



The Washburn Oil and Gas Law Center's mission is to provide course offerings and extracurricular activities that assist students in becoming proficient oil and gas lawyers.

## D I R E C T O R ' S   A N N U A L   R E P O R T

# *Abundant Opportunities Offered to Students*

During 2013 the Center provided six different “oil and gas” courses and five courses addressing natural resources issues that impact the oil and gas industry. These were in addition to the directed research and externship courses dealing with oil and gas law. See the [“Course Offerings”](#) and [“Student Externships and Internships”](#) sections of this report.

Extracurricular opportunities provided by the Center during 2013 included special lectures, field trips, and professional conferences in eight different states attended by over 100 Washburn students. See the [“Extracurricular Opportunities”](#) section of this report.

The Center continued its efforts to bring students into contact with oil and gas lawyers in a learning environment through various innovative course designs. For an expanded discussion of the course design employed in the Mineral Title Examination course and Oil and Gas Conservation Law and Practice

course, see the [“Innovative Course Design”](#) section of this report.

Washburn students participating in the Center's programs have received national recognition. The Rocky Mountain Mineral Law Foundation awarded \$32,600, and the Energy and Mineral Law Foundation awarded \$9,000, in scholarships to Washburn students. See the [“Student Awards and Honors”](#) section of this report.

Scholarly activities included a number of activities that address pressing issues in Kansas, the United States, and internationally. The Center received \$13,206 in grant funding from the Rocky Mountain Mineral Law Foundation to support new course development and student travel. See the [“Scholarly Activities”](#) and [“Grants”](#) sections of this report.

Washburn students continue to obtain employment with the oil and gas industry, law firms representing industry participants, and regulatory agencies involved with energy

development. See the [“Student Employment”](#) section of this report.

Looking forward to 2014, the Center will continue with the development of new courses and provide meaningful extracurricular opportunities for Washburn students. The Center will also continue its scholarly activities designed to serve the oil and gas legal community.

The major event in the spring will be the “Vexatious Title Issues” student symposium on March 28. See the [“Upcoming Event”](#) section of this report for a complete discussion of these items and the Center's scholarship agenda.

Finally, if you like what you see in this Report, and you would like to support the work of the Center, please see the [“Your Assistance is Requested”](#) section of this report for information on how you can help to maintain, expand, and improve the activities of the Washburn Oil and Gas Law Center.

## COURSE OFFERINGS

The following courses were offered in 2013: Oil and Gas Law (LW740), Advanced Oil and Gas Law (LW855), Mineral Title Examination (LW952), Oil and Gas Conservation Law and Practice (LW966), Energy Regulation (LW803), Independent Study in Oil and Gas Law (LW969), Drafting Contracts and Conveyances (LW946), Environmental Law (LW744), Public Land Law (LW747), Independent Readings in Natural Resources Law (LW826), and Water Rights (LW742).

Students also participated in Directed Research (LW763) and Externship (LW921, 922) courses that focused on oil and gas law, energy law, and environmental law. These courses were made possible by a cadre of law professors who were assisted by more than 50 practicing oil and gas lawyers together with technical experts such as geologists and engineers.

## STUDENT EXTERNSHIPS AND INTERNSHIPS

Taylor Leftwich was the 2013 extern with Chevron U.S.A., Inc., in Houston, Texas. Several students worked as externs or interns for the utility and oil and gas conservation divisions of the Kansas Corporation Commission.

Many students found summer positions with other state agencies, such as the Kansas Department of Health and Environment, and with the oil and gas industry or law firms representing participants in the industry.

Three students interned at Chesapeake Energy Corporation, Oklahoma City.



Washburn Law student Ben Busboom received orientation at a drill site in Oklahoma as part of his internship.

## EXTRACURRICULAR OPPORTUNITIES

### Special Lectures

Throughout the year a number of “lunch and learn” presentations were available to students. For example, **Jennifer Horchem, ’10**, an associate with Martin, Pringle, Oliver, Wallace & Bauer in Wichita, Kan., met with students to discuss “Unitization of Oil and Gas Fields in Kansas.” Patricia Moore, assistant general counsel, and Greg Schnacke, executive director for Governmental Relations, both with Denbury Resources Inc. in Plano, Texas, made presentations on legal issues associated with enhanced oil recovery using carbon dioxide. Students also attended lectures on oil and gas ownership and development, correlative rights, horizontal drilling, and hydraulic fracturing.

### Field Trips

The Center coordinates field trips that allow students to observe energy facilities first-hand and discuss their operation and regulation with facility operators. For example, students toured the Bowersock Hydroelectric Generating Facility, in Lawrence, Kan., and discussed construction permitting, renewable portfolio standards, and power purchase agreement issues with Sarah Hill-Nelson, a co-owner of The Bowersock Mills & Power Company.

### Conferences

Students attended a number of educational conferences, at no charge to the student. Registration fees, hotel expenses, and the cost of travel (airfare, car, or chartered bus) to attend an event were paid by the Center with funds provided by private donors and foundations. Substantial student travel support was provided by the Rocky Mountain Mineral Law Foundation.

The goal is to integrate students with the practicing bar to expand their study of oil and gas law and related subjects. Conferences attended by Washburn students in 2012-13 included:

- KBA/KIOGA 37th Annual Oil and Gas Conference, sponsored by the Kansas Bar Association and the Kansas Independent Oil and Gas Association, October 19, 2012, in Wichita, Kan. Twenty-one students attended.
- The Eugene Kuntz Conference on Natural Resources Law and Policy, sponsored by the University



Washburn Law graduate the Honorable Joseph W. Morris, '47, was recognized at the first Hartrick Symposium receiving the "Award for Distinguished Service in Energy Law." Judge Morris, and his wife Dona, are joined by Professor Pierce, Margann Bennett, and some of the 50 current Washburn law students who traveled to Tulsa to meet Joe and Dona and to attend the Hartrick Symposium on Career Paths in the Energy Sector.

of Oklahoma College of Law, Nov. 9, 2012, in Oklahoma City. Two students attended.

- Horizontal Oil and Gas Development Special Institute, sponsored by the Rocky Mountain Mineral Law Foundation, Nov. 8-9, 2012, in Westminster, Colo. Eight students attended.

- Introductory Oil and Gas Law for the Kansas Lawyer, sponsored by the Wichita Bar Association, Feb. 8, 2013, in Wichita, Kan. Six students attended.

- 64th Annual Oil & Gas Law Conference, sponsored by the Institute for Energy Law of the Center for American and International Law, Feb. 21-22, 2013, in Houston, Texas. Two students attended.

- Air Quality Issues Affecting Oil, Gas, and Mining Development in the West Special Institute, sponsored by the Rocky Mountain Mineral Law Foundation, Feb. 28 to March 1, 2013, in Denver, Colo. Two students attended.

- 2013 Hartrick Symposium: Career Paths for Young Attorneys in the Energy Sector, sponsored by the Institute for Energy Law, the Center for American and International Law, and the University of Tulsa College of Law, March 1-2, 2013, in Tulsa, Okla. Fifty students attended.

- 2013 Oil, Gas, and Mineral Conference, sponsored by the Kansas Bar Association, March 8, 2013, in Dodge City, Kan. Nine students attended.

- Title and Development Issues in the Utica Shale Special Institute, sponsored by the Energy and Mineral Law Foundation, April 14-16, 2013, in Columbus, Ohio. One student attended.

- Oil & Gas Agreements: Contracting for Goods, Services, and People Special Institute, sponsored by the Rocky Mountain Mineral Law Foundation, May 2-3, 2013, in Santa Fe, N.M. Two students attended.

- 59th Annual Rocky Mountain Mineral Law Institute, sponsored by the Rocky Mountain Mineral Law Foundation, July 18-20, 2013, in Spokane, Wash. Thirteen students attended.

- 76th Annual KIOGA Convention, sponsored by the Kansas Independent Oil & Gas Association, Aug. 18-20, 2013, in Wichita, Kan. One student attended.

- KBA/KIOGA 39th Annual Oil & Gas Conference, sponsored by the Kansas Bar Association and the Kansas Independent Oil & Gas Association, Oct. 18, 2013, in



Washburn students; Professor Pierce; and Professor and former Dean Alastair Lucas, Faculty of Law, University of Calgary, and his wife Sandy; at an evening event sponsored by the Foundation.



In Spokane, Wash., Washburn Law students and alumnus Steve Lautt, '12, pose for a group photo while attending the Rocky Mountain Mineral Law Foundation's Annual Institute.

Wichita, Kan. Twenty-two students attended.

- Kentucky Mineral Law Conference, sponsored by the Energy & Mineral Law Foundation, Oct. 23-25, 2013, in Lexington, Ky. One student attended.
- Renewable Electric Energy Development Special Institute, sponsored by the Rocky Mountain Mineral Law Foundation, Nov. 7-8, 2013, in Las Vegas, Nev. One student attended.
- The Eugene Kuntz Conference on Natural Resources Law and Policy, sponsored by the University of Oklahoma College of Law, Nov. 8, 2013, in Oklahoma City. One student attended.

## INNOVATIVE COURSE DESIGN

### Mineral Title Examination

Mineral Title Examination was taught as a winter intersession course by 20 practicing title examiners to 47 students and a select group of CLE attendees. Students completed the course by conducting a virtual stand-

up title search in the Ness County Courthouse. Students progressed from index to documents, created a chain of title, analyzed document language, identified ownership issues, made requirements, and discussed how requirements could be satisfied. During the discussion phase the students were provided with the actual Drilling Title Opinion and Division Order Title Opinion prepared by a recent graduate.

This course has received high praise from students and attorneys participating in the course. Seventy-two students attended the course offered January 15-17, 2014.

### Oil and Gas Conservation Law and Practice

Oil and Gas Conservation Law and Practice was presented for the first time in 2013. The course was held August 10-12 as a summer intersession course in Wichita, Kan. It was taught by 34 instructors comprised of attorneys that regularly practice before the Conservation Division of the Kansas Corporation Commission, Division legal and technical staff, and

the three commissioners. Twenty-four Washburn students, plus two from KU, had the opportunity to learn from the professionals who administer the oil and gas regulatory programs and the attorneys who represent clients before the Commission. The capstone event was a re-enactment of a contested hearing before the three commissioners concerning a spacing exception that required the introduction and evaluation of geological and reservoir mechanics evidence. Students were able to observe how subsurface conditions are factually established in a hearing so that regulatory standards can be applied.

This course also received high praise from participating students and attorneys. This experience has resulted in a model educational partnership between Washburn and the Kansas Corporation Commission. **Ryan Hoffman, '07**, director of Oil and Gas Conservation at the Kansas Corporation Commission, worked closely with Center faculty to design, coordinate, and present the course. The course will be offered again during the summer intersession, August 16-18, 2014.

## STUDENT AWARDS AND HONORS

One measure of the success of Washburn's program is the recognition students receive from organizations that specialize in educating lawyers practicing oil and gas law, energy law, and other natural resources law subjects. Washburn students received a total of \$41,600 in scholarships: Energy and Mineral Law Foundation



David Phillips and Aaron Friess shake hands during a reception at the Foundation's Annual Institute in Spokane, Wash. In addition to the scholarships awarded to Washburn students, the Foundation covers travel expenses so the recipients can attend the Foundation's Annual Institute.

(\$9,000) and Rocky Mountain Mineral Law Foundation (\$32,600).

The Rocky Mountain Mineral Law Foundation in 2012 instituted a new scholarship named in honor of David P. Phillips, the Foundation's retiring executive director with 42 years of stellar service. This is the most prestigious scholarship awarded by the Foundation. The first recipient of the David P. Phillips scholarship was Washburn 3L Aaron Friess.

## SCHOLARLY ACTIVITIES

Part of the Center's mission is to provide outreach to the legal community through useful scholarship. The Mineral Title Examination course, and the Oil and Gas Conservation Law and Practice course, have each triggered a number of research projects that address unresolved issues identified by course participants. For example, during the past year the Center has

provided useful scholarly guidance on issues such as: (1) Ohio's use of its compulsory unitization statute to pool horizontal drilling units; similarities between the Ohio statutes and the Kansas unitization statutes; and issues associated with the use of unitization statutes to pool Kansas lands for horizontal development. (2) The use of a correlative rights/reservoir community analysis, as opposed to a strict *ad coelum* and rule of capture analysis, to address intra-reservoir trespass claims associated with hydraulic fracturing, horizontal drilling, enhanced recovery operations, and waste disposal issues, including geologic carbon sequestration. (3) Many nagging Kansas title issues to include the validity of conveyances to a "stranger-to-the-deed," interpretation of railroad land grants and conveyances to railroads, and a seemingly unlimited supply of untouched property issues that oil and gas title examiners are addressing.

The Center has also taken the lead in addressing the ethical contours of exercising "professional judgment" when drafting documents and advising clients regarding title and development issues.

The following continuing legal education and academic presentations were made by Center faculty in 2012-13.

- Joint Program: Oil, Gas, and Energy Law Society and Real Estate Law Society, Correlative Rights. Oct. 2, 2012
- Oil, Gas, and Energy Law Society Program, Environmental Regulation

of the Oil and Gas Industry, Part 1. Oct. 8, 2012

- Oil, Gas, and Energy Law Society Program, Environmental Regulation of the Oil and Gas Industry, Part 2. Oct. 9, 2012

- Lunch & Learn: Transactional Drafting. Nov. 15, 2012

- Wichita Bar Association. "Basic Oil & Gas Ownership Issues." Wichita, Kan. Feb. 8, 2013

- Kansas Bar Association. "Vexatious Title Problems: Railroads, K.S.A. §79-420, and Strangers to the Deed." Dodge City, Kan. March 8, 2013

- American Society of International Law. "Uncommon Remedies in International Dispute Resolution." Washington, D.C. April 4, 2013

- Energy and Mineral Law Foundation. "Implied Covenant Law: Basic Principles, The Ohio Experience, and Horizontal Development." Columbus, Ohio. April 16, 2013

- Columbia Law School. "The Function of Annulment in Investor-State Arbitration." New York. April 19, 2013

- Seventh Annual Investment Treaty Arbitration Conference. "BIT, Contract, or a Bit of Both? Investor-State Dispute Resolution in the Energy Sector." Washington, D.C. April 22, 2013

- Rocky Mountain Mineral Law Foundation. "Contract Formation Issues When Contracting for Goods, Services, and People in the Oil and Gas Industry." Santa Fe, N.M. May 2, 2013



Washburn Law participants in the Horizontal Oil and Gas Development Special Institute in Westminster, Colo., included Christopher Stanley, Courtney Kelley, Kathleen Wary, and Nathan Jiwanlal.

- Kansas Paralegal Association. "Oil & Gas Issues of Interest to the Kansas Paralegal." Lawrence, Kan. June 14, 2013
- Washburn Law School. "Recent Developments in Kansas Contract and Property Law." "The Foreign Corrupt Practices Act and the Long-Awaited Anticlimactic Government Guidance." Topeka, Kan. June 27, 2013
- State Bar of Texas. 31st Annual Advanced Oil, Gas & Energy Resources Law Course. "Ethics of Oil & Gas Drafting." Houston, Texas. Oct. 3, 2013
- Young International Council for Commercial Arbitration. "Discovery in International Arbitration." Boston. Oct. 7, 2013
- Kansas Bar Association & Kansas Independent Oil and Gas Association. 38th Annual Oil & Gas Law Program. "The Courts and Kansas Oil & Gas Law." Wichita, Kan. Oct. 18, 2013
- Rocky Mountain Mineral Law Foundation. "Common Interests

Created in Oil & Gas." "Split Estates: The Surface Use Issues." Westminster, Colo. Oct. 22, 2013

- Rocky Mountain Mineral Law Foundation. "The Ethics of Drafting and the Lawyer Representing Renewable Power Project Developers." Las Vegas, Nev. Nov. 8, 2013
- University of New Mexico School of Law. "Rethinking Oil & Gas Ownership." Albuquerque, N.M. Nov. 13, 2013
- State Bar of New Mexico. "Correlative Rights: The Next 100 Years." Albuquerque, N.M. Nov. 13, 2013

## GRANTS

All of the Center's \$13,206 in grant money during 2013 came from the Rocky Mountain Mineral Law Foundation. The Foundation awarded a \$4,500 grant to support the development and presentation of the Oil and Gas Conservation Law and Practice course. This money was used to provide student research assistance to the instructors as they developed

materials for the course and to pay other first-time course expenses.

The Foundation provided \$8,406.41 in student travel funds so Washburn students could attend Foundation programs. This assistance consisted of \$3,000 under the Foundation's Law Student Attendance Program, \$2,500 from the Discretionary Law Student Attendance Program, and \$2,906.41 from the Scholarship Recipient Attendance Program.

The Foundation also provided \$300 under its Student Networking Program to support an open house co-sponsored by the student Oil, Gas, and Energy Law Society, the Agricultural Law Society, and the Environmental Law Society. The program showcased the Center's extracurricular study programs and the active involvement of Foundation members in those programs.

## STUDENT EMPLOYMENT

Washburn students have been successful at obtaining employment with the oil and gas industry, law firms representing industry participants, and regulatory agencies involved with energy development. The Center, working with the Professional Development Office, continues to explore ways to assist students in finding career opportunities in oil and gas law and the related disciplines.

By evaluating each student's career goals early in the process, a course of classroom and extracurricular study can be designed that will equip them to compete for employment opportunities.

TALK TO US: Call Jean Hays,  
316-268-6557, or e-mail  
jhays@wichita.eagle.com  
WWW.KANSAS.COM/NEWS

# LOCAL & STATE

3A

TUESDAY  
AUGUST 13, 2013

Now you know



Dion Lefler/The Wichita Eagle

Wichita lawyer David Bengtson re-enacts his role in a 2011 oil and gas case as part of a collaboration of the Kansas Corporation Commission and the Washburn University School of Law to train students.

## Mock trial gives students a view of real oil and gas case

BY DION LEFLER  
The Wichita Eagle

The lawyers stood before the members of the Kansas Corporation Commission arguing a case they'd all heard before.

At stake was absolutely nothing. In fact, the case was decided two years ago.

It was a carefully staged re-enactment, part of a new partnership between the commission and the Washburn University School of

Law to train the next generation of oil and gas attorneys, in a state where oil and gas law is becoming an increasingly bigger deal.

Granted, you probably won't see "Law and Order: Special Oil and Gas Unit" coming to NBC anytime soon.

But with hydraulic fracturing bringing once-dead oil fields back to life and even proposals to drill underneath Wichita's Century II convention center, it's a growing area of law with major impli-

cations pretty much across Kansas.

Washburn Law professor David Pierce, director of the university's Oil and Gas Law Center, said oil and gas cases are a lot like any other property dispute, except, "It's sometimes 5,000 feet underground and you can't see it."

Monday's re-enactment of an Ellis County case highlighted the three main issues that come up in KCC oil and

Please see TRIAL, Page 5A

A news article in the *Wichita Eagle* covered a mock trial that was part of the new Oil and Gas Conservation Law and Practice Course, a collaborative effort between the Kansas Corporation Commission and Washburn Law.

## Plans for 2014

### COURSE DEVELOPMENT

The faculty teams that will be teaching the Oil and Gas Taxation course (LW968) and the Environmental Regulation of the Oil and Gas Industry course (LW967) are being assembled and course materials developed. These courses will be offered during the 2014-15 academic year.

The Energy Regulation course (LW803) is being redesigned to make the subject matter more relevant to current energy development issues and to actively involve the agencies that regulate the various forms of energy studied. The goal is to put the subject matter into a transactional setting where students can study the process by which energy transactions are conceived, financed, developed, and operated.

Each course will build on the model of using practitioners actively involved with the subject matter as well as the legal and technical personnel responsible for regulating the activity.

Work is also being conducted to prepare the materials to support an online version of the Oil and Gas Law course (LW740). This will be offered in addition to the classroom version of the course in order to accommodate students participating in the new Master of Studies in Law (M.S.L.) and LL.M. in Global Legal Studies programs. It will also make Washburn Law School a source for oil and gas law education for students from law schools that do not offer oil and gas law.

### EXTRACURRICULAR STUDY: SPECIAL LECTURES & FIELD TRIPS

Special lectures on oil and gas purchase and sale agreements, royalty litigation, and legal issues associated with the planning and construction of midstream facilities are being planned and scheduled. Field trips are planned to observe an oil and gas drilling operation, a hydraulic fracturing operation, plugging operations, a wind farm, and to visit various midstream facilities.

### EXTRACURRICULAR STUDY: PROFESSIONAL CONFERENCES

The goal is to make it possible for Washburn students to attend the following annual programs:

- Center for American and International Law, Institute for Energy Law, Annual Oil & Gas Law Conference. Third week in February.
- Kansas Bar Association's Spring Western Kansas Oil & Gas Law Conference. First Friday in March.
- Ernest E. Smith Oil, Gas, and Mineral Law Institute, University of Texas School of Law. Third Friday in March.
- Louisiana Mineral Law Institute. Louisiana State University School of Law. First week in April.
- Hartrick Symposium on Career Paths for Young Attorneys in the Energy Sector. April.
- Energy & Mineral Law Foundation

Annual Institute. First week in June.

- Rocky Mountain Mineral Law Foundation Annual Institute. Third week in July.

- Kansas Independent Oil & Gas Association Annual Convention. Third week in August.

- Eastern Kansas Oil & Gas Association Annual Meeting. September.

- Advanced Oil, Gas, and Energy Resources Law Course, State Bar of Texas. First week in October.

- KBA/KIOGA Annual Oil & Gas Law Program. Third week in October.

- Kentucky Mineral Law Conference (Energy & Mineral Law Foundation). Fourth week in October.

- Eugene Kuntz Conference on Natural Resources Law and Policy. Second Friday in November.

Students are often selected to attend events based upon their desire to practice in a particular state or geographic area. The goal is to create opportunities to learn more about the law in a particular state while meeting lawyers from that state. This is part of the continuing effort to assist students in identifying and pursuing employment opportunities.

In addition to the regular annual conferences noted on pages 7 and 8, students will attend the following special institutes offered by the Rocky Mountain Mineral Law Foundation:

- Advanced Mineral Title Examination. Denver, Colo. January 23-24, 2014.

- Public Land Law, Regulation, and Management. Santa Fe, N.M. May 8-9, 2014.

- Federal Onshore Oil & Gas Pooling and Unitization. Westminster, Colo. Oct. 28-29, 2014

## SCHOLARSHIP

### Articles and Presentations

The Center faculty will be participating in a number of scholarly programs in 2014. Events scheduled include:

- “The Interpretation of International Investment Agreements.” International Centre for the Settlement of Investment Disputes (World Bank). Washington, D.C. Jan. 23.

- “Sustainable Oil and Gas Development in Rural America.” Kansas Journal of Law and Public Policy Symposium. University of Kansas School of Law. Lawrence, Kan. Feb. 21.

- “Kansas Oil & Gas Law: Ten Cases Where the Kansas Supreme Court Got it Wrong.” Kansas Bar Association’s Western Kansas Oil & Gas Law Conference. Hays, Kan. March 7.

- “Return to Basics.” Eighth Annual Investment Treaty Arbitration Conference. Washington, DC. March 28.

- “Correlative Rights: Returning the Oil & Gas Property Interest To Its Proper Context.” Louisiana Mineral Law Institute. Louisiana State University School of Law. Baton Rouge, La. April 3.

- “Post-Award Remedies in International Law and Investor-State Dispute Resolution.” Georgetown University Law Center. Washington, D.C. April 10.

- “Recent Developments in Kansas Oil & Gas Law and Related Disciplines.” Washburn Law School Recent Developments in the Law. Topeka, Kan. June 26.

- “Arkansas Correlative Rights: Past, Present, and Future.” Oil and Gas Law Symposium Recognizing the 75th Anniversary of the Arkansas Conservation Act and the Creation of the Arkansas Oil and Gas Commission. University of Arkansas School of Law. El Dorado, Ark. Oct. 15-17.

### Outreach to the Legal Community

Considerable Center resources will be devoted to developing an online series of “In the Classroom” presentations that can be viewed by lawyers and students to learn about contemporary oil and gas law issues.

This will be a joint project with professors, practitioners, technical experts, agency personnel, and Washburn students to prepare professional video vignettes addressing a specific topic and fully supported with a scholarly article on the topic. For example, one of the first topics addresses the formation of the contract to enter into an oil and gas lease and the mechanics of bonus payment. Typically these matters are not referenced in the oil and gas lease document, but rather are the product of correspondence that controls the mutual assent process by which the lease obligation arises.

**UPCOMING EVENT:**

Friday, March 28, 2014  
at Washburn Law

This symposium exemplifies one of the goals of the Washburn Oil and Gas Law Center: to provide Washburn Law students with meaningful and effective opportunities to continue their study of oil and gas law outside the classroom.

**VEXATIOUS TITLE ISSUES**

Title examiners, in Kansas and elsewhere, deal with a number of recurring issues that often defy resolution. This symposium provides an in-depth study of many of the commonly encountered issues along with a preview of several new emerging issues.

**STUDENT-LED SYMPOSIUM**

Each of the presentations at this Symposium will be made by a Washburn Law student who has worked with a professor and two practitioners to prepare his or her topic. The students will lead the Symposium by making presentations and engaging a panel of title examiners, and the audience, in a discussion of the issues.

**REGISTRATION**

If you would like to attend this event, go to the following link and complete the registration form:  
**[washburnlaw.edu/titleissues](http://washburnlaw.edu/titleissues)**

## A STUDENT SYMPOSIUM ON VEXATIOUS TITLE ISSUES

**9:00 A.M. WELCOME****9:15 A.M. "ALL MINERAL" AND "OIL, GAS, AND OTHER MINERALS"**  
*Courtney L. Kelley*

A foundational inquiry in every "mineral" or "oil, gas, and other minerals" conveyance is the scope of the term "mineral." Related interpretive issues concern the scope of terms such as "gas" and "coal" as they relate to coal bed methane ownership. Existing law is examined with the goal of distilling interpretive guides that can be used to try to define the scope of mineral conveyances. Guidance is also provided on drafting to avoid the problem.

**9:30 A.M. "MINERAL" AND "ROYALTY" INTERESTS**  
*Maurice Brewer*

Every conveyance of an interest in oil and gas must be analyzed to determine whether it creates a "mineral" interest or a "royalty" interest. Although the attributes of each can be easily identified, the industry is plagued with poorly drafted documents that are often the product of forms that perpetuate and magnify drafting errors. Although an extensive body of case law exists on the topic, it is inconsistent and often the product of the court seeking a desired outcome to achieve an equitable result. Early case law reflects the inability to recognize the nonparticipating mineral interest. After accounting for these jurisprudential tendencies, the case law nevertheless provides useful guidance to distinguish "mineral" from "royalty" with clear guides on how to draft to avoid the issue in future conveyances.

**9:45 A.M. NONPARTICIPATING MINERAL INTERESTS**  
*Michael Baxter*

The ability to create a "mineral" interest that participates only in "royalty," but as a "mineral" interest owner, has challenged judges and practitioners, particularly in a state like Kansas where distinguishing a mineral interest from a royalty interest will often determine whether the conveyance is void or valid. Although the nonparticipating mineral interest is clearly recognized by Kansas courts, the law defining the contours of the interest, including potential relational obligations, is largely nonexistent. Therefore, existing law must be identified along with the many unresolved issues. Experiences in other states provide guidance on how Kansas may, or may not, want to address the open issues. Guidance is also provided on drafting nonparticipating mineral interests to resolve and avoid the open issues.

**10:00 A.M. DEFEASIBLE TERM INTERESTS**  
*Michael J. Duenes*

The major issue is determining whether the interest has been extended, and maintained, during the indefinite "so long as oil or gas is produced" secondary term. Most deeds do not contain the detailed provisions found in oil and gas leases that provide for constructive production, such as commencement, completion, dry hole, cessation, shut-in, pooling, and *force majeure* clauses. Instead, a unique body of law has developed to address when the interest will be extended into the secondary term. The stakes are high. The validity of the interest will turn on the interpretation and application of a body of case law that has not been consistent, and that is continuing to develop in significant ways. The case law, however, provides a useful guide for drafting defeasible term mineral interests.

**10:15 A.M. BREAK**

**10:30 A.M. RIVERS AND LAKES***Coleman J. Younger*

Ownership of land beneath rivers and lakes depends upon whether they were navigable-in-fact at the time of statehood. The determination of navigability is a federal law issue and the U.S. Supreme Court recently reaffirmed that navigability is not a river-by-river determination but rather a segment-by-segment determination for each river. This presentation examines federal navigability law and state law defining ownership boundaries for navigable and non-navigable rivers and lakes. The legal effect of erosion, accretion, and avulsion are also examined.

**10:45 A.M. CITY STREETS, COUNTY ROADS, STATE, AND FEDERAL HIGHWAYS***Jeffrey A. "Jeff" Wilson*

When land is acquired for a street, road, or highway, whether by grant, dedication, or condemnation, the issue is whether a fee interest was conveyed, including the mineral interest, or an easement. The goal is to identify the applicable statutory law and case law that define the nature of ownership beneath a particular road, maintained by a particular entity, and created pursuant to a particular statutory or common law process.

**11:00 A.M. RAILROAD LAND GRANTS***Anthony J. "Tony" Ford*

Railroad land grants cover 1/6th of the land area of Kansas. Lands were granted pursuant to a number of legislative acts and for various railroad purposes. Commonly encounter legislative and grant language states: "Excluding and excepting all mineral lands should any such be found in the tracts aforesaid..." Language similar to this has been interpreted by state and federal courts with some inconsistent results. The goal is to identify and analyze the relevant law that must be considered to determine the disposition of the mineral estate at the time of the original grant. Another issue is determining whether an otherwise unlimited grant will create a fee simple, a fee simple determinable, or merely an easement.

**11:15 A.M. SPOUSAL RIGHTS***Christopher A. "Chris" Rohr*

Constitutional homestead rights, and a statutory substitute for dower and curtesy, make it essential that a married person be joined by their spouse in any conveyance of real property. The failure to recite marital status in a conveyance is perhaps the most common title defect. The law governing spousal joinder is examined along with other laws addressing spousal rights when a divorce petition is filed. The effect of a false recital of marital status is also examined.

**11:30 A.M. BREAK****11:45 A.M. MORTGAGES AND OTHER CREDITOR BURDENS***Nathan A. "Nate" Jiwanlal*

When a landowner grants an oil and gas lease, the land will often be subject to pre-existing creditor claims, typically secured by a recorded mortgage. Perfected creditor claims prior in time to the oil and gas lease create problems because they enable the creditor to foreclose on the property and sell it unburdened by junior claims, including a subsequently granted oil and gas lease. This has given rise to the "subordination" agreement and other arrangements to protect the oil and gas lessee in the event the landowner defaults on pre-existing obligations to creditors. Basic creditor rights in the oil and gas law context are explored along with common practices and problems associated with pre-existing creditor rights.

**NOON****FARM TENANCIES AND OTHER LANDLORD/TENANT RELATIONSHIPS***Tucker A. Stewart*

Land in Kansas is often burdened by a farm tenancy. The lease may be oral or written, and in many cases will be supported by the farm tenant's long-term physical possession of the land. Issues arise concerning the scope of the tenancy and whether it limits the landowner's ability to grant an oil and gas lease, and associated development rights, to the burdened land. The farm tenant's status as a third party beneficiary of the oil and gas lease and other development contracts is also explored.

**12:15 P.M. LUNCH****1:45 P.M. OPERATING AGREEMENT BURDENS***Robert J. Moody*

When evaluating the validity and effect of lease transfers, a major focus will be the terms of any operating agreement that may burden an interest in the lease. Restrictions on partition, required consents, preferential rights to purchase, areas of mutual interest, liens, and unfunded obligations may all burden the transferred interest. The focus is on operating agreement burdens that title examiners often encounter and what to do with them in the title opinion.

**2:00 P.M. FRACTIONAL CONVEYANCES AND THE DUHIG RESPONSE***Jessica A. Brunken*

Interpretive issues can arise whenever a grantor seeks to except from a conveyance a fractional interest in minerals at a time when the grantor owns less than all the minerals. Unless the conveyance addresses the issue, examiners are left with the task of trying to determine the intent of the parties to the conveyance. Many courts have adopted the *Duhig* analysis to arrive at a generic, matter-of-law approach to the issue. The adoption of a *Duhig* analysis remains open in Kansas. Available statutory and case law will be examined to determine how Kansas addresses these issues.

**SYMPOSIUM RECEPTION - Friday at 5 P.M.**

**2:15 P.M. PROPORTIONATE REDUCTION***Bret M. Robinson*

Proportionate reduction is an issue at the pre- and post-lease stages. It impacts the expectations of the parties, expectations that often differ. Proportionate reduction issues arise any time a party entitled to lease benefits owns less than all the underlying mineral interest. It arises between lessors and lessees, and between assignors and assignees. The goal is to evaluate existing law to identify potential traps, interpretive issues, and to define the effect of language commonly found in oil and gas leases and assignments.

**2:30 P.M. NOTICE: CONSTRUCTIVE, ACTUAL, INQUIRY***David W. Exstrum*

Third parties are deemed to have notice of title documents and circumstances through statutory and common law rules that impute notice regardless of the party's actual knowledge. Constructive notice, and actual notice, have been explained and developed by case law. Inquiry notice impacts the potential scope of both categories of notice. The goal is to explore the law of notice and define the necessary scope of an examiner's efforts to ascertain the facts.

**2:45 P.M. BREAK****3:00 P.M. RECORDED MEMORANDA OF UNRECORDED DOCUMENTS***Nathaniel A. "Nathan" Unruh*

It is now common to see recorded memoranda intended to put the public on notice that the property is burdened by a wind lease, oil and gas lease, operating agreement, or other important document affecting title. The referenced documents are not recorded, but instead are identified with varying degrees of detail in the memoranda. The goal is to evaluate the efficacy of the recorded memoranda, the required content of the memoranda, and how administering requests for a complete copy of the instrument can impact the notice analysis.

**3:15 P.M. TAX LIENS AND TAX SALES***Stephen P. Tyler*

Failure to pay taxes can result in a statutory lien against property. One of the most common judicial transfers of title arises from a sale for non-payment of taxes.

It is also the judicial proceeding that is most prone to procedural defects. This presentation examines tax liens and the procedural requirements for a valid tax sale, what the examiner should look for, and common defects.

**3:30 P.M. FRACTIONALIZED INTERESTS***Matthew A. "Matt" Tate*

Mineral and royalty interests are frequently overlooked until they become the focus of development. Often they will pass through several generations and, through intestacy, further fractionalized among statutory heirs.

Interests in oil and gas leases become fractionalized to accommodate investment and to leverage risk. For producing properties, the fractionalization may be simultaneously taking place at the mineral

owner, royalty owner, and working interest owner levels. Ownership can also become further complicated with the creation of future interests, such as remainders, reversions, and possibilities of reverter. The menu of statutory and common law procedures to address fractionalized interests is limited. The opportunities and limitations created by existing law are explored.

**3:45 P.M. BREAK****4:00 P.M. ROYALTY POOLS***Aaron K. Friess*

Since the 1920s, many landowners have conveyed fractional interests into "royalty pools," the concept being that each landowner could receive a fractional share of the mineral revenue generated by the interests in the trust. These royalty pools are still encountered, and can pose challenges for title examiners.

**4:15 P.M. RULE AGAINST PERPETUITIES***Kathleen M. "Kate" Wary*

The rule against perpetuities is a frequent issue when dealing with routine oil and gas interests, particularly in Kansas. The unique application of the rule to nonparticipating royalty interests continues to generate trips to the Kansas Supreme Court; most recently in *Rucker v. DeLay*. The courts have also applied the rule to preferential rights to purchase. The potential impact of the Kansas Uniform Statutory Rule Against Perpetuities remains to be determined by the courts. This presentation examines the current state of the rule and the role the statutory rule is likely to play in future perpetuities disputes.

**4:30 P.M. MINIMUM NOTICE REQUIREMENTS FOR TITLE LITIGATION***Taylor Leftwich*

An issue that impacts all legal proceedings is the effort that must be made, in the Internet Age, to diligently identify the present address or whereabouts of parties to a lawsuit so it is likely they will receive notice of a pending action. The goal is to define current federal constitutional notice requirements and address compliance with statutes that require some level of Internet inquiry.

**5:00 P.M. ENVIRONMENTAL LAND USE LIMITATIONS***Benjamin E. "Ben" Busboom*

Land use limitations come in many varieties. The more apparent limitations are those created by contract and conveyance. These typically appear of record in the chain of title. Less apparent are those created by law, such as zoning restrictions. These will rarely appear of record. The more obscure limitations arise from state and federal environmental laws. For example, a potential land use limitation may arise from the existence of unplugged wells on land or the classification of the land as a "wetland." This topic explores the potential expansion of the title examiner's role in identifying and searching public records that can alert the client to significant land use problems associated with a proposed lease acquisition or drill site.

## *Your Assistance is Requested*

At Washburn Law, we are dedicated to promoting the study of oil and gas law and assisting our students in becoming successful lawyers. Even for students who will never practice oil and gas law, taking advantage of these Center opportunities will make them better lawyers, with a better understanding of contract law, property law, and the interaction of business and regulation. The things we do at the Center enhance the law school experience for all students and provide opportunities to see the law in action and learn from leading practitioners.

The Center programs require the active involvement of lawyers with expertise in oil and gas law and related disciplines. Currently, the Center uses over 50 practitioners to assist in teaching our students. If you are not currently participating, and you believe your expertise would be relevant to an existing program or a program you think we should be pursuing, contact: Professor David

Pierce via e-mail at: david.pierce@washburn.edu or send mail to: Washburn Law, 1700 SW College Ave., Topeka, KS, 66621-1140.

As this report demonstrates, providing many of the extracurricular activities to our students requires considerable funding. The proximity of Topeka to field trip opportunities, conferences, and the practicing oil and gas bar, means students have to travel. Although we always seek the cheapest travel alternatives, it is still expensive. The Center does not charge students to participate in extracurricular activities. Most of the time conference registration fees are waived or substantially reduced by the provider. Center travel assistance covers the means to get the student to the event and a place to stay. The student is responsible for food (except for food that is part of the event registration) and other travel expenses. This approach makes it possible for all students to participate while

maximizing funds available for the two major travel costs: transport and lodging.

Private donations provide most of the funding to support the Center's extracurricular study programs. Therefore, private donations determine how much we can do. If you would like to support the Center's activities, you can do so by sending your contribution to: Professor David Pierce, Washburn Law, 1700 SW College Ave., Topeka, KS 66621-1140. Make checks payable to: Washburn University School of Law, Oil and Gas Law Center.

We welcome your comments and suggestions about the Washburn Oil and Gas Law Center and its programs. Thank you.

*David E. Pierce*

*Director, Oil and Gas Law Center, and Norman R. Pozez Chair in Business and Transactional Law*



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