

# Oklahoma Law Review

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# OKLAHOMA LAW REVIEW

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Enemy Combatants, the Courts, and  
the Constitution

*Roberto Iraola*

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Disparate Treatment, Sexual Harassment,  
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to Avoid Dealing with the Tension Between  
Congress and the President Regarding the  
War Powers

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*Cassandra L. Wilkinson*

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Holding States Accountable for the  
Devastation of Terrorism

*Sarah E. Smith*

VOLUME 56

FALL 2003

NUMBER 3

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## LAW SCHOOL NEWS

*College of Law:* In July, U.S. Supreme Court Justice Stephen Breyer joined the University of Oklahoma College of Law's 30th Summer Program at Brasenose College at Oxford University as a guest professor and lecturer. Justice Breyer lectured in Judge Robert Henry's class on Law and Anglo-Irish Literature and Professor Randall Coyne's Criminal Procedure class, speaking about the role of the justices, the mechanics of the Supreme Court, and several recently decided cases, including *Grutter v. Bollinger* and *Lawrence v. Texas*. After graduating from Stanford University, Justice Breyer attended Oxford University where he found an interest in economics. Justice Breyer graduated from Harvard Law School where he served as an editor of the *Harvard Law Review*. Supreme Court Justice Arthur Goldberg selected Justice Breyer to clerk for him in the 1964-65 term. Following his clerkship at the Supreme Court, Justice Breyer worked in the antitrust division of the Justice Department and later returned to Harvard to teach regulatory law. President Bill Clinton nominated Justice Breyer, who took his seat as the 108th Supreme Court Justice in 1994.

Throughout the fall semester, the Dick Bell Courtroom, the University of Oklahoma's state-of-the-art facility, has been used for oral arguments by the Oklahoma Court of Criminal Appeals, the Oklahoma Court of Civil Appeals, and a federal jury trial from the Western District of Oklahoma. Judges and attorneys recognize the increased capabilities that the Dick Bell Courtroom offers. Viewing rooms are available for students to observe the arguments and trials. Located above the courtroom in the library, the viewing rooms provide students with plasma displays for evidence, and allow students to hear both the courtroom proceedings and the sidebar conversations. In addition, the courtroom allows for electronic evidence presentation through document cameras, DVD and VCR, and computers. The judge, attorneys, and jury members have personal displays to view evidence. The electronic presentation includes touch screen capability.

The University of Oklahoma College of Law proudly welcomed the Fall 2003 entering class. The entering class comprises 177 students, 57% of whom are men and 42% of whom are women. The top 25% LSAT average is 161 and the median LSAT is 157. In addition, 57% of the entering class received merit-based scholarships.

The new Center for Special Education Due Process was launched at the OU Law Center. Two Oklahoma State agencies, the Department of Education and the University of Oklahoma, more specifically, the OU College of Law and the OU College of Education, have joined forces to create the Center for Special Education Due Process. The Center serves as the contracted agency for the Oklahoma State Department of Education for the purpose of managing and directing the State's obligations under the Individuals with Disabilities Education Act (IDEA) for the provision of due process hearings. The Center

is located in the OU College of Law's Andrew M. Coats Hall. The activities of the new center generally fall under two primary functions: the education and recruitment function (recruitment and training of Hearing and Appeal Officers), and the management function (hands-on administration of the Center). Directing the Center is Lawrence F. Rossow, an experienced special education due process hearing officer with a thirty-five-year career in education. Director Rossow has served as a teacher and principal at all levels of education and was a school superintendent in Illinois before joining academia. Before arriving in Oklahoma in 1988, Rossow served as the Chair of the Department of Education at Washburn University and taught education law at the School of Law. He also has taught education law at the University of New Orleans. Rossow continues to teach and perform research in education law at the University of Oklahoma College of Law and College of Education, with special education law being one of his areas of expertise. Rossow is the former Chair of the Department of Educational Leadership and Policy Studies at OU.

*Oklahoma Law Review*: Oklahoma Law Review Managing Editor Sarah Smith received the Outstanding Law School Senior Student Award from the Oklahoma Bar Association. The Outstanding Law School Senior Award is given annually to one third-year law student from each Oklahoma law school. David Treadwell, an Oklahoma Law Review editor, also received the Oklahoma Bar Foundation Scholarship. The Oklahoma Bar Foundation Scholarship is awarded annually to a first-, second- and third-year law student for academic accomplishment, community activity, and financial need.

# OKLAHOMA LAW REVIEW

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## CORRECTION

Because of an inputting error which occurred after the conclusion of the editorial process, part of a critical text quotation was missing from page 404 of the *Oklahoma Law Review*, vol. 56, no. 2. The error affected Liesa L. Richter's article, "Evidence: Is Oklahoma Balancing the Scales of Justice by Tying the Hands of Trial Judges?: The 2002 Amendment to Section 2403 of the Oklahoma Evidence Code Mandating Admission of In-life Victim Photographs in Homicide Cases." The *Review* regrets the error. The relevant portion of page 404 should have read as follows. The missing words are in italics:

### *III. The Amendment to Section 2403*

Consistent with this view, the Oklahoma legislature lifted the long-standing judicial ban on the admission of in-life photographs of victims in homicide prosecutions.<sup>89</sup> The legislature statutorily reversed the Oklahoma Court of Appeals' precedent concerning the admission of in-life photographs through an amendment to section 2403 itself. In stark contrast to the former, almost per se judicial rule excluding in-life victim photographs, the legislature amended section 2403 to create a per se rule of admissibility for such photographs in homicide cases. Section 2403 now reads:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, needless presentation of cumulative evidence, or unfair and harmful surprise. *However, in a prosecution for any criminal homicide, an appropriate photograph of the victim while alive shall be admissible evidence when offered by the district attorney to show the general appearance and condition of the victim while alive.*<sup>90</sup>

By providing that appropriate in-life photographs of homicide victims "shall be admissible" to show the general appearance and condition of the victim while alive, the amendment declares such photographs relevant pursuant to section 2401 and removes such photographs from the balancing test . . . .

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89. See *supra* note 6.

90. Act of Mar. 19, 2003, ch. 3, § 15, 2003 Okla. Sess. Law Serv. 17, 30-31 (West) (to be codified at 12 OKLA. STAT. § 2403) (emphasizing language added to section 2403 by the 2002 and 2003 amendments).