

Booklet control  
number:

Federal Courts  
The University of Oklahoma College of Law  
Fall 2013  
Professor Kit Johnson

Write your exam  
number here:

### FINAL EXAMINATION: ESSAY

#### General Notes and Instructions

1. All exam materials (including this booklet and the answer sheet) must be turned in at the end of the period. You will not receive credit unless you return this booklet with your exam number written above.
2. Do not turn the page until instructed to begin.
3. You may write anywhere on the examination materials — e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
4. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
5. During the exam: You may not consult with anyone – necessary communications with the proctors being the exception. You may not view, attempt to view, or use information obtained from viewing other student examinations or from viewing materials other than your own.
6. After the exam: You may discuss the exam with anyone, except that you may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam, and you must take reasonable precautions to prevent disclosure of exam information to the same.

#### Specific Notes and Instructions for PART II:

- a. Read all exam questions before answering any of them – that way you can be sure to put all of your material in the right place.
- b. Organization counts.
- c. Be complete, but avoid redundancy. Specifically, do not repeat the exact same analysis with substituted parties. For instance, computer users should probably not use the cut-and-paste function. Instead, to the extent called for, you may incorporate analysis by reference to another portion of your answer.
- d. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
- e. Feel free to use reasonable abbreviations.
- f. **Bluebooks:** Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page. Please put answers to each section in a separate blue book and label the blue books accordingly.
- g. **Computers:** Please clearly label your answers to each section.
- h. This section of the examination is “closed book.” You may not use any materials other than those provided to you by the proctors.
- i. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination I.D. number appropriately. Self-identification on the exam will, at a minimum, result in a lower grade, and may result in disciplinary action
- j. This Part II is worth approximately 2/3 of your exam grade.
- k. Good luck.

## Section 1

### 1 HOUR, 40 MINUTES

In January of 1971, President Richard M. Nixon nominated Jimmy Jagerson to a new seat on the U.S. District Court for the District of Western Oklahoma. Jagerson was confirmed by the Senate on February 14, 1971 and received his commission on March 23, 1971.

Jagerson was a controversial appointment. He had been a county prosecutor in Norman, Oklahoma for many years and had developed a reputation as a renegade. His energetic prosecutions of minor violations of liquor laws raised eyebrows – especially since Jagerson was prone to laughing himself into a fit with his backslapping stories about drinking his buddies under the table. And his charge-to-the-max prosecutions of local business proprietors for violating signage ordinances seemed absurd to many. “The law’s the law, bubba,” was his habitual quip to reporters.

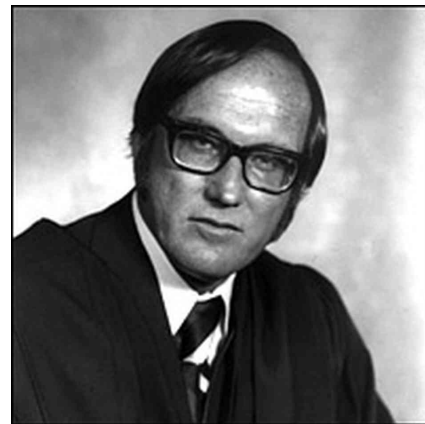
Given his experience, no one could really question Jagerson’s ability to tackle his federal criminal caseload. But many questioned how this rough-and-tumble prosecutor would handle his civil caseload.

Once on the bench, Jagerson quickly gained a reputation as something of a cowboy: He shot from the hip and tolerated little discussion. He once remarked in court that the Sherman Antitrust Act didn’t seem a whole lot different to him than the Slaughterville Bicycle Code. This sort of analysis allowed him to dispatch complex cases with lightning speed. Attorneys who didn’t like it were dismissed with what became Jagerson’s trademark phrase: “You get what you get, and you don’t throw a fit.”

Very quickly, the U.S. Court of Appeals for the Tenth Circuit learned to give especially intense scrutiny to appeals from Jagerson’s docket, and he ranked first in overturned decisions in the 10th Circuit nearly every year. His notoriety built to the point that in 2006, the Chair of the House Judiciary Committee floated a resolution to consider whether impeachment hearings were warranted against Jagerson, though he later dropped the issue.

On Mondays, Judge Jagerson handles his civil motions calendar. Just last week, Jagerson rocketed through the docket in his characteristic style. Trying to ignore the skittering and crunching sounds made by melting snow and ice sliding off the roof, Jagerson gruffly called his courtroom to order.

The first case up was *Smith v. Oklahoma*. Steven Smith, an inmate at the Oklahoma State Reformatory in Granite, Oklahoma, sued the State of Oklahoma, the Oklahoma Department of Corrections (“DOC”), Interim Director of the Oklahoma Department of Corrections Edward Evans, Correctional Officer Cliff Conway, and Warden Wally Wilkins under two causes of action: (1) 42 U.S.C. § 1983, under which he alleged that the defendants’ failure to provide adequate medical care amounted to a violation of the Eighth



**Fig. 1:** Judge Jimmy Jagerson of the U.S. District Court for the Western District of Oklahoma.

Amendment prohibition against “cruel and unusual punishment”; and (2) 63 Okla. Stat. § 1-523, which provides that prisons “shall ... furnish a physician and all proper medicines, instruments and apparatus for the proper treatment of” inmates infected with venereal diseases.

The alleged facts disclosed that while in the custody of the state, Smith began to experience painful discharge with his urine. Over the course of three months, Smith repeatedly asked Correctional Officer Conway for permission to see a physician, but Conway repeatedly denied his request. Humiliated and desperate, Smith showed Conway his soiled underwear, but Conway was unmoved. Smith was in such discomfort that he penned multiple letters to Warden Wilkins begging for intervention, and Smith sent copies of these letters to Interim Director Evans as well, hoping that someone would come to his aid. After four months of intense pain, Smith finally saw a doctor and was told that he had chlamydia. Due to the lateness of medical intervention, Smith was informed that he was now sterile.

It was the prison chaplain who brought Smith’s plight to the attention of Oklahoma Legal Aid, which filed the suit that came before Judge Jagerson. The complaint sought the following relief: (1) damages for Smith’s pain, suffering, and sterility; (2) an injunction requiring the defendants to provide adequate medical care to Smith and all Oklahoma inmates, with the specific requirement that new procedures be implemented for processing inmates’ medical requests; (3) the hiring of additional medical staff at the Oklahoma State Reformatory; (4) attorney’s fees; and (5) an increase in Smith’s “good time” credits, which would make him immediately eligible for parole.

The defendants jointly moved to dismiss on the basis of: (1) failure to state a claim under 42 U.S.C. § 1983, (2) failure to state a claim under 63 Okla. Stat. § 1-523, and (3) sovereign immunity.

Judge Jagerson had little to say about *Smith v. Oklahoma* once he’d tolerated a few minutes of oral argument. “You get what you get, and – well, you know the rest,” he announced from the bench. “Case dismissed!”

The next case on the docket was *T-Mobile USA, Inc. v. Dorner*. T-Mobile, a national telecommunications provider, enters into agreements with other telecommunications providers regarding calls between their customers and T-Mobile customers. Some of these agreements require T-Mobile to pay access fees to providers whose customers receive calls from T-Mobile subscribers.

The lawsuit before Jagerson last Monday arose out of T-Mobile’s relationship with Frontier, an Oklahoma communications company. T-Mobile had long paid intercarrier access fees to Frontier for certain long distance calls placed by T-Mobile customers to Frontier’s in-state customers. In 2012, however, T-Mobile decided to withhold payment for a subset of those calls, classified as Voice over Internet Protocol (VoIP) calls, after



**Fig. 2:** The Oklahoma State Reformatory was originally built by inmates using granite quarried at nearby Granite Mountain. It houses about 1,000 inmates, most at medium security.

concluding that the Telecommunications Act of 1996 preempted intrastate regulation of VoIP traffic. In response, Frontier threatened to block calls from T-Mobile to their subscribers.

T-Mobile filed a complaint with the Oklahoma Utility Board (“OUB”) seeking a declaration that Frontier was not permitted to discontinue service. At that point, Frontier retracted its threat, and T-Mobile requested to withdraw its complaint.

Concerned that the dispute would recur, the OUB nonetheless continued the proceedings in order to determine the merits of whether VoIP calls were subject to intrastate regulation. T-Mobile opposed the OUB’s continued proceedings on the basis that: (1) its original complaint with the OUB did not ask the OUB to reach this issue, and (2) only the FCC and federal courts could answer the issue, which was a question of federal law. The OUB determined that T-Mobile did raise the issue by means of a “federal defense” that was naturally part of the dispute. On this basis, the OUB decided the ultimate questions in the matter. Specifically, the OUB held: (1) VoIP calls are subject to state regulation; (2) intercarrier access fees are required for VoIP traffic; and (3) T-Mobile owed Frontier all withheld payments.

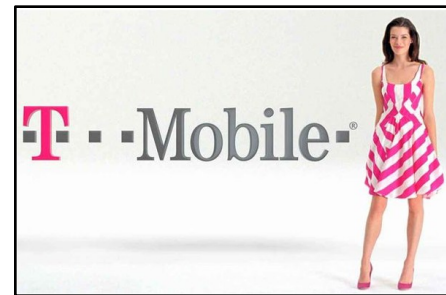
Thereafter, T-Mobile filed a complaint in the U.S. District Court for the Western District of Oklahoma against Dani Dorner, chair of the OUB, and the other members of the OUB, in their official capacities, seeking a declaration that the Telecommunications Act of 1996 preempted the OUB’s decision. T-Mobile also sought an injunction against enforcement of the OUB order.

T-Mobile simultaneously petitioned for review of the OUB decision in Oklahoma state court, as allowed by state law. T-Mobile reiterated the preemption argument that it made in its federal court complaint and asserted state law and procedural due process claims. T-Mobile asserted that it brought this state court action so as to preserve its judicial remedies in the event the federal court declined to hear its case, and T-Mobile immediately filed a motion to stay the state court case pending resolution of the federal issues in the federal case, which the state court granted.

The defendants moved to dismiss T-Mobile’s federal suit on the basis of *Younger v. Harris*. It didn’t take Judge Jagerson long to reach a decision after the extremely brief oral argument he allowed.

“I like motions to dismiss!” Jagerson bellowed. “Whole lot of nonsense here, if you ask me – and I guess, since I’m the judge, you did ask me. So, motion granted!”

Both rulings were immediately appealed. You are a judicial clerk for the U.S. Court of Appeals for the 10th Circuit, and you have been asked to analyze the issues.



**Fig. 3:** T-Mobile is the nation’s fourth largest mobile provider with about 12% market share. The company’s face to the public from 2011 through earlier this year was spokesmodel Carly Foulkes.

### **Question for Section 1**

Assess the legal issues that arise from the above facts, and organize your response as follows, clearly labeling the subparts:

*REGARDING SMITH V. OKLAHOMA:*

- Subpart A:* Discuss any issues concerning the defendants' motion to dismiss for failure to state a claim under 42 U.S.C. § 1983.
- Subpart B:* Discuss any issues concerning the defendants' motion to dismiss for failure to state a claim under 63 Okla. Stat. § 1-523.
- Subpart C:* Discuss any issues concerning the defendants' motion to dismiss on the basis of sovereign immunity.
- Subpart D:* If there is anything else you wish to discuss concerning *Smith v. Oklahoma*, which does not belong in any of subparts A through C, please put it under this Subpart D.

*REGARDING T-MOBILE V. DORNER:*

- Subpart E:* Discuss any issues concerning *Younger v. Harris*.
- Subpart F:* If there is anything else you wish to discuss concerning *T-Mobile v. Dorner*, which does not belong in subpart E, please put it under this Subpart F.

A few things to keep in mind: The subparts will not all be given equal weight. The subpart structure is provided for organizational purposes only. Thus, it may be entirely appropriate for one subpart to be answered with considerable brevity, while other subparts might require very detailed analysis. Pace yourself appropriately, and plan ahead to put information where it belongs.

#### **Some suggested abbreviations for your answer:**

JJ: Judge Jimmy Jagerson  
CC: Correctional Officer Cliff Conway  
DOC: Department of Corrections  
WW: Warden Wally Wilkins  
F: Frontier  
DD: Dani Dorner  
OUB: Oklahoma Utility Board  
TM: T-Mobile

**\*\*\* Go to the next page for Section 2 \*\*\***

**Section 2**  
**20 MINUTES**

You are a clerk for a justice on the United States Supreme Court. You are working on a case that presents a unique opportunity to keep, clarify, or totally redefine the limits on the jurisdiction of legislative courts. What do you think you will recommend to the justice? Why?

If you would like, feel free to draw upon key cases concerning legislative courts: *Crowell v. Benson*, 285 U.S. 22 (1932), *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982), *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568 (1985), *Commodities Futures Trading Comm'n v. Schor*, 478 U.S. 833 (1986), and *Stern v. Marshall*, 564 U.S. \_\_\_, 131 S Ct. 2594 (2011). Feel free as well to draw connections with any of the policy discussions during the course of the semester, even those not directly concerning legislative courts.