadelphia to draft the Constitution which guarantees the right to a jury for all criminal cases and in all civil suits exceeding $20. Indeed since the ratification to the Constitution, the right to a trial by jury has become deeply embedded in the American democratic ethos.[2] Additionally, the constitution of each state guarantees a trial by jury.[3] However outside the United States and the protections engrained in the U.S. and individual state constitutions, the civil jury has all but disappeared in the rest of the world.[4]

But what about the American Indian tribal governments which predated the Constitution? Oklahoma is home to 39 federally recognized tribes all of which are sovereign. Therefore, it is important for any practitioner in this state to know before practicing in Indian Country[5] the jurisdictional differences which affect the makeup of a jury in tribal court.[6]

In *Talton v. Mayes*[7] the petitioner, Bob Talton, sought a writ of *habeas corpus* and claimed that a five-member grand jury was contrary to his civil rights under the Constitution. The court, upholding his murder conviction in the Cherokee Nation Tribal Court held that "the powers of local self government enjoyed by the Cherokee nation existed prior to the Constitution" and therefore the Fifth Amendment did not apply to tribal governments.[8] Likewise in a previous case, the Supreme Court held that the 14th Amendment did not apply to tribal citizens because at the time, tribal citizens were not yet permitted to become American citizens, even though they were born in the territorial jurisdiction that is the United States.[9]

The Indian Civil Rights Act (ICRA) was passed in 1968 and extended certain aspects of the Bill of Rights to the Indian tribes. ICRA included trial by jury in criminal cases, but specifically omitted the right to a civil jury.[10] ICRA also only requires the use of six jury members rather than the customary 12. This was seen as a logistical necessity as tribes with much more limited resources could potentially be overburdened by having to produce 12 jurors.[11] It is important to note this sets a minimum number of jurors, and tribes are free to set the bar higher and do so in many cases.

The Courts of Indian Offenses were established by the Department of the Interior in 1883.[12] These courts later became known as the Courts of Federal Regulations or CFR courts.[13] In 1934, Congress passed the Indian Reorganization Act.[14] This allowed Indian tribes to exercise their inherent sovereignty to establish their own justice codes and operate court systems enforcing those laws.[15] Until a particular Indian tribe establishes their own tribal court, the CFR court acts as a tribe's judicial system.[16] Although many tribes have their own established courts, the CFR court acts as the judicial system for a number of tribes located in Oklahoma,[17] including the Apache Tribe, Caddo Tribe, Kiowa Tribe and many others.[18] In CFR court, "a defendant has the right upon demand, to a jury trial in any criminal case: 1) that is punishable by a maximum sentence of one year incarceration or 2) in which the prosecutor informs the court before the case comes to trial that a jail sentence will be sought."[19]

> **"Although many tribes have a right to a jury in civil cases, others do not; or, they do so in a more limited capacity."**

Although ICRA did not impose a requirement of trial by jury in civil cases, many tribes either through their own tribal constitution or tribal codes of civil procedure have guaranteed civil juries. For example, the Cherokee Nation Constitution states "[t]he right of trial by jury shall remain inviolate, and the Cherokee Nation shall not deprive any person of life, liberty or property without due process of law."[20]

Frequently, tribal court jury trials are criticized for only including tribal members on juries.[21] However, in many cases this criticism is unfair as many tribes actually do include nonmembers and non-Indians. The Chickasaw Nation provides two ways a person may be qualified for a jury pool: 1) an enrolled member of the Chickasaw Nation over 18 who is a resident within the jurisdiction of the Chickasaw Nation and 2) a list of persons over 18, irrespective of Chickasaw Nation citizenship who have voluntarily registered as prospective jurors.[22] The names of potential jurors are then drawn from a selection drum at least 20 days prior to each jury docket.[23]

In contrast, the Muscogee (Creek) Nation allows for all registered voters residing within the original 1867 territorial boundaries of the Muscogee (Creek) Nation.[24] Further, the Muscogee (Creek) Nation allows "physicians, attorneys, ministers, jailors or law enforcement officers" to be excused from jury services and disqualifies felons and "habitual drunkards."[25]

The Sac and Fox Nation allows persons who are over the age of 18 and residents of the tribal jurisdiction and an enrolled member, individual taxpayers who pay tax to the tribe, tenants of the Tribal Housing Authority and members of their households irrespective of their status as an Indian or tribal member, those who have registered with the jury selection roll or employed by the tribe or the Sac and Fox Casino.[26]

One issue with allowing non-Indians to sit on a tribal jury is that a non-Indian cannot be prosecuted by a tribe for violating his sworn duties as a juror.[27] This is because the Supreme Court has ruled that tribes do not have criminal jurisdiction over non-Indians who commit crimes inside their jurisdiction.[28]

Although many tribes have a right to a jury in civil cases others do not; or, they do so in a more limited capacity. The Choctaw Nation's Code of Civil Procedure specifically states "all issues of law and fact arising in an action must be tried to the court without the aid of a jury."[29] The Choctaw Nation's Code of Civil Procedure goes on to specifically forbid jury trials for forcible entry and detainer.[30] However, the Choctaw Nation's Code of Criminal Procedure does state that "issues of fact must be tried by a jury."[31] The Sac and Fox Nation preserve the right of trial by jury in criminal actions and all

civil actions (except forcible entry and detainer) where the amount in controversy exceeds $10,000 as well as all actions for the involuntary removal of children from the custody of their parents and the involuntary termination of parental rights."[32]

In conclusion, it is important for all Oklahoma practitioners to know and understand the tribes are sovereign and all tribes are distinct and different from one another. No practitioner should assume the procedure will be the same as a state court or that the procedure will be the same from one tribe to another. Before practicing in Indian Country, it is important to read the tribal codes, know the law and consider co-counseling with an Indian law practitioner or if overwhelmed refer the case to a lawyer who practices tribal law.

1. Letter from Thomas Jefferson to Thomas Paine, (July 11, 1789) (available in the National Archives), founders.archives.gov/documents/Jefferson/01-15-02-0259 (last visited July 31, 2016).
2. Valerie P. Hans and Neil Vidmar, *Judging the Jury*, 31.
3. *Id*.
4. *Id*.
5. Indian Country is in 18 U.S.C. §1151 as follows: a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state and c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.
6. This is assuming that the tribal court has jurisdiction to begin with. Assessing whether or not the tribe has jurisdiction over the matter, be it criminal or civil, involves a complicated framework of federal statutes, as well as case law that goes beyond the scope of this article.
7. *Talton v. Mayes*, 163 U.S. 376 (1898).
8. *Id*. at 384.
9. *Elk v. Wilkins*, 112 U.S. 94, 99 (1884).
10. Carole E. Goldberg *et al*., *American Indian Law: Native Nations and The Federal System* 412 (6th ed., 2010).
11. *Encyclopedia of Race and Crime*, (Helen Taylor Greene *et al*. eds 2009) 381
12. Tribal Court Clearing House, www.tribal-institute.org/lists/justice.htm (last visited Sept. 30, 2016).
13. *Id*.
14. 25 U.S.C.A. §461, *et seq*.
15. *Id*.
16. US Department of Interior, Bureau of Indian Affairs website, (Sept. 30, 2016) www.bia.gov/WhoWeAre/RegionalOffices/Southern Plains/WeAre/ciospr/index.htm (last visited Sept. 30, 2016).
17. *Id*.
18. Oklahoma Indian Legal Services, Inc., thorpe.ou.edu/OILS/court.html (last visited Sept. 30, 2016).
19. 25 CFR 11.314 (a).
20. Cherokee Const. Art. III, §3 (1976).
21. B.J. Jones, *Role of Indian Tribal Courts In The Justice System*, p. 11.
22. Chickasaw Nation Code Tit. 5, Ch 1, Art A, §5-212.1(B)1 and 2.
23. *Id*. at Section 5-212.3 (A).
24. Muscogee (Creek) Nation Code Tit 27, §2-111 (B).
25. Muscogee (Creek) Nation Code Tit 27, §2-111 (B) and (C).
26. Sac and Fox Nation Code Ch. 6, §601.
27. B.J. Jones, *Role of Indian Tribal Courts In The Justice System* 11.
28. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 205 (1978).
29. Choctaw Nation Code of Civil Procedure, Ch. 11, §556.
30. *Id*. at§1148.7.
31. Choctaw Nation Code of Criminal Procedure, §582.
32. Sac and Fox Code of Civil Procedure Ch 7, §703.

ABOUT THE AUTHOR

Erica R. Mackey received her J.D. from the OCU School of Law with a certificate in American Indian law. Along with the Ernest L. Wilkinson Award for Excellence in American Indian law, she was awarded two CALI Awards in American Indian law and advanced American Indian law. She is a member of the ABA, FBA, OAJ and AAJ. She is admitted to practice in all Oklahoma federal district courts as well as the Chickasaw Nation and Choctaw Nation.

Changes to the Insanity Laws: Not Guilty by Reason of Mental Illness and Guilty With Mental Defect

By Shawn Roberson and Connie Smothermon

When someone is murdered the public demands retribution, and many people believe that no period of confinement is long enough for such a horrific crime. The public believes that the insanity defense is used on a regular basis when actually it is used in less than 1 percent of criminal cases.[1] Public opinion against the use of the insanity defense exists because people want law-breakers punished and they believe that the insanity defense fails to protect the public,[2] leading many states to abolish the insanity defense altogether.[3] The outcomes of two high-profile cases in Oklahoma where the insanity defense was used led to public outrage, serious debate and significant changes to Oklahoma's insanity defense laws.

On Dec. 6, 2012, Jerrod Murray shot and killed Generro Sanchez in rural Pottawatomie County. Murray was found walking away from the crime scene, wearing a black suit and black trench coat. In a chilling confession, Murray, without emotion or remorse, detailed his plan to lure and execute a fellow college student he had chosen at random. Undersheriff Travis Palmer said, "Murray confessed that he knew he wanted to kill someone, but didn't know who or when. When I asked him why he killed Generro Sanchez, he told me that there was no reason; that he just wanted to see what it felt like."

Murray was charged with first-degree murder. Psychologists for both the prosecution and the defense examined him using the M'Naghten[4] test, and they determined that Murray met the strict legal standard for insanity.[5] The Oklahoma Court of Criminal Appeals has consistently held that a defendant is legally insane if "during the commission of the crime he was suffering from a mental disease or defect rendering him unable to differentiate between right and wrong, or unable to understand the nature and consequences of his acts."[6] This definition is codified in 22 O.S. §1161. Ultimately Murray was found not guilty by reason of insanity (NGRI) and was sent to the Oklahoma Forensic

Center until such time as it could be determined that he was no longer a danger to society. *Thirty-five days later,* a forensic psychologist at the facility reported to the court that "[w]hile his index offense … was of a violent nature, given that his mental condition is stable he is not considered to be a present danger to the public,"[7] thereby clearing the way for Murray's possible release from custody. The report outraged prosecutors and devastated Jeana West, Sanchez's mother. The judge refused to release Murray after two additional experts disagreed with the first report, but the possibility that Murray, a confessed killer, could have been released so quickly led to a review of Oklahoma's insanity defense laws by Pottawatomie County District Attorney Richard Smothermon, the prosecutor in Murray's case. This review led to the passage of Senate Bill 1214 (SB1214) which makes significant changes to 22 O.S. §1161. The changes to the statute, which took effect on Nov. 1 of this year were the collaborative efforts of prosecutors, criminal defense attorneys, legislators, forensic psychologists and leadership at the Oklahoma Department of Mental Health and Substance Abuse Services.

Many attorneys, mental health professionals and the general public are unaware that there has been a movement over the past five years to change Oklahoma's insanity statutes. The movement began in Oklahoma County with the high-profile criminal case of Dr. Stephen Wolf.[8] Wolf was found NGRI for the stabbing death of his 9-year-old son during a psychotic episode.[9] According to Mack Martin, Wolf's criminal defense attorney, Wolf had a history of mental illness that had been treated medically for many years. "Dr. Wolf's crime occurred when he failed to keep up with his medical regimen and fell into a psychotic episode. When properly medicated, Dr. Wolf isn't a danger to society."[10]

The discussions about changes to the insanity laws began when a state psychologist recommended Wolf's release from custody almost immediately after the NGRI finding, a request denied by the district judge.

> **"…the title of the legal defense was changed from 'not guilty by reason of insanity' to 'not guilty by reason of mental illness'…"**

Sen. Anthony Sykes, chairman of the Senate Judiciary Committee and co-author of SB1214 explains the history:

> This was not the first time this issue was discussed at the legislature. A few years ago, a bill containing the 'guilty but insane' concept was considered but did not become law. SB1214 is the result of careful consideration after input from multiple perspectives and I was honored to be a part of it.[11]

SB 1214, signed into law on May 5 of this year,[12] changes the previous NGRI statute in several ways. The traditional "insanity" defense remains intact for those persons with mental illness who cannot appreciate the nature, consequences and wrongfulness of their actions. However the title of the legal defense was changed from "not guilty by reason of insanity" to "not guilty by reason of mental illness" (NGMI) to more accurately mirror the clinical diagnosis[13] and to eliminate the "insanity" wording as there is no "insane" diagnosis listed in the *Diagnostic and Statistical Manual of Mental Disorders*.[14]

Under the previous law, when someone was found NGRI, he was sent to a secure facility for an evaluation to aid the court in making a determination as to whether the defendant should be committed to a secure facility indefinitely or released from custody. The law directed that "the court shall conduct a hearing to ascertain if the person is *presently* dangerous to the public peace or safety."[15] In the case of Murray, the words "presently dangerous" were strictly interpreted by the psychologist at the Forensic Center, leading to his finding that Murray was no longer a danger. In the new law, the word "presently" was stricken in the definitions, allowing the evaluator to consider past history in making his determination.[16]

In addition to the change from NGRI to NGMI, the law creates an entirely new verdict, "guilty with mental defect" (GMD), for the finder of fact to use when determining guilt of the defendant. The law specifically targets defendants who have been diagnosed with a mental illness, have been diagnosed with anti-

social personality disorder and the antisocial personality disorder "substantially contributed to the act for which the person has been charged."[17] The reason for this change was to specifically focus on those defendants diagnosed with antisocial personality disorder. District Attorney Smothermon explains, "[w]e wanted to draft a law that kept those defendants who are not amenable to treatment and will always be dangerous from being released, yet kept available the idea of the NGRI defense for those who are truly deserving of it."[18]

This change to the law significantly alters punishment options for those criminal defendants who act on antisocial motives, even if suffering from a mental illness, so they will be held accountable and not released to reoffend. This is similar to the "guilty but mentally ill" verdict option that is found in many other states across the country.[19]

The new GMD verdict is markedly different from a NGMI. First, GMD is defined in the new statute as "the person committed the act and was either unable to understand the nature and consequences of his or her actions or was unable to differentiate right from wrong, and has been diagnosed with antisocial personality disorder which substantially contributed to the act for which the person has been charged."[20] Both verdicts require the elements of M'Naghten, "the person committed the act and was either unable to understand the nature and consequences of his or her actions or was unable to differentiate right from wrong."[21] The key differences are that a verdict of GMD requires both a finding of an antisocial personality disorder and that disorder must have "substantially contributed" to the offense.[22]

Second, NGMI is an *affirmative defense* and/or a *plea* entered by a defendant. Once a defendant pleads NGMI, a judge or jury has the option of finding the defendant NGMI, rejecting the NGMI defense and finding the defendant GMD if the criteria are present or finding the defendant not guilty.[23]

The third and most important difference between GMD and NGMI is that of disposition. If found NGMI, a defendant is committed to the Oklahoma Department of Mental Health and Substance Abuse Services indefinitely or until they are released by the district court.[24] If found GMD, individuals are given the same sentence they might have received if found guilty in the traditional sense.[25] The court can sentence the individual to probation, county jail or prison. Persons found GMD who are placed on probation are subject to examination by Oklahoma Department of Mental Health and Substance Abuse Services for a 45-day hearing by the court to determine the need for treatment.[26] As with current criminal probationary sentences, failure to comply with any court-ordered treatment may be grounds for revocation. In probation cases a mental health status report must be filed with the probation officers and the sentencing court every six months while the person is on probation.[27]

The changes to 22 O.S. §1161 address the problems highlighted by the Murray and Wolf cases. The new GMD verdict will allow courts and juries to sentence dangerous defendants to prison who are not amenable to treatment and will always be dangerous. At the same time, the law continues to allow courts and juries to find defendants NGMI in appropriate cases, sending them to a secure facility for treatment. The changes will allow judges, mental health professionals and attorneys to meet the needs of everyone involved.

1. Melton, G.B., Petrila, J., Poythress, N.G., & Slobogin, C., *Psychological Evaluations for the Courts* 202 (3rd ed. 2007).

2. Hans, Valerie P., "An Analysis of Public Attitudes Toward the Insanity Defense" (1986). *Cornell Law Faculty Publications*. Paper 330. scholarship.law.cornell.edu/facpub/330.

3. "The Insanity Defense Among the States," FindLaw.com, criminal.findlaw.com/criminal-procedure/the-insanity-defense-among-the-states.html (last visited Aug. 26, 2016).

4. M'Naghten's Case, 8 Eng.Rep. 718 (1843).

5. Court minute in Pottawatomie County case no. CF-2012-874, *Oklahoma District Court Records*, www1.odcr.com/detail?court=063-&casekey=063-CF++1200874 (last visited July 17, 2015).

6. *Pugh v. State* 781 P.2d 843, 844 (Okla. Crim. App. 1989).

7. Report from Dr. Peter Rausch, Ph.D., forensic psychologist, Oklahoma Forensic Center to District Judge John G. Canavan, Jr. (Sept. 17, 2015) (on file with the Pottawatomie County court clerk).

8. Oklahoma County case no. CF-2009-6406.

9. In both Wolf's and Murray's cases the leadership at the Oklahoma Department of Mental Health and Substance Abuse Services, and/or the presiding district court, ordered subsequent examination(s) which ultimately concluded the patients should not be released and they remained at the Oklahoma Forensic Center for further treatment.

10. Interview by Connie Smothermon with Mack Martin, criminal defense attorney for Stephen Wolf, (Aug. 29, 2016).

11. Interview by Connie Smothermon with Sen. Anthony Sykes (R-Moore), chairman of the Senate Judiciary Committee, (Aug. 24, 2016).

12. The bill, authored by Sens. Sharp, Holt, Boggs, Sykes and Brecheen and Rep. Wood, overwhelmingly passed both the Oklahoma Senate and House of Representatives.

13. 22 O.S. §1161(A)(1) (2016) (amending 22 O.S. §1161(A)(1) (2008)).

14. "The Definition of Insanity is…", Ryan Howes PhD, ABPP, *Psychology Today*, www.psychologytoday.com/blog/in-therapy/200907/the-definition-insanity-is (July 27, 2009); *Diagnostic and Statistical Manual of Mental Disorders* is published by the American Psychiatric Association, is in its fifth edition (2013) and serves as "a classification of mental disorders with associated criteria designed to facilitate more reliable diagnoses of these disorders." (p. xli in the Preface).

15. 22 O.S. §1161(B)(2) (2008), amended by 22 O.S. §1161(B)(2) (2016).

16. Report from Dr. Peter Rausch, Ph.D., forensic psychologist, Oklahoma Forensic Center to District Judge John G. Canavan, Jr. (Sept. 17, 2015) (on file with the Pottawatomie County court clerk).
17. 22 O.S. §1161(H)(3) (2016).
18. Interview by Connie Smothermon with District Attorney Richard Smothermon (Aug. 24, 2016).
19. "The Insanity Defense Among the States," *FindLaw.com*, criminal.findlaw.com/criminal-procedure/the-insanity-defense-among-the-states.html (last visited Aug. 26, 2016).
20. 22 O.S. §1161(H)(3) (2016) (Emphasis added).
21. 22 O.S. §§1161(H)(3), (6) (2016).
22. 22 O.S. §1161(H)(3) (2016).
23. 22 O.S. §1161(A)(2) (2016).
24. 22 O.S. §1161(A)(5) (2016).
25. 22 O.S. §1161(A)(2) (2016).
26. 22 O.S. §1161(A)(3) (2016).
27. Id

ABOUT THE AUTHORS

Dr. Shawn Roberson is a forensic psychologist in private practice in Oklahoma City and the vice chair of the Oklahoma State Board of Examiners of Psychologists. He has performed thousands of criminal forensic evaluations and routinely testifies in complex, high-profile criminal and civil cases. Dr. Roberson was formerly the director of forensic psychology at the Oklahoma Forensic Center in Vinita.

Connie Smothermon is an associate professor of law, assistant director of legal research, writing and advocacy, and director of competitions and externships at the OU College of Law. Ms. Smothermon has been working in the area of criminal law as a prosecutor or criminal defense attorney since 1996.

Benefits That Benefit You

Fastcase 7 Legal Research Now Available

Fastcase 7, the new version of Fastcase, is now available as a new member benefit. Many members already access Fastcase for their legal research and are familiar with the features and smart search tools that help you find the results you are searching for faster. Fastcase 7 is an even more fluid and easy-to-navigate online legal research library. It has all of the familiar features and tools, plus an enhanced Forecite, Tag Cloud, Authority Check and Bad Law Bot, more advanced search options, new results screen options, larger fonts and selections to make documents easier to read on computer screens and new dual-column printing options.

You'll see a slider in the top right corner of your screen that allows you to toggle between Fastcase 7 and the classic Fastcase service.

Members have access to Fastcase through the OBA website (okbar.org) where they can log in with their ID and pin.

When you use the new Fastcase 7 version, you'll also get the following new features and additions:

THE NEW HOME SCREEN

When you enter Fastcase 7, you will be greeted with a guided visual tour that automatically loads the first time you toggle over and can be viewed anytime. You will notice several resources, tools and updates are prominently displayed, including: help resources (such as the ability to live chat with a Fastcase reference attorney), any new results on alerts you have set for particular searches and quick access to a much more detailed version of your search history than was available in previous versions of Fastcase.

A MORE ADVANCED SEARCH

For the first time you can search across different types of materials at the same time. Cases, state constitutions, attorney general opinions — choose to search everything or filter results down to just a select category. You can also choose to search across all materials associated with a particular state jurisdiction simultaneously.

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When you run a search on Fastcase 7 your main results are accompanied by several tools, all on the same page. These panels can be hidden or expanded without any load time, everything is pre-loaded. You can also move panels and customize your research experience.

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The Tag Cloud is the first of its kind in the legal research space. You can ascertain which terms are being used to discuss

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THE DOCUMENT PAGE

Fastcase 7 makes reading cases on a screen easier by using large, beautiful fonts. You can make the reading experience even cleaner by activating full-screen mode using the diagonal arrows on the top right of the opinion text.

Your results list is now displayed alongside the opinion text in larger format. You can favorite or add cases to your print queue directly from an opinion page.

THE NEW AUTHORITY CHECK

You can view Authority Check alongside your opinion. All of your citing cases, the case-level Interactive Timeline and Bad Law Bot, can be viewed without opening a new tab or window. Statistical information about which jurisdictions are citing your case is now clearer so you can spot trends in the law on the fly. You can view the Authority Check report right next to your case, or expand it for the full dashboard view.

NEW DUAL-COLUMN PRINTING

Now you can download up to 500 documents at a time in a zip file, with each document in a separate file. Each file has an intelligent name, so you can identify them in a snap.

OBA Practice Management Advisor Darla Kite-Jackson said, "As a former law librarian, I am really excited about the new features of Fastcase 7. The increased speed, ease of searching and filtering and expanded result display certainly improve the user experience and make Fastcase comparable with other more costly commercial legal research databases. However, I realize that there are those who may not be ready to move from the familiar classic Fastcase system. Allowing users to switch back and forth between classic Fastcase and Fastcase 7 using the toggle button is another way Fastcase has addressed user preference in a customer-focused approach."

The Fastcase service ordinarily costs $995 per year for an individual subscriber, but OBA members have access to Fastcase and Fastcase 7 for free as a member benefit. Fastcase has pioneered the smartest legal research tools in the market, with integrated citation analysis tools, data visualization maps of search results and the first legal research apps for iPhone, iPad and Android devices. The service also includes Bad Law Bot, the first big-data service to identify negative citations to judicial opinions.

For more information on Fastcase 7 and how to use the new features go to https://youtu.be/9KV5U_7OdNk.

Oklahoma Lawyers for America's Heroes Program Tops $2.8 Million in Free Legal Services

By Carol Manning

The OBA's Oklahoma Lawyers for America's Heroes Program began six years ago with the battle cry of "Thank you is not enough" to help service members and veterans with their legal needs. More than 4,000 military heroes have been helped by 712 volunteer lawyers, who have donated over $2.8 million in free legal services.

OBA President Garvin Isaacs said, "As we celebrate Veterans Day this year, Oklahoma lawyers are honored to assist those who fight and have fought for freedom. Service members have made sacrifices for us — many putting their lives on the line — so they deserve help when they return."

The program provides one-on-one legal advice to active duty, reserve, guard or veteran service men and women who do not have access to the legal services they need. To qualify for the program, financial circumstances are a consideration.

Nearly half of the legal problems service members face involve domestic issues such as divorce, adoption and paternity. About 14 percent of the legal assistance given is regarding assorted issues, such as employment and military-related disputes, followed by criminal matters. Other legal needs involve debts, disability,

continued on next page

Heroes Needing Legal Assistance

A U.S. Navy veteran, who was a master at arms, is a mother of three on limited income. She alleges her husband raped her and committed child abuse. She needs help filing for divorce and determining child custody issues.

An active duty member of the U.S. Army is deployed in the Middle East. His home base is Fort Sill, where he obtained a divorce in Comanche County. His ex-wife has moved their children to California, where she is trying to get a custody case filed.

If you would be willing to help one of these Oklahoma heroes, please contact Heroes Coordinator Gisele Perryman at 405-416-7086 or giselep@okbar.org.

estate planning and probate, personal injury and real estate.

Program Coordinator Gisele Perryman said, "Often these individuals call in because they've received notification of legal action, and they are desperate because they don't know where to go next or what to do. Sometimes I can pair them up with an attorney quickly, but often they have to wait or make do without legal help because the need is so great."

Another service the program provides is a collection of forms and general information on a variety of legal consumer topics called a "Legal Clinic in a Box," designed to make it easy for a lawyer or county bar association to organize a free clinic to help veterans anywhere in the state.

Also lawyers on the OBA Military Assistance Committee often partner with other organizations to give free legal advice at legal clinics held before a unit deploys and again when they return. The Heroes Program reference materials are handed out during the clinics.

Ms. Perryman said, "The service members are very grateful for the legal assistance, which can be life changing for them. Being able to give back is an honor and a privilege."

For more information about the program or to sign up to become a volunteer lawyer, visit www.okbar.org/heroes or call 405-416-7086.

Ms. Manning is OBA communications director.

House of Delegates Actions

The following resolution and title examination standards report were submitted to the House of Delegates at the 112th Oklahoma Bar Association Annual Meeting at 10:30 a.m. Friday, Nov. 4, 2016, at the Sheraton Hotel in Oklahoma City. Actions are as follows:

RESOLUTION NO. 1: REAFFIRMING MERIT SELECTION OF JUDGES

BE IT RESOLVED that the House of Delegates of the Oklahoma Bar Association reaffirm its commitment to merit selection of Judges in the State of Oklahoma through the Judicial Nominating Commission, place protection of the Judicial Nominating Commission perpetually on the Legislative Program and acknowledge and celebrate the 50th anniversary of judicial reform in the State of Oklahoma. (Submitted by the Bench and Bar Committee, Cosponsored by the Family Law Section and Young Lawyers Division, 60% vote required.)

ADOPTED

TITLE EXAMINATION STANDARDS

Action: The Oklahoma Title Examinations Standards revisions and additions published in the *Oklahoma Bar Journal* 87 1992 (Oct. 15, 2016) were approved in the proposed form. The revisions and additions are effective immediately.

ADOPTED

2016 OBA OFFICERS AND NEW BOARD MEMBERS

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OBA 112TH ANNUAL MEETING

SAFEGUARDING OUR FREEDOMS
OKLAHOMA BAR ASSOCIATION
ANNUAL MEETING 2016
NOV. 2-4 · SHERATON HOTEL · OKLAHOMA CITY

U.S. Attorney Danny C. Williams accepts the Award of Judicial Excellence for his uncle, Judge Carlos J. Chappelle, at the Annual Luncheon. Judge Chappelle passed away June 28, 2015.

Weldon Nebbitt eats a taco at the A Night in Havana section event.

OBA Executive Director John Morris Williams, OBA President Garvin Isaacs and Court of Criminal Appeals Presiding Judge C. Clancy Smith honor Chief Justice John Reif at the OBA General Assembly.

MAP Director Jim Calloway gives a CLE on essential business skills.

James Marshall looks on as author and keynote speaker Jane Mayer signs a copy of her book *Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right.*

Joe Balkenbush, Gary Rife and Mack Martin enjoy delicious food at the President's Reception.

Melissa DeLacerda and Luke Adams reviewing articles at the Board of Editor's meeting.

Alissa Preble Hutter, James Hicks and Gina Hendryx attend the Board of Governors meeting.

Linda and Mike DeBerry enjoy networking with fellow attorneys at the President's Reception.

Go to bit.do/AMphotos to view more photos from Annual Meeting events.

At the House of Delegates, President-Elect Linda Thomas recognizes the hard work and dedication of those who have shown support to the legal profession.

Nancy Coats and Past President Andy Coats attend the A Night in Havana section event.

Juan Garcia, recipient of the Outstanding Service to the Public Award, accepts his award from President Garvin Isaacs at the General Assembly.

A view from above of the A Night in Havana sponsored by the OBA sections.

You Have Something to Offer — Join a Committee

If you invest just a small amount of your time working on an OBA committee, I promise that you'll receive a 100 percent return on your investment — especially if you are in private practice. The contacts you make are invaluable, and the work accomplished benefits our communities and our profession.

New members with fresh ideas, we need you! Geography is a nonissue with today's technology, and the OBA will soon be rolling out the option of attending meetings from your desk. (It's being beta tested now.) So if driving a long distance to participate in a meeting has prevented you from becoming involved, that obstacle is gone.

Sign up today. Option #1 – online at www.okbar.org, scroll down to the bottom of the page. Look for "Members" and click on "Join a Committee." Options #2 & #3 – Fill out this form and mail or fax as set forth below. I'll be making appointments soon, so please sign up by Dec. 9.

Linda S. Thomas, President-Elect

Note: No need to sign up again if your current term has not expired.
Check www.okbar.org/members/committees.aspx for terms.

— — — — — — — — — — — — — — —

Please Type or Print

Name _____

Telephone _____ OBA # _____

Address _____

City _____ State/Zip_____

FAX _____ E-mail _____

Committee Name

1st Choice _____

2nd Choice _____

3rd Choice _____

Have you ever served on this committee? If so, when? How long?

1st Choice ❑ Yes ❑ No _____

2nd Choice ❑ Yes ❑ No _____

3rd Choice ❑ Yes ❑ No _____

■ Please assign me to ❑ one ❑ two or ❑ three committees.

Besides committee work, I am interested in the following area(s):

_____

_____

Mail: Linda Thomas, c/o OBA, P.O. Box 53036, Oklahoma City, OK 73152
Fax: (405) 416-7001

Standing Committees

- Access to Justice
- Awards
- Bar Association Technology
- Bar Center Facilities
- Bench and Bar
- Communications
- Disaster Response and Relief
- Diversity
- Group Insurance
- Law Day
- Law-related Education
- Law Schools
- Lawyers Helping Lawyers Assistance Program
- Legal Intern
- Legislative Monitoring
- Member Services
- Military Assistance
- Paralegal
- Professionalism
- Rules of Professional Conduct
- Solo and Small Firm Conference Planning
- Strategic Planning
- Uniform Laws
- Women in Law
- Work/Life Balance

Time to Sign Up for Committees and Sections

By John Morris Williams

This is the time of year when the OBA president-elect is making committee appointments for next year and soon your OBA dues statement will come with section membership options. Both are essential for the existence and excellence of the OBA.

I cannot recall a time when member involvement is more critical than right now. The legal profession is under continued attacks in the public square as well as the marketplace. Internet legal providers are continuing to flood the marketplace. Often these providers are not lawyers or lawyers licensed in Oklahoma. As I have said before, the ability to protect the public from the unlicensed practice of law gets more difficult every day. We have committees and sections that deal with these issues.

Another major issue facing the OBA is the "graying" of the profession. It is estimated that in 2017 the OBA for the first time will have fewer dues-paying members than the previous year. Why is that? Several factors are in play. First, we have fewer persons entering law school at some institutions. Second, bar passage rates are down. Third, and perhaps most significant, is we have a large wave of members reaching senior status. That's right, the Baby Boomers are reaching age 70 and taking senior status at record rates. The impact is the OBA will have a growing number of nondues-paying members. As members live longer and practice longer, senior status is an ever growing member category. In addition to the economic realities of a large number of nondues-paying members, there is the question of members to provide competent legal services as they age. This is not just a question for persons above or below any dues category. It is a question for all of us as we age. We have committees and sections that deal with these issues.

> **"I cannot recall a time when member involvement is more critical than right now."**

In 2017 the OBA is going to look at these issues and more. Kim Hays, who will be president-elect and chair of strategic planning, will oversee planning on a number of fronts. I suspect we will look at dues categories and financial viability of the OBA in the years to come. I am certain we will revisit continued publication of the bar journal editions containing court opinions. One side of the issue is the OBA could save considerable sums and help protect the environment if the court editions were electronic only. The other side of the issue is the familiarity of holding paper in one's hand and the transportability of the paper copy. All worthy issues to discuss. We have committees and sections that deal with these issues.

If you have not sensed it yet, huge change is coming to the practice of law and to the OBA. Most of the solutions have not been developed. Most of the questions have not been answered. Most of the day-to-day "how do we proceed from here" rules have not been written. Never in the history of the practice of law has such change been at our doorstep and never in the history of the practice of law has there been an opportunity for innovative and conscientious lawyers to chart the course for the entire profession and the public. OBA committees and sections are where most of these issues will be addressed and solutions offered. Sign up!

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

The Basics of a Lawyer's Smartphone

By Jim Calloway

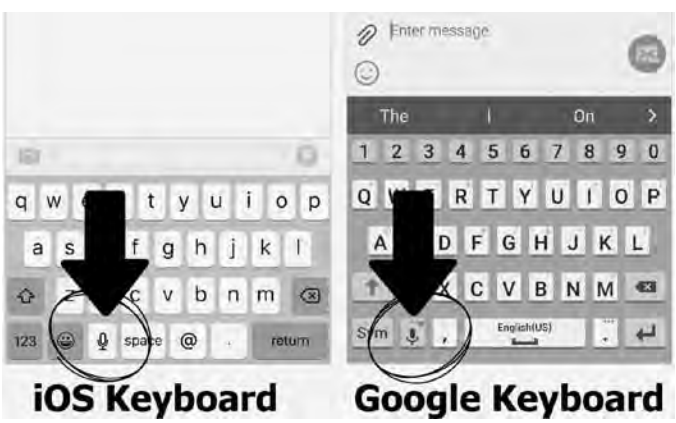
At the OBA Annual Meeting, during a discussion about smartphones, an attendee pulled out an old-style flip phone and smiled at us. This happens a lot, although not nearly with the frequency it did several years ago. Sometimes the lawyer is a bit sheepish about still having an old flip phone and other times they are quite proud of it, having avoided what they view as the additional complexity and expense of operating a smartphone.

I am not judging anyone for their phone. Even the most fervent users of smartphones would agree that they are a mixed blessing. Even carrying a flip phone still means that most serene weekend afternoon or private moment can be interrupted by a call. It is a part of life today. And flip phones do have the advantage of never having a reported episode of bursting into flame.

The idea of individuals carrying a device that is a phone and a powerful computing device connected to the internet is not going to go away. I used to do seminars about apps for lawyers' mobile devices, but now it is easy to do a quick search for any function and find articles comparing and contrasting various mobile apps.

A challenging thing about technology, however, is knowing what you don't know.

So let's cover a few things lawyers can do with their smartphones today.



SPEECH-TO-TEXT AND OTHER SPEECH TOOLS

I mentioned this in a recent seminar and was amused to see some surprised expressions. There were a couple of attendees who could not wait until the seminar was concluded to try this out quietly in the back of the room. That small microphone graphic on the iOS keyboard when you are typing into your phone is an invitation for you to dictate that text or email instead of typing on the tiny keyboard. It works amazingly well, but not perfectly.

Siri will allow iOS users to draft and send emails and texts without touching any button other than the Home button. This is much easier than typing on a virtual keyboard on a smartphone.

Android users will want to install the Google keyboard.

Other text-to-speech tools include the family of apps from Nuance ranging from the free Dragon Dictation app to the powerful Dragon Anywhere for Android and iOS for $15 per month. A few Google searches will yield many app comparison articles like "5 Best Android Applications to Turn Your Voice to Text."[1]

One can do that Google search via speech recognition as well after installing the Google app on your phone.

PRACTICE MANAGEMENT SOFTWARE

The majority of today's practice management software tools have either a smartphone app

or responsive website that works well with smartphones. If you are not using practice management software, you probably should be. If you are, then you should see if smartphone functions are available with your particular system.

BILLING

If you don't have a practice management software tool that allows you to do billing entries on your smartphone, you need to develop a way to capture time on your phone so you do not forget any billing information. There are applications that handle that task. Brian Focht on his *Cyber Advocate* blog reviews several of these in his post "6 Excellent Timekeeping Apps for Lawyers."[2]

FASTCASE

Fastcase is your legal research tool provided to you as an OBA member benefit. If you are a Fastcase user, you want to have your Fastcase app on your phone synchronized with your primary Fastcase account so if something unexpected happens you will have access to your search history, saved cases and favorites. Here are the instructions to do that: www.fastcase.com/mobile-sync.

COPY A PHYSICAL DOCUMENT AND FILE IT

You have a piece of paper in your hand and want to either make a copy of it or file it. This is now pretty simple. You use the smartphone's camera to take a picture of the document and use the appropriate scanning app to convert it to a PDF and file it. This is particularly handy for receipts that might get lost or are on cheap thermal paper that will fade and become unreadable. If you have never tried this before, the key is to do a bit of advanced planning, app installation and testing before you need to do this. The document needs to be well-lighted for a great result.

There are many apps that will convert a photograph to a PDF file on your smartphone. Many of them are free and all are inexpensive. They include CamScanner, Microsoft Office Lens, Genius Scan, Scanner Pro, Scanbot and FineScanner. Check to see whether the OCR function requires a paid version app and whether there is a built-in configuration to save to your preferred cloud storage.

> **"…Microsoft Office Lens will not only convert to a PDF but also to editable Word and PowerPoint files."**

Some may like the idea that Microsoft Office Lens will not only convert to a PDF but also to editable Word and PowerPoint files. One does have to sign up for a Microsoft account to do this and the formatting will often be less than perfect, but it is a great free tool.

As noted, if your intention is to scan documents and then store them, decide where you will store them because many cloud-based storage services have their own dedicated app. Examples include Scannable by Evernote and Google Drive.

MANAGING PDF FILES

GoodReader has been referred to as the Swiss Army knife of PDF readers and annotation apps. At $4.99 it is an app that every lawyer who deals with PDFs on a mobile device should have in my opinion. It is powerful so there is a learning curve, but it is relatively easy to use. For those who want to examine tools that many consider more powerful, look at PDF Expert and PDFpen. Jeff Richardson's *iPhoneJD.com* is the go-to website for reviews of these tools and other iOS apps that lawyers might want to use.

My personal preference for manipulating PDF files is to use an iPad rather than a smartphone because of the screen size.

DOCUMENTS ON A SMARTPHONE

Most people who just want to look at a document that was emailed to them find that their email program's built-in viewer works well enough. Documents To Go, at a cost of up to $14.99, has long been a powerful document editing tool on a mobile device, however Microsoft Office instantly became the tool of choice for most when it was finally released for mobile. You can download Microsoft Word, Excel and PowerPoint for free and you can use Microsoft OneDrive to sync these files with your PC. Microsoft Outlook is also available if you are an Office 365 subscriber.

OBTAINING A SIGNATURE

I have to confess that I haven't had the need to use a signature app on my phone, but many people tell me that they use them all the time. DocuSign Mobile is a popular electronic signature app and Adobe Fill & Sign, designed to work with PDF fillable forms, looks interesting. RightSignature provides the iOS app for

iPad or iPhone with any paid plan. SignMyPad has both iOS and Android versions.

GPS

Since the theme of this article is smartphone uses one might not know about, I have to include turn-by-turn GPS functionality. Google Maps is still superior to Apple Maps in my opinion, but some say it is a much closer contest today and, if you have an Apple Watch, you definitely will want Apple Maps for walking directions.

REMINDERS

Location-based reminders have been a part of the iPhone ecosystem since iOS 5 and they are an easy-to-use Siri tool. One just engages Siri and starts with the phrase "remind me to" followed by any reminder such as "pick up my dry cleaning when I leave work" or "set the DVR when I get home." Detailed instructions are available online[3] and one can even set up a list, such as a shopping list, and share with another via iCloud.[4]

It is somewhat spooky what your phone knows about you and what it can remind you to do. One morning I was leaving early to visit a law firm in another city. As I was leaving, I picked up my phone and Siri spoke to me, saying, "Traffic is unusually heavy this morning. You will want to leave in five minutes to arrive on time." This all occurred only because my assistant had placed the address of the law firm in my calendar entry in Outlook. So in the background, my phone had been paying attention to the fact I was still at home, my destination city and address, the appointment time, the estimated travel time and the local traffic conditions. I have still never bothered to research and determine exactly why that now happens and how I could disable it because I really like the feature.

SECURITY

If you ever have any client information on your smartphone (including email), then you should employ these basic security steps:

1) You must use a passcode to protect your phone from others being able to access your information, and that passcode needs to be longer than the four digits required by some older operating systems.

2) You should be extremely cautious and judicious about logging into any WiFi network that does not require a password. By definition they are not secure.

3) You should understand how the "find your lost phone" application works on your phone and test it so you are confident you know how to use it.

4) You should understand how the remote data wiping feature of your phone works so you can erase any data if the phone is lost and cannot be found.

5) You should backup the information on your phone. This is only technically required for client information if there is no duplicate copy of the information. But you want everything backed up so you can restore it if need be and you could find yourself in the position where critical client data existed only on your phone, *e.g.* pictures taken at the scene of an accident.

CONCLUSION

Information flows freely in the world today. If you want to do something with your phone but don't know how, it is likely a brief search on the internet will provide an answer. If there's something you really want to do with your phone, it is unlikely you are the first person who wanted to do that with your phone and your research may reveal as the saying goes, there's an app for that.

1. www.geekdashboard.com/5-best-android-applications-to-turn-your-voice-to-text
2. www.thecyberadvocate.com/2015/03/08/timekeeping-apps-for-lawyers
3. www.iphonejd.com/iphone_jd/2012/01/iphone-tip-location-based-reminders-and-exchange-servers.html and www.imore.com/how-set-reminders-and-update-task-and-do-lists-siri
4. www.macworld.com/article/1163482/share_reminders_with_icloud_add_them_with_siri.html

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

Ethical Considerations in Pro Bono Public Service Representations

By Gina L. Hendryx

By volunteering to provide legal services as a pro bono attorney, you are participating in a time-honored tradition of assisting those most needy with access to legal information and legal representation. Whether you give of your time and talent through short-term limited contact or lengthy advanced representation, there are ethical implications to consider. The following will review basic scope of representation and potential conflict snares to review with any representation.

1 Short-term limited legal services. Examples of short-term representation include hotlines, counseling clinics, assistance with forms and advice and counsel-only consultations. These types of services are short in duration and usually only involve one or two contacts with the person in need of legal advice. Oklahoma Rule of Professional Conduct 6.5 eases the application of the conflicts rules to these types of representations.

This rule permits such short-term, limited representations without the rigid requirements of formal conflict checks prior to the giving of advice. You may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. If you are undertaking such a limited-scope representation, you should consider the following: 1) confirm with the client that you are providing a limited-scope representation such as telephone consult only; 2) obtain enough information to deduce the problem and to identify the client and 3) obtain a limited-scope representation agreement if you meet with the client.

Rule 6.5 only absolves the attorney who unwittingly gives legal advice to a potential client wherein a conflict may exist. You may not provide legal services, even on a limited basis, to a potential client wherein you are aware of an existing conflict.

2 Continuing representation. You may be called upon to provide more than a short-term, limited representation. If so, you must begin any such review with a systematic check for conflicts. This includes checking for conflicts with any current clients (Rule 1.7), any former clients (Rule 1.9) and any conflict another member of your firm may have with the prospective representation (Rule 1.10). You may continue to limit the scope of the representation, but you continue to be charged with the identification of conflicts. In a continuing representation, it is recommended that an engagement letter be employed.

Considerations should include: 1) address the scope of representation and assistance to be provided; 2) agreement with regard to attorney's fees (whether may be sought from adverse party) and agreement with regard to expenses of representation; 3) confidentiality; 4) termination of the agreement and 5) any particular issues relevant to the facts of the matter being undertaken. You may use any form of contract that you currently draft for traditional clients. The fee portion should be modified to reflect the pro bono representation and to inform the client of any financial responsibility he has in the matter. The client should sign the agreement and be provided a copy of same.

The primary considerations to pro bono representation center around the need to avoid when possible conflicts with other clients and former clients. These rules are relaxed when the volunteer service is of the type that is hindered by access to conflicts information.

When possible, you should continue to review all representations for any potential conflicts. Remember pro bono clients are entitled to the same quality legal representation as your for-profit clients. You may limit the scope of the representation; however, be sure and reach an understanding of the scope and reduce the same to writing. The OBA's ethics counsel and Office of General Counsel are resources for you should you have any questions regarding the undertaking of these pro bono clients.

Ms. Hendryx is OBA general counsel.

Meeting Summaries

The Oklahoma Bar Association Board of Governors met at the Tulsa County Bar Center in Tulsa on Friday, Sept. 23.

REPORT OF THE PRESIDENT

President Isaacs reported he spoke at the swearing-in ceremonies for new attorneys and to the Grady County Bar Association.

REPORT OF THE PRESIDENT-ELECT

President-Elect Thomas reported she met with Administration Director Combs and Executive Director Williams regarding the 2017 proposed budget, made numerous committee appointments for 2017, submitted names and resumes for approval by the Board of Governors and submission to Governor Fallin for appointment to the Oklahoma Commission on Children and Youth and worked with Executive Director Williams, Kim Hays and Governor Will regarding the resolution going to the House of Delegates. She attended the Strategic Planning Committee Financial Planning Subcommittee meeting, Budget Committee meeting, 50-year member celebration in Payne County in honor of Stewart Arthurs and Charles Drake at which she presented each member his 50-year pin, Boiling Springs Institute in Woodward and Board of Governors social event at the home of Jim and Janet Gotwals.

REPORT OF THE PAST PRESIDENT

Past President Poarch reported he arranged the past presidents dinner that will be held during the Annual Meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the Financial Planning Subcommittee meeting, YLD meeting in Grove, Budget Committee meeting, monthly staff celebration, Payne County Bar Association dinner, swearing in of new attorneys and Boiling Springs Legal Institute.

BOARD MEMBER REPORTS

Governor Coyle reported he attended the Oklahoma County Bar Association meeting, Oklahoma County Criminal Lawyers meeting and the OCBA dinner dance. He was a presenter at a recent OBA CLE seminar. **Governor Gotwals** reported he attended the Tulsa County Bar Association Board of Directors orientation, Inns of Court annual banquet, OBA Awards Committee meeting, OBA Budget Committee meeting, OBA Family Law Section monthly CLE seminar and a Tulsa Central High School Foundation Board of Directors meeting. He also met with the Tulsa courthouse law librarian, a county commissioner and the courthouse administrator to discuss the location and size adjustment of the Tulsa Courthouse Law Library. **Governor Hennigh** reported he attended the Garfield County Bar Association September meeting and Boiling Springs Institute. **Governor Hicks** reported he participated in the Access to Justice teleconference, attended the McAfee & Taft open house and circulated a nomination petition for a full three-year term for the at-large Board of Governors position to which he was appointed to fill an unexpired term. **Governor Hutter** reported she attended the Cleveland County Bar Association executive planning meeting, Cleveland County Bar Association Bench and Bar meeting and several Judge Foss retirement party planning meetings. **Governor Kee** reported he attended the Grady County Bar Association meeting at which President Isaacs spoke. **Governor Kinslow** reported he attended the joint dinner of the Board of Governors and Oklahoma Bar Foundation. **Governor Marshall** reported he attended the Legal Intern Committee meeting and OBA Budget Committee meeting. **Governor Porter** reported she attended the Law-related Education Committee meeting via phone and the swearing in of new lawyers. **Governor Tucker** reported he attended the Law Day Committee meeting via telephone, Oklahoma Municipal League Annual Meeting in Oklahoma City and community town hall meeting to discuss the impact

of SQ780 and SQ781. **Governor Weedn** reported he attended the joint meeting with the Board of Governors and Oklahoma Bar Foundation and the Ottawa County Bar Association meeting. He accepted reappointment to the Strategic Planning Committee as the board liaison.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Will reported he chaired the YLD August meeting in Grove. After the meeting, board members carried out a community service project for the HELP Center and Abundant Blessings — reorganizing donated items in the warehouse, painting and helping with cleanup. The HELP Center is a food pantry that serves northern Delaware County, and Abundant Blessings offers physical and emotional assistance to women dealing with pregnancy-related issues in Grove. He attended the Budget Committee meeting and spoke at the swearing-in ceremony for new admitees who passed the July 2016 bar examination.

AWARDS COMMITTEE RECOMMENDATIONS

Awards Committee Chair Jennifer Castillo reviewed the committee's recommendations for OBA award recipients. She said the committee thought nominations for the Fern Holland Courageous Lawyer Award were not strong enough to merit its presentation this year. The board approved the Awards Committee recommendations for 2016 OBA Awards. President Isaacs will personally contact all the winners to notify them of their selection. Two governors asked for permission to have the honor of contacting two award recipients, and permission was granted.

BOARD LIAISON REPORTS

Governor Marshall reported the Legal Intern Committee has several issues pending that it is working on. Governor Hicks reported the Access to Justice Committee met and is working with TU law students on preparing forms for the public. President-Elect Thomas reported the Budget Committee met, made amendments, and the proposed budget will be published in the bar journal. Governor Tucker reported the Law Day Committee is working on topics for the 2017 *Ask A Lawyer* TV show. The Juror Appreciation Subcommittee has concluded its work in creating plaques, posters and certificates for every Oklahoma courthouse, and President Isaacs will begin presentations soon. Governor Coyle reported the Lawyers Helping Lawyers Assistance Program Committee is continuing its work. Governor Porter reported the Women in Law Committee is completing final conference details, has held social mixers and will hold a fall event with Oklahoma City nonprofit organization ReMerge, for which they are looking for sponsors. Governor Kinslow reported the Clients' Security Fund Committee will meet once more before preparing its report for the Board of Governors.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the Supreme Court approved the amendments to the Rules of Professional Conduct reviewed by the Board of Governors. She said a lawsuit was filed against the OBA, however, the Supreme Court denied the action, and the lawsuit was dismissed. A written report of Professional Responsibility Commission actions and OBA disciplinary matters for August was submitted to the board for its review.

LAW-RELATED EDUCATION

Executive Director Williams reported he talked to LRE Committee Chairperson Brady Henderson, who has no information to share with the board. Executive Director Williams said he will have lunch with Mr. Henderson soon. Governor Porter said she talked to David Hopper, who spoke at the last two board meetings, and believes he has a better understanding that the work of the committee will continue.

HOUSE OF DELEGATES RESOLUTION

Executive Director Williams said a resolution reaffirming the OBA's commitment to merit selection of judges and celebrating the 50th anniversary of judicial reform in Oklahoma will be on the board's November agenda. The resolution will be considered by the House of Delegates.

RESOLUTION

The board voted to issue resolutions of appreciation to the Tulsa County Bar Association and to Governor Gotwals and his wife, Janet, for their hospitality in hosting the Board of Governors for its meeting in Tulsa.

EXECUTIVE SESSION

The board voted to go into executive session to discuss the executive director's evaluation. They met in executive session and voted to come out of executive session.

❑

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, Oct. 21.

REPORT OF THE PRESIDENT

President Isaacs reported he attended the Southern Conference of Bar Presidents annual meeting in Missouri. He launched his Juror Appreciation Project and has started delivering plaques, posters and certificates to courthouses. He made presentations in Mayes, Delaware, Ottawa, Craig, Nowata and Osage counties.

REPORT OF THE PRESIDENT-ELECT

President-Elect Thomas reported she attended the Oklahoma Attorneys Mutual Insurance Co. quarterly meeting, OAMIC Underwriting Committee meeting, Southern Conference of Bar Presidents annual meeting, luncheon with Attorney General Scott Pruitt and the Washington County Bar Association monthly meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the retirement reception for Judge Miller in Canadian County, OETA 60th Anniversary Gala Planning Committee meetings and the event itself, monthly staff celebration, Bench and Bar Committee meeting, Southern Conference of Bar Presidents meeting and Legislative Monitoring Committee planning session. He presented a CLE in Comanche County and had lunch with LRE Committee Chair Brady Henderson to discuss needs of the committee.

BOARD MEMBER REPORTS

Governor Coyle reported he was a presenter at a day-long OBA CLE on the "Art of Storytelling at Trial." He attended the Oklahoma County Criminal Defense Lawyers meeting and Holloway Inn of Court meeting. **Governor Gotwals** reported he attended the Tulsa County Bar Association Litigation Section meeting, Quality Assurance Panel meeting at the Tulsa County Courthouse on an Inns of Court Pupilage Group presentation on speed mentoring, TCBF Golf Committee meeting, TCBA Young Lawyers Division social mixer, TCBA Family Law Section meeting and TCBA Board of Directors meeting. **Governor Hennigh** reported he attended the Garfield County Bar Association meeting and American Agricultural Law Association annual meeting. **Governor Hicks** reported he attended the Tulsa County Bar Association Membership Committee meeting and TCBF Golf Tournament meeting. **Governor Hutter** reported she attended the Tulsa bar and board reception at the home of Governor Gotwals, Cleveland County Bar Association executive meeting and the county bar's regular meeting featuring CLE speaker Micheal Salem. She met with an IT person to create a new CCBA website launching soon and is busy planning Judge Janet Foss' retirement courthouse ceremony and private-party reception. The ceremony will be held in Judge Balkman's courtroom with various speakers, certificates of appreciation and a presentation of Judge Foss' photo for the ceremonial courtroom wall. Immediately following the ceremony, there will be a reception at the Sooner Theater Studio. **Governor Kinslow** reported he arranged for Executive Director Williams to speak to the Comanche County Bar Association on new laws going into effect Nov. 1. **Governor Marshall** reported he attended the Pottawatomie County Bar Association meeting at which he updated bar members on current issues and encouraged attendance at the OBA Annual Meeting. **Governor Porter** reported she attended the retirement reception for Canadian County District Judge Gary Miller, Christian Legal Society of Oklahoma City's annual banquet, special meeting of the Oklahoma Board of Test for Alcohol and Drug Influence, OBA LRE Committee meeting via telephone and William J. Holloway Jr. Inn of Court joint meeting with the other three inns of courts of Oklahoma City. **Governor Tucker** reported he attended the Ninth Annual Excellence in Action against domestic violence awards presentation and presented information on upcoming state questions to a local church seniors group. **Governor Sain** reported he attended the McCurtain Memorial Foundation board meeting and McCurtain County Bar Association monthly meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Will, unable to attend the meeting, reported via email he networked with young lawyers across the state discussing their potential involvement in YLD, is awaiting the results of the pending YLD Board of Directors election for 2017 seats and is attending the ABA YLD Fall Conference in Detroit, which prevented him from attending the October board meeting.

REPORT OF THE SUPREME COURT LIAISON

Justice Kauger reported state and federal judges are working together and will hold their first joint conference at OCU. She said the last Movie Night with the Justices CLE Seminar featuring the movie *Bananas* was well attended, and the next movie night seminar will feature *Blossoms in the Dust*.

BOARD LIAISON REPORTS

Governor Porter reported the LRE Committee is organizing subcommittees and helped staff a booth at an education conference. It was noted committee chair Brady Henderson is doing a good job as the committee transitions from supervising staff to assuming more responsibility in executing projects. Governor Weedn reported early this morning he stopped by the Women in Law Conference taking place at the Embassy Suites Hotel and was told board members are invited to come attend the luncheon. Governor Porter noted for the first time the Diversity Committee will present its awards at the same event as the Lambird Spotlight Awards at the luncheon. Governor Gotwals reported the Professionalism Committee will hold a seminar and is working on writing articles for the *Oklahoma Bar Journal.*

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the Professional Responsibility Commission has two meetings remaining this year. A written report of PRC actions and OBA disciplinary matters for September was submitted to the board for its review. She noted the department has experienced a staff change with Manni Arzola moving to the Oklahoma Board of Bar Examiners and taking his place as an investigator will be former employee Tony Blasier.

GOVERNMENT AND ADMINISTRATIVE LAW PRACTICE SECTION BYLAWS AMENDMENT

Section Chair Michael Mannes requested the Board of Governors approve a change to the section bylaws to allow associate members and that associate members, except for law students, would pay dues. The board approved the amendment to the Government and Administrative Law Practice Section bylaws.

RESOLUTION NO. 1

Executive Director Williams reviewed the content of Resolution No. 1 reaffirming the merit selection of judges and celebrating the 50th anniversary of the historic amendment to the Oklahoma Constitution creating merit selection in the appointment of members of the judiciary, which will be considered by the OBA House of Delegates. The board voted to support the resolution submitted by the Bench and Bar Committee and cosponsored by the Family Law Section and Young Lawyers Division.

PROPOSAL TO RESCIND POLICY REGARDING STAFF AND BOARD OF GOVERNORS ATTENDANCE AT YLD MEETINGS AND EVENTS

President-Elect Thomas called the board's attention to the requirement in the current policy that "at least one officer or other member of the Board of Governors selected by the President should attend the YLD monthly board meetings as a liaison of the Board of Governors." The board decided it was helpful for the OBA executive director, who is very knowledgeable of all OBA policies, to attend YLD meetings and to guide YLD board members in decisions made. The board voted to rescind the second paragraph of the policy requiring a board member to attend meetings.

OKLAHOMA COMMISSION ON CHILDREN AND YOUTH NOMINEES

The board ratified the email vote approving the submission of Todd Pauley, Oklahoma City; Judge Lisa Hammond, Oklahoma City and Bradley E. Davenport, Oklahoma City as candidates for one appointment by the governor to the Oklahoma Commission on Children and Youth.

APPOINTMENTS

The board approved President-Elect Thomas' recommendations to reappoint Dwight Smith, Tulsa, to the Legal Aid Services of Oklahoma Board of Directors and to reappoint Diane Hammons, Tahlequah, to the Indian Legal Services Board of Directors. Both will be three-year terms expiring Dec. 31, 2019.

OBA 2017 PROPOSED BUDGET

President-Elect Thomas reported a budget hearing was scheduled Oct. 20 to allow bar members to voice their opinions on the proposed budget, and no one showed up. The board approved the proposed budget, which was published in the *Oklahoma Bar Journal.*

APPOINTMENTS

President-Elect Thomas reviewed the following appointments:

Audit Committee – Appoint John Weedn, Miami, as chair-

person, term expires Dec. 31, 2017; and appoint as members John W. Coyle III, Oklahoma City, term expires Dec. 31, 2018; and Kim Hays, Tulsa, term expires Dec, 31 2019.

Board of Medicolegal Investigations – Reappoint Glen Huff, Oklahoma City, to a one-year term expiring Dec. 31, 2017.

ANNUAL MEETING

The current number of bar members registered for the Annual Meeting was announced. Board members discussed possible ways to increase attendance.

NEXT MEETING

The Board of Governors met in conjunction with the OBA Annual Meeting on Nov. 2 at the Sheraton Hotel in downtown Oklahoma City. A summary of those actions will be published after the minutes are approved. The next board meeting will be at 10 a.m. Friday, Dec. 9, at the Oklahoma Bar Center in Oklahoma City.

2016 Scholarship Recipients Announced

By Candice Jones

The Oklahoma Bar Foundation is pleased to announce the 2016 recipients of the Chapman-Rogers Scholarship and the Fellows Scholarship.

CHAPMAN-ROGERS SCHOLARSHIP

The Chapman-Rogers Scholarship recognizes an outstanding law student from each of Oklahoma's law schools. It was established through donations to the Oklahoma Bar Foundation from Leta M. Chapman in honor of her Tulsa lawyer and advisor, John Rogers.

The 2016 Chapman-Rogers Scholarship recipients are:

Amy Basler
J.D. Candidate, Class of 2017
TU College Of Law

Amy Basler graduated from OSU in 2014 with a bachelor's degree in environmental sciences. She is the president of the Public Interest Board and is a notes and comments editor for the *Energy Law Journal*. She has received CALI Awards in both property law and decedents and estates and trusts. During her first summer of law school she interned with the Oklahoma Department of Agriculture, Food and Forestry and worked for Birmingham, Morley, Weatherford and Priore her second year of law school. She has also interned at the Department of Justice in the Environment and Natural Resource Division in Washington, D.C.

"This scholarship is such a blessing because it fully financed my bar prep course and will allow me to devote my full attention to studying and passing the bar this upcoming July," Ms. Basler said. "After graduation and the bar exam, I hope to practice environmental and natural resource law in the Tulsa area."

Zachary Williams-Kupec
J.D. Candidate, Class of 2019
OU College of Law

Zach Williams-Kupec is currently a first-year law student at the OU College of Law. He obtained his Bachelor of Music from OU in 2010 and a Master of Arts in music from the University of Missouri-Kansas City in 2014. Following graduation, he interned as a music therapist at Jim Thorpe Rehabilitation Hospital in Oklahoma City. From there, he started his own private music therapy practice, serving individuals with special needs in the Oklahoma City metro area, while simultaneously acting as life enrichment director for Legend Senior Living LLC. He continues to volunteer with the Music Moves Mountains Foundation, a charity focused on bringing music education and music therapy to children throughout Oklahoma and Texas.

Mr. Williams-Kupec has always wanted to attend law school, and after finishing his M.A., he realized there is a need for individuals with legal education both within the music therapy field and in general health-

care to advocate for patient care and access to services.

Sarah D. Willey
J.D. Candidate, Class of 2017
OCU School of Law

Sarah Willey is a third-year law student who serves as resource editor for the *Oklahoma City University Law Review.* She is a member of the William J. Holloway American Inn of Court for the 2016-2017 term and is a licensed legal intern. She has worked for the Oklahoma County Public Defender's Office, District Attorney's Office, as well as a small criminal defense and family law firm in Oklahoma City. Her comment

"Challenges to the 'Killing State:' Eighth Amendment Concerns in *Warner v. Gross*" was recently published in the 41st volume of the law review. After graduation and licensure, she intends to practice criminal law in Oklahoma. She graduated from OU with a Bachelor of Science in political science and history.

"This scholarship means more than monetary assistance to me," Ms. Willey said. "Though I am truly grateful for that assistance, it also means recognition to students who want to work and counsel Oklahomans after graduation. I intend to practice public law in the state of Oklahoma after graduating, and this recognition fortifies my determination to give back in any way I can. This scholarship is a burst of energy in the last leg of a long marathon. I'm grateful for it."

FELLOWS SCHOLARSHIP

The Fellows Scholarship was established in 2006 to recognize the Oklahoma Bar Foundation's 60 years of service to the legal profession and Oklahoma citizens. This scholarship is awarded to law students from each of Oklahoma's three law schools who have demonstrated high academic standards, the intent to practice law in Oklahoma and a commitment to public service.

The 2016 Oklahoma Bar Foundation Fellows Scholarship recipients are:

Tara L. Jordan
J.D. Candidate, Class of 2018
OU College of Law

Tara Jordan is a second-year student at the OU College of Law. In addition to pursuing her studies, she is the co-founder and director of Impact at Arrow Global Capital, an Oklahoma-based investing platform that currently supports entrepreneurs in Nicaragua, Mozambique and Rwanda.

She is a recipient of the Comfort Scholarship from the OU College of Law and is also a member of the Dean's Leadership Council as a mentor to the first-year class of 2019. She currently serves as secretary for the Hispanic American Law Student Association and is a member of the Organization for the Advancement of Women in the Law, Black Law Student Association, Lawyers Against Sex Trafficking and the Oklahoma International Law Society. She also volunteers with the Victim Advocacy and Protection Program at the Women's Resource Center in Norman.

Before returning to school, she researched, contributed to and edited a paper titled "Denial of Justice: The Latest Indigenous Land Disputes Before the European Court of Human Rights and the Need for Expansive Interpretation of Protocol I," with forthcoming publication in the *Yale Human Rights and Development Journal* at Yale Law School.

She is fluent in Spanish and earned her bachelor's degree in international studies from OU in 2010, graduating with a 4.0 GPA and highest honors. After law school, she looks forward to using her J.D. as she continues her career in the international business arena, serving neighbors and local clients, and doing her best to represent the Oklahoma standard at home and abroad.

"Receiving a scholarship from the Oklahoma Bar Foundation is incredibly humbling," Ms. Jordan said. "I so appreciate not only the opportunity to receive financial support, which has been very helpful, but also the opportunity to engage with the Oklahoma bar while still a student. I look forward to meeting more members of the bar work-

ing in the international business and development fields, as well as immigration law, and I'm grateful to be in a position to learn from them as I grow into the profession."

Kristin E. Richards
J.D. Candidate, Class of 2017
OCU School of Law

Kristin Richards is a third-year law student at OCU School of Law, where she is a member of the *Oklahoma City University Law Review* and received the law review's 2015-2016 Award for Outstanding Case Comment. She also currently serves as the president of the Student Bar Association and is an academic fellow for civil procedure I and II. During her fourth semester of law school, she served as a judicial extern for Justice Noma Gurich of the Oklahoma Supreme Court. The Oklahoma native also holds a bachelor's degree in language arts and English education from OU.

"Education is the most powerful weapon which you can use to change the world," Ms. Richards said.

Chase Snodgrass
J.D. Candidate, Class of 2017
TU College of Law School

Alexander "Chase" Snodgrass is an Oklahoma native, born and raised in Oklahoma City. He attended OSU, where he graduated with a bachelor's in business administration. He discovered his passion for energy while interning at Chesapeake Energy Corp. as a government relations intern. Since starting his legal education at the TU College of Law, he has had the opportunity to intern for Justice Winchester of the Oklahoma Supreme Court, extern for Judge Cleary, intern for the Grand River Dam Authority, clerk at Riggs, Abney, Neil, Turpen, Orbison, and he recently finished working on energy policy for Congressman Markwayne Mullin's office in Washington, D.C. He currently serves as editor-in-chief of the *Energy Law Journal* and has previously served as an executive editor for the ABA Section on Environment, Energy and Resources Law The Year in Review publication. He was also recently appointed by Gov. Mary Fallin to serve on the Board of Chiropractic Examiners. He is looking forward to the road ahead and all that it has in store for him.

"I am appreciative of the Oklahoma Bar Foundation for providing these valuable scholarships," Mr. Snodgrass said. "I know it will make a profound difference in my legal education."

ABOUT THE AUTHOR

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

OBA YLD Members and Committee Recognized at Annual Meeting

By Bryon J. Will

First of all, I want to give a "shout-out" to all of the young lawyers who attended the OBA Annual Meeting! It was great seeing everyone there.

I also want to thank all young lawyers and veteran lawyers who attended the YLD Friends and Fellows Networking Reception! It was an honor that U.S. Marines attended both the YLD meeting and reception. They spoke on the importance of JAG officers and their recruitment criteria for new JAG Marines. Thank you, gentlemen, for your service to our country and *semper fi*.

Congratulations are in order for OBA young lawyers!

YLD ELECTION RESULTS

At the November meeting, held in conjunction with the OBA Annual Meeting, the results of the YLD election were announced. They were as follows:

Chair:	Lane Neal
Chair-Elect:	Nathan D. Richter
Treasurer:	Brandi N. Nowakowski
Secretary:	Jordan L. Haygood
District 1:	Aaron Pembleton
District 3:	Melanie Christians
District 5:	Brittany J. Byers
District 7:	John Tyler Hammons
District 9:	Grant Kincannon
At-Large:	April Moaning
At-Large:	Sarah Stewart
At-Large Rural:	Matthew T. Sheets

YLD AWARDS PRESENTED AT ANNUAL MEETING

At the Friends and Fellows Networking Reception several awards were presented to friend of the YLD, a fellow attorney of the YLD, those who have displayed continued support for the YLD, to outstanding young lawyers and to those who displayed excellence within the YLD throughout the year. The awards presented were as follows:

Friend to the YLD

The Friend to the YLD award is presented annually to a nonlawyer who has shown tremendous support to the YLD.

Nickie Day

Fellow to the YLD

The Fellow to the YLD award is a lawyer who has practiced more than 10 years and has been instrumental to YLD success.

Molly Aspan

Officer of the Year

Brandi Nowakowski

Director of the Year

Jordan Haygood

Outstanding Committee Chair

LeAnne McGill, Nomination Committee
Robert Bailey, New Attorney Orientation Committee

Most Miles Traveled

Aaron Pemberton

Distinguished Service

Blake Lynch

Rising Leader in the YLD

Clayton Baker

AWARDS PRESENTED TO THE YLD COMMITTEE AND A YLD BOARD MEMBER AT GENERAL ASSEMBLY

Golden Gavel Award

This year the recipient of the Golden Gavel Award is the YLD Kick It Forward Committee. Two years ago a young lawyer reached out to the YLD for assistance. The lawyer was having trouble paying essential bills like the electric bill. Annual bar dues were an even bigger hurdle. When the issue was brought before the YLD Board at a monthly meeting LeAnne McGill and I agreed to personally split and pay for that particular lawyer's dues.

In 2015 Ms. McGill introduced the Kick It Forward Committee to the YLD. As a part of the committee she and the YLD organized a kickball tournament in effort to kick off the new program and to raise the initial funds for the program. The kickball tournament raised over $13,000 and KIF received an additional $1,700 in donations by fellow OBA members who contributed with their annual bar dues.

Since then more than 16 attorneys have been assisted with their bar dues and are able to maintain practice in good standing. As a part of receipt of assistance from KIF the recipient must commit to giving back to the KIF program.

Outstanding Young Lawyer Award

LeAnne McGill, recipient of the Outstanding Young Lawyer Award, is a partner with the Edmond firm McGill and Rodgers, where her practice focuses on all areas of family law. Ms. McGill has been active in the OBA YLD since 2006, currently serving as immediate past chair of the division. During her time in the YLD, she has served as chair of the division, chair of the New Attorney Orientation Committee, Publications and Website Committee, Membership Committee and the Kick It Forward Program. She has also participated in Wills for Heroes, Serving Our Seniors and the annual Day of Service community service projects. She was the recipient of the YLD Outstanding Director award in 2011, the YLD Outstanding Committee Chair in 2013 and the YLD Officer of the Year in 2012, 2013 and 2014.

She has also served on the Oklahoma County YLD Board of Directors since 2006. As a director for the OCBA YLD she has held numerous positions, including serving as the chair for the Harvest Food Drive Committee and the Chili Cookoff Committee. These two committees work together to donate more than $20,000 to the Regional Food Bank each fall.

Aside from her participation in the YLD she has served on several OBA committees, including the Mentoring Task Force, Law Day Committee, Solo & Small Firm Committee, Budget Committee and the Women in Law Committee. She is a graduate of the inaugural 2008-2009 OBA Leadership Academy, the 2007 OBA Leadership Conference, is an Oklahoma Bar Foundation Fellow and served as the first chair of the OBA Law Student Division. She received her B.A. in English and political science from OSU in 2003 and her J.D. from the OCU School of Law in 2006.

MOVING FORWARD

Lately I have been receiving calls and emails from new lawyers from across the state inquiring on how to get involved in the YLD. It's been great that so many are reaching out. Always feel free to contact me by phone or email. Also, it's not too late to reach out to the 2017 Chair, Lane Neal, to sign up for a committee position for 2017.

Till next month.

ABOUT THE AUTHOR

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

November

24-25 **OBA Closed** - Thanksgiving

December

1 **OBA Lawyers Helping Lawyers Discussion Group;** Office of Tom Cummings, 701 NW 13th St., Oklahoma City, OK 73012; Contact Jeanne M. Snider 405-366-5466 or Hugh E. Hood 918-747-4357

2 **OBA Alternative Dispute Resolution Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact John H. Graves 405-684-6735

6 **OBA Government and Administrative Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Michael Mannes 405-473-0352

9 **OBA Board of Governors meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000

OBA Access to Justice Committee meeting; 11 a.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Michael Speck 405-205-5840

OBA Law-related Education Committee meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Professor Paul Clark 405-208-6303 or Brady Henderson 405-524-8511

OBA Family Law Section meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Luke Barteaux 918-585-1107

12 **OBA Appellate Practice Section meeting;** 11:30 a.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Mark Koss 405-720-6868

13 **OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Judge David B. Lewis 405-556-9611 or David Swank 405-325-5254

15 **OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with video-conference; Contact Tiece Dempsey 405-609-5406

16 **OBA Professional Responsibility Commission meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Gina Hendryx 405-416-7007

20 **OBA Women in Law Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ann E. Keele 918-592-1144 or Reign Grace Sikes 405-419-2657

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

26-27 **OBA Closed** - Christmas (observed)

January

2 **OBA Closed** - New Year's Day (observed)

3 **OBA Government and Administrative Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Michael Mannes 405-473-0352

5 **OBA Lawyers Helping Lawyers Discussion Group;** Office of Tom Cummings, 701 NW 13th St., Oklahoma City, OK 73012; Contact Jeanne M. Snider 405-366-5466 or Hugh E. Hood 918-747-4357

6 **OBA Alternative Dispute Resolution Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact John H. Graves 405-684-6735

11 **OBA Women in Law Committee meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Deb Reheard 918-689-9281 or Cathy Christensen 405-752-5565

12 **OBA High School Mock Trial Committee meeting;** 5:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Judy Spencer 405-755-1066

13 **OBA Law-related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Amber Godfrey 405-525-6671 or Brady Henderson 405-524-8511

OBA Family Law Section meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City with video-conference; Contact Luke Barteaux 918-585-1107

16 **OBA Closed** - Martin Luther King Day

18 **OBA Indian Law Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with tele-conference; Contact Deborah Reed 918-728-2699

20 **OBA Board of Governors Swearing-In Ceremony;** 10 a.m.; Supreme Court Ceremonial Courtroom, Oklahoma Capitol; Contact John Morris Williams 405-416-7000

OBA Board of Governors meeting; 11:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000

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

31 **OBA Legal Intern Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact H. Terrell Monks 405-733-8686

February

2 **OBA Lawyers Helping Lawyers Discussion Group;** Office of Tom Cummings, 701 NW 13th St., Oklahoma City, OK 73012; Contact Jeanne M. Snider 405-366-5466 or Hugh E. Hood 918-747-4357

3 **OBA Alternative Dispute Resolution Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact John H. Graves 405-684-6735

7 **OBA Government and Administrative Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Michael Mannes 405-473-0352

8 **OBA Women in Law Committee meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Deb Reheard 918-689-9281 or Cathy Christensen 405-752-5565

9 **OBA Master Lawyer Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Ronald Main 918-742-1990

OBA High School Mock Trial Committee meeting; 5:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Judy Spencer 405-755-1066

10 **OBA Law-related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Amber Godfrey 405-525-6671 or Brady Henderson 405-524-8511

OBA Family Law Section meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City with video-conference; Contact Luke Barteaux 918-585-1107

15 **OBA Indian Law Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with tele-conference; Contact Deborah Reed 918-728-2699

17 **OBA Board of Governors meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000

Important Upcoming Dates

Don't forget the Oklahoma Bar Center will be closed Thursday and Friday, Nov. 24-25, in observance of Thanksgiving and Monday and Tuesday, Dec. 26-27, in observance of Christmas. The bar center will also be closed Monday, Jan. 2 in observance of New Year's.

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:

Michael Burleson Bush
OBA No. 21123
2724 N.W. 158th Street
Edmond, OK 73013

OBA Member Resignations

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

Donna L. Caswell
OBA No. 20553
65 Harbour Point Circle
Fort Worth, TX 76179

Randy A. Parsons
OBA No. 12812
3400 Riverwalk Drive
Norman, OK 73072-4841

Susan M. Ryan
OBA No. 30823
1700 Lincoln St., Ste. 3500
Denver, CO 80203

Member Dues Statements Available Online

In an effort to save money and cut down on the cost of printing and postage, the OBA Membership Department sent an email on Monday, Nov. 7, to all OBA members containing a link to their member portal and urging them to go online to pay their dues. As a follow up, a paper statement will be mailed toward the end of November to those members who have not paid. Please help the OBA in this effort by paying your dues today!

Members can pay their dues three different ways. They can pay by credit card online at ams.okbar.org/eweb or by calling 405-416-7080 or they can mail a check to the OBA Membership Department, P.O. Box 960101, Oklahoma City, OK 73196. Dues are due Monday, Jan. 2, 2017.

LHL Discussion Group Hosts December Meeting

"How to Set Priorities as a Young Attorney" will be the topic of the Lawyers Helping Lawyers monthly discussion group on Dec. 1. Each meeting, always the first Thursday of the month, is facilitated by committee members and a licensed mental health professional. The group meets from 6 to 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th St. Oklahoma City. There is no cost to attend and snacks will be provided. RSVPs to Lori King, loriking@cabainc.com, are encouraged to ensure there is food for all.

Kudos

Dianne Barker Harrold was honored with a Cherokee Nation Statesmanship Award on Sept. 1 at the 64th Annual Cherokee Nation National Holiday. Ms. Harrold is an attorney for the Tribal Council of the Cherokee Nation.

Gov. Fallin appointed **EdnaMae Holden** to the Oklahoma Humanities Council Board, **Jordan Russell** to the Oklahoma Worker's Compensation Commission, **Charles Sullivan** as the district attorney for Pittsburg and Haskell counties and **Irma J. Newburn** as the district judge for Comanche County. Ms. Holden is an of counsel attorney with Gungoll, Jackson, Box and Devoll in the firm's Enid office. Mr. Russell is policy director and counsel to Oklahoma House Speaker Jeff Hickman. Mr. Sullivan will replace Farley Ward who retired Sept. 30 and Ms. Newburn is replacing Keith B. Aycock who retired July 1.

Michael F. Smith of McAfee & Taft has been appointed editor of the *Defense Counsel Journal*, the scholarly legal publication of the International Association of Defense Counsel.

Charles H. Moody Jr. of Rodolf and Todd has been elected a fellow of the American College of Trial Lawyers. He was officially inducted in September at the annual meeting in Philadelphia.

On The Move

Benjamin M. McCaslin has joined Pignato, Cooper, Kolker and Roberson PC. Mr. Williams is a 2016 graduate of the OCU School of Law. He will practice in the area of general insurance defense.

Jon Pitcher has joined Smith Simmons as a senior associate. Mr. Pitcher will join the firm's business law section and will advise clients in Oklahoma and Texas on corporate structures and transactional matters.

Jack S. Dawson was sworn in as associate municipal judge for the city of Piedmont on Oct. 11. Mr. Dawson is also the senior partner at Miller Dollarhide law firm in Oklahoma City.

Cindy Allen and Associates PLLC has now become Allen & Mills PLLC, as **Julia Mills Mettry** has been named partner at the firm. The firm continues to be located at 222 E. Main St., Norman, and can be reached at 405-701-8856; info@normanokattorney.com. **Joshua D. Simpson** has also joined the firm.

Cathleen W. McMahon, Whitney M. Rodich and **Wynoka M. McClellan** have joined the firm Atkinson, Haskins, Nellis, Brittingham, Gladd and Fiasco. All three associates practice in the area of civil litigation.

Tracey Persons and **Mira Radieva** have joined Boeheim Freeman Law. Ms. Persons will head the firm's family law division. Ms. Radieva joins the firm as an associate.

Hilary A. Hudson and **Kendra M. Norman** have joined Phillips Murrah. Ms. Hudson represents individuals and both privately-held and public companies in civil litigation matters. Ms. Norman has joined the transactional practice group as an associate attorney.

John N. Hove, currently a partner in the Dallas-Fort Worth office of Scopelitis, Garvin, Light, Hanson & Feary, will establish the firm's newest office in Tulsa.

Jared R. Ford joined the transactional practice firm Fellers Snider. Prior to joining the firm Mr. Ford practiced at two leading oil and gas firms in the Southwest.

Christa Sullivan and **Elaine DeGiusti** have joined Meyer, Leonard and Edinger PLLC. The firm also recently moved its offices to 100 Park Avenue, Suite 500, in Oklahoma City.

Katherine E. McDonald, Lauren Oldham, Justin Lollman and **Samuel P. Clancy** have joined GableGotwals. Ms. McDonald and Ms. Oldham will primarily practice

state and federal litigation. Mr. Lollman's practice will focus on state and federal litigation and appellate law. Mr. Clancy's primary focus will be transactional and health care law.

Sharisse O'Carroll has retired from the law firm of O'Carroll & O'Carroll. The firm will continue under the direction of **Richard O'Carroll** with its focus on employment law, criminal litigation and civil rights.

N. Roxane Gebhart has joined Rosenstein, Fist and Ringold as an associate attorney. Ms. Gebhart received her J.D. from the TU College of Law in May 2016.

C. Brent Dishman of Dishman Military Advocates PLLC was recently selected for promotion to lieutenant colonel, U.S. Air Force Reserve.

Cassia C. Carr, Ruth "Ruthie" E. Stevens, Carson K. Glass and **Lindsay N. Kistler** joined Hall Estill as associates to the firm's Oklahoma City and Tulsa offices. Ms. Carr and Ms. Glass will serve as part of the Tulsa office's litigation practice. Ms. Stevens will primarily practice in the firm's corporate/commercial law practice area. Ms. Kistler will be working on Hall Estill's Oklahoma City litigation team.

Jennifer L. Wright has joined Wallis Law Group of Edmond as an associate attorney. Ms. Wright focuses her practice in estate planning and administration, probate and business formation and development.

At The Podium

Kim D. Parrish, administrative law judge, served as an instructor for newly appointed ALJs in Falls Church, Virginia, from Sept. 5-8.

Eric L. Johnson moderated a panel at the Consumer Finance Law's Annual Consumer Financial Services Conference in Chicago. Mr. Johnson also spoke at DealerSocket's 2016 Users Summit in San Antonio.

Tom Vincent presented to several Tulsa-area groups regarding "Practical Cybersecurity: The First Line of Defense." Groups include the Association for Legal Support Professionals (NALS of Oklahoma) and the Tulsa Area Paralegals Association (TAPA).

Sidney Swinson spoke at the Tulsa County Bar Association Energy & Mineral Law Section meeting regarding oil and gas bankruptcy.

Dean Luthey presented to the International Masters of Gaming Law about "Internet Gaming in Indian Country" and "The Impact of Fantasy Sports Betting on State Tribal Gaming Compacts." He also recently spoke at the Sovereignty Symposium sponsored by the Oklahoma Supreme Court on "Internet Gaming in Indian Country."

Blake Krattiger addressed the Oklahoma City Real Property Lawyers in October. He discussed anticipatory repudiation in Oklahoma.

Ellen Adams presented to MBI and Oklahoma City Real Property Lawyers on general litigation matters. She also spoke at a community seminar on FLSA overtime regulations and changes and made a presentation to the TU staff regarding gender laws and policies.

Phillip Schovanec addressed the Oklahoma City Real Property Lawyers. He spoke about "Oil and Gas Operations in Municipal Areas" and "Surface Conflicts and Issues."

Sheppard Miers Jr. will present his annual tax update for the OBA Legal Updates CLE.

Paula Williams spoke to the Luther Bohanan Inn of Court regarding upcoming changes to FLSA regulations. Ms. Williams also spoke to ReMerge regarding basics of employment law, including discrimination, harassment, retaliation and wage/hour issues.

Amy Stipe participated in a panel on "Class Actions 101: Nuts and Bolts of Class Actions for Young Attorneys" hosted by the American Bar Association.

Brandon Bickle gave a presentation on "Bankruptcy and Legal Issues" to the Oklahoma Bankers Association Consumer Lending School in October.

Chris Thrutchley presented to numerous employment groups regarding the "New Decisions and Pronouncements Affecting All Employers in Big Ways."

Stacy Brklacich presented to the TU staff about appropriate documentation regarding student behavior. In addition, she presented at a St. John Health System symposium regarding the legal perspective of "limits of intervention" when planning and caring for the elderly and terminally ill.

Amy Fogleman gave the federal Indian law Supreme Court update as a part of the Cherokee Nation Bar Association (CNBA) Annual Luncheon and CLE presentation in August.

Ellen Adams, Chris Thrutchley and **Tom Vincent** presented in both Tulsa and Oklahoma City at public employment law seminars covering diversity, termination and cybersecurity.

How to place an announcement: The *Oklahoma Bar Journal* welcomes short articles or news items about OBA members and upcoming meetings. If you are an OBA member and you've moved, become a partner, hired an associate, taken on a partner, received a promotion or an award, or given a talk or speech with statewide or national stature, we'd like to hear from you. Sections, committees, and county bar associations are encouraged to submit short stories about upcoming or recent activities. Honors bestowed by other publications (*e.g., Super Lawyers, Best Lawyers*, etc.) will not be accepted as announcements. (Oklahoma-based publications are the exception.) Information selected for publication is printed at no cost, subject to editing, and printed as space permits.

Submit news items via email to:
Lacey Bynum
Communications Dept.
Oklahoma Bar Association
405-416-7017
barbriefs@okbar.org

Articles for the Jan. 16 Issue must be received by Dec. 12.

IN MEMORIAM

Jerry Earl Benson of Watonga died Oct. 5. Mr. Benson was born in Watonga on Oct.13, 1946. He graduated from Watonga High School in 1964. **After graduation he served seven years in the U.S. Navy during which he achieved the rank of second class petty officer radioman. As a Vietnam War veteran, he was awarded a Good Conduct Medal, a National Defense Medal and a Moratorium Unit Citation Medal**. After leaving the Navy in 1971, he attended OU and Southwestern State College, earning a B.S. in business administration. In 1974, he began his studies at the OCU School of Law and received his J.D. in 1977. In 1976, he worked as a legal intern for the OCU Legal Aid Society and in 1978, he was a legal intern for Oklahoma Attorney General Larry Derryberry. After receiving his license to practice law he was appointed as an assistant attorney general where he served until 1979. He then joined Tom Morgan's law office where he remained until 1989. From 1979 until 1989, he served as the Watonga municipal judge. From 1989 to 1991, he attended Midwestern Baptist Theological Seminary in Kansas City, Missouri. He returned to private practice in Watonga until his death.

Harold Charney of Owasso died Sept. 23 in Tulsa. Mr. Charney graduated from Henryetta High School in 1948, earning state championship honors in both debate and extemporaneous speaking. **After enlisting in the Army and completing active-duty service,** he attended the OU College of Law. Upon graduating in 1956, he established a law practice in Owasso. In addition to an active law practice that spanned nearly 50 years, he served as the inaugural president of the Tulsa County Vo-Tech School Board. Early in his legal career, he worked for Tulsa County Legal Aid, serving indigent clients from all backgrounds. He served on the Owasso City Council and later served as the Owasso city attorney. Mr. Charney, a lover of the performing arts, also served as the president of the Oklahoma Professional Theatre Foundation. An avid reader and writer of poetry, he spoke annually for many years at the Tulsa Library's "Harold Charney Poetry Festival for Children."

Scott C. Emerson of Oakland, Michigan, died Aug. 30 in Oklahoma City. Mr. Emerson was born April 12, 1953, in Detroit. He graduated from Clawson High School in 1971 and from Oakland (Michigan) University in 1974. In 1977 he received his J.D. from the OCU School of Law. His career providing legal services to the Oklahoma Legislature began in 1977

as a staff attorney for the Legislative Council and in 1980, he joined the House of Representatives legal staff. In 1984 he was named chief counsel of the House Legal Division, a position he held until his retirement on Jan. 1, 2007. He spent the 2007 through 2012 legislative sessions as a consultant for the Oklahoma state Senate. Memorials in his honor may be made to the American Cancer Society.

Gary W. Davis died Sept. 27. Mr. Davis was born Aug. 29, 1931. He grew up in Iola, Kansas, and graduated from Kansas University in 1953. **During law school at KU, his education was interrupted by a two-year tour of duty with the U.S. Air Force attaining the rank of first lieutenant.** After his service, he returned to KU to complete law school in 1957. Following law school, he accepted a position in Phillips Petroleum Co.'s legal department and then a position as vice-president of the petrochemical division. He then became CEO of Commonwealth Oil and Refining Co. in San Antonio. In 1978, he returned to practicing law by joining Martin, Pringle, Fair, Davis and Oliver in Wichita. In 1982 he joined Crowe & Dunlevy in Oklahoma City as head of its oil and gas practice.

David R. Garrison of Ponca City died Sept. 10. Mr. Garrison was born May 16, 1937, in Cushing. He served as an assistant city attorney and active practicing lawyer. He was admitted to the OBA in 1967 after receiving a J.D. from the OU College of Law. He was a lifetime member of the OU College of Law Association, the Kay County Bar Association and a lifetime member of Pampa Mason Lodge #966. He earned his undergraduate degree from OSU in 1965, with Delta Theta Phi honors and was a member of the Sigma Alpha Epsilon fraternity.

Larry Eugene Goins died July 2 in Oklahoma City. He was born Sept. 19, 1959, in Oklahoma City. Lt. Colonel Goins graduated from Northeastern State University in 1989 with degrees in psychology and criminal justice. He graduated from the OU College of Law in 1992 and opened his law practice in Oklahoma City soon after. **He was an accomplished officer for the U.S. Army, officer for his church, attorney and volunteer. He served his country in tours in Kuwait in 2002 and in Afghanistan in 2005**. He was a generous, witty, humorous individual who loved everyone and who was passionate about God and caring for others. He was an active and dedicated member of Bible Baptist Church in Lawton and often volunteered there.

William P. Huckin Jr. of Tulsa died Sept. 29 in Dallas. Mr. Huckin was born on Aug. 20, 1920, in Okmulgee. Following his graduation from Muskogee Central High School, he attended OU. **On Dec. 8, 1941, he joined the U.S. Army where he served as a B-17 pilot. He flew 53 combat missions over Italy, Romania and Germany. He was awarded the Air Medal, Oak Leaf Clusters and Bronze Stars for the European Offensive. He attained the rank of captain and remained in the U.S. Air Force Reserve until 1958** After the war he returned to the OU College of Law and received his J.D. He was a member of Beta Theta Pi fraternity and served as its president. He was employed by Standard Oil and Gas Co. in Tulsa and later as assistant district attorney for the city of Tulsa. His private practice of law spanned over 60 years. He was recognized by the Tulsa County Bar Association for Distinguished Service in 1986.

Elton L. Johnson Jr. died Oct. 4. Mr. Johnson was born Nov. 1, 1940, in Chicago. He graduated from Norman High School in 1958. He earned a B.S. in engineering in 1963 from OU and his J.D. in 1966 from the OU College of Law. Following law school, he joined the practice of Jack Durrett in Tahlequah. He practiced law for 40 years, retiring in 2006. In the 1970s he served as a part-time referee for C.P. "June" Bliss, judge of the Oklahoma Court of Criminal Appeals. In 1988 he was appointed by the Oklahoma Supreme Court as associate with the Oklahoma Board of Bar Examiners and served until his retirement. He was a charter member of the Tahlequah-Cherokee County Rotary Club, a founding member of the Tahlequah Public Schools Foundation, and he helped organize the Indian Nations Soccer Club, serving as its treasurer.

R. Thomas Lay of Oklahoma City died Sept. 21. Mr. Lay was born Nov. 4, 1948, in Nowata. He graduated from Putnam City High School in 1966, OSU in 1970 and the OCU School of Law in 1973. From 1973-1976 he was an assistant municipal counselor for Oklahoma City. He also

served as an assistant attorney general for the state of Oklahoma, general counsel to the Oklahoma Water Resources Board, an adjunct professor teaching environmental law at OSU-OKC and an attorney for Kerr, Irvine, Rhodes & Ables. He was a member of the Phi Delta Phi fraternity and received the Governor's Water Pioneer Award in 2011.

John Card McMurry of Oklahoma City died on Oct. 4. He was born in Sentinel on June 18, 1944. Mr. McMurry graduated from Harding High School in 1962, Washington and Lee University in 1966 and the OU College of Law in 1971 where he served on the *Oklahoma Law Review*. **He served as an intelligence officer in the U.S. Army during the Vietnam War.** He has practiced law in the Oklahoma City area for over 40 years. He was a member of First Christian Church in Oklahoma City and more recently Crown Heights Christian Church and led the Lamplighter's Sunday school class for over 30 years.

Eugene F. Mowery died Oct. 2 in Muskogee. Judge Mowery was born Feb. 17, 1938, in Okmulgee. He graduated from Muskogee High School, Northeastern State University, TU and the OCU School of Law. Upon graduating from OCU he moved to Stilwell where he opened a law practice and served as a municipal judge. He was elected associate district judge in 1990 where he served for 16 years. He was instrumental in forming the McIntosh County Youth & Family Education Center Inc. and was chairman of the board from inception in 1998 to 2005. From 1968 to 1991 he was a solo practitioner in all aspects of civil law. He retired in 2006. He loved spending time with his family and grandchildren and reading. He was a member of the First Free Will Baptist Church of Checotah.

George D. Sherrill Jr. died Oct. 4. He was born July 17, 1942, in Stillwater. Mr. Sherrill graduated from Newkirk High School in 1959. He obtained a B.S. in electrical engineering and an MBA from OSU. **He was commissioned as second lieutenant in the U.S. Army, and served as an Air Defense Artillery Battery Commander in the Republic of Korea from September 1966 to August 1967.** He attended the OU College of Law and received his J.D. in 1970. He was on the *Oklahoma Law Review* and was a member of Phi Delta Phi legal fraternity. He joined the law firm of DeBois & Peck in 1970. In addition to his law practice he served as Duncan's municipal judge for 44 years, retiring in January 2015. He was a member of the Duncan Rotary Club and became a Paul Harris Fellow.

Fred Slicker died Oct. 3 in Tulsa. Mr. Slicker was born Aug. 21, 1943, in Tulsa. He was a distinguished business lawyer, earning many professional awards, primarily in the areas of ethics and professionalism. He was also an author, who published seven books focused on his spiritual journey. He was a long time member of the First United Methodist Church, and he served the church in many capacities throughout his life.

Five Paths to a Purposeful Practice

Professor Paul Dolan says when it comes to finding happiness, we tend to look in all the wrong places. Here are five ways to increase your happiness and well-being for a more purposeful life.

goo.gl/YbEBwV

Avoid Late Nights at the Office

Are you tired of being at the office until 11 p.m. every night? Jay Harrington explains how staying late at the office is a vicious cycle and gives tips on how to break this cycle.

goo.gl/ExAtBn

What to Ask in Your Client Interviews

In-person client interviews can cement relationships and open opportunities. Check out these sample client survey questions to guide you in your client interviews.

goo.gl/K6b6hZ

Critical Thinking in Just Five Steps

The World Economic Forum anticipates that critical thinking will be the second most important skill in 2020, right behind complex problem solving. Building critical thinking skills is a process, but you can kickstart that process by using these five simple principles.

goo.gl/43etM6

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Life Fellow — ACFEI	FBI National Academy

Arthur D. Linville 405-736-1925

MEDICAL MALPRACTICE CASE REVIEW: Board certified pediatrician and member of the Oklahoma Bar Association. Available to review any issues involving neonates, children and adolescents. William P. Simmons, M.D., J.D. 850-877-1162 wsimmons@northfloridapeds.com.

WANT TO PURCHASE MINERALS AND OTHER OIL/GAS INTERESTS. Send details to: P.O. Box 13557, Denver, CO 80201.

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OFFICE SPACE IN JENKS: Case sharing, referrals, mentoring with experienced attorney. Fully furnished office, conference room, reception area, kitchen, free parking, notary services, fax, WiFi, building security. Easy access from Hwy 75 and Creek Turnpike. $650/month. Contact 918-299-4454.

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SEEK OFFICE SPACE in OKC for satellite bankruptcy practice. Meet clients one or two days per week. Minimal space and minimal service required. Send address and rent amount to admin@Okla-Bankruptcy.com.

POSITIONS AVAILABLE

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

COLLINS, ZORN & WAGNER, P.C., an AV-rated Oklahoma City firm, is seeking an attorney with 5-15 years of civil litigation experience. Emphasis on insurance defense, civil rights and employment law. The ideal candidate will be a self-starter with a strong work ethic, solid litigation experience and excellent communication and organizational skills. The compensation package is commensurate with level of experience and qualifications. Benefits include health insurance, life insurance and 401(k) with match. Please provide your resume, a recent writing sample and salary requirements to Collins, Zorn & Wagner, P.C., 429 NE 50th, 2nd Floor, Oklahoma City, OK 73105 or czw@czwlaw.com

PART-TIME PARALEGAL/OFFICE HELP for 2-attorney estate planning/probate office in NW OKC. SIxteen-20 hours per week. Paralegal skills required; admin/bookkeeping helpful. Compensation depends on experience. Please send resume to Law Office, P.O. Box 20561, Oklahoma City, OK 73156-0561.

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(WITH 3 TO 5 YEARS EXPERIENCE)

needed for general civil practice, by AV-rated Tulsa insurance and transportation defense firm. Very busy, fast-paced office offering competitive salary commensurate with experience, health/life insurance, 401k, etc. Candidates with strong academic background and practical litigation experience, please send a résumé and writing sample (10 pg. max) to "Box PP," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

DOWNTOWN TULSA AV-RATED LAW FIRM SEEKS AN EXPERIENCED EMPLOYMENT DEFENSE ATTORNEY with 5-12 years of experience. Applicants must be proficient at legal research, writing, analysis and practical litigation strategies. Applicants must be able to work in a fast-paced team environment. Salary commensurate with experience and the firm provides excellent benefits. Applications will be kept confidential. Please send resume to "Box L", Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

THE OKLAHOMA ATTORNEY GENERAL'S OFFICE IS SEEKING AN ATTORNEY to serve in the Multi-County Grand Jury Unit as an assistant attorney general. The Multi-County Grand Jury Unit investigates and prosecutes a variety of cases including public corruption, complex white-collar crimes, homicides and narcotics violations. The unit also administers all aspects of the Multi-County Grand Jury. The successful candidate will have outstanding legal judgment and be able to effectively and professionally research, prepare, analyze and understand complex information and legal issues. Applicants must be a licensed attorney in the state of Oklahoma with a minimum of 5 years in the practice of criminal law. Strong writing and oral advocacy skills are a must. Extensive in-state travel, including some overnight travel, will be required. Send resumes to resumes@oag.ok.gov on or before Dec. 1, 2016. EOE

DOWNTOWN OKLAHOMA CITY LAW FIRM HAS AN IMMEDIATE OPENING FOR AN EXPERIENCED LEGAL SECRETARY. We are looking for a candidate with at least 2 years' experience, good time management, typing and computer skills. Must be able to multitask in a busy work environment. Salary commensurate with experience. Benefits include health insurance and retirement savings contributions and paid covered parking. Please send your resume to olssonhome@gmail.com.

POSITIONS AVAILABLE

Ardmore Staff Attorney

Legal Aid Services of Oklahoma (LASO) is a nonprofit law firm dedicated to the civil legal needs of low-income persons. Funded in part by the federal Legal Services Corporation, LASO serves all of Oklahoma's 77 counties and has 21 offices statewide. LASO is hiring a staff attorney for its Ardmore office. This position presents an opportunity to provide general, high-quality representation of low-income persons.

Being home to many pioneers in the dawn of the American oil industry, Ardmore has been blessed with riches far beyond most cities of its size, as well as the colorful past that often accompanies such "instant" wealth. The wealth has been channeled into many philanthropic endeavors, as well as reinvested into the area in various art and infrastructure endowments.

Applicants should be licensed Oklahoma attorneys, or out-of-state attorneys or law graduates eligible to sit for the Oklahoma bar exam in February 2017.

Salary is competitive and offers a generous fringe benefit package, including health, dental, pension and loan repayment assistance.

Please submit your resume and a cover letter to Bud Cowsert, by email at bud.cowsert@laok.org. Your cover letter should provide insight into your interest into poverty law and highlight your relevant experience. The position is open until filled, and interviews will be conducted on a rolling basis. Additionally, to be considered you must submit an application at this link: legalaidokemployment.wufoo.com/forms/z7x4z5/.

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 oil and gas matters. This is an unclassified position with a salary of $65,000 annually. Applicants must be admitted to the Oklahoma bar and have 4 years of litigation and oil and gas experience. Send resume and writing sample to: Oklahoma Corporation Commission, Human Resources Division, P.O. Box 52000, Oklahoma City, Oklahoma, 73152-2000, or by email to HR3@occemail.com. Deadline: Nov. 29, 2016.

DOWNTOWN OKLAHOMA CITY FIRM SEEKS AN ASSOCIATE WITH MINIMUM 3 TO 5 YEARS EXPERIENCE in general personal injury practice. Individual must be able to draft pleadings, prepare discovery responses and handle scheduling. Trial and deposition experience preferred. Please send your resume with salary requirements to jeri.howard@taylorlucas.com.

POSITIONS AVAILABLE

MOORE-SHRIER LAW FIRM, P.C. SEEKS ATTORNEY WITH MINIMUM OF 3 YEARS' EXPERIENCE in civil litigation. Ideal candidate must have strong research and analytical skills, work well in a collaborative environment and possess high standards for client service. Compensation is based on experience and qualifications. Provide resume and writing sample to Moore-Shrier Law Firm, P.C., 624 S. Boston, Ste. 800, Tulsa, OK 74119 or michael@mstulsalaw.com.

JOHNSON & JONES, PC, TULSA, SEEKS AN EXPERIENCED LITIGATION LEGAL ASSISTANT. Candidate should have 3 years of experience in a litigation practice. Responsibilities include preparing letters/pleadings, scheduling, docketing and phone relief for receptionist. Plus factor: familiarity with PCLaw accounting/document management software, Adobe Pro, MS Word and ECF federal filings. Please send resumes to LAF@johnson-jones.com.

Guymon Staff Attorney

Legal Aid Services of Oklahoma (LASO) is a nonprofit law firm dedicated to the civil legal needs of low-income persons. Funded in part by the federal Legal Services Corporation, LASO serves all of Oklahoma's 77 counties and has 21 offices statewide. LASO is hiring a staff attorney for its Guymon office.

This position presents an opportunity to fill the dire need for high-quality representation of low-income persons in rural areas. The Guymon office, located on the Great Plains, serves the elderly and impoverished of the Oklahoma panhandle, including a sizeable immigrant worker population drawn by the meatpacking industry. Over 20 languages and dialects are represented in the English Language Learner program in the public school system.

Guymon is centrally located for road trips to the American West — Denver is a six-hour drive and Santa Fe is a five-hour drive. Historic Route 66 features prominently in the region, with Oklahoma City located four hours away and Amarillo, Texas, located two hours away.

Applicants should be licensed Oklahoma attorneys, or out-of-state attorneys or law graduates eligible to sit for the Oklahoma bar exam in February 2017.

Salary is competitive for the civil legal aid sector (for this location the base salary is enhanced to $50K for a new attorney). LASO offers a generous fringe benefit package, including health, dental, pension and loan repayment assistance.

Please submit your resume and a cover letter to Bud Cowsert, by email at bud.cowsert@laok.org. Your cover letter should provide insight into your interest into poverty law and highlight your relevant experience. The position is open until filled, and interviews will be conducted on a rolling basis. Additionally, to be considered you must submit an application at this link: legalaidokemployment.wufoo.com/forms/z7x4z5/.

POSITIONS AVAILABLE

IN-HOUSE COUNSEL POSITION - Helmerich & Payne Inc., a Tulsa-based domestic and international contract drilling company seeks full-time attorney with 10-12 years' experience in energy, corporate compliance, commercial transactions, contracts and/or general business practice. A J.D. degree from an accredited law school and membership in good standing in the Oklahoma bar is required. Ability to speak Spanish is a plus, but not required. Submit confidential resumé and application with salary requirements at www.hpinc.com/careers.

Woodward Victims Attorney

Do you want to ensure that survivors of domestic violence obtain justice and an end to violence in their lives for themselves and their children? Are you fervent about equal justice? Legal Aid Services of Oklahoma (LASO) is a nonprofit law firm dedicated to the civil legal needs of low-income persons. If you are passionate about advocating for the rights of domestic violence survivors, LASO is the place for you, offering opportunities to make a difference and to be part of a dedicated team. The successful candidate should have experience in the practice of family law, with meaningful experience in all aspects of representing survivors of domestic violence.

Woodward is a city in and the county seat of Woodward County, Oklahoma. The area was historically occupied by the Kiowa, Comanche, Cheyenne and Arapaho tribes. European-American settlers established the town in 1887 after construction of the railroad to that point for shipping cattle to markets. Boiling Springs State Park, named for its artesian springs that seem to boil, has been established east of the city.

Applicants should be licensed Oklahoma attorneys, or out-of-state attorneys or law graduates eligible to sit for the Oklahoma bar exam in February 2017.

Salary is competitive for the civil legal sector. LASO offers a generous fringe benefit package, including health, dental, pension and loan repayment assistance.

Please submit your resume and a cover letter to Bud Cowsert, by email at bud.cowsert@laok.org. Your cover letter should provide insight into your interest into poverty law and highlight your relevant experience. The position is open until filled, and interviews will be conducted on a rolling basis. Additionally, to be considered you must submit an application at this link: legalaidokemployment.wufoo.com/forms/z7x4z5/.

ESTABLISHED TULSA GENERAL PRACTICE SEEKS ASSOCIATE with 3-5 years' experience. Ideal candidate will be hard working, organized and able to work independently. Competitive pay with potential to assume large portion of caseload and clients. Please submit resume and writing sample to rgiles@gileslawtulsa.com.

POSITIONS AVAILABLE

AN OPENING IS AVAILABLE FOR THE STAFF LEVEL POSITION OF ASSISTANT CITY ATTORNEY in the city government of Ponca City, Oklahoma. The general responsibilities of this position include providing legal advice and representation to the mayor and city commission and various related entities and staff. A significant function will involve the prosecution of violations of the city ordinances in municipal court. All applicants must have graduated from an accredited law school. Admission to practice law in the state of Oklahoma, or the ability to become so certified in the near future is required and admission to the Western District Court serving Oklahoma is desirable. The wage will depend on the qualifications and experience of the selected applicant and the wage range is in the mid $50's to the mid $60's. The position includes a benefit package that includes medical and dental insurance, life insurance, paid vacation, holidays and sick leave and a 401A retirement plan. Qualified applications may submit a resume or application to City of Ponca City, Human Resources, P.O. Box 1450, Ponca City, Oklahoma 74602 or submit an application at the city's website www.poncacityok.gov. The City of Ponca City is an Equal Opportunity Employer.

Chickasha Staff Attorney

Do you want to ensure that survivors of domestic violence obtain justice and an end to violence in their lives for themselves and their children? Are you fervent about equal justice? Legal Aid Services of Oklahoma (LASO) is a nonprofit law firm dedicated to the civil legal needs of low-income persons. If you are passionate about advocating for the rights of domestic violence survivors, LASO is the place for you, offering opportunities to make a difference and to be part of a dedicated team. The successful candidate should have experience in the practice of family law, with meaningful experience in all aspects of representing survivors of domestic violence.

Chickasha was founded by Hobart Johnstone Whitley, a land developer, banker, farmer and Rock Island Railroad executive. The founding took place in 1892 when the Chicago, Rock Island and Pacific Railway (Rock Island) built a track through Indian Territory.

Applicants should be licensed Oklahoma attorneys, or out-of-state attorneys or law graduates eligible to sit for the Oklahoma bar exam in February 2017.

Salary is competitive and offers a generous fringe benefit package, including health, dental, pension and loan repayment assistance.

Please submit your resume and a cover letter to Bud Cowsert, by email at bud.cowsert@laok.org. Your cover letter should provide insight into your interest into poverty law and highlight your relevant experience. The position is open until filled, and interviews will be conducted on a rolling basis. Additionally, to be considered you must submit an application at this link: legalaidokemployment.wufoo.com/forms/z7x4z5/.

POSITIONS AVAILABLE

Enid Staff Attorney

Do you want to ensure that survivors of domestic violence obtain justice and an end to violence in their lives for themselves and their children? Are you fervent about equal justice? Legal Aid Services of Oklahoma (LASO) is a nonprofit law firm dedicated to the civil legal needs of low-income persons. If you are passionate about advocating for the rights of domestic violence survivors, LASO is the place for you, offering opportunities to make a difference and to be part of a dedicated team. The successful candidate should have experience in the practice of family law, with meaningful experience in all aspects of representing survivors of domestic violence.

This position presents an opportunity to fill the dire need for high-quality representation of low-income persons in the Enid area. Located in Northwestern Oklahoma, Enid sits at the eastern edge of the Great Plains. The community house Vance Airforce Base. Enid is a "hub city" for the NW region of the state and it is an equal distance to Stillwater and Oklahoma City.

Applicants should be licensed Oklahoma attorneys, or out-of-state attorneys or law graduates eligible to sit for the Oklahoma bar exam in February 2017.

Salary is competitive and offers a generous fringe benefit package, including health, dental, pension and loan repayment assistance.

Please submit your resume and a cover letter to Bud Cowsert, by email at bud.cowsert@laok.org. Your cover letter should provide insight into your interest into poverty law and highlight your relevant experience. The position is open until filled, and interviews will be conducted on a rolling basis. Additionally, to be considered you must submit an application at this link: legalaidokemployment.wufoo.com/forms/z7x4z5/.

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

ESTABLISHED OKC INJURY FIRM SEEKS ASSOCIATE ATTORNEY. Ideal candidate will possess 3 – 5+ years of experience in personal injury and/or insurance defense. We are looking for someone who is hard-working, highly organized and able to work independently. Offering competitive pay with excellent income potential. Please submit resume and writing sample to "Box BB," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

Make a Difference

Do you want a fulfilling career where you can really make a difference in the lives of people? Are you fervent about equal justice? Does a program with a purpose motivate you? Legal Aid Services of Oklahoma, Inc. (LASO) is searching for an attorney for its Tahlequah law office.

We are a statewide, civil law firm providing legal services to the impoverished and senior population of Oklahoma. With more than 20 offices and a staff of 155+, we are committed to the mission of equal justice.

The successful individuals will have a passion for justice and empathy for improvised individuals, computer literate and willingness to learn and contribute to a positive work environment. In return, the employee receives a great benefit package including paid health, dental, life insurance plan, a pension and generous leave benefits. Additionally, LASO offers a great work environment and educational/career opportunities.

To start making a difference you MUST complete our application and submit it to Legal Aid Services of Oklahoma.

The online application can be found:
legalaidokemployment.wufoo.com/forms/z7x4z5/
Print application
www.legalaidok.org/documents/388541Employment_Application_Revised_10.2008.pdf

Legal Aid is an Equal Opportunity/Affirmative Action Employer.

SEEKING ASSISTANT DISTRICT ATTORNEY FOR PAYNE COUNTY DISTRICT ATTORNEY'S OFFICE located in Stillwater. Minimum 2 years major crimes jury trial or significant misdemeanor prosecution experience required. Must have strong work ethic and ability to professionally work with partner agencies, law enforcement and the bar. Send resume and contact information to scott.staley@dac.state.ok.us.

POSITIONS AVAILABLE

EDMOND FIRM SEEKS ATTORNEY WITH MINIMUM OF FIVE YEARS OF EXPERIENCE in aircraft title and finance matters. Some portable business preferred but not necessary. Excellent salary, retirement and health benefits and potential for profit sharing for qualified candidate. Please send resumes to "Box G," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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Why I Quit Practicing Law and Why I'll Never Give Up My License

By Sarah M. Hall

Nothing had equipped me for law school. Despite having graduated with honors from college, I was totally unprepared for the sheer volume of work and intense stress levels law school threw at me. By the end of first semester, I felt that my mind would not hold one single additional piece of information. I had no idea how I would make it through another five semesters — I only knew I had to. Not because I absolutely had to be a lawyer, but because there was no way I could ever justify having put that much effort into something only to throw it away.

Thirty years later, I still feel the same. Nonetheless, a few years ago, I decided to close my practice and reclaim my artistic side, which was all but lost when I gave up music for law school.

The decision to stop practicing law wasn't easy. My law practice, small though it was, represented a series of hard-won victories — and I don't mean the kind fought in a courtroom. My career started out slowly, derailed by a devastating car wreck that almost killed me two weeks after the bar exam. Jobs for recent graduates were scarce; jobs for a recent graduate in a wheelchair who couldn't work 40 hours a week, much less 70, even scarcer. I had to find my own clients, one at a time.

Personal injury was a natural choice; I knew the plaintiff's side all too intimately. I helped injured people, and I felt good about it.

As I healed, my practice grew. But over the years, civil law seemed to grow less civil. I became disillusioned.

Then I began to write. Late at night, there were no anxious clients or obnoxious insurance adjusters. The only sound was the quiet tapping of keys as ideas flew from my fingers, sprouted wings and soared over the page. It felt almost like falling in love — the breathless anticipation of not knowing where the words would go, only that, once written, they took on a life of their own. After a while, I had to admit it was what I needed to do for a living.

People don't always understand what I do, so I describe it this way: I'm a freelance writer and blogger for publications, corporations and professionals — anyone who needs writing help with online content, especially lawyers. For fun, I also write songs and occasionally gig for tips, singing and playing piano. It's good to hear the muse again.

Though there were many things about practicing law that I enjoyed, closing my law practice allowed me to find a part of myself that I had lost. And as long as I pay my bar dues every year, I can still call myself a lawyer. Being a lawyer is who I am, whether I practice law or not. I worked too hard earning that title to ever give it up.

Ms. Hall is an OBA member who is a freelance writer and blogger based in Eugene, Oregon.

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Johnny Albert, Malcolm Savage, John Cannon, Kimberly Miller, David McKenzie, Garvin Isaacs, Elliott Crawford, Tanya Jones and Tommy Adler

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