

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name:** State full name (include any former names used).

Robert Edwin Bacharach

2. **Position:** State the position for which you have been nominated.

United States Circuit Judge for the Tenth Circuit

3. **Address:** List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Federal Courthouse
200 Northwest Fourth Street, Room 1305
Oklahoma City, Oklahoma 73102

Residence: Edmond, Oklahoma

4. **Birthplace:** State year and place of birth.

1959; Clarksdale, Mississippi

5. **Education:** List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1982 – 1985, Washington University School of Law; J.D., 1985

1978 – 1981, University of Oklahoma; B.A. (with high honors), 1981

1977 – 1978, Washington University; no degree received

6. **Employment Record:** List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

1999 – present

United States District Court for the Western District of Oklahoma
Federal Courthouse

200 Northwest Fourth Street, Room 1305

Oklahoma City, Oklahoma 73102

United States Magistrate Judge

1987 – 1999

Crowe & Dunlevy, P.C.

20 North Broadway, Suite 1800

Oklahoma City, Oklahoma 73102

Associate (1987 – 1994)

Shareholder (1994 – 1999)

1997 – 1999

University of Oklahoma School of Law

300 West Timberdell Road

Norman, Oklahoma 73071

Adjunct Professor

1985 – 1987

United States Court of Appeals for the Tenth Circuit

Federal Courthouse

200 Northwest Fourth Street, Room 2301

Oklahoma City, Oklahoma 73102

Law Clerk to the Honorable William J. Holloway, Jr.

Summer 1984

McAfee & Taft

Two Leadership Square, Tenth Floor

211 North Robinson

Oklahoma City, Oklahoma 73102

Summer Associate

Summer 1983

Fagin, Hewett, Mathews & Fagin

Bank of Oklahoma Tower, 26th Floor

Oklahoma City, Oklahoma 73102

Summer Associate

Spring and Summer 1982

Stanley Kaplan Test Preparation

5117 North Shartel Avenue

Oklahoma City, Oklahoma 73118

L.S.A.T. Course Instructor and Clerk

Other Affiliations (uncompensated):

2011 – present
LHL Foundation
Oklahoma Bar Association
119 North Robinson, Suite 240
Oklahoma City, Oklahoma 73102
Board of Directors

2004 – present
Federal Bar Association
1220 North Fillmore Street, Suite 444
Arlington, Virginia 22201
Vice-President for the Tenth Circuit (national) (2007 – present)
President, Oklahoma City Chapter (2005 – 2006)
Vice-President, Oklahoma City Chapter (2005)
Board of Directors, Oklahoma City Chapter (2004 – 2005; 2006 – 2009)

2004 – 2007
Oklahoma County Bar Association
119 North Robinson, Suite 240
Oklahoma City, Oklahoma 73102
Board of Directors

1998 – 2001
Big Brothers Big Sisters of Greater Oklahoma City
4101 Perimeter Center Drive, Suite 235
Oklahoma City, Oklahoma 73112
Director, Executive Committee Member

1998 – 2001
Temple B'nai Israel
4901 North Pennsylvania
Oklahoma City, Oklahoma 73112
Board of Trustees

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military. I did not register for selective service because men born in 1959, as I was, were not required to register.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Professional Honors

Leadership in Law Award, The Journal Record (2007)
Earl W. Kintner Award for Distinguished Service, Federal Bar Association (2006)
Special President's Award, Federal Bar Association (2006)

Law School Honors:

Order of the Coif
Executive Editorial Board & Developments Editor, *Washington University Law Quarterly*
Mary Collier Hitchcock Prize (best writing for the law review)
Honor Scholar Awards (two) (achievement in the top 10% in the first and second years in law school)
Breckenridge Scholarship (second highest grade point average in third year of law school)
American Jurisprudence Awards (two) (Civil Procedure, Professional Responsibility)
Order of the Barristers
Golden Gavel Award, Wiley Rutledge Moot Court Competition (1984)

Undergraduate Honors:

Tom Lottinville Award (outstanding essay in the History Department of the University of Oklahoma)
Graduated with High Honors
Honors Club

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

Federal Bar Association

Vice-President for the Tenth Circuit (national) (2007 – present)
Chairperson, Chapter Activity Grant Committee (national) (2010 – present)
President, Oklahoma City Chapter (2005 – 2006)
Vice-President, Oklahoma City Chapter (2005)
Board of Directors, Oklahoma City Chapter (2004 – 2005; 2006 – 2009)

Federal Magistrate Judges Association

Oklahoma Bar Association

Lawyers Helping Lawyers ("LHL") Assistance Program Committee (2011)
LHL Foundation, Board of Directors (2011)

Oklahoma County Bar Association

Board of Directors (2004 – 2007)

The Ruth Bader Ginsburg American Inn of Court

Supreme Court Historical Society

United States District Court for the Western District of Oklahoma

Chairperson, A.D.R. Advisory Group (2005 – 2010)

Chairperson, Criminal Justice Act Committee (2002 – 2005)

Chairperson, Local Civil Rules Committee (2006 – 2009)

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Oklahoma, 1985

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

Supreme Court of the United States, 1989

United States Court of Appeals for the Tenth Circuit, 1986

United States District Court for the Southern District of Texas, 1996

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Big Brothers Big Sisters of Greater Oklahoma City (1998 – 2001)
Director, Member of the Executive Committee (1998 – 2001)

The Greens Country Club (2005 – present)

Temple B'nai Israel (1969 – present)
Board of Trustees (1998 – 2001)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

To the best of my knowledge, none of the organizations listed in response to Question 11a currently discriminates or formerly discriminated on the basis of race, sex, religion, or national origin.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Robert Bacharach, *Spotlight on San Nguyen, Court Clerk's Office, Western District of Oklahoma*, The Federal Bar Association Oklahoma City Chapter (Jan. 20, 2012). Copy supplied.

Robert Bacharach, *Spotlight on Carrie McKee—Human Resources Administrator, Western District of Oklahoma*, The Federal Bar Association Oklahoma City Chapter (Dec. 1, 2011). Copy supplied.

Robert Bacharach & Lyn Entzeroth, *Judicial Advocacy in Pro Se Litigation: A Return to Neutrality*, 42 Ind. L. Rev. 19 (2009). Copy supplied.

Federal Bar Association Is On the Move, Briefcase (published by Oklahoma County Bar Association) (Dec. 2008). Copy supplied.

FBA Chapter Provides Needed Legal Assistance, 78 Okla. Bar J. 731 (2007). Copy supplied.

A Message from the Chapter President, Federal Bar Association, Oklahoma City Chapter (2006). Copy supplied.

Motions in Limine in Oklahoma State and Federal Courts, 24 Okla. City U. L. Rev. 113 (1999). Copy supplied.

Section 1983 and an Administrative Exhaustion Requirement, 40 Okla. L. Rev. 407 (1987). Copy supplied.

Section 1983 and the Availability of a Federal Forum: A Reappraisal of the Police Brutality Cases, 16 Memphis St. U. L. Rev. 353 (1986). Copy supplied.

Post-Trial Juror Interviews by the Press: The Fifth Circuit's Approach, 62 Wash. U. L.Q. 783 (1985). Copy supplied.

Dirks v. SEC's Footnote Fourteen: Horizontal and Vertical Reach, 62 Wash. U. L.Q. 477 (1984). Copy supplied.

In addition to the above, I drafted a section on appeals in civil and habeas cases in the Tenth Circuit Court of Appeals for a treatise on Oklahoma Appellate Practice. Clyde Muchmore & Harvey Ellis, *Oklahoma Appellate Practice* (1999). My work was acknowledged by the authors in prefatory remarks, stating that I had provided "almost all of the initial drafting of the lengthy chapter on Tenth Circuit appellate procedure." I do not know the extent to which this section was edited or redrafted by the authors. Copy of the section supplied, annotated to indicate those portions of the section that I am certain I did not draft.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

As the chairperson of the Western District of Oklahoma's Local Civil Rules Committee, I drafted annual reports in 2006, 2007, 2008, and 2009. The recommendations reflect approval by a majority of the committee members. Inclusion in the annual report does not necessarily indicate my approval of individual recommendations. Copies of the four annual reports and the amended reports are supplied.

In 2008 and 2009, the Federal Bar Association – Oklahoma City Chapter requested that the national organization clarify several provisions in the Bail Reform Act and Prison Litigation Reform Act. On behalf of the chapter, I drafted the two letters. Copies supplied.

In 2008, I signed the Sedona Conference Cooperation Proclamation. Copy supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

To the best of my recollection, I have not given testimony, made official statements, or engaged in communications relating, in whole or in part, to matters of public policy or legal interpretation to public bodies or public officials.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have not kept a comprehensive list of the presentations I have made. The following list is compiled from my calendars and other sources and is my best effort to recreate my history of speaking engagements. It is possible I have omitted presentations for which I did not retain records.

October 20, 2011: Presentation of Book to Judge Holloway, Federal Bar Association – Oklahoma City Chapter, Sixth Annual William J. Holloway, Jr. Lecture. The book presented to Judge Holloway consisted of tributes by over 40 of his former and current law clerks. Remarks supplied.

October 4, 2011: Presentation at District Court Workshop, Western District of Oklahoma, regarding the Federal Bar Association – Oklahoma City Chapter. In this presentation, I discussed the upcoming “Holloway Lecture” by Jonathan Turley and the status of the Federal Bar Association – Oklahoma City Chapter. I have no notes, transcript, or recording. The sponsor was the Western District of Oklahoma, 200 Northwest Fourth Street, Oklahoma City, Oklahoma.

July 28, 2011: Remarks regarding magistrate judges, Federal Bar Association – Oklahoma City Chapter, Summer Associates Courthouse Tour. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

May 3, 2011: Introduction and Closing Remarks, Federal Bar Association – Oklahoma City Chapter, Program by Mickey Edwards. I have no notes,

transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

December 10, 2010: Federal Bar Association – Hawaii Chapter, “Ethical Issues in Judicial Settlement Conferences,” (presented jointly with Magistrate Judge Michelle Burns). The sponsor was the Federal Bar Association – Hawaii Chapter. Written materials supplied.

October 27, 2010: Presentation for Judge Barbara Swinton’s Class at Oklahoma City University Law School. The presentation covered suggestions for interviewing and tips for legal practice. Remarks supplied.

October 19, 2010: Presentation at District Court Workshop, Western District of Oklahoma, regarding the Federal Bar Association – Oklahoma City Chapter. Remarks supplied.

August 27, 2010: Participation in Naturalization Ceremony, Western District of Oklahoma. Remarks supplied.

August 19, 2010: Remarks regarding magistrate judges and question-and-answer session, Third Thursday Lunch with Judge Bacharach. The sponsor was the Federal Bar Association – Oklahoma City Chapter. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

June 29, 2010: Remarks regarding magistrate judges, Federal Bar Association – Oklahoma City Chapter, Summer Associates Courthouse Tour. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

April 13, 2010: Presentation for Speaker Series, Federal Bar Association – Student Chapter, Oklahoma City University School of Law. The presentation covered suggestions for interviewing and tips for legal practice. I used the same materials as supplied for the Oct. 27, 2010 event.

December 14, 2009: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter, Fourth Annual William J. Holloway, Jr. Lecture. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

November 5, 2009: Speaker at Federal Bar Association – Oklahoma City Chapter, Attorney Admissions Swearing-In Ceremony regarding judicial settlement conferences. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

July 16, 2009: Remarks regarding magistrate judges and question-and-answer session, Federal Bar Association – Oklahoma City Chapter, Third Thursday Lunch with Judge Bacharach. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

May 21, 2009: Speaker at Attorney Admissions Swearing-In Ceremony regarding the Federal Bar Association – Oklahoma City Chapter. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

April 24, 2009: Presentation at Federal Bar Association, Leadership Training Program, “Issues, Concerns and Opportunities.” Presentation slides supplied.

March 12, 2009: Presentation for Judge Barbara Swinton’s Class at Oklahoma City University School of Law. This presentation generally involved the function of magistrate judges. I have no notes, transcript, or recording. The School of Law is located at 2501 North Blackwelder, Oklahoma City, Oklahoma 73106.

February 25, 2009: Presentation on Local Civil Rules Report for Crowe & Dunlevy Litigation Section Meeting. I have no notes, transcript, or recording. The sponsor was Crowe & Dunlevy, 20 North Broadway, Suite 1800, Oklahoma City, Oklahoma 73102.

December 30, 2008: Presentation at Federal Bar Association – Oklahoma City Chapter Program, entitled “Habeas Corpus and Other Prisoner Litigation.” This presentation was part of the general program entitled “The Tenth Circuit’s 2008 Decisions.” My presentation addressed *Crawley v. Dinwiddie*, 533 F.3d 1226 (10th Cir. 2008), and *Kilgore v. Attorney General of Colorado*, 519 F.3d 1084 (10th Cir. 2008). I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

November 13, 2008: Remarks at Federal Bar Association – Oklahoma City Chapter, Third Annual William J. Holloway, Jr. Lecture. At this event, I made a tribute to Judge Holloway and presented him with a presidential letter of congratulations. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

November 6, 2008: Speaker at Federal Bar Association – Oklahoma City Chapter, Attorney Admissions Swearing-In Ceremony regarding judicial settlement conferences. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

October 23, 2008: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, “Mock Oral Argument on the Constitutionality of the Death Penalty.” My remarks involved an introduction of the participants and presentation of thank-you gifts at the conclusion. I have no notes, transcript, or

recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

October 21, 2008: Presentation at District Court Workshop, Western District of Oklahoma, regarding Local Civil Rules Update. I have no notes, transcript, or recording. The sponsor was the Western District of Oklahoma, 200 Northwest Fourth Street, Oklahoma City, Oklahoma 73102.

June 13, 2008: Presentation for Central Oklahoma Association of Legal Assistants. The remarks involved the importance of teamwork between attorneys and paralegals in litigation. Remarks supplied.

April 25, 2008: Presentation at Federal Bar Association, Leadership Training Program, “Bench Bar Relationships.” Presentation slides supplied.

April 25, 2008: Presentation at Federal Bar Association, Leadership Training Program, “Best Practices and Best Programs.” I have no notes, transcript, or recording. Federal Bar Association, 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

April 4, 2008: Introductory Remarks at Federal Bar Association – Northern/Eastern Oklahoma Chapter Seminar, “The Constitution: Does It Matter Any More?” My remarks involved an introduction of the speaker and presentation of a thank-you gift at the conclusion. I have no notes, transcript, or recording. The Federal Bar Association – Northern/Eastern Oklahoma Chapter has no physical address.

March 19, 2008: Remarks at Federal Bar Association – Northern/Eastern Oklahoma Chapter Seminar, “Famous Oklahoma Cases by the Attorneys in *National Collegiate Athletic Association v. Board of Regents of the University of Oklahoma, et al.*, 468 U.S. 85 (1984); *Karen Silkwood v. Kerr-McGee Corp.*, 485 F. Supp. 566 (W.D. Okla. 1979); and *United States v. Governor David Hall*, 424 F. Supp. 508 (W.D. Okla. 1975).” My remarks included an introduction of the speakers and expression of gratitude at the conclusion of the program. Remarks supplied.

January 15, 2008: Presentation at Oklahoma City Commercial Law Attorneys Association Program, “Ethical Issues in Settlement Negotiations.” The presentation involved an interactive dialogue with the attendees about ethical issues in judicial settlement conferences. Written materials supplied.

December 18, 2007: Presentation at Oklahoma County Bar Association Program, “Ethical Issues in Settlement Negotiations.” This presentation involved an interactive dialogue with the attendees about ethical issues in judicial settlement conferences. I have no notes, transcript, or recording. The sponsor was the

Oklahoma County Bar Association, 119 North Robinson, Suite 240, Oklahoma City, Oklahoma 73102.

November 9, 2007: Remarks regarding magistrate judges, Federal Bar Association – Student Chapter of Oklahoma City University School of Law, “Lunch with the Judges.” I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

October 25, 2007: Presentation at District Court Workshop, Western District of Oklahoma, “Update on New Federal Rules.” I have no notes, transcript, or recording. The sponsor was the Western District of Oklahoma, 200 Northwest Fourth Street, Oklahoma City, Oklahoma 73102.

October 24, 2007: Co-moderator of “Open World Program” discussion between Russian Judges and Criminal Jurors. Judge Stephen Friot and I led a discussion between visiting Russian judges and a number of individuals who had recently served as jurors in criminal cases. I have no notes, transcript, or recording. The sponsor was the Open World Leadership Center, 101 Independence Avenue SE, John Adams Building, Room 144, Washington, D.C. 20540.

July 26, 2007: Remarks regarding magistrate judges, Federal Bar Association – Oklahoma City Chapter, Summer Interns Courthouse Tour. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

June 28, 2007: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, “Visual Aids in the Courthouse: A Hands-On Primer” by Rhonda Reynolds, Chief Deputy, Court Clerk for the Western District of Oklahoma and Legal Graphics. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

April 27, 2007: Presentation at Federal Bar Association, Leadership Training Program, “Bench Bar Relationships.” Presentation slides supplied.

March 6, 2007: Presentation at Lions Club Luncheon. My remarks involved the function of magistrate judges. I have no notes, transcript, or recording. The sponsor was the Oklahoma City Downtown Lions Club, 520 West Main Street, Oklahoma City, Oklahoma 73102.

December 22, 2006: Speaker at Crowe & Dunlevy Christmas Breakfast. Remarks supplied.

December 15, 2006: Presentation at Oklahoma Employment Lawyers Association Program, “Ethical Issues in Settlement Negotiations.” My presentation involved an interactive dialogue with the attendees about ethical

issues in judicial settlement conferences. I have no notes, transcript of recording. The Oklahoma Employment Lawyers Association has no physical address.

October 16, 2006: Presentation at District Court Workshop, Western District of Oklahoma, "Local Civil Rules." Outline supplied.

September 19, 2006: Participated in Federal Bar Association – Oklahoma City Chapter Colloquium with the Russian Judiciary (five Russian judges and Professor Jonathan Turley and Professor Susan Estrich). Professors Estrich and Turley and the Russian judges discussed their respective legal systems with respect to civil procedure and commercial litigation. My remarks consisted of introductory and closing remarks. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

September 14, 2006: Introductory Remarks at Federal Bar Association – Northern/Eastern Oklahoma Chapter Program, "With Justice For All." I introduced the speaker and expressed appreciation to him at the conclusion of the program. I have no notes, transcript, or recording. The Federal Bar Association – Northern/Eastern Oklahoma Chapter has no physical address.

August 30, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter, "Visual Aids in the Courthouse: A Hands-On Primer." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

August 26, 2006: Acceptance Speech for the Earl W. Kintner Award for Distinguished Service, Federal Bar Association. I have no notes, transcript, or recording. The sponsor was the Federal Bar Association, 1220 North Fillmore Street, Suite 444, Arlington, Virginia 22201.

July 20, 2006: Remarks regarding magistrate judges, Federal Bar Association – Oklahoma City Chapter, Summer Associates Courthouse Tour. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

July 7, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "DNA Evidence – From the Crime Scene to the Courtroom - Identifying Issues in DNA Evidence." I introduced the speaker and presented a thank-you gift at the conclusion. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

June 29, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, "The New Oklahoma Uniform Arbitration Act." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

June 1, 2006: Speaker at Attorney Admissions Swearing-In Ceremony, regarding the Federal Bar Association – Oklahoma City Chapter. I provided a background on the Federal Bar Association. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

May 23, 2006: Remarks at Federal Bar Association – Oklahoma City Chapter Program, “Mock Oral Argument on Whether *Roe v. Wade/Planned Parenthood v. Casey Should Be Overturned*.” I introduced the program and the participants and provided closing remarks upon the conclusion of the mock oral argument. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

May 16, 2006: Remarks at Federal Bar Association – Oklahoma City Chapter, William J. Holloway, Jr. Lecture. I introduced the program and the special guests, made a tribute to Judge Holloway, and provided closing remarks. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

May 3, 2006: Remarks at Federal Bar Association – Oklahoma City Chapter Program, “Do’s and Don’ts for Social Security Practice.” I introduced the program and speakers and provided closing remarks. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

April 19, 2006: Remarks regarding magistrate judges and question-and-answer session, Federal Bar Association – Oklahoma City Chapter, “Lunch with the Judges,” for Oklahoma University Law Students at Oklahoma University Law School. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

April 12, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, “Dealing with Inappropriate Conduct in Depositions.” I introduced the speakers and expressed appreciation to them at the conclusion of the program. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

April 4, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, Presentation by Seth Waxman, 41st Solicitor General of the United States. I introduced the speaker and expressed appreciation to him at the conclusion of the program. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

March 26, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Judicial Reception. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

March 23, 2006: Remarks at Federal Bar Association – Oklahoma City Chapter Program, “Effective Pretrial Practice in Federal Court.” My remarks included introduction of the program and speakers and presentation of closing remarks. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

March 15, 2006: Remarks regarding magistrate judges and question-and-answer session, Federal Bar Association – Oklahoma City Chapter, “Lunch with the Judges,” for Young Lawyers. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

February 22, 2006: Presentation at Federal Bar Association – Oklahoma City Chapter Program, “Ethical Issues in Settlement Negotiations.” I conducted an interactive dialogue with the attendees about ethical issues in judicial settlement conferences. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

February 16, 2006: Remarks at Federal Bar Association – Oklahoma City Chapter Program, “Lunch with the Law Clerks.” My remarks included introduction of the speakers and closing remarks. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

February 10, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, “The Domestic War on Terror: Challenges and Pitfalls at Home,” with Governor Frank Keating. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

February 7, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, “Lunch with the Law Clerks.” I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

January 24, 2006: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, “Recollections of the McVeigh Case.” I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

December 19, 2005: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, “A Review of the Tenth Circuit’s Decisions in 2005.” I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

December 2, 2005: Remarks at Federal Bar Association – Oklahoma City Chapter Program, Debate About the Patriot Act. My remarks included introduction of the program and closing remarks. I have no notes, transcript, or

recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

November 17, 2005: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, Debate About the Death Penalty. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

November 17, 2005: Speaker at Attorney Admissions Swearing-In Ceremony, regarding the Federal Bar Association – Oklahoma City Chapter. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

October 27, 2005: Presentation at District Court Workshop, Western District of Oklahoma, “ADR.” Outline supplied.

October 7, 2005: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, “A Review of the Supreme Court’s 2004-05 Term and a Preview of 2005-06.” I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

September 14, 2005: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, “*Booker and Beyond*.” I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

August 18, 2005: Introductory Remarks at Federal Bar Association – Oklahoma City Chapter Program, “Recollections of *United States v. David Hall*.” I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

July 22, 2005: Remarks regarding magistrate judges and question-and-answer session, Federal Bar Association – Oklahoma City Chapter, Summer Intern Tour of Courthouse. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

June 2, 2005: Presentation at Oklahoma Bar Association Program, “The Criminal Justice Act Panel – How to Get On It and What To Do Once You’re There.” I have no notes, transcript, or recording. The sponsor was the Oklahoma Bar Association, 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

June 2, 2005: Speaker at Attorney Admissions Swearing-In Ceremony, regarding the Federal Bar Association – Oklahoma City Chapter. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

March 10, 2005: Welcoming Remarks, Federal Bar Association – Oklahoma City Chapter, Tenth Circuit CLE Program. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

February 28, 2005: Presentation for Judge Robin Cauthron's class at the University of Oklahoma School of Law, "Trial Practice in the Western District," Oklahoma University Law School. My remarks involved suggestions for effective discovery practice. Outline supplied.

January 20, 2005: Master of Ceremonies for Joint Program of the Tenth Circuit Historical Society and the Federal Bar Association – Oklahoma City Chapter. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address. The address for the Tenth Circuit Historical Society is 1550 Seventeenth Street, Number 500, Denver, Colorado 80202.

December 10, 2004: Presentation at Federal Bar Association – Oklahoma City Chapter Seminar, "Ethical Issues in Judicial Settlement Conferences." Written materials supplied.

December 6, 2004: Presentation at Bricktown Rotary Club, "Functions of U.S. Magistrate Judges." I have no notes, transcript, or recording. The Bricktown Rotary Club has no physical address.

October 19, 2004, Presentation at Oklahoma City Commercial Law Attorneys Association. I conducted an interactive dialogue with the attendees about ethical issues in judicial settlement conferences. I have no notes, transcript, or recording. The Oklahoma City Commercial Law Attorneys Association has no physical address.

October 1, 2004: Presentation at Oklahoma Bar Association Program, "Judicial Settlement Conferences," as part of the program, "Civil Pretrial Practice in Federal Court: A Practitioner's Guide." Outline supplied.

May 7, 2004: Remarks regarding magistrate judges and question-and-answer session, Federal Bar Association – Oklahoma City Chapter, "Lunch with the Judges." I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

December 9, 2003: Panel Discussion by Magistrate Judges on settlement conferences. I have no notes, transcript, or recording. The sponsor was the Oklahoma Bar Association, 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

December 1, 2003: Presentation at Oklahoma County Bar Association Program, "Judicial Settlement Conferences: Effective Techniques." I have no notes.

transcript, or recording. The sponsor was the Oklahoma County Bar Association, 119 North Robinson Avenue, Suite 240, Oklahoma City, Oklahoma 73102.

January 24, 2003: Presentation at Federal Bar Association – Oklahoma City Chapter Program, “Prisoner Rights Litigation: Nuts and Bolts.” I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

November 7, 2002: Speaker at Attorney Admissions Swearing-In Ceremony, regarding magistrate judges in the Western District of Oklahoma. I have no notes, transcript, or recording. The sponsor was the Western District of Oklahoma, 200 Northwest Fourth Street, Oklahoma City, Oklahoma 73102.

October 7, 2002: Presentation at District Court Workshop, Western District of Oklahoma, “Diversity.” My remarks summarized the level of diversity among courthouse employees in the Western District of Oklahoma. Written materials supplied.

September 13, 2002: Presentation for Central Oklahoma Association of Legal Assistants, “Practice Before a U.S. Magistrate.” Video recording supplied.

June 20, 2002: Presentation at Federal Bar Association – Oklahoma City Chapter Luncheon regarding work as a magistrate judge. I have no notes, transcript, or recording. The Federal Bar Association – Oklahoma City Chapter has no physical address.

May 23, 2002: Presentation at Kingfisher County Bar Association, “Settlement Conferences in the Western District of Oklahoma.” I have no notes, transcript, or recording. The Kingfisher County Bar Association has no physical address.

November 2, 2001: Presentation at Oklahoma Bar Association Seminar, Federal Magistrate Judge Panel Discussion: “Understanding the Changing Practice Before the U.S. Magistrate Judges.” I have no notes, transcript, or recording. The sponsor was the Oklahoma Bar Association, 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

October 16, 2001: Presentation at Oklahoma City Commercial Law Attorneys Association, “Ethical Issues in Settlement Negotiations.” I conducted an interactive dialogue with the attendees about judicial settlement conferences in the Western District of Oklahoma. I have no notes, transcript, or recording. The Oklahoma City Commercial Law Attorneys Association has no physical address.

April 27, 2001: Presentation at Federal Civil Litigation Seminar. I have no notes, transcript, or recording. I do not recall the entity that sponsored this program.

April 11, 2001: Presentation for Oklahoma University Law School ADR Class, "Judicial Settlement Conferences in the Western District of Oklahoma." I have no notes, transcript, or recording. The sponsor was the University of Oklahoma School of Law, 300 West Timberdell Road, Norman, Oklahoma 73071.

December 21, 2000: Presentation at Oklahoma Bar Association Seminar on Advanced Litigation, "New Approaches in Federal Court Settlement Conferences and ADR." I have no notes, transcript, or recording. The sponsor was the Oklahoma Bar Association, 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

May 25, 2000: Speaker at Attorney Admissions Swearing-In Ceremony, "Magistrate Judges in the Western District of Oklahoma." I have no notes, transcript, or recording. The sponsor was the Western District of Oklahoma, 200 Northwest Fourth Street, Oklahoma City, Oklahoma 73102.

February 16, 2000: Presentation at Bohanon Inn of Court. My remarks involved the function of magistrate judges. I have no notes, transcript, or recording. The Bohanon Inn of Court has no physical address.

November 4, 1999: Presentation at Crowe & Dunlevy Litigation Section Meeting, "Settlement Conferences in the Western District of Oklahoma." I have no notes, transcript, or recording. The sponsor was Crowe & Dunlevy, 20 North Broadway, Suite 1800, Oklahoma City, Oklahoma 73102.

September 21, 1999: Presentation at Oklahoma Employment Lawyers Association Event, "Meet the New Magistrates." I have no notes, transcript, or recording. The Oklahoma Employment Lawyers Association has no physical address.

March 26, 1999: Presentation at Oklahoma Bar Association Seminar, "A New Look for the U.S. Magistrates – Meet the Magistrate Judges and the Magistrate Nominees." I have no notes, transcript, or recording. The sponsor was the Oklahoma Bar Association, 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

February 19, 1999: Presentation at Oklahoma Bar Association Program on Effective Discovery and Winning Motion Practice in Civil Cases, "Motions in Limine." I have no notes, transcript, or recording. The sponsor was the Oklahoma Bar Association, 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105.

May 25, 1988: Presentation at Oklahoma Association of Municipal Attorneys, Spring Workshop, "Oklahoma City Police Brutality Cases Since 1985 (*Tennessee v. Garner*)."

I have no notes, transcript, or recording. The Oklahoma Association of Municipal Attorneys has no physical address.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Professor Jonathan Turley Delivers the Sixth Annual Holloway Lecture, The Federal Bar Association Oklahoma City Chapter (Nov. 28, 2011). Copy supplied.

Nicholas J. Patterson, *Hon. William J. Holloway Jr.: Senior U.S. Circuit Judge, Tenth Circuit Court of Appeals*, Fed. Law. (Nov./Dec. 2008). Copy supplied.

Kevin Gordon, *A Lawyer Loving Retirement: L.E. 'Dean' Stringer*, Briefcase (published by Oklahoma County Bar Association) (Mar. 2008). Copy supplied.

Staff, *Okla. Leadership in Law Profile: Hon. Robert Bacharach, U.S. District Court, Western District*, J. Record (Oklahoma City, OK) (May 1, 2007). Copy supplied.

Lyn Entzeroth, *Hon. Bana Roberts: U.S. Magistrate Judge, Western District of Oklahoma*, Fed. Law. (May 2007). Copy supplied.

Regan Beatty, *FBA Pro Bono Program Seeks Volunteer Lawyers*, Briefcase (published by Oklahoma County Bar Association) (Apr. 2007). Copy supplied.

Sharon O'Roke, *Hon. Doyle W. Argo: U.S. Magistrate Judge, Western District of Oklahoma*, Fed. Law. (Nov./Dec. 2006). Copy supplied.

Christina Good Voice, *Civil Rights Advocate Speaks to Lawyers*, Associated Press (Sept. 15, 2006) (reprinted in multiple outlets). Copy supplied.

A. John Norberto, *Who's Who*, Western Wire, U.S. Probation Office for the Western District of Oklahoma (June 2001). Copy supplied.

John Perry, *STOP Taxes Goes Too Far*, Southwest Jewish Chron. (Sept. 1990). Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Since March 29, 1999, I have served as a United States Magistrate Judge for the Western District of Oklahoma. This position was appointed. In this district, United States Magistrate Judges are generally granted jurisdiction that is coextensive with the powers authorized under the Federal Magistrates Act, 28 U.S.C. § 636(b)-(c) (2006).

Magistrate Judges in this district have jurisdiction to enter a report and recommendation in all dispositive matters in every non-capital habeas proceeding, prisoner civil rights case, social security appeal, and post-judgment proceedings. For all nondispositive matters in these areas, magistrate judges are authorized to enter orders. Upon consent of the parties and transfer by the district judge, magistrate judges enjoy authority to conduct trials and enter judgment in civil cases.

In felony cases, magistrate judges have jurisdiction to issue warrants and conduct a variety of pretrial proceedings, including detention hearings, preliminary examinations, and identity hearings. In addition, magistrate judges are authorized to conduct all proceedings in misdemeanor cases upon the parties' consent.

a. Approximately how many cases have you presided over that have gone to verdict or judgment? Three cases.

i. Of these, approximately what percent were:

jury trials:	33%
bench trials:	67%
civil proceedings:	100%
criminal proceedings:	0%

b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list.

c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *Giannetti v. City of Stillwater*, Case No. CIV-04-926-BA (W.D. Okla.). The Tenth Circuit Court of Appeals affirmed my summary judgment ruling. *See Giannetti v. City of Stillwater*, 216 Fed. Appx. 756 (10th Cir. 2007) (unpublished op.).

An arrestee died while in police custody, and her personal representative attributed the death to "positional asphyxiation" as a result of overly aggressive conduct by law enforcement officers. The claims arose under 42 U.S.C. § 1983 and Oklahoma law. I issued rulings on the admissibility of expert testimony and ultimately granted summary judgment to the defendants on all claims. *See Giannetti v. City of Stillwater*, Case No. CIV-04-926-BA, 2006 WL 5100544 (W.D. Okla. Jan. 26, 2006) (unpublished op.) (admissibility of expert testimony);

Giannetti v. City of Stillwater, Case No. CIV-04-926-BA, 2006 WL 290583 (W.D. Okla. Feb. 6, 2006) (unpublished op.) (summary judgment ruling).

Counsel for Plaintiff: Jeremy Beaver
Gotcher & Belote
P.O. Box 160
209 East Wyandotte Avenue
McAlester, OK 74501
Telephone: (918) 423-0412

Counsel for Defendant: David W. Lee
Lee Law Center, P.C.
6011 North Robinson Avenue
Oklahoma City, OK 73118
Telephone: (405) 848-1983

2. *Stanphill v. Health Care Service Corp.*, Case No. CIV-06-985-BA (W.D. Okla.).

This case involved a labor dispute. The employer reorganized, terminating the plaintiff and refusing to rehire her. She sued, claiming discrimination in her termination and refusal to rehire her. The parties consented to trial by a magistrate judge, and I denied the employer's motion for partial summary judgment and granted the employee's motion for sanctions based on spoliation of evidence. *See Stanphill v. Health Care Service Corp.*, Case No. CIV-06-985-BA, 2008 WL 2359730 (W.D. Okla. June 3, 2008) (unpublished op.) (sanctions for spoliation of evidence); *Stanphill v. Health Care Service Corp.*, 627 F. Supp. 2d 1244 (W.D. Okla. 2008) (summary judgment ruling); *Stanphill v. Health Care Service Corp.*, Case No. CIV-06-985-BA, 2008 WL 4056284 (W.D. Okla. Aug. 22, 2008) (unpublished op.) (summary judgment ruling). The case ultimately settled.

Counsel for Plaintiff: Mark E. Hammons
Hammons Gowens & Associates
325 Dean A. McGee Avenue
Oklahoma City, OK 73102
Telephone: (405) 235-6111

Counsel for Defendant: Elaine Turner
Hall Estill
100 North Broadway Avenue
Suite 2900
Oklahoma City, OK 73102
Telephone: (405) 553-2804

3. *Pierce v. Gilchrist*, Case No. CIV-05-1519-C (W.D. Okla.).

This civil rights action was brought by a man sentenced to 65 years in prison for rape. He was exonerated by D.N.A. testing after he had spent twelve years in prison. The suit arose under 42 U.S.C. § 1983 and the defendants included a long-time district attorney, the City of Oklahoma City, and a former chemist who had worked for the city for ten years. The chemist's work was questioned by federal investigators in numerous cases. Shortly before the trial, I conducted a day-long judicial settlement conference. The case settled at the conference.

Counsel for Plaintiff: Clark O. Brewster
Brewster & DeAngelis
2617 East 21st Street
Tulsa, OK 74114
Telephone: (918) 742-2021

Guy A. Fortney
Brewster & DeAngelis
2617 East 21st Street
Tulsa, OK 74114
Telephone: (918) 742-2197

Counsel for Defendant
Gilchrist: Melvin Hall
Riggs Abney Neal Turpen Orbison Lewis
5801 North Broadway Avenue
Oklahoma City, OK 73118
Telephone: (405) 843-9909

Counsel for Defendant
Macy: Honorable John Jacobsen
Special Judge, Oklahoma County
Oklahoma County District Court
Oklahoma County Courthouse
321 Robert S. Kerr Avenue
Oklahoma City, OK 73102
Telephone: (405) 713-1722

Counsel for Defendant
City of Oklahoma City: Richard C. Smith
Municipal Counselor's Office
The City of Oklahoma City
200 North Walker Avenue
Suite 400
Oklahoma City, OK 73102
Telephone: (405) 297-2451

4. *Meyer v. City of Buffalo*, Case No. CIV-02-1691-F (W.D. Okla.).

This action involved tort claims against law enforcement officers arising out of the plaintiff's forced admission to a psychiatric hospital. She sued the county and a number of county officials for violation of her civil rights and state law. The presiding district judge granted summary judgment to the defendant, and the Tenth Circuit Court of Appeals reversed. After the reversal, I conducted multiple settlement conferences and a summary jury trial. The case settled shortly after the summary jury trial was conducted.

Counsel for Plaintiff: Phyllis L. Walta
Walta & Walta
204 South Main Street
Hennessey, OK 73742
Telephone: (405) 853-2346

Counsel for Defendant: Jodi Casey
Collins, Zorn, and Wagner
429 Northeast 50th Street
Second Floor
Oklahoma City, OK 73105
Telephone: (405) 524-2070

5. *Kishore v. Federal Bureau of Investigation*, Case No. CIV-06-330-BA (W.D. Okla.).

This case involved a civil rights claim regarding a failure to advise an Austrian citizen of his rights under the Vienna Convention on Consular Relations after an arrest. I conducted a bench trial and entered judgment for the two agents of the Federal Bureau of Investigation, finding that they had orally advised the plaintiff of his right to consular notification. Order supplied.

Counsel for Plaintiff: Christine M. Cave
Employers Legal Resource Center
301 Northwest 63rd Street
Suite 390
Oklahoma City, OK 73116
Telephone: (405) 702-9797

Counsel for Defendant: Steven K. Mullins
United States Attorney's Office
210 West Park Avenue
Suite 400

Oklahoma City, OK 73102
Telephone: (405) 553-8700

6. *Vague v. City of Shawnee*, Case No. CIV-02-910-BA (W.D. Okla.).

This action involved a claim for overtime pay under the Fair Labor Standards Act. The issue involved the characterization of time spent in the care and maintenance of police dogs. After conducting a bench trial, I found that the city had not violated the Fair Labor Standards Act because it had complied with the terms of a collective bargaining agreement. Order supplied.

Counsel for Plaintiff: Robert L. Mitchell
205 Northwest 63rd Street
Suite 330
Oklahoma City, OK 73116
Telephone: (405) 767-0404

Counsel for Defendant: Margaret McMorrow-Love
228 Robert S. Kerr Avenue
Suite 540
Oklahoma City, OK 73102
Telephone: (405) 235-3848

7. *Morris v. Crete Carrier Corp.*, Case No. CIV-04-888-T (W.D. Okla.).

This case involved a serious vehicle accident. A driver crossed the center median on a busy interstate, resulting in a collision. At some point, this driver died. Another driver, injured in the accident, sued. The central factual issue was whether the first driver had crossed the center median because he had fallen asleep or had experienced a heart attack. To facilitate settlement, I conducted a summary jury trial shortly before the conventional trial was scheduled. The case settled upon the conclusion of the summary jury trial.

Counsel for Plaintiff: Robert C. Smith, Jr.
Monnet Hayes Bullis Thompson & Edwards
120 North Robinson Avenue
Suite 1719
Oklahoma City, OK 73102
Telephone: (405) 232-5481

Counsel for Defendant: Robert B. Mills
Earl D. Mills Attorney at Law
One Leadership Square
Suite 1350C
211 North Robinson Avenue

Oklahoma City, OK 73102
Telephone: (405) 239-2501

8. *Petzold v. Jones*, Case No. CIV-06-1317-HE (W.D. Okla.).

This case involved a habeas petition by a state prisoner. He claimed ineffective assistance at trial and at a hearing on his motion to withdraw a guilty plea. I conducted an evidentiary hearing and recommended denial of habeas relief. *Petzold v. Jones*, Case No. CIV-06-1317-HE (W.D. Okla. Aug. 29, 2008); *Petzold v. Jones*, Case No. CIV-06-1317-HE (W.D. Okla. Sept. 26, 2008). The presiding district judge agreed and adopted my report and recommendations. *Petzold v. Jones*, Case No. CIV-06-1317-HE, 619 F. Supp. 2d 1143 (W.D. Okla. Dec. 18, 2008). The Tenth Circuit Court of Appeals affirmed and the Supreme Court denied *certiorari*. *Petzold v. Jones*, Case No. 09-6002, 349 Fed. Appx. 295 (10th Cir. 2009), *cert. denied*, 130 S. Ct. 3394 (2010). My orders are supplied.

Counsel for Petitioner: Honorable Howard R. Haralson
Special District Judge
Oklahoma County Courthouse, Room 123
321 Park Avenue
Oklahoma City, OK 73102
Telephone: (405) 713-1451

Counsel for Respondent: Diane L. Slayton
Attorney General's Office
313 Northeast 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921

9. *Goodner v. Parker*, Case No. CIV-08-1095, 2009 WL 2003395 (W.D. Okla. May 29, 2009).

In a state court trial, the judge granted the defendant's motion for a mistrial. The second trial resulted in a conviction, and the defendant sought habeas relief on grounds of a double jeopardy violation. His theory was that he had been goaded into the request for a mistrial by the prosecutor's misconduct. I conducted an evidentiary hearing and, based on the evidence elicited, rejected the double jeopardy claim. *Goodner v. Parker*, Case No. CIV-08-1095-R (W.D. Okla. May 29, 2009). The district judge adopted my report and recommendation. *Goodner v. Parker*, Case No. CIV-08-1095, 2009 WL 2003395 (W.D. Okla. July 2, 2009).

Counsel for Petitioner: Mack K. Martin
125 Park Avenue
5th Floor
Oklahoma City, OK 73102
Telephone: (405) 236-8888

Counsel for Respondent: Donald D. Self
Attorney General's Office
313 Northeast 21st Street
Oklahoma City, OK 73105
Telephone: (405) 522-4403

10. *Chrisman v. Mullins*, Case No. CIV-04-1226-L (W.D. Okla.).

This action involved a habeas claim for ineffective assistance of counsel and involuntariness of a guilty plea. I conducted an evidentiary hearing and rejected the claims based on the evidence presented. *Chrisman v. Mullins*, Case No. CIV-04-1226-L (W.D. Okla. Dec. 30, 2004) (evidentiary hearing); *Chrisman v. Mullins*, Case No. CIV-04-1226-L (W.D. Okla. Aug. 30, 2005) (recommended denial of habeas relief). The Tenth Circuit Court of Appeals affirmed, and the Supreme Court denied *certiorari*. *Chrisman v. Mullins*, Case No. 06-6182, 213 Fed. Appx. 683 (10th Cir. 2007), *cert. denied*, 551 U.S. 1150 (2007). My opinions are supplied.

Counsel for Petitioner: Teresa K. Brown
Federal Public Defender's Office
215 Dean A. McGee Avenue
Suite 109
Oklahoma City, OK 73102
Telephone: (405) 609-5930

Counsel for Respondent: Diane L. Slayton
Attorney General's Office
313 Northeast 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921

- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Fleming v. Miller*, Case No. CIV-05-690-C, 2008 WL 4866167 (W.D. Okla. Sept. 26, 2008).

Counsel for Petitioner: Joseph L. Wells
3955 Northwest 23rd Street
Oklahoma City, OK 73107
Telephone: (405) 990-5523

Counsel for Respondent: Diane L. Slayton
Attorney General's Office
313 Northeast 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921

Jay L. Schniederjan
Attorney General's Office
313 Northeast 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921

2. *Walck v. Edmondson*, Case No. CIV-05-430-R, 2005 WL 1356481 (W.D. Okla. June 7, 2005).

Counsel for Petitioner: Steven M. Presson
Presson Law Office
P.O. Box 5392
207 West Main Street
Norman, OK 73070
Telephone: (405) 447-6637

Counsel for Respondent: Diane L. Slayton
Attorney General's Office
313 Northeast 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921

John J. Foley
Mitchell Foley & Jencks
205 Northwest 63rd Street
Suite 330
Oklahoma City, OK 73116
Telephone: (405) 767-0404

3. *Threadgill v. Boone*, Case No. CIV-99-1887-T (W.D. Okla. May 31, 2001) (Doc. 31). Opinion supplied.

Counsel for Petitioner: Steven M. Presson
Presson Law Office
P.O. Box 5392
207 West Main Street
Norman, OK 73070
Telephone: (405) 447-6637

Counsel for Respondent: James E. Kelly
P.O. Box 702860
Tulsa, OK 74170
Telephone: (918) 592-7070

4. *Moore v. Newton-Embry*, Case No. CIV-09-985-C, 2011 WL 5143080 (W.D. Okla. Sept. 7, 2011); (W.D. Okla. Sept. 7, 2011) (Doc. 132). Order supplied.

Counsel for Petitioner: Christine M. Cave
Employers Legal Resource Center
301 Northwest 63rd Street
Suite 390
Oklahoma City, OK 73116
Telephone: (405) 702-9797

Counsel for Respondent: Diane L. Slayton
Attorney General's Office
313 Northeast 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921

Donald D. Self
Attorney General's Office
313 Northeast 21st Street
Oklahoma City, OK 73105
Telephone: (405) 522-4403

5. *Worthen v. Wackenhut Correctional Corp.*, Case No. CIV-99-1417-W (W.D. Okla. Sept. 29, 2000) (Doc. 93). Opinion supplied.

Plaintiff: Sidney Allen Worthen, Deceased

Counsel for Defendant: Barbara C. Stoner
Federal Courthouse
200 Northwest Fourth Street
Room 1411
Oklahoma City, OK 73102
Telephone: (405) 609-5071

6. *Petzold v. Jones*, Case No. CIV-06-1317-HE (W.D. Okla. Aug. 29, 2008) (Doc. 63). Opinion supplied in response to 13(c).

Counsel for Petitioner: Honorable Howard Haralson
Special District Judge
Oklahoma County Courthouse, Room 123
321 Park Avenue

Oklahoma City, OK 73102
Telephone: (405) 713-1451

Counsel for Respondent: Diane L. Slayton
Attorney General's Office
313 Northeast 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921

7. *Chrisman v. Mullins*, Case No. CIV-04-1226-L (W.D. Okla. Aug. 30, 2005) (Doc. 49). Opinion supplied in response to 13(c).

Counsel for Petitioner: Teresa K. Brown
Federal Public Defender's Office
215 Dean A. McGee Avenue
Suite 109
Oklahoma City, OK 73102
Telephone: (405) 609-5930

Counsel for Respondent: Diane L. Slayton
Attorney General's Office
313 Northeast 21st Street
Oklahoma City, OK 73105
Telephone: (405) 521-3921

8. *Goodner v. Parker*, Case No. CIV-08-1095-R, 2009 WL 2003395 (W.D. Okla. May 29, 2009).

Counsel for Petitioner: Mack K. Martin
125 Park Avenue
5th Floor
Oklahoma City, OK 73102
Telephone: (405) 236-8888

Counsel for Respondent: Donald D. Self
Attorney General's Office
313 Northeast 21st Street
Oklahoma City, OK 73105
Telephone: (405) 522-4403

9. *Suarez-Tejeda v. United States*, Case No. CIV-01-96-F (W.D. Okla. July 30, 2002) (Doc. 61). Opinion supplied.

Counsel for Petitioner: Susan M. Otto
Federal Public Defender's Office
215 Dean A. McGee Avenue

Suite 109
Oklahoma City, OK 73102
Telephone: (405) 609-5930

Counsel for Respondent: Papu Sandhu
United States Department of Justice
Immigration Litigation, Civil Division
1331 Pennsylvania Avenue NW
Suite 700 S
Washington, D.C. 20004
Telephone: (202) 616-9357

H. Lee Schmidt
Assistant United States Attorney
210 West Park Avenue
Suite 400
Oklahoma City, OK 73102
Telephone: (405) 553-8700

10. *Stanphill v. Health Care Service Corp.*, Case No. CIV-06-985-BA, 2008 WL 2359730 (W.D. Okla. June 3, 2008).

Counsel for Plaintiff: Mark Hammons
Hammons Gowens & Associates
325 Dean A. McGee Avenue
Oklahoma City, OK 73102
Telephone: (405) 235-6111

Counsel for Defendant: Elaine Turner
Hall Estill
100 North Broadway Avenue
Suite 2900
Oklahoma City, OK 73102
Telephone: (405) 553-2804

- e. Provide a list of all cases in which certiorari was requested or granted.

Certiorari Granted

None.

Certiorari Pending

Kerchee v. Smith, Case No. CIV-11-459-C (W.D. Okla.), Case No. 11-6058 (10th Cir.), *petition for cert. filed*, Case No. 11-7042 (Oct. 18, 2011). (This case has not

been adjudicated by the Tenth Circuit Court of Appeals. The petitioners are *pro se* litigants.)

Certiorari Denied

Knox v. Workman, Case No. 10-1181-W (W.D. Okla. Jan. 14, 2011), *adopted* (W.D. Okla. Feb. 11, 2011), *aff'd*, Case No. 11-6042 (10th Cir. June 13, 2011), *cert. denied*, __ U.S. __, __ S. Ct. __, 2011 WL 4534902 (U.S. Oct. 3, 2011).

White v. Mullin, Case No. CIV-10-1114-M (W.D. Okla. Dec. 23, 2010), *adopted* (W.D. Okla. Jan. 19, 2011), *aff'd*, Case No. 11-6024 (10th Cir. May 31, 2011), *cert. denied*, __ U.S. __, __ S. Ct. __, 2011 WL 4536089 (U.S. Oct. 3, 2011).

Bell v. LeSure, Case No. CIV-08-1255-R (W.D. Okla. Apr. 30, 2009), *adopted* (W.D. Okla. May 6, 2009), *aff'd*, Case No. 09-6099 (10th Cir. June 25, 2009), *cert. denied*, __ U.S. __, 130 S. Ct. 221 (U.S. Oct. 5, 2009).

Breedlove v. Costner, Case No. CIV-08-1065-D (W.D. Okla. Dec. 8, 2009), *adopted* (W.D. Okla. Jan. 11, 2010), *aff'd*, Case No. 10-6043 (10th Cir. Dec. 16, 2010), *cert. denied*, __ U.S. __, 131 S. Ct. 2162 (U.S. Apr. 25, 2011).

Staten v. Parker, Case No. CIV-08-655-F (W.D. Okla. Feb. 3, 2009), *adopted* (W.D. Okla. Mar. 2, 2009), *aff'd*, Case No. 09-6050, 334 Fed. Appx. 166 (10th Cir. June 18, 2009), *cert. denied*, __ U.S. __, 130 S. Ct. 628 (U.S. Nov. 16, 2009).

Mukes v. Warden, Case No. CIV-08-560-W (W.D. Okla. June 27, 2008), *adopted* (W.D. Okla. Aug. 5, 2008), *aff'd*, Case No. 08-6182 (10th Cir. Dec. 3, 2008), *cert. denied* (U.S. Apr. 20, 2009).

Clark v. Jones, Case No. CIV-08-05-C (W.D. Okla. July 22, 2009), *adopted* (W.D. Okla. Sept. 14, 2009), *aff'd*, Case No. 09-6219 (10th Cir. Dec. 29, 2010), *cert. denied* (U.S. May 2, 2011).

Rockwell v. Parker, Case No. CIV-07-330-R (W.D. Okla. June 19, 2007), *adopted* (W.D. Okla. Aug. 17, 2007), *aff'd*, Case No. 07-6222, 267 Fed. Appx. 783 (10th Cir. Feb. 29, 2008), *cert. denied*, 555 U.S. 878 (U.S. Oct. 6, 2008).

Petzold v. Jones, Case No. CIV-06-1317-HE (W.D. Okla. Sept. 26, 2008), *adopted* (W.D. Okla. Dec. 18, 2008), *aff'd*, Case No. 09-6002, 349 Fed. Appx. 295 (10th Cir. Oct. 15, 2009), *cert. denied*, __ U.S. __, 130 S. Ct. 3394 (U.S. June 7, 2010).

Barber v. Jones, Case No. CIV-06-1260-W (W.D. Okla. May 3, 2007), *adopted* (W.D. Okla. July 10, 2007), *aff'd*, Case No. 07-6170, 279 Fed. Appx. 710 (10th Cir. May 28, 2008), *cert. denied*, __ U.S. __, 129 S. Ct. 461 (U.S. Oct. 20, 2008).

Parker v. Jones, Case No. CIV-06-1107-T (W.D. Okla. Dec. 20, 2006), *adopted* (W.D. Okla. Mar. 20, 2007), *aff'd*, Case No. 07-6068, 260 Fed. Appx. 81 (10th Cir. Jan. 7, 2008), *cert. denied*, 553 U.S. 1082 (U.S. June 2, 2008).

Terry v. Jones, Case No. CIV-06-840-F (W.D. Okla. Jan. 8, 2007), *adopted* (W.D. Okla. Mar. 30, 2007), *aff'd*, Case No. 07-6099, 259 Fed. Appx. 85 (10th Cir. Dec. 13, 2007), *cert. denied*, 554 U.S. 924 (U.S. June 23, 2008).

VanDusen v. Mullin, Case No. CIV-06-295-M (W.D. Okla. Nov. 7, 2006), *adopted* (W.D. Okla. Dec. 14, 2006), *aff'd*, Case No. 06-6376 (10th Cir. July 27, 2007), *cert. denied* (U.S. May 12, 2008).

Clark v. State of Oklahoma, Case No. CIV-05-1285-C (W.D. Okla. Dec. 30, 2005), *adopted* (W.D. Okla. Jan. 10, 2006), *aff'd*, Case No. 06-6046, 468 F.3d 711 (Nov. 13, 2006), *cert. denied*, 551 U.S. 1149 (U.S. June 25, 2007).

Folsom v. State of Oklahoma, Case No. CIV-05-1240-W (W.D. Okla. Apr. 28, 2006), *adopted* (W.D. Okla. May 9, 2006), *aff'd*, Case No. 06-6172 (May 17, 2007), *cert. denied* (U.S. Jan. 7, 2008).

Worthen v. Franklin, Case No. CIV-05-1090-C (W.D. Okla. Jan. 9, 2006), *adopted* (W.D. Okla. Jan. 25, 2006), *aff'd*, Case No. 06-6058, 186 Fed. Appx. 835 (June 30, 2006), *cert. denied*, 549 U.S. 1034 (U.S. Nov. 13, 2006).

Moyer v. Miller, Case No. CIV-05-1085-R (W.D. Okla. Oct. 28, 2005), *adopted* (W.D. Okla. Nov. 15, 2005), *aff'd*, Case No. 06-6119 (Apr. 12, 2006), *cert. denied*, 549 U.S. 959 (U.S. Oct. 10, 2006).

Collins v. State of Oklahoma, Case No. CIV-05-585-W (W.D. Okla. Jan. 31, 2006), *adopted* (W.D. Okla. Feb. 24, 2006), *aff'd*, Case No. 06-6106, 200 Fed. Appx. 827 (Oct. 17, 2006), *cert. denied*, 549 U.S. 1215 (U.S. Feb. 20, 2007).

Bullock v. Franklin, Case No. CIV-05-215-W (W.D. Okla. Nov. 23, 2005), *adopted* (W.D. Okla. Jan. 18, 2006), *aff'd*, Case No. 06-6051 (10th Cir. Oct. 24, 2006), *cert. denied*, 549 U.S. 1309 (U.S. Mar. 26, 2007).

Rich v. Peterson, Case No. CIV-05-65-C (W.D. Okla. Feb. 23, 2005), *adopted* (W.D. Okla. Mar. 14, 2005), *aff'd*, Case No. 05-6171, 158 Fed. Appx. 160 (10th Cir. Jan. 6, 2006), *cert. denied*, 547 U.S. 1120 (U.S. May 1, 2006).

Chrisman v. Mullins, Case No. CIV-04-1226-L (W.D. Okla. Aug. 30, 2005), *adopted* (W.D. Okla. Apr. 26, 2006), *aff'd*, Case No. 06-6182, 213 Fed. Appx. 683 (10th Cir. Jan. 17, 2007), *cert. denied*, 551 U.S. 1150 (U.S. June 25, 2007).

Breedlove v. Mullin, Case No. CIV-04-826-F (W.D. Okla. Nov. 24, 2004), *adopted* (W.D. Okla. Jan. 3, 2005), *aff'd*, Case No. 05-6026, 148 Fed. Appx. 728 (10th Cir. Sept. 20, 2005), *cert. denied*, 547 U.S. 1133 (U.S. May 15, 2006).

Harmon v. Booher, Case No. CIV-04-235-C (W.D. Okla. Aug. 30, 2006), *adopted* (W.D. Okla. Apr. 12, 2007), *aff'd*, Case No. 07-6117, 271 Fed. Appx. 704 (10th Cir. Mar. 25, 2008), *cert. denied*, ___ U.S. ___, 129 S. Ct. 197 (U.S. Oct. 6, 2008).

Dawson v. Miller, Case No. CIV-03-1161-T (W.D. Okla. Nov. 23, 2004), *adopted* (W.D. Okla. Apr. 28, 2005), *aff'd*, Case No. 05-6182, 171 Fed. Appx. 739 (10th Cir. Mar. 22, 2006), *cert. denied*, 549 U.S. 924 (U.S. Oct. 2, 2006).

Walters v. Guilfoyle, Case No. CIV-01-1690-R (W.D. Okla. Aug. 28, 2002), *adopted* (W.D. Okla. Jan. 8, 2003), *aff'd*, Case No. 03-6022, 68 Fed. Appx. 939 (10th Cir. July 21, 2003), *cert. denied*, 540 U.S. 1117 (U.S. Jan. 12, 2004).

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

To the best of my recollection, none of my orders have been reversed.

When a party objects to a report, the district judge typically determines whether to adopt or decline my recommendation. The decision to “decline” my suggested ruling does not operate as a reversal. Many times, for example, the district judge may decline to adopt my recommendation based on newly presented information. Below I have listed those instances in which a district judge has reached a different outcome or expressed significant criticism of my analysis.

Parker v. Standifird, Case No. CIV-10-1395-W, 2011 U.S. Dist LEXIS 129966, 2011 U.S. Dist LEXIS 130107 (W.D. Okla. Apr. 8, 2011). I recommended denial of a motion to dismiss, reasoning that the petitioner had asserted a “class of one” equal protection theory and that the petitioner’s allegations would reasonably support liability for purposes of Fed. R. Civ. P. 12(b)(6). The district judge disagreed.

Johnson v. Astrue, Case No. CIV-10-487-M (W.D. Okla. Jan. 28, 2011). In a report, I concluded that the Court should affirm the administrative law judge’s finding in a social security case. I concluded that the judge had considered all of the probative evidence and had a substantial record to support this finding. The district judge disagreed. Opinions supplied.

Thornton v. Hill, Case No. CIV-08-575-D, 2009 U.S. Dist. LEXIS 81651, 2009 U.S. Dist. LEXIS 81256 (W.D. Okla. May 27, 2009). I construed the complaint

to include official capacity claims. The district judge disagreed with this reading of the complaint based on a subsequently filed document.

Kincannon v. Astrue, Case No. 07-563-D, 2008 U.S. Dist. LEXIS 1640 (W.D. Okla. Nov. 29, 2007). I concluded that the administrative agency had erred and recommended a remand with instructions to award benefits because of exceptional circumstances. The district judge disagreed with the remedy that I had recommended. A copy of my opinion is supplied.

Rockwell v. Parker, Case No. CIV-07-330-R, 2007 U.S. Dist. LEXIS 64539, 2007 U.S. Dist. LEXIS 60721 (W.D. Okla. June 19, 2007). I recommended denial of the respondent's motion to dismiss on timeliness grounds. I reasoned that the petitioner had alleged facts which, if proven, could have supported equitable and statutory tolling. The district judge agreed that some equitable tolling was warranted, but believed that I had allowed too much time. The district judge concluded that the petitioner had become aware of counsel's abandonment on a date certain and had not been diligent in seeking leave to appeal out of time.

Jolly v. Astrue, Case No. CIV-07-243-HE, 2007 U.S. Dist. LEXIS 96109, 2008 U.S. Dist. LEXIS 7779 (W.D. Okla. Nov. 21, 2007). I concluded that the administrative agency had erred and recommended a remand with instructions to award benefits based on exceptional circumstances. The district judge disagreed with my recommendation to award benefits.

Jones v. State of Oklahoma, Case No. CIV-05-630-L (W.D. Okla. Aug. 26, 2005). In this habeas action under 28 U.S.C. § 2254, I recommended denial of the respondent's motion for summary judgment on grounds of timeliness. In particular, I relied on the petitioner's certification of mailing, which indicated that he had "filed" the petition on a date certain under the "mailbox rule." In his objection, the respondent provided evidence that petitioner had not actually mailed his petition on that date. Additionally, the district judge regarded the petitioner's declaration as inadequate. Consequently, the district judge declined to adopt the report and recommendation. Opinions supplied.

Deatherage v. Workman, Case No. CIV-04-1716-L (W.D. Okla. Feb. 24, 2005). I recommended dismissal of a habeas petition as untimely, rejecting the petitioner's claims of equitable tolling. The district judge disagreed, finding that the petitioner had demonstrated active pursuit of judicial remedies. Opinions supplied.

Thomas v. Jordan, Case No. CIV-04-876-R (W.D. Okla. Apr. 25, 2005). I recommended denial of the prison officials' motion for summary judgment, concluding that a genuine dispute of material fact existed regarding whether the defendants had been aware of a substantive risk of harm from exposed wires. The district judge disagreed, concluding that a reasonable juror could not have found culpability on the part of prison officials. Opinions supplied.

Ball v. Fatkin, Case No. CIV-02-610-HE (W.D. Okla. Nov. 19, 2002). A prisoner filed a civil rights claim after being found guilty of a prison disciplinary misconduct. In part, the plaintiff sought expungement of the misconduct conviction and restoration of earned credits which had been revoked as punishment. I recommended dismissal of these claims because the proper remedy could only be obtained if the plaintiff had sought a writ of habeas corpus. The district judge declined to adopt my recommendation. Instead, he liberally construed the complaint and recharacterized it as one seeking habeas relief. Opinions supplied.

Henry v. Stewart, Case No. CIV-01-1374-R (W.D. Okla. Sept. 10, 2003). In my report and recommendation, I concluded that the plaintiff's allegations and evidence were sufficient on the claims against ten defendants with respect to interference with court access, retaliation, conspiracy, denial of equal protection, and intentional infliction of emotional distress. The district judge disagreed with these conclusions and believed that the plaintiff's allegations were insufficient on the claims involving denial of court access and that the evidence was insufficient on the claims involving retaliation, conspiracy, denial of equal protection, and intentional infliction of emotional distress. Opinions supplied.

Umoren v. McPharron, Case No. CIV-01-1071-M (W.D. Okla. Aug. 21, 2001). In a report, I recommended denial of class certification, concluding that the plaintiffs could not adequately represent the class. Subsequently, I entered an order denying the plaintiffs' motion for appointment of counsel, concluding that the claims were not sufficiently complex to merit counsel. The plaintiffs appealed that ruling. The district judge concluded that the issues involving class certification and appointment of counsel were interrelated and should be decided together. Thus, the district judge declined to adopt my recommendation concerning class certification and remanded the matter for reconsideration of both issues. Opinions supplied.

Brookman v. Apfel, Case No. CIV-00-876-C (W.D. Okla. Feb. 28, 2001). In a report, I recommended partial reversal and remand of an administrative decision to deny disability benefits. In the administrative decision, the agency had considered the claim for disability benefits by proceeding through a five step sequential analysis. I recommended a remand at step four. The district judge adopted my recommendation to reverse and remand, but concluded that the remand should not be limited to reconsideration at step four. Opinions supplied.

Washington v. Oklahoma State Department of Corrections, Case No. CIV-00-836-A (W.D. Okla. Oct. 24, 2000). In a report, I recommended dismissal without prejudice for failure to timely effect service on the defendant. The district judge declined to adopt the recommendation, concluding that good cause existed to allow additional time for service. Opinions supplied.

Green v. Owens, Case No. CIV-99-1827-L (W.D. Okla. May 12, 2000). In a report, I recommended dismissal of claims for monetary and injunctive relief based on the plaintiff's failure to exhaust administrative remedies prior to filing the lawsuit. The district judge disagreed with my conclusion regarding the monetary claims and declined to adopt my recommendation with respect to those claims. Opinions supplied.

Harvey v. State of Oklahoma, Case No. CIV-99-1807-A (W.D. Okla. Sept. 13, 2000). In this civil rights case by an inmate, one defendant filed a motion to dismiss based on the plaintiff's failure to exhaust the available administrative remedies. I declined to address this portion of the motion to dismiss, as dismissal was appropriate on other grounds. The defendant objected and the district judge concluded that determination of the issue was appropriate and that the motion to dismiss should be granted for failure to exhaust available administrative remedies. Opinions supplied.

Davenport v. Stradley, Case No. CIV-99-1457-R (W.D. Okla. May 18, 2000). I recommended summary judgment to the defendants on the plaintiff's claim that his constitutional rights had been violated through the prison's restrictions on visitation between the plaintiff/pre-trial detainee and the plaintiff's children. The district judge declined to adopt this portion of my recommendation, concluding that the restriction violated the Fourteenth Amendment and that the restriction was not reasonably related to a legitimate governmental objective. Opinions supplied.

Powers v. Apfel, Case No. CIV-99-1170-L (W.D. Okla. Sept. 22, 2000). In a report, I recommended affirmance of the administrative decision to deny benefits. The district judge declined to adopt my recommendation, concluding that the administrative law judge had erred in his analysis of subjective complaints and the opinion of a treating physician. Opinions supplied.

Scarberry v. Blanchard Police Department, Case No. CIV-98-1300-L (W.D. Okla. June 8, 1999). In this suit, I required the plaintiff to show cause why the claims against one defendant should not be dismissed for lack of service and capacity to be sued. Thereafter, the plaintiff sought voluntary dismissal as to that defendant and I recommended that the Court grant the motion. The district judge believed that dismissal should instead be based on the lack of service and the defendant's lack of capacity to be sued. Opinions supplied.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

Civil: In accordance with the practice in our district, I have not authorized publication in the conventional reporter system. One decision – *Petzold v. Jones*, 619 F. Supp. 2d 1143 (W.D. Okla. 2008) – has been published. Virtually all of

my other decisions are publicly available through the court's electronic filing system.

Criminal: As a magistrate judge I preside over a broad range of matters, such as preliminary hearings, detention hearings, and presentation of applications for warrants. In the Western District of Oklahoma, none of these decisions have been published in the conventional reporter system. Unless sealed, however, these decisions are publicly available through the court's electronic filing system.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Since March 1999, I have issued hundreds of opinions on constitutional issues. Most of these opinions could arguably be considered "significant" on issues involving the federal constitution. I have tried to be selective and list only those which are particularly significant.

1. *Walck v. Edmondson*, Case No. CIV-05-430-R, 2005 WL 1356481 (W.D. Okla. June 7, 2005) (Doc. 25), *adopted*, Case No. CIV-05-430-R, 2005 WL 1907347 (W.D. Okla. Aug. 10, 2005), *aff'd*, 472 F.3d 1227 (10th Cir. 2007).

2. *Threadgill v. Boone*, Case No. CIV-99-1887-T (W.D. Okla. May 31, 2001), *adopted*, Case No. CIV-99-1887-T (W.D. Okla. July 6, 2001), *aff'd*, 49 Fed. Appx. 773 (10th Cir. 2002). My opinion was supplied in response to 13(d) and the District Judge's opinion is supplied.

3. *Suarez-Tejeda v. United States*, Case No. CIV-01-96-F (W.D. Okla. July 30, 2002), *adopted*, Case No. CIV-01-96-F (W.D. Okla. Aug. 29, 2002), *appeal dismissed*, Case No. 02-6341, 2004 WL 68758 (10th Cir. 2004). My order was supplied in response to 13(d) and the District Judge's opinion is supplied.

4. *Lemes v. Ashcroft*, Case No. CIV-02-890-HE (W.D. Okla. Dec. 11, 2002), *adopted*, Case No. CIV-02-890-HE (W.D. Okla. Jan. 31, 2003). Copies of these opinions are supplied.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal. (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have

come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

The Western District of Oklahoma employs an “automatic” recusal system. Under this system, the assigned judge receives a report stating whether a potential issue of disqualification exists. However, I do not rely solely on this system.

When a case is referred or transferred to me, I review the parties and counsel to consider the possibility of a disqualifying association. When a potential issue arises, I review the Code of Judicial Conduct and the pertinent advisory opinions. I also have consulted informally with officers of the General Counsel’s Office for the Administrative Office of the United States Courts.

In *Lampley v. United States*, Case No. CIV-01-976-T (W.D. Okla.), a *pro se* plaintiff moved for my recusal on grounds that I had “determined to prejudicially view this Case, outside properly enacted laws of the Constitution for the United States of America; codes, rules, and regulations which have never conformed to the Contractual Agreement of that Constitution” Motion to Correct the Record and Motion for the Recusal of Magistrate Judge, *Lampley v. United States*, Case No. CIV-01-976-T (W.D. Okla. July 13, 2001). I denied the motion for recusal. *Lampley v. United States*, Case No. CIV-01-976-T (W.D. Okla. July 16, 2001).

In *Evitt v. Durland*, Case No. CIV-98-1712-A (W.D. Okla.), the plaintiff requested recusal. The matter involved post-judgment proceedings to collect on a judgment. According to the plaintiff, the judgment debtor – Jack Durland, Jr. – had boasted of his close relationship with me when the two of us were practicing law at Crowe & Dunlevy. Mr. Durland was an attorney at Crowe & Dunlevy for a few years while I was there, but the two of us barely knew one another. I denied the motion for recusal because there was no basis for disqualification.

In *Moore v. Newton-Embry*, Case No. CIV-09-985-C (W.D. Okla. July 19, 2011), the respondent filed a limited motion for recusal. At the time, I was considering

the petitioner's request for an evidentiary hearing. The respondent stated that if an evidentiary hearing were required, it would need to call my sister-in-law as a witness. Thus, the respondent conditionally moved for recusal in the event that an evidentiary hearing were ordered. I separately denied the petitioner's motion for an evidentiary hearing. As a result, the limited motion for recusal became moot and I denied it on this ground. Order: Limited Motion for Recusal, *Moore v. Newton-Embry*, Case No. CIV-09-985-C (W.D. Okla. Sept. 7, 2011); see *Moore v. Newton-Embry*, Case No. CIV-09-985-C (W.D. Okla. July 15, 2011) (my disclosure of my sister-in-law's involvement in the underlying events based on my review of the parties' exhibits).

In *Clapp v. National Bureau of Collections, Inc.*, Case No. CIV-01-331-P (W.D. Okla.), I recused because the defense attorney's wife had previously employed my wife.

For several years following my resignation from Crowe & Dunlevy, I recused from cases involving my former law firm. These cases included *Knight v. Conner*, Case No. CIV-00-621-R (W.D. Okla. July 10, 2000), *Hampton v. Keating*, Case No. CIV-00-2061-T (W.D. Okla. Aug. 15, 2001), *Nautilus Insurance Co. v. SOL & Sons Corp.*, Case No. CIV-01-826-BA (W.D. Okla. Sept. 27, 2001), *Jones v. Pace American, Inc.*, Case No. CIV-99-1368-A (W.D. Okla. Aug. 3, 2000), and *Shamrock Drilling Fluids, Inc. v. Oklahoma Federal Savings & Investment Association*, Case No. CIV-89-1818-A (W.D. Okla. Sept. 23, 1999).

Approximately three years after my appointment, I employed the remittal procedure in Canon III(D) of the Code of Judicial Conduct when my former law firm, Crowe & Dunlevy, was involved. *Doe 1 v. Dominion, Inc.*, Case No. CIV-01-1855-F (W.D. Okla. Feb. 11, 2002), and *Doe 1 v. Dominion, Inc.*, Case No. CIV-01-1855-F (W.D. Okla. Mar. 5, 2002). In this case, the parties jointly consented – outside of my presence – to my participation and I continued participation as the assigned judge. Joint Consent, *Doe 1 v. Dominion, Inc.*, Case No. CIV-01-1855-F (W.D. Okla. Mar. 27, 2002). When fewer than all parties consented in *Scott v. John Alden Life Insurance Co.*, Case No. CIV-03-880-T (W.D. Okla. May 13, 2004), I recused.

I also employed this procedure in *Clark v. Penn Square Mall Limited Partnership*, Case No. CIV-10-29-C (W.D. Okla. July 11, 2011). This case was referred to me for discovery disputes. One of the disputes involved the plaintiff's request for documents involving other crimes at a mall owned by Simon Properties Group, Inc. While I was in private practice, I had represented Simon Properties Group, Inc. in a case involving a similar discovery dispute. I disclosed the prior representation and stated that I would recuse unless all parties filed a joint remittal of the disqualification. *Id.* The parties filed a joint consent, and I continued to act as the assigned judge. Joint Remittal of Disqualification, Order, *Clark v. Penn Square Mall Limited Partnership*, Case No. CIV-10-29-C (W.D. Okla. July 15, 2011).

For similar reasons, I employed the remittal procedure in *Pendergraft v. Simon Property Group, Inc.*, Case No. CIV-04-1450-T (W.D. Okla. Sept. 2, 2005). Because fewer than all parties consented, I recused. Joint Response, *Pendergraft v. Simon Property Group, Inc.*, Case No. CIV-04-1450-T (W.D. Okla. Sept. 15, 2005); Order, *Pendergraft v. Simon Property Group, Inc.*, Case No. CIV-04-1450-T (W.D. Okla. Sept. 19, 2005).

This procedure was also employed in *Reinhardt v. Brinker Oklahoma, Inc.*, Case No. CIV-10-549-BA (W.D. Okla.). My wife had recently been involved in a vehicle accident and the other driver and her husband had been represented by the attorney representing the plaintiff in *Reinhardt v. Brinker Oklahoma, Inc.*, Case No. CIV-10-549-BA (W.D. Okla.). I disclosed this situation to the attorneys and announced that I would recuse in the absence of a joint remittal of disqualification. Order, *Reinhardt v. Brinker Oklahoma, Inc.*, Case No. CIV-10-549-BA (W.D. Okla. June 17, 2011). The parties filed a joint remittal of disqualification, and I continued to act as the assigned judge. Joint Remittal of Disqualification, *Reinhardt v. Brinker Oklahoma, Inc.*, Case No. CIV-10-549-BA (W.D. Okla. July 1, 2011).

I recused in *Chesapeake Panhandle Limited Partnership v. Kinder Morgan, P.C.*, Case No. CIV-00-397-F (W.D. Okla. Nov. 30, 2001). I had presided over a judicial settlement conference, and one party moved for enforcement of the settlement agreement. This referral was erroneous because I was not the assigned magistrate judge and I had expressed an opinion on the issue to counsel during my efforts to resolve the dispute by agreement.

I recused in *Environmental Safety & Health, Inc. v. Integrated Pro Services, LLC*, Case No. CIV-08-1215-BA (W.D. Okla. Sept. 2, 2011), because of my association with one of the attorneys in the case.

I recused in *Logsdon v. Harvanek*, Case No. CIV-11-1471-F (W.D. Okla. Dec. 19, 2011). This habeas action was brought by a person convicted on charges involving fraudulent conduct. A friend of mine was one of the alleged victims, and he and I had discussed some of the underlying incidents prior to the filing of the habeas action.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public officers you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

My only public office has involved service as a United States Magistrate Judge. I have not had any unsuccessful candidacies for elective office or unsuccessful nominations for appointed office.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In about 1998, I served on the Finance Committee for Ms. Laura Boyd, who was the Democratic nominee for governor. My wife was a volunteer for Ms. Boyd, and I agreed to serve on the Finance Committee. My responsibility involved solicitation of funds for Ms. Boyd's campaign. I do not recall the dates of my involvement on this committee, but believe that it covered a few months in 1998.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

From 1985 to 1987, I served as a law clerk to the Honorable William J. Holloway, Jr., Circuit Judge of the United States Court of Appeals for the Tenth Circuit. At the time of my clerkship, Judge Holloway was serving as the Chief Judge for the court.

- ii. whether you practiced alone, and if so, the addresses and dates:

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

1987 – 1999
Crowe & Dunlevy
20 North Broadway
Suite 1800
Oklahoma City, OK 73102
Associate (1987 – 1994)
Shareholder (1994 – 1999)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I have not served as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

Throughout my tenure at Crowe & Dunlevy, I practiced primarily in commercial litigation, focusing largely on antitrust and franchise litigation. From 1996 to 1998, I also handled a considerable number of cases involving the Employee Retirement Income Security Act.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

In my work involving commercial litigation, my typical clients involved large businesses such as Simon Properties Group, Inc., Continental Illinois National Bank, Liberty National Bank, and NEC Corporation. A typical client, when I handled ERISA litigation, would have been an insurer such as MetLife Insurance Company or John Alden Life Insurance Company.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

My practice was exclusively in litigation from 1987 to 1999.

From 1987 to about 1990, I did not frequently appear in court because most of my practice involved legal research and writing. From about 1990 to 1999, I appeared in court with increasing frequency.

From 1994 to 1999, I appeared in federal court occasionally. In federal district court, the judges did not frequently entertain oral argument. Thus, my federal court appearances generally involved trial participation. During this period, I also appeared frequently in state court.

- i. Indicate the percentage of your practice in:

- | | | |
|----|-------------------------|-----|
| 1. | federal courts: | 50% |
| 2. | state courts of record: | 50% |

3. other courts: 0%
4. administrative agencies: 0%

ii. Indicate the percentage of your practice in:

1. civil proceedings: 100%
2. criminal proceedings: 0%

d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately ten cases to verdict. In two, I served as sole counsel. In roughly eight other cases, I served at trial as associate counsel.

i. What percentage of these trials were:

1. jury: 90%
2. non-jury: 10%

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

In the United States Supreme Court, I have filed only one *certiorari* petition for a former client, Mr. Lawrence Wolfberg. I believe this document was filed in the late 1980s, and I have not been able to obtain a copy. I have never presented oral argument in the Supreme Court.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. *Herron v. Herron Lumber, Inc.*, Case No. C-88-505 (McCurtain Co. Dist. Ct., State of Okla.).

This case involved a dispute between two factions of a family. Our clients were limited partners of a limited partnership. This entity owned 26,775 acres of timberlands in Oklahoma and Arkansas. From its inception, the limited partnership was managed by its general partner, Herron Lumber, Inc. The officers of Herron Lumber, Inc. (the general partner) were the principal defendants. Herron Lumber, Inc. bought timber from the limited partnership. We claimed that: (1) the officers had manipulated the timber prices – as principals of both the buyer and seller – to exclude our clients from a fair share of the profit; (2) the defendants took advantage of business opportunities that should have been made available to the limited partnership; (3) the officers jeopardized the assets of the limited partnership by executing a guaranty on behalf of that entity even though it had been excluded from any of the profits for the relevant business venture; and (4) the defendants breached their fiduciary duties by withholding distributions and secretly purchasing life insurance for one of the officers out of the limited partnership's assets.

The representation covered the period December 1988 to May 1992. I participated as associate counsel in the trial and was one of the attorneys of record. However, my principal role in the case involved briefing on the numerous legal issues prior to and during the trial. After approximately one week of trial, the parties settled.

The case was assigned to Judge Hack Welch.

Contact Information

Co-Counsel for Plaintiffs: D. Kent Meyers
Crowe & Dunlevy
20 North Broadway
Suite 1800
Oklahoma City, OK 73102
Telephone: (405) 235-7700

John Shipp, Deceased

Counsel for Defendants: Joe Stamper, Deceased

Michael Burrage
Whitten & Burrage
1215 North Classen Drive
Oklahoma City, OK 73103
Telephone: (405) 516-7800

2. *Dollar Systems, Inc. v. Bluewater Leasing, Inc.*, Case No. 92-CV-1118 (N.D. Okla.).

From approximately November 1992 to January 1995, I served as lead counsel for the franchisor, Dollar Systems, Inc., in this action and was counsel of record. The suit began as a collection matter on Dollar's part. The franchisee filed a substantial counterclaim and aggressively pursued various tort theories against Dollar. Through informal investigation, I discovered that the franchisee had actively concealed the existence of several rent-a-car locations in order to avoid payment of franchise fees. This discovery led to the franchisee's relinquishment of its counterclaim and consent to a judgment in Dollar's favor.

Co-Counsel for Plaintiff: Michael Gibbens
Crowe & Dunlevy
321 South Boston Avenue
Suite 500
Tulsa, OK 74103
Telephone: (918) 592-9800

Counsel for Defendant: Charles Shipley
Shipley Law Firm
1800 South Baltimore
Suite 900
Tulsa, OK 74119
Telephone: (918) 582-1720

Doug Inhofe
One West Third Street
Tulsa, OK 74103
Telephone: (918) 582-0410

3. *Suiter v. Mitchell Motor Coach Sales, Inc.*, Case Nos. 96-5152, 96-5159 (10th Cir.).

From early 1996 to late 1998, I served as lead counsel for the plaintiff in this case, which involved claims under the Motor Vehicle Information and Cost Savings Act (commonly known as the "Odometer Act"). I was hired to defend the plaintiff's favorable judgment on appeal. Our client purchased a motor coach, and the odometer understated the actual mileage by at least 42,000 miles. My work involved supervision of the drafting of appellee's brief and presentation of oral argument in the Tenth Circuit Court of Appeals. My client's judgment was affirmed in *Suiter v. Mitchell Motor Coach Sales, Inc.*, 151 F.3d 1275 (10th Cir. 1998).

Counsel for Defendant: James Tilly
Tilly Law Firm

1639 South Carson Avenue
Tulsa, OK 74119
Telephone: (918) 583-8868

4. *Burghart v. Frisch's Restaurants, Inc.*, Case No. 86-2045 (10th Cir.).

The underlying suit involved a claim under the state's forcible entry and detainer statutes. I was asked to represent the landlord after the underlying judgment had already been affirmed. The landlord sought recovery for losses by the tenant's continued presence on the property during the pendency of the prior appeal. The defendant had lost this issue in the federal district court prior to my engagement in the case. At that point, the plaintiff's lead counsel asked me to prepare the brief for the second appeal and to present oral argument in the Tenth Circuit Court of Appeals. I did so, but the effort was unsuccessful. *See Burghart v. Frisch's Restaurants, Inc.*, 865 F.2d 1162 (10th Cir. 1989) (*per curiam*).

Co-Counsel for Plaintiff: David L. Thomas
Thomas & Terrell
4000 North Classen Center
Suite 100 South
Oklahoma City, OK 73118
Telephone: (405) 286-6353

Counsel for Defendant: Robert H. Warren
Warren, Ricks & Associates
430 Northwest Fifth Street
Oklahoma City, OK 73102
Telephone: (405) 232-3441

5. *Bucklin Equipment Co. v. John Deere Industrial Equipment Co.*, Case No. 84-1602-P (W.D. Okla.).

My law firm represented the plaintiff in three trials. The first trial ended in a defense verdict, and the second and third trials resulted in awards of \$1,000,000 and \$850,000 for our client. I represented the plaintiff in the second and third trials, but not in the first one.

Our client, Bucklin Equipment Co., was a distributor for John Deere Industrial Equipment Co. The owner was convicted of a felony involving bribery, and John Deere terminated his dealership. I was not involved in the first trial. At that trial, Bucklin Equipment's theory involved wrongful termination. There was a defense verdict, but the Tenth Circuit Court of Appeals reversed and remanded for a new trial.

In 1986, Tony Rupert and I became the new attorneys for Bucklin Equipment. We declined to pursue the theory of wrongful termination. Instead, we relied on a

promise to reasonably approve prospective purchasers and to assist in a sale of the business as a going concern. John Deere rejected a prospective buyer as a dealer, and we argued that this decision was unreasonable. We also claimed that John Deere had undermined Bucklin's ability to sell his business to another dealer. After a six-day trial, the jury returned a verdict of \$1,000,000 for our client.

The federal district court granted a new trial based on a determination that the verdict was against the greater weight of the evidence. Mr. Rupert and I again represented the plaintiff at the third trial, which resulted in another favorable verdict. This time, the award totaled \$850,000. The defendant agreed to pay this judgment, and our client agreed to forego an appeal on the vacatur of the earlier award of \$1,000,000. My representation ended on November 1, 1989.

Co-Counsel for Plaintiff: Anton J. Rupert
Crowe & Dunlevy
20 North Broadway
Suite 1800
Oklahoma City, OK 73102
Telephone: (405) 235-7700

Counsel for Defendant: John C. Harrington, Jr.
Lytle Soule & Curlee
119 North Robinson
Suite 1200
Oklahoma City, OK 73102
Telephone: (405) 235-7471

6. *McAlister v. McAlister*, Case No. 88836 (Okla.).

From January 1997 to April 1998, I represented the mother in an appeal over the loss of custody of her son. At trial, the mother sought to present evidence that her ex-husband was unfit for custody because he had abused her during their marriage. The trial judge excluded the evidence.

I served as lead counsel for the mother in an appeal. The intermediate appeals court affirmed, and the state supreme court denied *certiorari* in a 5-4 decision. See Docket Sheet at p. 4, *McAlister v. McAlister*, Case No. DF-88836 (Okla.).

Counsel for Defendant: Arnold Fagin
1218 East Ninth Street
Suite 3
Edmond, OK 73034
Telephone: (405) 341-6565

7. *Comcoa Inc. v. NEC Telephones Inc.*, Case No. CIV-85-1436-C (W.D. Okla.).

This case involved a suit for price-discrimination under the Robinson-Patman Act and tort theories under state law. I served as associate counsel for the defendant, NEC Telephones, Inc., from the Fall of 1987 to January 1994. I had substantial involvement in the extensive briefing prior to trial, during the trial, and on an appeal to the Tenth Circuit Court of Appeals. In addition, I participated in the two trials conducted in this case.

Prior to trial, the federal district court granted summary judgment to the defendant on the claim involving breach of the implied duty of good faith and fair dealing. The trial resulted in a defense verdict on the claims involving price-discrimination and intentional interference with prospective economic relations. The summary judgment ruling was reversed on appeal. *Comcoa v. NEC Telephones, Inc.*, 931 F.2d 655 (10th Cir. 1991). At the retrial, the plaintiffs obtained a judgment for \$2,690,000. See Docket Sheet at p. 12 No. 524, *Comcoa v. NEC Telephones Inc.*, Case No. CIV-85-1436 (W.D. Okla. June 25, 1992). I drafted the brief on the second appeal. The case settled during the pendency of this appeal.

Counsel for Plaintiff: (Second Trial)	John T. Edwards Monnet Hayes Bullis Thompson & Edwards 120 North Robinson Suite 1719W Oklahoma City, OK 73102 Telephone: (405) 232-5481
--	--

(First Trial)	Joseph Giffin (retired) Chicago, IL
---------------	--

Co-Counsel for Defendant:	D. Kent Meyers Crowe & Dunlevy 20 North Broadway Suite 1800 Oklahoma City, OK 73102 (405) 235-7700
---------------------------	---

	Mack J. Morgan III Crowe & Dunlevy 20 North Broadway Suite 1800 Oklahoma City, OK 73102 (405) 235-7700
--	---

8. *John A. Henry & Co. v. T.G. & Y. Stores Co.*, 941 F.2d 1068 (10th Cir. 1991).

From approximately 1990 to 1991, I served as associate counsel for the plaintiff, John A. Henry & Co., the landlord for a large local retailer. The landlord claimed breach of contract and wrongful interference with contract. According to the landlord, the retail tenant withheld lease payments to obtain consent to cancel the lease.

In federal district court, we obtained a jury verdict for \$100,000 in actual damages and \$2,000,000 in punitive damages. I participated in the trial and did virtually all of the briefing in the federal district court and in the appeal. Our \$2,100,000 judgment was affirmed in *John A. Henry & Co. v. T.G. & Y. Stores Co.*, 941 F.2d 1068 (10th Cir. 1991).

Co-Counsel for Plaintiff: Anton J. Rupert
Crowe & Dunlevy
20 North Broadway
Suite 1800
Oklahoma City, OK 73102
(405) 235-7700

Counsel for Defendant: John T. Edwards
Monnet Hayes Bullis Thompson & Edwards
120 North Robinson
Suite 1719W
Oklahoma City, OK 73102
Telephone: (405) 232-5481

9. *Cassan Enterprises Inc. v. Dollar Systems Inc.*, Case No. 93-CV-1077-BJR (W.D. Wash.).

From approximately 1993 to 1996, I served as associate counsel for Dollar Systems Inc. in a suit brought by its earliest franchisee for statutory and common law tort claims under Washington law. According to the franchisee, the franchisor failed to provide support for a bid to maintain a presence at the Seattle airport. I had principal responsibility for the extensive briefing prior to and during the trial, for preparing our witnesses prior to and during the trial, for preparing the requested jury instructions and objections to the plaintiffs' proposed jury instructions, and for conducting oral argument on these issues. However, I did not participate in the trial.

The trial resulted in a substantial judgment for the plaintiffs. However, that judgment was overturned on appeal. *Cassan Enterprises, Inc. v. Dollar Systems, Inc.*, 131 F.3d 145 (9th Cir. 1997). I did not participate in the appeal.

Counsel for Plaintiff: Floyd Newland (retired)
Seattle, WA

Co-Counsel for Defendant: James L. Kincaid
Crowe & Dunlevy
321 South Boston Avenue
Suite 500
Tulsa, OK 74103
Telephone: (918) 592-9800

Michael Gibbens
Crowe & Dunlevy
321 South Boston Avenue
Suite 500
Tulsa, OK 74103
Telephone: (918) 592-9800

10. *Continental Illinois National Bank v. Bell*, Case No. CIV-84-2386-C (W.D. Okla.).

My law firm represented Continental Illinois National Bank in a suit brought against a guarantor on a loan that was in default. Beginning in October 1987, when I joined Crowe & Dunlevy, I had principal responsibility for the extensive briefing in federal district court. However, I did not participate in the two trials that took place. Our client sued on various guaranties, and the guarantor counterclaimed on various theories of lender liability.

The first trial resulted in an award of \$51,604,074 for the guarantor on his counterclaim against Continental Illinois National Bank. This judgment was appealed, but I did not participate at that stage. In the appeal, the judgment was vacated and remanded for retrial on damages on a claim involving nonregistration of securities. *See FDIC v. Bell*, 1990 WL 58108 (10th Cir. Apr. 24, 1990) (unpublished op.).

At the second trial, the court found no damages for the guarantor. In a subsequent appeal, I was substantially involved in the briefing. That effort proved successful, as the Tenth Circuit Court of Appeals affirmed. *See Continental Bank v. Burke*, 1993 WL 360664 (10th Cir. Sept. 14, 1993) (unpublished op.). My involvement in the case ended with the second appellate decision in September 1993.

Counsel for Plaintiff: Murray Cohen (retired)
(First Trial)

Paul Tobin
801 Northwest 46th Street
Oklahoma City, OK 73118
Telephone: (405) 557-0404

(Second Trial)

Joe Edwards
Crowe & Dunlevy
20 North Broadway
Suite 1800
Telephone: (405) 235-7700

Ricki V. Sonders
9020 North May Avenue
Suite 200
Oklahoma City, OK 73120
Telephone: (405) 810-2200

Co-Counsel for Defendant: D. Kent Meyers
Crowe & Dunlevy
20 North Broadway
Suite 1800
Oklahoma City, OK 73102
Telephone: (405) 235-7700

Anton J. Rupert
Crowe & Dunlevy
20 North Broadway
Suite 1800
Oklahoma City, OK 73102
Telephone: (405) 235-7700

Mack J. Morgan III
Crowe & Dunlevy
20 North Broadway
Suite 1800
Oklahoma City, OK 73102
Telephone: (405) 235-7700

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organization(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

The most significant legal activities, outside of the cases I have handled in private practice and as a judge, involve mentoring, legal writing, and participation in bar activities.

I have served for approximately three years on the Oklahoma Bar Association's committee, "Lawyers Helping Lawyers." I also have been recently appointed as a director for a related foundation, called "LHL Foundation." Lawyers Helping Lawyers is devoted to assisting attorneys who are experiencing personal problems. These problems include depression, alcoholism, and drug dependency. I have served as a mentor for several young men, and this experience has proven to be an invaluable learning experience for me. I hope it has helped these young men as well.

I also greatly enjoy the academic aspect of the law and have engaged in extensive legal writing outside of my legal practice or judicial service. For example, I have authored or coauthored six law review articles and drafted a section for a legal treatise on "Oklahoma Appellate Practice," authored by two fellow shareholders at Crowe & Dunlevy.

Finally, I have spent considerable time and energy in various bar organizations. This work has included presidency of the local chapter of the Federal Bar Association. In this capacity, I increased the membership of the organization from roughly 140 members to over 330 members in less than eighteen months. For my service as the president of the Federal Bar Association – Oklahoma City Chapter, I was awarded the national organization's most prestigious honor, the Earl Kintner Award. In addition, I have served on the county bar's board of directors and the national leadership of the Federal Bar Association. Through these bar activities, I have tried to promote the ideals of civility and professionalism that are natural by-products of organizations that unite lawyers in a common purpose.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I was a co-instructor in 1997, 1998, and 1999 for "Civil Pretrial Litigation" at the University of Oklahoma School of Law. I have not retained a syllabus for this class.

20. **Deferred Income/Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no deferred income arrangement, stocks, options, uncompleted contracts or other future benefits that I expect to derive from previous business relationships, firm memberships, former employers, clients or customers.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not currently have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during my service with the court.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I do not anticipate conflicts of interest from family members or other persons, parties, categories of litigation, or financial arrangements. If confirmed, I would carefully review cases and parties to determine if any actual or potential conflicts of interest were present. I would adhere to the Code of Conduct for United States Judges and the pertinent advisory opinions.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If confirmed, I would handle all matters involving actual or potential conflicts of interest through careful application of the Code of Conduct for United States Judges and the pertinent advisory opinions. I would continue to recuse when appropriate.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have attempted to fulfill this obligation through bar activities and representation of individuals without compensation.

I have served on the Oklahoma Bar Association's committee, "Lawyers Helping Lawyers," for approximately three years. Through this committee, I have served as a mentor for several young men experiencing personal problems involving alcoholism, marital conflict, bipolar disorder, and lack of professional guidance. I meet periodically with these young men and try to provide encouragement, advice, and friendship. In this manner, I have tried to help attorneys disadvantaged by personal difficulties.

When I was in private practice, I also provided *pro bono* representation to a number of individuals. For example, at the request of different federal judges, I agreed to represent three prisoners in civil rights cases. One went to trial, and two settled. I spent roughly 550 hours on these cases without any compensation.

I also provided *pro bono* representation for a mother who had lost custody of her minor son. At trial, her counsel attempted to present evidence of domestic abuse to demonstrate her ex-husband's lack of fitness as a sole custodian. The evidence was excluded. I agreed to represent her, without pay, in an appeal. For the appeal, I not only drafted the briefs for the mother but also solicited an *amicus* brief by the Family Violence and Sexual Assault Institute and Oklahoma Coalition Against Domestic Violence. After an unsuccessful result in the state's intermediate court, I petitioned for *certiorari* in the Oklahoma Supreme Court. That court denied *certiorari* in a 5-4 decision. In this case, I spent approximately 118 hours without any compensation.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

There is no selection commission in the State of Oklahoma for federal judicial vacancies.

In January 2010, I wrote to Attorney General Holder, expressing an interest in the position. This letter was referred to the Justice Department Office of Legal Policy.

I met with Congressman Boren in approximately February 2010, Governor Henry on March 2, 2010, Congressman Cole on August 9, 2011, Congressman Sullivan on August 23, 2011, and Congressman Lankford on September 30, 2011. I had

initiated each meeting to request consideration for the vacancy in the Tenth Circuit Court of Appeals.

I spoke with an attorney from the White House Counsel's Office on October 19, 2011. Since October 31, 2011, I have been in contact with officials from the White House Counsel's Office and the Office of Legal Policy at the Department of Justice. On December 1, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, D.C. On January 23, 2012, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, Robert E. Bacharach, do swear
that the information provided in this statement is, to the best
of my knowledge, true and accurate.

January 24, 2012
(DATE)

Robert E. Bacharach
(NAME)

Ann Baskin
(NOTARY)

My Commission Expires:
3/25/2015

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF OKLAHOMA
UNITED STATES COURTHOUSE
200 N.W. 4TH STREET, ROOM 1305
OKLAHOMA CITY, OKLAHOMA 73102

CHAMBERS OF
ROBERT E. BACHARACH
UNITED STATES MAGISTRATE JUDGE

January 3, 2013



The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I have reviewed the questionnaire submitted to the Senate Judiciary Committee on January 24, 2012, in connection with my nomination to the Tenth Circuit Court of Appeals. Incorporating the additional information listed below, I certify that the information contained in these documents is, to the best of my knowledge, true and accurate.

Q. 9

I continue to be a member of the Federal Bar Association's Chapter Activity Grant Committee, but I am no longer serving as the chairperson of that committee.

Q. 12(a)

I have written five additional articles:

Robert Bacharach, *FBA's Spotlight on Rick Wade*, The Federal Bar Association Oklahoma City Chapter (Nov. 30, 2012). Copy supplied.

Robert Bacharach, *FBA's Spotlight on Eva Hixson!*, The Federal Bar Association Oklahoma City Chapter (Aug. 31, 2012). Copy supplied.

Robert Bacharach, *Spotlight on Sandra O'Hara, Administrative Manager*, The Federal Bar Association Oklahoma City Chapter (Aug. 16, 2012). Copy supplied.

Robert Bacharach, *Spotlight on Ann Baskin, Administrative Assistant to the Clerk of Court in the Western District of Oklahoma*, The Federal Bar Association Oklahoma City Chapter (July 10, 2012). Copy supplied.

The Honorable Patrick Leahy
January 3, 2013
Page 2

Robert Bacharach, *Spotlight on Cathy Suchy, Case Administrator, Western District of Oklahoma*, The Federal Bar Association Oklahoma City Chapter (Feb. 7, 2012). Copy supplied.

Q. 12(d)

Since my previously-submitted questionnaire, I have given the following presentations:

July 6, 2012: Presentation to approximately 50 children for a daycare/preschool, called the "Childcare Network." I gave the children a tour of my courtroom and answered general questions about my role as a judge. I have no notes, transcript, or recording. The sponsor was the Childcare Network, 4500 East I-240 Service Road, Oklahoma City, Oklahoma 73135.

September 22, 2012: Invocation at the Reception and Presidential Installation Banquet, Federal Bar Association 2012 Annual Meeting and Convention. Remarks supplied.

October 18, 2012: Presentation at the Investiture of Dean Valerie K. Couch, Oklahoma City University School of Law. Remarks supplied.

Q. 13(a)

I have presided over two more criminal bench trials that resulted in a judgment.

Q. 13(b)

I have attached a list of opinions I have issued since my previously-submitted questionnaire.

Q. 13(c)

Certiorari was requested, but denied, in the following cases:

Gibbs v. Astrue, Case No. CIV-05-1189-M (W.D. Okla. Feb. 25, 2011), *adopted* (W.D. Okla. Mar. 16, 2011), *aff'd*, Case No. 11-6076, 449 F. App'x 744 (10th Cir. Dec. 1, 2011), *cert. denied*, ___ U.S. ___, 132 S. Ct. 1927 (U.S. Apr. 16, 2012).

Winchester v. Jones, Case No. CIV-10-307-R (W.D. Okla. June 3, 2011), *adopted* (W.D. Okla. July 6, 2011), *appeal dismissed*, Case No. 11-6175, 455 F. App'x 811 (10th Cir. Nov. 15, 2011), *cert. denied*, ___ U.S. ___, 132 S. Ct. 1919 (U.S. Apr. 16, 2012).

Whitmore v. Miller, Case No. CIV-10-1409-R (W.D. Okla. Apr. 7, 2011), *adopted* (W.D. Okla. July 12, 2011), *appeal dismissed*, Case No. 11-6190, 466 F. App'x 705 (10th Cir. Feb. 23, 2012), *cert. denied*, __ U.S. __, 133 S. Ct. 240 (U.S. Oct. 1, 2012).

Banks v. Warden, FTC, Oklahoma, Case No. CIV-11-151-C (W.D. Okla. June 23, 2011), *adopted* (W.D. Okla. July 13, 2011), *aff'd*, Case No. 11-6192, 467 F. App'x 777 (10th Cir. Mar. 9, 2012), *cert. denied*, __ U.S. __, 132 S. Ct. 2414 (U.S. May 14, 2012).

Esquivel v. Warden, F.C.I., El Reno, Case No. CIV-11-365-W (W.D. Okla. Aug. 29, 2011), *adopted* (W.D. Okla. Oct. 4, 2011), *aff'd*, Case No. 11-6269, 462 F. App'x 825 (10th Cir. Feb. 14, 2012), *cert. denied*, __ U.S. __, 133 S. Ct. 251 (U.S. Oct. 1, 2012).

The certiorari petition remains pending in this case:

Petty v. Rudek, Case No. CIV-10-1009-W (W.D. Okla. Feb. 7, 2011), *adopted* (W.D. Okla. Mar. 23, 2011), *appeal dismissed*, Case No. 11-6140, 470 F. App'x 713 (10th Cir. July 17, 2012), *cert. petition filed*, Case No. 12-481 (U.S. Oct. 15, 2012).

Q. 13(f)

When a party objects to a report, the district judge typically determines whether to adopt or decline my recommendation. The decision to “decline” my suggested ruling does not operate as a reversal. But below, I have listed the two instances since my previously-submitted questionnaire in which a district judge has declined to adopt one of my reports:

First, based on newly-presented arguments, the district judge declined to adopt my report in *Stuart v. Taylor*, Case No. CIV-11-869-R (W.D. Okla. Sept. 20, 2012). Opinions supplied.

Second, explicitly declining to address whether my report was correct, the district judge “decline[d], at this time,” to adopt my report in *Moore v. Newton-Embry*, Case No. CIV-09-985-C (W.D. Okla. Apr. 6, 2012). Opinions supplied.

The Honorable Patrick Leahy
January 3, 2013
Page 4

I am also forwarding an updated net worth statement and financial disclosure report as requested in the questionnaire. I thank the Committee for its consideration of my nomination.

Yours very truly,

A handwritten signature in dark ink, reading "Bob Bacharach". The signature is fluid and cursive, with the first name "Bob" and last name "Bacharach" clearly legible.

Robert E. Bacharach
United States Magistrate Judge

cc: The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Federal Bar Association - Oklahoma City Chapter

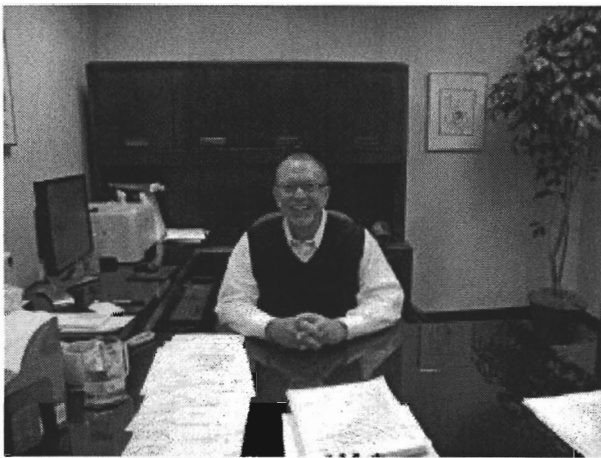
The Federal Bar Association

Oklahoma City Chapter

FBA'S SPOTLIGHT ON RICK WADE

Posted by Judge Robert Bacharach on 11/30/2012

FBA's Spotlight on Rick Wade



The Federal Bar Association proudly puts its spotlight on Rick Wade, valued member of the court family in the Western District of Oklahoma.

A native Oklahoman, Rick graduated from Northwest Classen High School and attended Central State University.

After attending college, Rick went to work at Honeywell until it experienced a major layoff in 1975. At the same time, the court clerk (Rex Hawks) was wanting to hire a file clerk who wanted to make a career here. In search of such a person, Mr. Hawks contacted Honeywell's human relations manager and, not surprisingly, she recommended Rick.

Of course, Rick thoroughly impressed Mr. Hawks. But Rick's hiring had to be approved by the chief district judge, who was the Honorable Fred Daugherty. The problem: 23-year-old Rick Wade sported long hair and a beard, and Judge Daugherty was not a fan of either one on young men like Rick. So, Mr. Hawks gently suggested a shave. Fortunately, Rick took the advice and Judge Daugherty was suitably impressed — and Rick was hired.

In the next 37+ years, Rick was promoted from a file clerk to statistical clerk, to a courtroom deputy for Judge Chandler, to a courtroom deputy for Judge West, and eventually to his current position as Operations Manager. Rick fondly remembers all of these roles. But he has special memories of his time with Judge West. Of Judge West, Rick says: "These were the best years I ever spent. I love that man like a father."

The admiration is mutual, for Judge West says about Rick:

Rick was my courtroom deputy for many years. I thoroughly enjoyed the opportunity to work with him, and simply cannot imagine a more capable or effective courtroom deputy.

Ricochet, as I nicknamed Rick, and I share many common values and interests — including unbounded enthusiasm for the O.U. football team.

Although Rick has not discussed his future plans with me, I have every confidence he will bring to his future endeavors the extraordinary skill and competence that have made a success of his every undertaking thus far.

Bob Dennis, the Court Clerk, has similar glowing remarks about Rick:

I don't think I can ever remember a time when Rick was late getting into the office. He has always been very punctual and dependable. I think he may have one of the most enviable records for having the highest accumulated unused sick leave balances in the office.

Rick has been the recipient of many outstanding evaluations, quality step increases and cash awards over the many years he has worked in the court. He has always conducted himself in a very quiet and dignified manner and has always been a steady hand at the helm. Rick is known for his good nature and calm disposition. He has been a loyal and dedicated employee who reflects credit upon this court and upon this office.

After over 37 years with the court family, Rick is heading to the next chapter in his journeys — retirement. He began thinking about retirement in the Spring of 2012. At about the same time, Rick was diagnosed with an aggressive form of skin cancer. Fortunately, doctors detected the cancer early and were able to remove the melanoma. Today, Rick is cancer-free, but mindful from his scare of the blessings in his life. Some of his many blessings are his wife Linda and his two daughters (Brandy and Amy). Rick is also the proud grandfather of five (Brooke, Drake, Isaiah, Jade, and Emma). In his retirement, Rick plans on spending more time with his precious daughters and grandchildren.

Rick is so proud of them, and we are so proud of Rick! As he begins this wonderful new chapter in his life, the F.B.A. proudly puts its spotlight on Rick Wade. Farewell, Rick; we are all blessed by your dedicated service for 37 years.

Federal Bar Association - Oklahoma City Chapter

The Federal Bar Association

Oklahoma City Chapter

FBA'S SPOTLIGHT ON EVA HIXSON!

Posted by Judge Robert E. Bacharach on 08/31/2012

The Federal Bar Association proudly puts its spotlight on Eva Hixson!

Eva is retiring on August 31, 2012, after 45 years of service as a deputy court clerk. Before joining the Western District of Oklahoma, Eva spent 20 years as a deputy court clerk for the Oklahoma County District Court. There she did accounting and docketing and worked on every appeal from the Oklahoma



County District Court.

It was during Eva's service at the Oklahoma County Court Clerk's Office that she met a young law student who was clerking for Judge Charles Owens. That law student was Bob Dennis. And, when Bob was appointed Court Clerk in the Western District of Oklahoma, he contacted Eva and encouraged her to apply. Eva was enjoying work at the Oklahoma County Court Clerk's Office but, to the federal court's good fortune, she applied and joined the Western District of Oklahoma Court Clerk's office in 1987. Initially, she joined the office as an intake clerk. Her duties over the next 25 years have expanded, along with her responsibilities. As a case administrator, Eva works with attorney admissions, fields calls to the Help Desk, and assists practitioners with electronic case filing.

In Eva's 45-year tenure as an assistant court clerk, she has seen extraordinary changes. To Eva, the biggest change is the development of a paperless filing system in federal court. In 2004, when electronic case filing was developed, Eva shared responsibility for creation of a menu which served as a framework for how documents would be filed. Although Eva was somewhat apprehensive at the time about a paperless filing system, she views the development as a remarkable success.

After 45 years of work as a deputy court clerk, Eva is looking forward to the opportunity for relaxation in her retirement. Until now, Eva has never spent more than about a week away from work. In her retirement, Eva will have an opportunity to spend more time with her numerous hobbies — gardening, sewing, reading, cooking, and shopping for antiques.

Eva has confronted a number of health problems — diabetes, heart problems, and amputation — with extraordinary grace. Her upbeat attitude is infectious, spreading warmth and joy to everyone in her path.

Chief Judge Vicki Miles-LaGrange says of Eva: "She is always very professional as she goes about her work and is a very kind person. I will miss what she brings every day to our Court."

Similarly, Judge Robin Cauthron describes Eva as sweet and hard working, always with good humor and a sweet smile. Judge Cauthron adds that she is inspired by Eva's example.

Bob Dennis says:

I remember when Eva and I first worked together in the Oklahoma County Court Clerk's Office in the early 1970s. She then had a reputation among the bench and bar of being one of the most competent and conscientious employees in the Clerk's Office at the time. Not only did she have a wide reputation for being very professional, but she also was known for her charming personality and friendly attitude. When I later became the U.S. District Court Clerk in the late 1980s, I was delighted when Eva indicated her willingness to come work in this office. Over the years, Eva has proven to be a superb employee and an outstanding member of our staff. She has provided a consistent example of maturity, professionalism and fortitude that all should strive to emulate. When Eva retires in a few days, I will feel that I have lost an old trusted friend since she and I have worked together for almost my entire working



career.

The Federal Bar Association echoes the apt descriptions by Chief Judge Miles-LaGrange, Judge Cauthron, and Court Clerk Bob Dennis. We will all miss you, Eva!

Federal Bar Association - Oklahoma City Chapter

The Federal Bar Association

Oklahoma City Chapter

SPOTLIGHT ON SAUNDRA O'HARA, ADMINISTRATIVE MANAGER

Posted by Judge Robert Bacharach on 08/16/2012

The Federal Bar Association proudly puts its spotlight on Sandra O'Hara, the Court's Administrative Manager!



She grew up on a farm in Canute, Oklahoma, with her two sisters and one brother. There, she learned many life-skills — chopping cotton, feeding the chickens, working in the garden, and doing whatever needed to be done. From the family farm, Sandra attended Southwestern Oklahoma State University and Baylor University and ultimately obtained a bachelor's degree in accounting and a master's degree in business from Southwest Texas State University (now Texas State University). While in San Marcos, Sandra worked as a tax accountant and finished her requirements for the CPA certification. Then she became an accounting instructor at Texas State University. The following year she and her family moved to Iowa when her husband, John, was hired at the University of Iowa as a football coach.

Sandra's Oklahoma adventures began through happenstance. In 1992, Sandra was working as a senior accountant in the Business Department at the University of Iowa. John had recently passed away and she wanted to move to Oklahoma because her mother and two sisters were here. Sandra's sister (Judy) learned about a newly created job in the courthouse for a "budget analyst." Judy knew that the job would be perfect for Sandra and told her about it. Luckily, Sandra applied. Bob Dennis, the Court Clerk, quickly recognized Sandra's exceptional abilities and hired her. Sandra began on August 17,

1992 — exactly twenty years before her retirement will go into effect.



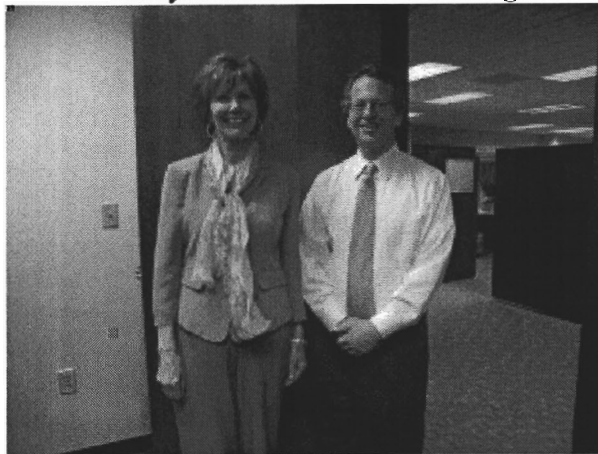
Saundra enjoys traveling and has had an opportunity to visit 42 of the states. That number will grow soon because her fiancée, Duane Boardman, is also retired and shares Saundra's love of traveling.

Saundra has a wonderful family. Her two sons live in Texas, and her daughter resides in Tulsa. Saundra is also the proud grandmother of seven grandchildren ranging from 17 years old to a 3-month-old.

She has treasured her 20-year service with the Court. Through her extensive work with the budget, Saundra has had a unique opportunity to see all the phases of the court operations and had the challenging task of keeping all of the operations afloat with limited funds.

All will miss Saundra, as she is a true professional and exudes warmth and enthusiasm to everyone in her path. Bob Dennis says of Saundra:

Being one of the first federal courts in the nation to implement the then-new "decentralized budgeting process" back in 1992, our court was given special authorization by the Administrative Office of the U.S. Courts to hire a "Budget Analyst" to implement new procedures. Because of Saundra's superb accounting background, we hired her for the position and have been very thankful ever since. We got the right



person for the job. Saundra is an excellent employee and exemplifies the values of grace, dignity and elegance. Because of her work ethic, dedication to duty, and expertise, Saundra has advanced from Budget Analyst to Budget Manager and ultimately to Administrative Manager. She is a delightful person to work with and she will be sorely missed by the entire Court family.

The FBA agrees and, for that, puts its spotlight on the Court Family's Saundra O'Hara. We will miss you, Saundra!

©2011 The Oklahoma City Chapter of the Federal Bar Association

Federal Bar Association - Oklahoma City Chapter

The Federal Bar Association

Oklahoma City Chapter

SPOTLIGHT ON ANN BASKIN, ADMINISTRATIVE ASSISTANT TO THE CLERK OF COURT IN THE WESTERN DISTRICT OF OKLAHOMA

Posted by Judge Robert Bacharach on 07/10/2012

The Federal Bar Association proudly puts its "spotlight" on Ann Baskin. Ann has been a part of the Court Family for over 20 years, having started on June 29, 1992.

Ann is the Administrative Assistant to the Clerk of Court in the Western District of Oklahoma. In this capacity, Ann takes care of all of the administrative details in the office and ensures smooth operations throughout the Clerk's office. For example, she handles all of the Clerk's correspondence, manages the daily docket, opens the mail, processes checks, and maintains the official records of the court, among other duties.



Ann and her husband, Mike, have three children: Aaron, Sarah, and Monica, all of whom work in the oil and gas industry. Ann and Mike are also blessed with two grand-children, Hannah (age 12) and Hudson (age 3). For 8 years, Ann and Mike have taken their grand-daughter on an annual vacation. When their grandson turns 4, he too will be treated to the annual vacation by Ann and Mike.

Ann has wonderful experience that she brought to the courthouse a little over 20 years ago. She was an administrative assistant at Watson McKenzie for roughly 10 years, then worked at Hall Estill for about 2 ½ years before coming to the Courthouse. She began as the secretary for the Chief Deputy Court Clerk, Mr. Grant Price. But with Ann's experience and superior performance, her responsibilities have continued to grow.

Over the last 20+ years, Ann has seen numerous changes in the Courthouse. The biggest change in Ann's eyes is the development of electronic filing. Although Ann misses the personal interaction with manual filing, Ann regards the development of electronic filing as a good thing.

In Ann's leisure time, she enjoys traveling and has gone on many wonderful trips with her husband. Some of her favorite destinations include Costa Rica, St. Lucia, Hawaii, and the Caribbean Islands.

As everyone in the Courthouse knows, Ann always has a huge smile and a wonderful attitude. Apparently, it comes easy for Ann because she says she loves her job. In particular, Ann says she particularly enjoys the people who work in the Courthouse.

Mr. Bob Dennis, the Court Clerk, says of Ann:

Ann is not only efficient at what she does, but she does so with a cheerful heart. I have never heard her say a disparaging word about another person and I've not heard another employee say a disparaging word about her. She keeps up with everyone's family life and she is the only one I know who can name all the spouses, children, and grandchildren of fellow employees as well as remember their birthdays and other important dates. Ann is a delight to work with and she is one of those key employees who sets the tone for the whole office's esprit de corps. In Ann's world, the office is not an office - it's a family.

As Bob says, Ann is truly a delight and the Court family is so lucky to have her! For that, the Federal Bar Association puts its SPOTLIGHT on THE WONDERFUL ANN BASKIN.

©2011 The Oklahoma City Chapter of the Federal Bar Association

Federal Bar Association - Oklahoma City Chapter

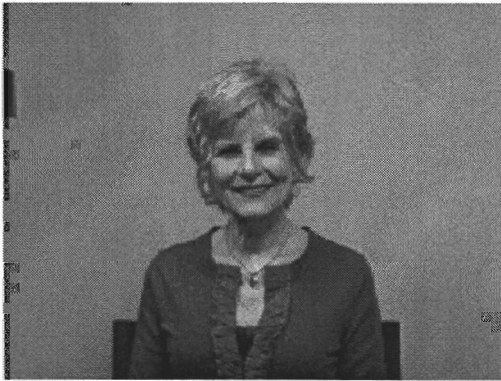
The Federal Bar Association

Oklahoma City Chapter

SPOTLIGHT ON CATHY SUCHY, CASE ADMINISTRATOR, WESTERN DISTRICT OF OKLAHOMA

Posted by Judge Robert Bacharach on 02/07/2012

The Federal Bar Association, Oklahoma City Chapter puts its "spotlight" on the eternally smiling, upbeat Cathy Suchy.



Cathy is the proud mother of three children (Scott Suchy and wife Kelly; Shannon Peregrin and husband Mark; and Shay Payne and husband Kyle) and the doting grandmother of eight (Cate and Turner Suchy; Joe, Jack and Drew Peregrin; and Ethan, Emery and Eli Payne).

Before joining the court family, she worked as the Administrative Assistant to the President, Chairman of the Board, and Chief Financial Officer for Consolidated Asset Management Company, which is a subsidiary of First Interstate Bank of Oklahoma, N.A.

She joined the Western District of Oklahoma on January 2, 1990, as an Intake Clerk. In 1996, she was promoted to the position of Civil Docket Clerk. In 2004, she was promoted again to the position of Case Administrator. In addition to her work as a case administrator, Cathy retains duties for financial matters.

She has received multiple special service awards and recognition for her outstanding service.

Cathy has loved working at the courthouse. Her favorite thing about working at the courthouse is the people. She loves the people in the court family and the camaraderie.

Bob Dennis, the Court Clerk, says:

Cathy came to work for the Clerk's Office in 1990 after a stellar employment career in the banking community. She was hired initially as an Intake Clerk and later promoted to Case Administrator. Cathy is a solid and reliable employee who demonstrates exceptional organizational skills. She is an inspirational

"team player" and one of the nicest people you will ever meet. It has been a joy working with Cathy for



the past 22 years.

Alas, Cathy will be retiring at the end of February, 2012. She will miss the courthouse, but is eager to spend more time with her family. She also plans on volunteering at the Children's Center in Bethany.

©2011 The Oklahoma City Chapter of the Federal Bar Association

Invocation at Federal Bar Association Annual Meeting in San Diego, California
September 22, 2012

Invocation (Please bow your head.)

Bless us, God, and ~~allow~~^{help} us to reach our goals in helping one another and the greater society in which we are a part.

Bless our ^{FBA} leaders — past, present, and future — as we express appreciation for their dedicated service.
~~for all of us~~

Bless ~~our~~ the remarkable ^{individuals} ~~teachers~~ who are being honored tonight, who exemplify the best in all of us and demonstrate ~~the value of~~ how a single person can make a great difference in ^{other} ~~our~~ lives for others.

Bless our wonderful friends, Jack and Nancy, as they embark on a wonderful new chapter in their lives.

~~May~~
Thank you, God, for all of our many blessings.

Amen

INVESTITURE REMARKS FOR DEAN VALERIE COUCH

Good evening. I **truly appreciate** the opportunity to participate in this **wonderful celebration** of O.C.U. Law School's passing of the torch to Dean Couch. This is a **chance** to **pause** and **reflect** on this **great institution's path**, both **where it has been** and **how it is poised to advance even further** in the coming decades.

A law school is comprised of many **influences and constituencies**. Ultimately, the person responsible for **navigating** the various **constituencies** is the **Dean**. The Dean bears not only the ultimate **responsibility** for the school's **progress**, but also serves as a **guide** for the **multitude of influences** within the school.

For over a decade, that **role** was occupied by a **remarkable person, scholar, friend, and leader** — Dean Emeritus Larry Hellman. **Today**, we celebrate the **next chapter** in this school's development under the leadership of another **remarkable person, scholar, and friend** — Dean Valerie Couch.

I had the **wonderful fortune** to meet Dean Couch in 1998. I met her as an **opponent**. We represented two parties in a lawsuit that was **very contentious** between our clients. Dean Couch was a **wonderful advocate**, but I quickly learned that her **temperament** would never be **compromised** by the **intense emotions** of others. She **was, is, and will always be** a **very gracious person**.

In the midst of our litigation, we were both appointed to fill two vacancies as Magistrate Judges in the Western District of Oklahoma.

[REB: Look at Dean Couch]

In the ensuing 13+ years, Valerie, you and I went from **adversaries** to **colleagues** and to **friends**. In that process, I have come to **appreciate even more** your **unique combination of qualities**: your extraordinary **intellect**, your strong **work-ethic**, your **graciousness**, your ability to **listen and communicate**, and your **judgment**.

[REB: Look back at audience]

Dean Couch's **intellect** is **profound** and **evident** to all who know her. She graduated in the top 5% of her law school class at the University of Oklahoma, served as Articles Editor for the law review, and graduated Order of the Coif. Prior to law school, she earned her bachelor's *and* master's degrees in English Literature. For six years, Dean Couch served on the Editorial Board for the *Federal Courts Law Review*. Dean Couch is quite simply, **brilliant**. She was **brilliant** as a **lawyer**, she was **brilliant** as a **judge**, and she **will be brilliant** as a **law school dean**.

Dean Couch's **graciousness and professionalism** are also recognized by all who **interact** with her. In 2006, the Oklahoma Bar Association bestowed on Dean Couch the prestigious **Neil Bogan Professionalism Award**. That award is given to

a member of the state bar for **conduct, honesty, integrity, and courtesy** in a manner that best represents the **highest standards** of the legal **profession**.

Her professionalism was also recognized by the state bar association when it presented her with the **Mona Lambird Spotlight Award**, which is given to OBA members for **superior leadership qualities** and **dedication** to the **advancement of women in law**.

Dean Couch is not only extraordinarily **intelligent** and **gracious**, but also a true **leader**. She has served as the President of the Oklahoma County Bar Association, the William J. Holloway, Jr. Inn of Court, and the Oklahoma City Chapter of the Federal Bar Association.

She has also served as a wonderful **steward** of various court committees, such as the **criminal rules committee**.

She initiated and administered the Court's "**CARE**" **program**, which is a program designed to help individuals on supervised release who are facing difficulties with addiction.

Dean Couch's skill as a **leader** is well known, proven in **diverse ways**, and is a **testament** to her **character**.

Dean Couch's skill as a **leader** is enhanced by her wonderful **judgment**. I have seen this judgment exercised in a variety of settings — as an **opponent** in court,

as a **colleague**, as a **friend**, and as a **judge**. Dean Couch enjoys a rare gift — a sense of **how to go about determining the right thing to do in difficult situations**.

For 13+ years, I have thought Dean Couch's professional gifts have served her remarkably well — in part as a **friend**, but more importantly for our community, as a **judge**.

These qualities will also serve Dean Couch well in her **new role** as the **symbol** and **moderator** of the various **influences and constituencies** that comprise O.C.U. Law School.

[REB: Look at Dean Couch]

Valerie, you have performed your various professional roles so well throughout your adult life. For me, I have particularly **appreciated your role** as my **friend**. In the last 14 years, I have learned what **wonderful friends** you and Dr. Joe are. You are **two very special people**.

You have been a **true source of strength** and **support** for me ever since I met you some 14 years ago. It has been a **privilege to work** with you and **learn** from you.

[REB: Look at audience]

Dean Couch brings **her professional gifts** *wherever* she goes, and that is now to **your institution** to serve as your **partner in continuing along your extraordinary path**.

Dean Couch's **qualities uniquely suit** her for this **collective pursuit**. This law school, like any great law school, is not so much a **melting pot** as it is a **montage** of **divergent** and **sometimes conflicting** vantage-points: **law students, faculty, administrators, alumni, donors, staff, and the community**. Each of these constituencies is distinct and important to a law school's success. It takes a **unique** sort of **person** and **leader** to be able to **listen to**, and **blend**, these diverse **points-of-view** to maximize the school's **potential**.

Many people **may have** the necessary intelligence **or may have** the work-ethic **or may have** the leadership qualities **or may have** the communicative abilities for this role. But **few people** possess **all** of these traits. **Like Dean Hellman, Valerie Couch** does. Thus, the **passing of the torch** to Dean Couch is the **cause** for **celebration** both for **this school** and, **more broadly**, for our **legal community**.

The celebration is **especially meaningful** because Dean Couch has **long shared** your **passion** for the **mission** of this institution — **to train the student body to carry out its future professional responsibilities in a manner befitting the next generation**. Dean Couch joins your team of administrators and teachers with a **passion** for that **mission** and is **enthusiastic** about the **opportunity** to work with all

of you. I can tell you — as someone who already misses the **privilege** of working with her — that you too will **enjoy** the **opportunity** to share your **mission** with her.

[REB: Look at Dean Couch]

Congratulations Dean Couch, Joe, Dan, and Ross for this extraordinary occasion for your family.

[Look at audience]

And, congratulations O.C.U. Law School for this great moment in your long and celebrated history. This school is poised to navigate the challenges ahead with the strength of that history and the strength of a remarkable leader — your newly-invested Dean and my good friend, Valerie Couch. Your **history** is **strong**, but your **future** is **boundless**.

Thank you for the opportunity to share in this **celebration** of **your continued journey** under the **leadership** of Dean Couch.

Attachment 13b

Reports and Recommendations

1. *Lay v. Otto*, Case No. CIV-12-888-D (W.D. Okla. Dec. 14, 2012).
2. *Corber v. Warden*, Case No. CIV-12-1145-C (W.D. Okla. Dec. 17, 2012).
3. *Uzochukwu v. Jones*, Case No. CIV-11-1512-HE (W.D. Okla. Dec. 13, 2012) (two report and recommendations).
4. *Emerson v. Jones*, Case No. CIV-12-990-C (W.D. Okla. Dec. 11, 2012).
5. *Hubbard v. Robinson*, Case No. CIV-12-869-M (W.D. Okla. Dec. 10, 2012).
6. *Wickman v. Rogers County*, Case No. CIV-12-1138-M (W.D. Okla. Nov. 20, 2012).
7. *Mayfield v. Kay County*, Case No. CIV-12-785-M (W.D. Okla. Nov. 28, 2012).
8. *Dubois v. Astrue*, Case No. CIV-12-259-M (W.D. Okla. Nov. 28, 2012).
9. *Baker v. Astrue*, Case No. CIV-12-425-R (W.D. Okla. Nov. 28, 2012).
10. *Davis v. Workman*, Case No. CIV-12-564-C (W.D. Okla. Nov. 27, 2012).
11. *Grumbley v. State of Oklahoma*, Case No. CIV-12-1295-C (W.D. Okla. Nov. 29, 2012).
12. *Gaddis v. Jones*, Case No. CIV-11-1481-F (W.D. Okla. Nov. 6, 2012).
13. *Crane v. Astrue*, Case No. CIV-12-286-F (W.D. Okla. Nov. 28, 2012).
14. *Williams v. Astrue*, Case No. CIV-12-205-HE (W.D. Okla. Nov. 20, 2012).
15. *Knox v. Trammell*, Case No. CIV-12-1256-W (W.D. Okla. Nov. 29, 2012).
16. *Galbreath-Berry v. Astrue*, Case No. CIV-12-80-R (W.D. Okla. Oct. 30, 2012).
17. *Dunn v. State of Oklahoma*, Case No. CIV-12-722-F (W.D. Okla. Oct. 9, 2012).
18. *Patterson v. Vaughn*, Case No. CIV-12-738-HE (W.D. Okla. Oct. 29, 2012).
19. *Bryant v. Astrue*, Case No. CIV-12-288-D (W.D. Okla. Oct. 4, 2012).
20. *Lee v. Board of County Commissioners*, Case No. CIV-11-05-R (W.D. Okla. Sept. 5, 2012).

21. *Mims v. Astrue*, Case No. CIV-11-1454-C (W.D. Okla. Sept. 21, 2012).
22. *Johnson v. Cantrall*, Case No. CIV-12-442-F (W.D. Okla. Sept. 17, 2012).
23. *Cleveland v. Havanek*, Case No. CIV-12-86-F (W.D. Okla. Sept. 21, 2012).
24. *Webb v. Oklahoma Department of Corrections*, Case No. CIV-11-1477-M (W.D. Okla. Aug. 22, 2012).
25. *Brushwood v. Franklin*, Case No. CIV-12-193-R (W.D. Okla. Aug. 13, 2012).
26. *King v. Hogan*, Case No. CIV-11-1036-R (W.D. Okla. Aug. 14, 2012).
27. *Stuart v. Taylor*, Case No. CIV-11-869-R (W.D. Okla. Feb. 16, 2012; Aug. 17, 2012; Aug. 22, 2012).
28. *Tucker v. McKinney*, Case No. CIV-11-1109-R (W.D. Okla. Aug. 27, 2012).
29. *Prandy v. Astrue*, Case No. CIV-11-930-F (W.D. Okla. Aug. 15, 2012).
30. *Brown v. Astrue*, Case No. CIV-11-1133-HE (W.D. Okla. Aug. 14, 2012).
31. *Brown v. Astrue*, Case No. CIV-11-932-M (W.D. Okla. July 10, 2012).
32. *Whitmore v. Jones*, Case No. CIV-10-430-M (W.D. Okla. July 16, 2012).
33. *Butler v. Astrue*, Case No. CIV-11-1459-HE (W.D. Okla. July 23, 2012).
34. *Leiva v. Trammel*, Case No. CIV-12-342-W (W.D. Okla. July 24, 2012).
35. *Hernandez v. Astrue*, Case No. CIV-11-267-W (W.D. Okla. July 9, 2012).
36. *Berryhill v. Jones*, Case No. CIV-11-1513-W (W.D. Okla. July 26, 2012) (two report and recommendations).
37. *Hale v. Astrue*, Case No. CIV-10-1377-L (W.D. Okla. July 24, 2012).
38. *Rogers v. Denecke*, Case No. CIV-12-373-R (W.D. Okla. June 26, 2012).
39. *Colum v. State of Oklahoma*, Case No. CIV-12-659-HE (W.D. Okla. June 22, 2012).
40. *Crick v. Astrue*, Case No. CIV-11-1372-F (W.D. Okla. June 5, 2012).
41. *Horton v. Astrue*, Case No. CIV-11-943-F (W.D. Okla. June 27, 2012).
42. *Klein v. State of Oklahoma*, Case No. CIV-12-637-HE (W.D. Okla. June 29, 2012).

43. *Knox v. Morgan*, Case No. CIV-12-446-W (W.D. Okla. June 12, 2012).
44. *Nichols v. Astrue*, Case No. CIV-11-852-L (W.D. Okla. June 22, 2012).
45. *Garrison v. Social Security Administration*, Case No. CIV-10-1234-HE (W.D. Okla. May 16, 2012).
46. *Riva v. USA*, Case No. CIV-12-486-F (W.D. Okla. May 31, 2012).
47. *Singleton v. Astrue*, Case No. CIV-11-832-F (W.D. Okla. May 30, 2012).
48. *Leith v. State of Oklahoma*, Case No. CIV-12-419-M (W.D. Okla. May 23, 2012).
49. *Pool v. Astrue*, Case No. CIV-11-338-M (W.D. Okla. May 3, 2012).
50. *Klein v. Corrections Corporation of America*, Case No. CIV-11-956-M (W.D. Okla. Feb. 29, 2012; May 30, 2012).
51. *Lesley v. Addison*, Case No. CIV-11-1166-R (W.D. Okla. Apr. 30, 2012).
52. *Thomas v. Chester*, Case No. CIV-11-1283-W (W.D. Okla. Apr. 10, 2012).
53. *Martinez v. United States of America*, Case No. CIV-11-830-F (W.D. Okla. Apr. 26, 2012).
54. *Seamster v. Jones*, Case No. CIV-12-42-F (W.D. Okla. Apr. 23, 2012).
55. *Michael v. Newton-Embry*, Case No. CIV-10-1064-F (W.D. Okla. Apr. 9, 2012).
56. *Trujillo v. Ledezma*, Case No. CIV-11-1072-F (W.D. Okla. Apr. 9, 2012).
57. *Floyd v. Astrue*, Case No. CIV-11-952-C (W.D. Okla. Apr. 24, 2012).
58. *Berryhill v. United States of America*, Case No. CIV-12-225-C (W.D. Okla. Apr. 17, 2012).
59. *Allen v. Pottawatomie County Public Safety Center*, Case No. CIV-10-998-C (W.D. Okla. Apr. 17, 2012).
60. *Miller v. Embry*, Case No. CIV-11-1500-C (W.D. Okla. Apr. 12, 2012).
61. *Beison v. State of Oklahoma*, Case No. CIV-12-164-C (W.D. Okla. Apr. 4, 2012).
62. *Skibo v. Rhodes*, Case No. CIV-10-1381-C (W.D. Okla. Apr. 3, 2012).

63. *Mark v. Jackson*, Case No. CIV-11-426-M (W.D. Okla. Mar. 12, 2012; Apr. 9, 2012; Apr. 10, 2012; Apr. 12, 2012).
64. *Michael v. Jones*, Case No. CIV-11-1294-D (W.D. Okla. Mar. 8, 2012).
65. *Adams v. Jones*, Case No. CIV-10-920-F (W.D. Okla. Mar. 28, 2012; Mar. 29, 2012).
66. *Burden v. Mullin*, Case No. CIV-11-1398-F (W.D. Okla. Mar. 7, 2012).
67. *Todd v. Ramey*, Case No. CIV-12-272-C (W.D. Okla. Mar. 27, 2012).
68. *Foster v. Franklin*, Case No. CIV-11-771-C (W.D. Okla. Mar. 5, 2012).
69. *Davis v. Oklahoma Halfway House*, Case No. CIV-12-306-R (W.D. Okla. Mar. 30, 2012).
70. *Thiessen v. Marten*, Case No. CIV-11-1467-R (W.D. Okla. Mar. 8, 2012).
71. *Moore v. Embry*, Case No. CIV-09-985-C (W.D. Okla. Feb. 10, 2012).
72. *Solis v. Parker*, Case No. CIV-11-1155-HE (W.D. Okla. Feb. 10, 2012).
73. *Palmer v. Astrue*, Case No. CIV-11-509-C (W.D. Okla. Feb. 27, 2012).
74. *Scott v. Ritter*, Case No. CIV-11-540-R (W.D. Okla. Feb. 2, 2012; Feb. 14, 2012).
75. *Roberts v. Jones*, Case No. CIV-11-143-M (W.D. Okla. Feb. 10, 2012; Feb. 29, 2012 (two report and recommendations)).
76. *Hogue v. Astrue*, Case No. CIV-10-1270-M (W.D. Okla. Feb. 7, 2012).
77. *Bollinger v. Astrue*, Case No. CIV-11-109-HE (W.D. Okla. Jan. 30, 2012).
78. *Christian v. Rhodes*, Case No. CIV-11-28-R (W.D. Okla. Jan. 30, 2012).
79. *Trinidad v. Addison*, Case No. CIV-11-873-M (W.D. Okla. Jan. 27, 2012).

Consent Cases

80. *Casaluci v. Astrue*, Case No. CIV-11-1097-BA (W.D. Okla.)
June 29, 2012 (Doc. 21)

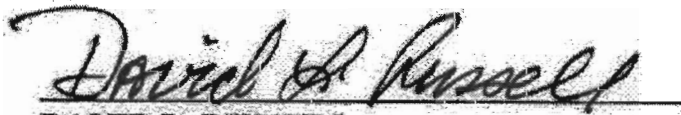
Case No. CIV-11-869-R

Before the Court are the Report and Recommendation of United States Magistrate Judge Robert E. Bacharach entered August 17, 2012 [Doc. No. 38] and Warden Joseph Taylor's Objection to the Report and Recommendation [Doc. No. 44]. Pursuant to 28 U.S.C. § 636(b)(1)(B), the Court reviews the Report and Recommendation *de novo* in light of Defendant's objection. Defendant asserts that the Magistrate Judge erroneously concluded that Warden Taylor, the warden of a private prison, Cimarron Correctional Facility, had custody of Plaintiff James Clifford Stuart, when in fact the Oklahoma Department of Corrections had custody of him and the state officer having custody of Plaintiff was Oklahoma DOC Director Justin Jones. Defendant also asserts that the Magistrate Judge erroneously determined that the writ of habeas corpus ad testificandum was properly directed to and should have been executed by Warden Taylor when it could only have been directed to and executed by either the Sheriff of Cherokee County or the Director of the Oklahoma Department of Corrections. In support of his arguments, Defendant Taylor cites *Crowley v. Jones*, 2008 WL 4816531 n.1 (W.D. Okla. Oct. 30, 2008).

The Oklahoma Department of Corrections bears responsibility for the custody and supervision of inmates housed in private prisons. *See* Okla. Stat. tit. 57, § 561(A). Oklahoma DOC Director Justin Jones was therefore the state officer having custody of Plaintiff, *see Lister v. Jones*, 2009 WL 2163514 at n. 1(W.D. Okla. July 10, 2009); *see also Pennsylvania Bureau of Correction v. United States Marshals Service*, 474 U.S. 34, 38, 106 S.Ct. 255, 88 L.Ed.2d 189 (1985)(writ of habeas corpus ad testificandum may be properly directed only to a prisoner's custodian), to whom the writ of habeas corpus ad testificandum should have been directed and by whom it should have been executed, although service of the writ by the Sheriff of Cherokee County was proper. *See* Okla. Stat. tit. 12, § 1336. Therefore, Defendant Warden Joseph Taylor's noncompliance with the writ was not improper inasmuch as the writ was not properly directed to him.

In accordance with the foregoing, the Report and Recommendation of the Magistrate Judge [Doc. No. 38] is REJECTED and Defendant Joseph Taylor's motion for summary judgment [Doc. No. 31] is GRANTED.

IT IS SO ORDERED this 20th day of September, 2012.


DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

JAMES CLIFFORD STUART,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-11-869-R
)	
JOSEPH TAYLOR, Warden,)	
)	
Defendant.)	

REPORT AND RECOMMENDATION

James Stuart is a state prisoner being housed at a private prison. He collaterally attacked his conviction, and the state district court ordered a hearing and authorized him to testify. Thus, the court issued a writ of habeas corpus ad testificandum to the warden of Mr. Stuart's prison. The warden did not comply with the writ, preventing Mr. Stuart from appearing at the hearing. In his absence, the court dismissed Mr. Stuart's claim. He has now sued the warden under 42 U.S.C. § 1983, claiming that he violated the federal constitution by disregarding the writ. The warden moves for summary judgment, arguing that the writ was a nullity because the issuing court lacked jurisdiction. The summary judgment motion should be denied.

The Defendant's Burden on Summary Judgment

The Defendant bears the burden on the motion.¹ This burden is satisfied when the defendant shows that there was no genuine dispute on any material fact and that he is entitled

¹ See *Trainor v. Apollo Metal Specialties, Inc.*, 318 F.3d 976, 982 (10th Cir. 2002).

to judgment as a matter of law.² In making this determination, “[t]he court views the record and draws all favorable inferences in the light most favorable to the non-moving party.”³

Analysis of the Defendant’s Arguments

The warden’s arguments are based on confusion:

- between a judgment and a writ of habeas corpus ad testificandum,
- between a writ of habeas corpus ad testificandum and a writ of habeas corpus ad subjiciendum, and
- between service of a writ and its execution.

I. The Necessity of Jurisdiction Over the Person Designated to Serve the Writ

The Defendant argues that a writ of habeas corpus ad testificandum can only be enforced if the issuing court has jurisdiction over the person designated in the document. In this case, the Defendant’s argument continues, the issuing court (Cherokee County District Court) lacked jurisdiction over the warden because he was not a named party in the earlier proceedings or a resident of Cherokee County. The Defendant’s argument is defective because it erroneously likens a writ of habeas corpus ad testificandum to a judgment.⁴ The two are different.

² Fed. R. Civ. P. 56(a).

³ *Pepsi-Cola Bottling Co. of Pittsburgh, Inc. v. PepsiCo, Inc.*, 431 F.3d 1241, 1255 (10th Cir. 2005) (citation omitted).

⁴ See *infra* p. 4.

Unlike a judgment, a writ of habeas corpus ad testificandum does not grant a remedy to any of the parties. Instead, the writ simply facilitates a witness's appearance in court to testify when he is incarcerated.

Ordinarily, witnesses are ordered to appear through a subpoena.⁵ However, a subpoena can only be enforced if authorities are able to secure the inmate's temporary release so that he can appear in court. A writ of habeas corpus ad testificandum allows authorities to secure the inmate's temporary release so that he can appear in court.⁶

⁵ See Okla. Stat. tit. 22 § 703 (2011) ("The process by which the attendance of a witness before a court or magistrate is required, is a subpoena.").

⁶ See *Anderson v. State*, 556 P.2d 1010, 1011-12 (Okla. Crim. App. 1976) (stating that the defendant should have requested writs of habeas corpus ad testificandum, rather than subpoenas, to obtain testimony by four prisoners); see also *Gilmore v. United States*, 129 F.2d 199, 202 (10th Cir. 1942) (stating that the object of a writ of habeas corpus ad testificandum "is to direct the custodian of a desired witness who is incarcerated to bring such witness into court to give testimony"); see also *infra* p. 5 & note 17.

Subpoenas can be served by anyone — regardless of whether the person conducting service is within the issuing court’s jurisdiction.⁷ The same is true for its functional equivalent, a writ of habeas corpus ad testificandum.⁸

The warden’s contrary argument is based on *Isenhower v. Isenhower*, 666 P.2d 238, 241-42 (Okla. Civ. App. 1983).⁹ But this decision simply provides that a court must have jurisdiction before it can issue a judgment.¹⁰ A writ of habeas corpus ad testificandum does not constitute a judgment. Instead, this type of writ simply allows the issuing court to “borrow” the prisoner for a proceeding.¹¹ There is no statute or published decision

⁷ Oklahoma law provides:

A peace officer must serve in his county, city, town or village, as the case may be, any subpoena delivered to him for service, either on the part of the state or of the defendant, and must make a written return of the service, subscribed by him, stating the time and place of service without delay. A subpoena may, however, be served by any other person.

Okla. Stat. tit. 22 § 711 (2011); *see also infra* p. 6 & note 19.

⁸ *See United States v. Garrard*, 83 F.3d 889, 893 (7th Cir. 1996) (comparing a subpoena and a writ of habeas corpus ad testificandum).

⁹ Def.’s Mot. Summ. J. at 4.

¹⁰ *Isenhower v. Isenhower*, 666 P.2d at 241-42.

¹¹ *See In re Liberatore*, 574 F.2d 78, 89 (2d Cir. 1978) (stating that through a writ of habeas corpus ad testificandum, one jurisdiction can lend its prisoner to another court to answer charges or to testify); *United States v. Poole*, 531 F.3d 263, 271-72 (4th Cir. 2008) (stating that a writ of habeas corpus ad testificandum functions as a loan of the prisoner to another jurisdiction so that he can appear at a proceeding).

suggesting that an issuing court must have jurisdiction over the prisoner's custodian before he can be issued a writ of habeas corpus ad testificandum.¹²

II. Territorial Reach of a Writ of Habeas Corpus Ad Testificandum

The warden also argues that the court can only issue "the great writ" against a custodian within the county.¹³ This argument reflects confusion between "the great writ" and a writ of habeas corpus ad testificandum.

There are many types of writs of habeas corpus.¹⁴ When a court refers to a writ of habeas corpus without any further identifiers, it is typically discussing "the great writ," also known as a writ of habeas corpus ad subjiciendum.¹⁵ This type of writ is used to challenge the legality of a party's imprisonment.¹⁶ In contrast, a writ of habeas corpus ad testificandum is used to bring a prisoner to court so that he can testify.¹⁷

¹² See *infra* p. 6 & note 19.

¹³ Def's Mot. Summ. J. at 5.

¹⁴ See *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 97-99 (1807) (Marshall, C.J.) (identifying the writ of habeas corpus ad prosequendum, writ of habeas corpus ad testificandum, writ of habeas corpus ad respondum, writ of habeas corpus ad satisfaciendum, writ of habeas corpus ad deliberandum, and writ of habeas corpus cum causa or ad faciendum et recipiendum).

¹⁵ See *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 95 (1807) (Marshall, C.J.) ("when we say *the writ of habeas corpus*, without addition, we most generally mean that great writ which is now applied for; and in that sense it is used in the constitution"); see also *Pennsylvania Bureau of Correction v. United States Marshals Service*, 474 U.S. 34, 39 n.5 (1985) (referring to the "Great Writ" as a writ of habeas corpus ad subjiciendum).

¹⁶ See *Black's Law Dictionary* 715 (Bryan A. Garner ed. 7th ed. 1999).

¹⁷ See *Black's Law Dictionary* 715 (Bryan A. Garner ed. 7th ed. 1999); see also *supra* p. 3 & note 6.

As the warden argues, many courts say that a judge can only issue a writ of habeas corpus ad subjiciendum to a custodian within the court's geographical boundaries.¹⁸ But, there are no published cases — in Oklahoma or elsewhere — to suggest that writs of habeas corpus ad testificandum are confined to the issuing court's territory.¹⁹

Indeed, Oklahoma law expressly provides that a state district court can issue a writ of habeas corpus to bring a prisoner to testify from “any prison in this state” even when he is housed “out of the county” in which he is to appear.²⁰ Under this provision, the state district court could issue a writ of habeas corpus ad testificandum to bring Mr. Stuart to testify even though he had been imprisoned in another county.

III. The Sheriff's Role in the Execution of Writs

The Defendant says that writs can only be directed to county sheriffs.²¹ This statement is inaccurate and confuses service of a writ with its execution.

¹⁸ See *Spahr v. Swanson*, 596 P.2d 549, 550-51 (Okla. 1979), cited in Def.'s Mot. Summ. J. at 5.

¹⁹ See *supra* p. 4; see also *United States v. Moussaoui*, 382 F.3d 453, 466 (4th Cir. 2004) (“It is . . . clear that a district court can reach beyond the boundaries of its own district in order to issue a testimonial writ.”); *Itel Capital Corp. v. Dennis Mining Supply & Equipment*, 651 F.2d 405, 407 (5th Cir. 1981) (adopting “the rule . . . that district courts have the authority to issue writs of habeas corpus ad testificandum extraterritorially”); *Stone v. Morris*, 546 F.2d 730, 737 (7th Cir. 1976) (holding “that a district court has the power . . . to compel production of an incarcerated party or witness from anywhere in the country through the use of a writ of habeas corpus ad testificandum”); see also *Roe v. Operation Rescue*, 920 F.2d 213, 218 n.4 (3d Cir. 1990) (“District courts have issued [writs of habeas corpus ad testificandum] in civil proceedings to obtain the presence of prisoners who are incarcerated outside of the territorial jurisdiction of the district court.” (citations omitted)).

²⁰ Okla. Stat. tit. 22 § 1151 (2011).

²¹ Def.'s Mot. Summ. J. at 4, 8, 11.

Prisoners are generally housed in jails or prisons. The jails are run by sheriffs;²² the prisons are run by wardens.²³ When a person is housed in a prison, he is subject to the control of a warden — not a sheriff. Thus, if wardens were powerless to carry out a writ of habeas corpus ad testificandum, courts would never be able to procure testimony of people housed in prisons. That cannot be the law — and isn't.

In Oklahoma, a writ of habeas corpus can be directed to a warden as well as a sheriff.²⁴ Both are authorized to execute writs because they serve as custodians, and a sheriff or warden has no special role in the matter because of his office. Instead, that role grows out of a determination of where the inmate is housed. If he is in a jail, the custodian — who is charged with the execution of a writ of habeas corpus — would be the sheriff. If the inmate is housed in a prison, as Mr. Stuart was, the warden would be the only person who could carry out the writ.

This point is illustrated by the clear command of Okla. Stat. tit. 12 § 1334 (2011), which expressly requires the court to direct the writ “to the officer or party having the person

²² See Okla. Stat. tit. 19 § 513 (2011) (“The sheriff shall have the charge and custody of the jail of his county, and all the prisoners in the same, and shall keep such jail himself, or by his deputy or jailer, for whose acts he and his sureties shall be liable.”); Okla. Stat. tit. 57 § 47 (2011) (“The sheriff, or such person designated by law in his place, shall have charge of the county jail of his county and of all persons by law confined therein . . .”).

²³ See Okla. Stat. tit. 22 § 980 (2011) (“Duty of sheriff when defendant sentenced to state prison”).

²⁴ See, e.g., *Brooks v. Baltz*, 12 P.3d 467, 470 (Okla. 2000).

under restraint.”²⁵ Elsewhere, Oklahoma statutes provide that a writ can be directed to a sheriff or another person.²⁶ Thus, the Cherokee County District Court could have directed the writ to the warden rather than the county sheriff.

The Defendant appears to confuse designation of the person assigned to deliver the writ with the individual responsible for carrying it out. As the Defendant states, a sheriff serves a writ of habeas corpus by delivering it to the person designated in the document.²⁷ Here the person to receive the writ — and carry it out — was the warden, Joseph Taylor. The writ could be, and presumably was, delivered to the warden by the sheriff. But the sheriff would have had little reason to deliver the writ to the warden if he had not been the individual designated in the document.

The Defendant’s contrary argument is based on Okla. Stat. tit. 19 § 514 (2011) and Okla. Stat. tit. 22 § 1151 (2011).²⁸ These sections do not support the Defendant’s legal position.

²⁵ Okla. Stat. tit. 12 § 1334 (2011).

²⁶ Okla. Stat. tit. 12 § 1336 (2011) (“If the writ be directed to any . . . person [other than the sheriff] . . .”), § 1338 (referring to “[t]he sheriff or other person to whom the writ is directed”).

²⁷ See Okla. Stat. tit. 12 § 1336 (2011) (“If the writ be directed to any . . . person [other than the sheriff], it shall be delivered to the sheriff and shall be by him served by delivering to such person without delay.”).

²⁸ Def.’s Mot. Summ. J. at 4.

According to the Defendant, Okla. Stat. tit. 19 § 514 (2011) confines service of writs to sheriffs.²⁹ As discussed above, Oklahoma law does require service of writs by the sheriff.³⁰ But Oklahoma law distinguishes between service of a writ and designation of the person to carry it out.³¹

The Defendant also relies on Okla. Stat. tit. 22 § 1151 (2011).³² As the Defendant points out, this statute prevents liability for escape when the person carrying out the writ “lodge[s]” a copy of the document with the custodian.³³ The Defendant argues that if the warden had to execute the writ, he would have to “lodge” the writ with himself.³⁴ To avoid this anomaly, the Defendant contends that the statute requires the state district court to direct

²⁹ Def.’s Mot. Summ. J. at 4, 8, 11.

³⁰ See Okla. Stat. tit. 12 § 1336 (2011) (quoted *supra* note 27).

³¹ See *supra* p. 8.

³² Def’s Mot. Summ. J. at 6-7.

³³ Section 1151 provides in pertinent part:

When a writ of habeas corpus shall be issued for the purpose of bringing into court any person to testify, or the principal, to be surrendered in discharge of bail, and such principal or witness, shall be confined in any prison in this state, out of the county in which such principal or witness is required to be surrendered, or to any county in this state, and there be executed and returned by any officer to whom it shall be directed, and the principal, after being surrendered, or his bail discharged, or a person testifying as aforesaid, shall by the officer executing such writ, be returned by virtue of an order of the court, for the purpose aforesaid, an attested copy of which, lodged with the custodian, shall exonerate such prison keeper from being liable for an escape.

Okla. Stat. tit. 22 § 1151 (2011).

³⁴ Def’s Mot. Summ. J. at 7.

the writ to a sheriff within the county.³⁵ This interpretation would flatly contradict Okla. Stat. tit. 12 § 1334 (2011), which expressly requires the court to direct the writ “to the officer or party having the person under restraint.”³⁶

As the Defendant asserts, Okla. Stat. tit. 22 § 1151 (2011) requires the person carrying out the writ to deliver the document to the custodian.³⁷ Sometimes the person carrying out the writ will be the custodian. As the Defendant says, this situation would entail an anomaly because the person transporting the prisoner would be called upon to give the writ to himself. That is an oddity in the statute, as the Defendant points out. But this oddity would not justify disregard of the statutory language in Okla. Stat. tit. 12 § 1334 (2011).

Effect on Access to Courts

The court issued the writ to “borrow” Mr. Stuart so that it could adjudicate his collateral challenge to the conviction.³⁸ By failing to execute the writ, the warden prevented Mr. Stuart from testifying. And, the absence of his testimony apparently led to dismissal of the proceeding.

This dismissal implicates Mr. Stuart’s right of access to the courts. The Supreme Court has held that a prisoner enjoys a constitutional right of court access to collaterally

³⁵ Def’s Mot. Summ. J. at 7.

³⁶ Okla. Stat. tit. 12 § 1334 (2011) (quoted *supra* pp. 7-8).

³⁷ *See supra* note 33 (quoting Okla. Stat. tit. 22 § 1151 (2011)).

³⁸ *See supra* p. 4 & note 11.

challenge his conviction.³⁹ That right encompasses various forms of access. One basic form of access is the ability to appear in court to testify when it is permitted by the judge.⁴⁰ The fact-finder can reasonably infer from the evidence that Mr. Stuart was deprived of this opportunity by virtue of the warden's failure to execute the writ of habeas corpus ad testificandum.⁴¹

The Defendant argues that after the dismissal, Mr. Stuart continued to pursue the claim by sending the court a notice, letters, and a motion.⁴² The argument is invalid because the warden has not presented any evidence of these documents and they would not preclude a factual finding of legal injury from the warden's failure to execute the writ. When Mr. Stuart didn't appear, the court dismissed his claim. The Plaintiff's unsuccessful efforts to obtain reconsideration do not remove the potential for injury from the earlier dismissal.

³⁹ *Lewis v. Casey*, 518 U.S. 343, 355 (1996).

⁴⁰ *See, e.g., Swekel v. River Rouge*, 119 F.3d 1259, 1262 (6th Cir. 1997) (stating that the constitutional right to court access "in its most formal manifestation protects a person's right to physically access the court system").

⁴¹ The Tenth Circuit Court of Appeals addressed a similar issue in *Lemmons v. Law Firm of Morris and Morris*, 39 F.3d 264 (10th Cir. 1994). There an inmate alleged issuance of a writ of habeas corpus ad testificandum to testify at a trial in an action in an Oklahoma district court. *See Lemmons v. Law Firm of Morris and Morris*, 39 F.3d at 266. According to the prisoner, a prosecutor prevented execution of the writ and the suit languished as a result. *See id.* The inmate alleged that interference with the writ could constitute denial of his constitutional right of court access, and the Tenth Circuit Court of Appeals agreed. *Id.* at 266, 268-69. The court reasoned: "The writ of habeas corpus ad testificandum . . . manifests a legal determination to allow a prisoner to testify. Thus, a petitioner's due process right to have the writ executed according to law necessarily encompasses an actual right of physical access to the relevant court." *Id.* at 268.

⁴² Def's Mot. Summ. J. at 10.

The Existence of a “Dangerous Precedent”

The warden also argues that the Court would be creating “a dangerous precedent” by finding a constitutional violation.⁴³ However, this Court is bound by precedents from the Supreme Court, and that entity has recognized constitutional protection for a prisoner’s access to the judiciary.⁴⁴ The Defendant is simply mistaken in his view that the Cherokee County District Court had lacked jurisdiction to issue the writ to a custodian, rather than a named party, who was outside the court’s geographical boundary.⁴⁵

Cost and Difficulty of Transportation

In a related manner, the warden complains of the cost and difficulty in executing the writ.⁴⁶ Oklahoma law recognizes these burdens and accommodates them by requiring reimbursement to the custodian for the cost of his services.⁴⁷ As a result, the warden’s alleged cost and difficulty would not justify his disregard of the writ.

Summary

As discussed above, the warden has argued that:

- the writ was a nullity because it was directed to a non-party outside the court’s geographical boundaries and

⁴³ Def’s Mot. Summ. J. at 9-10.

⁴⁴ See *supra* pp. 10-11 & note 39.

⁴⁵ See *supra* pp. 2-10.

⁴⁶ Def’s Mot. Summ. J. at 9.

⁴⁷ See Okla. Stat. tit. 22 § 1151 (2011); see also *supra* note 33 (quoting a different part of Okla. Stat. tit. 22 § 1151 (2011)).

- Mr. Stuart was able to send documents to the court in an unsuccessful effort to obtain vacatur of the dismissal.

These arguments are incorrect as a matter of law. On summary judgment, the Court's task is to determine whether these arguments would dictate rejection of Mr. Stuart's constitutional claim. The Court should answer in the negative and deny the warden's motion for summary judgment.

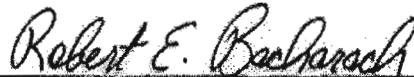
Notice of the Right to Object

The parties can object to this report and recommendation. To object, the party must file an objection with the Clerk of this Court by September 4, 2012.⁴⁸ The failure to timely object would foreclose appellate review of the suggested ruling.⁴⁹

Status of the Referral

The referral is not discharged.

Entered this 17th day of August, 2012.



Robert E. Bacharach
United States Magistrate Judge

⁴⁸ See Fed. R. Civ. P. 6(a)(1)(C), 6(a)(6)(A), 6(d), 72(b)(2); 28 U.S.C. § 636(b)(1) (2010 supp.).

⁴⁹ See *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

BEVERLY MICHELLE MOORE,)	
)	
Petitioner,)	
)	
vs.)	No. CIV-09-985-C
)	
WARDEN MILLICENT NEWTON-)	
EMBRY,)	
)	
Respondent.)	

ORDER

In 2005, Petitioner was found guilty of murder and sentenced to life without the possibility of parole. Thereafter, the Oklahoma Court of Criminal Appeals (“OCCA”) modified her sentence to add the possibility of parole after Petitioner filed a direct appeal of her sentence claiming ineffective assistance of counsel. Petitioner filed a post-conviction proceeding where she again claimed ineffective assistance counsel due to her attorney’s failure to present a medical expert, which was ultimately dismissed by the OCCA for failure to attach a copy of the district court’s ruling. Presently, Petitioner seeks relief in federal court. Consistent with the provisions of 28 U.S.C. § 636(b)(1)(B), this action was referred to United States Magistrate Judge Robert E. Bacharach. Judge Bacharach entered a Report and Recommendation (“R&R”) on February 10, 2012, to which Respondent timely objected and this Court will review de novo.

The substantive facts and law are accurately set out in the Magistrate Judge's R&R and there is no purpose to be served in repeating them yet again. Judge Bacharach concluded that exhaustion would be futile here in light of the prohibition of filing second and subsequent post-conviction proceedings in non-capital cases, and, therefore, found that failure to exhaust state court remedies prior to filing the present action would not be fatal to Petitioner's claim.

Respondent raises as a point of contention with the R&R Judge Bacharach's silence on the Petitioner's "cause and prejudice." (Resp. Br., Dkt. No. 165, at 5.) But, as Judge Bacharach aptly points out in his R&R, procedural default was not raised in the Respondent's Limited Answer. (R&R, Dkt. No. 162, at 6 ("The perceived anomaly implicates the doctrine of procedural default, rather than exhaustion. Although the Respondent has reserved her right to urge procedural default, she has not raised the issue at this stage." (footnotes omitted))).)

In response to the Respondent's objection, the Petitioner argues that she has in fact exhausted her claim and, if the Court should disagree, that the Petitioner should be excused from exhausting her claims in the interests of justice.

Setting aside, for now, the correctness of Judge Bacharach's findings, the Court instead focuses on the substantial newfound evidence developed in federal court regarding the Petitioner's actual innocence, the state attorneys' persistence that this matter be presented in state court before continuing with federal habeas proceedings, and the importance of comity and federalism. Considering these factors, the Court concludes that the state courts should be given an opportunity to address this matter in the first instance. See Granberry v.

Greer, 481 U.S. 129, 134-35 (1987) (“If . . . the case presents an issue on which an unresolved question of fact or of state law might have an important bearing, both comity and judicial efficiency may make it appropriate for the court to insist on complete exhaustion to make sure that it may ultimately review the issue on a fully informed basis.”).

Accordingly, the Court declines, at this time, to adopt the Report and Recommendation of the Magistrate Judge, and instead stays the case pending exhaustion of state remedies. The Motion to Stay (Dkt No. 166) is MOOT. Within 30 days, Petitioner will file proof that exhaustion of her state remedies has been initiated, whereupon the Clerk will administratively close the case pending the final resolution of the state court proceedings.

IT IS SO ORDERED this 6th day of April, 2012.



ROBIN J. CAUTHRON
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

BEVERLY MICHELLE MOORE,)	
)	
Petitioner,)	
)	
v.)	Case No. CIV-09-985-C
)	
WARDEN MILLICENT NEWTON-)	
EMBRY,)	
)	
Respondent.)	

Report and Recommendation: Exhaustion Issue

Ms. Beverly Moore was convicted of murder and alleges ineffective assistance of counsel. In a limited answer, the Respondent urges a failure to exhaust state court remedies. The Court should overrule the Respondent's exhaustion argument.

The Exhaustion Requirement

Ordinarily, exhaustion requires presentation of the habeas claim to the highest state court with jurisdiction.¹ As the Respondent concedes, however, exhaustion is unnecessary if continued resort to state court would be futile.² Because a return to state court would be futile for Ms. Moore, she is not required to exhaust state court remedies.

¹ See *Dever v. Kansas State Penitentiary*, 36 F.3d 1531, 1534-35 (10th Cir. 1994) (stating that "[t]he exhaustion requirement is satisfied if the federal issue has been properly presented to the highest state court" (citation omitted)).

² See *Bear v. Boone*, 173 F.3d 782, 784 (10th Cir. 1999); see also Limited Answer on the Issue of Exhaustion at p. 4 (Jan. 20, 2012).

The State Court Appeals

The Oklahoma Court of Criminal Appeals considered Ms. Moore's conviction on two occasions.

The first time was on direct appeal. There Ms. Moore challenged her sentence solely on grounds involving an instructional error and ineffective assistance for failure to request an instruction regarding the limits on parole eligibility.³

The second time was on Ms. Moore's appeal from the denial of post-conviction relief. There the Oklahoma Court of Criminal Appeals dismissed the appeal because of Ms. Moore's failure to attach a copy of the state district court's ruling to the petition in error.⁴

The Petitioner's Arguments

Ms. Moore argues that exhaustion should be excused in the interest of justice and that she had fairly presented the habeas claim in state court. If either argument were valid, the Court would be obliged to overrule the Respondent's exhaustion argument. In this case, however, the Court can assume *arguendo* that exhaustion should not be excused in the interest of justice and that Ms. Moore had not fairly presented her ineffective assistance claim in state court. With these assumptions, the federal district court would need to decide

³ Appellant's Brief at pp. 13-19, *Moore v. State*, Case No. F-2006-63 (Okla. Crim. App. Sept. 11, 2006).

⁴ Order Declining Appellate Jurisdiction and Dismissing Petition in Error, *passim*, *Moore v. State*, Case No. HC-2009-33 (Okla. Crim. App. Mar. 9, 2009); *see* Rule 5.2(C)(2), Rules of the Oklahoma Court of Criminal Appeals.

whether any remedies would have remained in state court. That question should be answered in the negative.

The Respondent's Arguments

The Respondent argues that Ms. Moore has an available remedy through post-conviction proceedings in state court and that she is attempting to circumvent the exhaustion requirement. Both arguments are invalid as a matter of law.

Potential for a Second Post-Conviction Application

The Respondent argues that Ms. Moore could pursue a second post-conviction application. The undersigned disagrees.

Oklahoma law provides in Okla. Stat. tit. 22 § 1086:

All grounds for relief available to an applicant under this act must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the applicant has taken to secure relief may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the prior application.⁵

In the post-conviction application, Ms. Moore claimed ineffective assistance by failure to present a medical expert to testify that the child had not died from shaking.⁶ For this claim, Ms. Moore was not able to obtain an adjudication in the state's highest court only

⁵ Okla. Stat. tit. 22 § 1086 (2011) (footnote omitted).

⁶ Application for Post-Conviction Relief at p. 2, *Moore v. State*, Case No. PC-2008-844 (Okla. Co. Dist. Ct. Sept. 26, 2008).

because she had not attached the district court's ruling to her petition in error.⁷ If Ms. Moore had properly appealed, she could have avoided the restriction on second or successive post-conviction proceedings in Okla. Stat. tit. 22 § 1086. Because she did not do so, however, a second round of post-conviction proceedings would appear futile.

According to the Respondent, the Oklahoma courts could entertain a future post-conviction application based on an exception for "actual innocence."⁸ For this argument, the Respondent points to the Court's earlier conclusion that no reasonable jury would have convicted Ms. Moore if it had been privy to the aggregate of old and new evidence.⁹

The argument is invalid because Ms. Moore's demonstration of actual innocence would not allow her to avoid the procedural bar in state court. In Oklahoma, the law expressly allows consideration of a second post-conviction application in capital cases when the facts to be proven would reflect clear and convincing evidence that no reasonable fact-finder would have found the applicant guilty in the absence of the alleged error.¹⁰ No comparable provision exists in the statutes governing post-conviction proceedings in non-capital cases.¹¹

⁷ See *supra* p. 2.

⁸ Limited Answer on the Issue of Exhaustion at pp. 4-8, 12-13 (Jan. 20, 2012).

⁹ Proposed Findings of Fact and Conclusions of Law: Timeliness of the Petition, *passim* (Sept. 7, 2011), *adopted*, Order (Oct. 28, 2011).

¹⁰ Okla. Stat. tit. 22 § 1089(D)(8)(b)(2) (2011).

¹¹ Oklahoma courts have distinguished between the procedural requirements for post-conviction proceedings in capital and non-capital cases. See, e.g., *Moore v. Gibson*, 27 P.3d 483, 484 n.1 (Okla. Crim. App. 2001) (time limitations). For example, the Oklahoma Court of Criminal

The Respondent relies on *Slaughter v. State*, 108 P.3d 1052, 1054 (Okla. Crim. App. 2005). But that decision involved a death sentence, which triggered the Oklahoma law authorizing second and subsequent post-conviction proceedings based on a showing of actual innocence.¹² The Oklahoma Court of Criminal Appeals has never suggested a similar exception in non-capital cases.

Alleged "Circumvention" of the Exhaustion Requirement

The Respondent argues:

It seems highly unlikely that the Supreme Court would contemplate that the exhaustion requirement, reenforced by the Court in [*Harrington v. Richter*, __ U.S. __, 131 S. Ct. 770 (2011)] and [*Cullen v. Pinholster*, __ U.S. __, 131 S. Ct. 1388, 1398 (2011)], could be circumvented by a federal habeas petitioner simply skipping available remedies in state court and proceeding directly to federal habeas court. There would be no record that was before the state court on the merits of the claim but only because the Petitioner failed to present her claims to the state court; a veritable "Catch-22" at best.¹³

Appeals has adopted two separate forms for post-conviction applications, depending on whether a death sentence had been imposed. Forms 13.11, 13.11a, Rules of the Oklahoma Court of Criminal Appeals. The form for non-capital cases includes the following mandatory language:

I realize that I cannot later raise or assert any reason or ground known to me at this time or which could have been discovered by me by the exercise of reasonable diligence. I further realize that I am not entitled to file a second or subsequent application for post-conviction relief based upon facts within my knowledge or which I could discover with reasonable diligence at this time.

Rule 13.11, Part D, Rules of the Oklahoma Court of Criminal Appeals. The form for capital cases does not contain similar language. See Form 13.11a, Rules of the Oklahoma Court of Criminal Appeals.

¹² *Slaughter v. State*, 108 P.3d 1052, 1054 (Okla. Crim. App. 2005).

¹³ Limited Answer on the Issue of Exhaustion at p. 9 (Jan. 20, 2012).

The Respondent's argument is immaterial, as the exhaustion requirement is not affected by the Supreme Court's alleged perception of an anomaly in the statutes.

As stated above, futility is a recognized exception to the exhaustion requirement.¹⁴ Indeed, elsewhere in her brief, the Respondent acknowledges that "exhaustion of state remedies is not required where it would be futile to require exhaustion."¹⁵ The Court cannot disregard the futility of further post-conviction proceedings based on the perceived anomaly of a procedural windfall for Ms. Moore.

The perceived anomaly implicates the doctrine of procedural default, rather than exhaustion.¹⁶ Although the Respondent has reserved her right to urge procedural default,¹⁷ she has not raised the issue at this stage.¹⁸ Thus, the Court has no legal basis to avoid

¹⁴ See *supra* p. 1.

¹⁵ Limited Answer on the Issue of Exhaustion at p. 4 (Jan. 20, 2012) (quoting *Bear v. Boone*, 173 F.3d 782, 785 (10th Cir. 1999)).

¹⁶ In a dissenting opinion, Justice Stevens wrote:

The purpose of [the doctrine of procedural default] is to ensure that state prisoners not only become ineligible for state relief before raising their claims in federal court, but also that they give state courts a sufficient opportunity to decide those claims before doing so.

O'Sullivan v. Boerckel, 526 U.S. 838, 853 (1999) (Stevens, J., dissenting). Every member of the Court agreed with this discussion. See *id.* at 848 (statement by the six-member majority that it did not disagree with Justice Stevens' description of the interplay between exhaustion and procedural default); *id.* at 850 (noting that two other justices had joined Justice Stevens' dissent).

¹⁷ Limited Answer on the Issue of Exhaustion at p. 1 n.1 (Jan. 20, 2012).

¹⁸ The Petitioner argues that the anticipatory procedural default should be excused in light of her actual innocence. Petitioner's Reply on Issue of Exhaustion at pp. 12-13 (Jan. 30, 2012). However, the Respondent has not raised an issue of procedural default.

consideration of the merits based on Ms. Moore's responsibility for her misstep in the post-conviction appeal. If the procedural windfall for Ms. Moore is unfair, as the Respondent believes, the issue would involve consideration of a procedural default rather than a failure to exhaust state court remedies.

Summary

The Respondent's focus on the importance of exhaustion is misguided. She admits that exhaustion is not necessary when further proceedings in state court would be futile,¹⁹ and they clearly would be here. The Respondent believes it would be unfair to allow Ms. Moore to proceed in federal court without properly presenting her claim in state court. But there is no cognizable basis to disregard the exhaustion requirement based on the perception of fairness. The procedural default doctrine is designed to prevent circumvention of state court remedies, and Ms. Newton-Embry has not raised an issue of procedural bar. The Respondent's sole argument, exhaustion, is invalid because further resort in state court would be futile. As a result, the Court should overrule the Respondent's limited answer.

Notice of the Right to Object

Any party may file written objections with the Clerk of the United States District Court, Western District of Oklahoma.²⁰ The deadline for objections is February 27, 2012.²¹

¹⁹ See *supra* p. 6.

²⁰ See 28 U.S.C. § 636(b)(1) (2010 supp.).

²¹ See Fed. R. Civ. P. 6(d), 72(b)(2).

The failure to file timely objections would result in waiver of the right to appeal the suggested ruling.²²

Status of the Referral

The referral is not discharged.

Entered this 10th day of February, 2012.

A handwritten signature in cursive script, reading "Robert E. Bacharach".

Robert E. Bacharach
United States Magistrate Judge

²² See *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991).