

As OSBI Commission gets AG report on director, general counsel resigns for racial slur in email

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By Tres Savage

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From left: Oklahoma State Bureau of Investigation legislative liaison Derek White speaks with OSBI general counsel Jana Wallace on Wednesday, April 24, 2024. (Tres Savage)

(Editor's note: The following article includes reference to racial slurs.)

The Oklahoma State Bureau of Investigation Commission will have a lot to talk about during its meeting scheduled for Wednesday, May 15.

Touted as the independent governing body of Oklahoma's premiere law enforcement agency, the OSBI Commission asked Attorney General Gentner Drummond's office in February to investigate complaints filed against director Aungela Spurlock by a former agent and his wife.

The complex scenario includes allegations that former OSBI general counsel Richard Smothermon violated Oklahoma's Rules of Professional Conduct late last year by simultaneously working for the state agency and the OSBI Agents Association during negotiations over whether to terminate since-resigned agent Joe Kimmons, who used the phrase "my n—a" in what he thought was a private phone conversation with a friend and coworker.

As Spurlock sought to remove Kimmons from the agency in November and December, she was also supporting the hiring of former Pushmataha County Judge Jana Wallace as OSBI's new general counsel.

But Wallace resigned May 2 for her own crass diction hours after asking whether NonDoc had obtained an [April 2022 email](#) in which she had written the racial slur "wet back" while asking a question of a Department of Public Safety attorney.

Combined with litigation over an OSBI agent's turnpike [wreck](#) that left an auto mechanic hospitalized and a resigned OSBI sex crimes investigator's [prosecution](#) for sexual abuse of a minor, the resignation of Wallace and the final report from Drummond's office regarding Spurlock underscore the array of internal issues facing the agency, which is also seeking legislative appropriations to replace its headquarters, a portion of which has been decommissioned owing to a mold problem some fear could spur a class-action lawsuit.

"We will not discuss personnel matters," OSBI public information officer Hunter McKee said May 3.

'No evidence of criminal wrongdoing by director Spurlock exists'



Oklahoma State Bureau of Investigation director Aungela Spurlock listens during an OSBI Commission meeting Wednesday, Feb. 21, 2024. (Michael McNutt)

In his April 12 letter to the [OSBI Commission's](#) chairman ([embedded below](#)), Drummond said he instructed his staff "to investigate for any evidence of criminal acts or omissions" related to how Spurlock handled the discipline process undertaken for Kimmons' use of inappropriate

language. Kimmons and his wife each filed complaints with the OSBI Commission alleging inappropriate and coercive actions by Spurlock, but Drummond said the overall complaint was “unfounded.”

“After an extensive review of all available evidence, I have determined that no evidence of criminal wrongdoing by director Spurlock exists,” Drummond wrote. “The Kimmons complaints alleged: The encouragement of fraud by requiring a doctor’s note in order for Mr. Kimmons to use sick leave for his absence from work until he reached his desired retirement date. The evidence indicates that the use of sick leave was initially requested by Mr. Kimmons’ attorney and that the request for a doctor’s note was consistent with OSBI policy to require a doctor’s note for medical exceeding three days. This complaint is unfounded.”

Drummond also said his team members examined allegations that “Kimmons was targeted for termination” by Spurlock, but that “the evidence fails to support their accusations.”

Drummond, however, couched his statement with concern about the proposal for Kimmons to obtain a doctor’s note and receive medical leave through a retirement date that would have increased his pension earnings. (Instead, Kimmons chose to leave OSBI in December and is working for the Grady County Sheriff’s Department now.)

“While I do not condone a state agency conditioning a separation agreement upon the withdrawal of complaints made against the agency’s director or upon agreeing not to share non-confidential information with the media, under the circumstances present here, doing so did not constitute a crime,” Drummond wrote. “Additionally, the evidence indicates that this condition was requested by OSBI’s chief legal counsel not by director Spurlock. While director Spurlock may have been made aware of the request at some point during the negotiations with Mr. Kimmons’ attorney, no evidence exists that this request was made at the direction of director Spurlock.”

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But Kimmons, who described his interview with Drummond’s investigators to NonDoc, said the man who served as his attorney from the OSBI Agents Association — former Pottawatomie County District Attorney Richard Smothermon — had returned to work for OSBI itself at the time of the negotiations.



“Smothermon was the one who brought up sick leave to me on the phone and asked if I could go get a doctor’s note and get sick leave through April. I said, ‘I can try. I don’t have any major health ailments, but I can try.’ That’s when he replied, ‘OK, make a doctor’s

appointment and see if you can get a doctor's note, but keep in mind that they're going to want your wife to withdraw her complaint against Spurlock," Kimmons said. "I knew he was employed as OSBI as an attorney but also as general counsel for the Agents Association. I assumed he was having meetings with OSBI leadership because he was an attorney there."

Kimmons said Drummond's investigators told him Smothermon had declined to be interviewed for the inquiry, citing "attorney-client privilege." Kimmons said that "privilege" must have been between Smothermon and OSBI because Smothermon never asked him about the interview and that Kimmons wanted Smothermon to answer questions.

"It comes down to Smothermon. That's why he probably refused to speak to them because he did some stuff on his own accord without consulting with me," Kimmons said. "What his role was, I don't know. I didn't even know until he came to my house on Dec. 11 that he was even employed by OSBI. I thought he had already left and was just the Agents Association's attorney, but he said, 'No, no, no, I'm still there.' But he said he was retained to help with the Capitol issues, not any of the disciplinary stuff.

"He was the key witness in all this. And he never checked with me to see whether I would allow him to speak with the commission (or investigators). He just chose attorney-client privilege on his own."

Asked about the situation, Smothermon said by text message that he was not representing the agency regarding the Kimmons situation.

"My employment contract with the OSBI specifically excluded me from dealing with any personnel issues," Smothermon said. "There was no conflict."

Smothermon, who left OSBI for a seat on the Pardon and Parole Board before resigning that position and returning to the agency, declined to answer a question about whose idea it was to have Kimmons pursue a doctor's note for authorization of medical leave.

Phil Bacharach, Drummond's director of communications, said Smothermon's actions were not reviewed because the attorney general "is not the appropriate authority" to examine potential conflicts of interest.

"At the request of the OSBI Commission, the attorney general reviewed director Spurlock's actions and found no criminality or misconduct," Bacharach said. "The attorney general is not the appropriate authority to investigate or to make determinations regarding alleged conflict of interest violations of the Rules of Professional Conduct for attorneys. That authority is vested in the Oklahoma Bar Association and ultimately the Oklahoma Supreme Court."

After Ricky Adams announced his retirement in 2022, the OSBI Commission named Spurlock director of the agency. Spurlock joined OSBI in 2002 after starting her career at the Tulsa County Sheriff's Office.

Asked Thursday about Drummond's investigation into the allegations Kimmons made against her, Spurlock declined to comment ahead of the OSBI Commission's meeting.

But on April 17, five days after Drummond sent his letter to the commission's chairman, Spurlock emailed OSBI employees to say she had read it. She quoted two sentences saying the inquiry "did not reveal any criminal acts or omissions or any misconduct by director Spurlock."

Wallace resigns as OSBI general counsel over slur in email



Mark Thomas, executive vice president of the Oklahoma Press Association, speaks with OSBI legislative liaisons Hunter McKee and Jana Wallace on Wednesday, May 1, 2024. (Bennett Brinkman)

While Spurlock and other OSBI leaders were deciding how to respond to Kimmons' Oct. 23 use of inappropriate language, they were simultaneously onboarding the agency's new general counsel, Jana Wallace, who had resigned as Pushmataha County district judge effective Nov. 1.

To be hired at OSBI, protocols required Wallace to undergo a thorough background check, which was actually the second background check OSBI agents had conducted on her over the past 12 months. In December 2022, the Judicial Nominating Commission announced that Wallace had applied for a vacant Court of Civil Appeals position and that OSBI would assist the JNC with "background reviews" of all applicants.

While OSBI background checks and reviews are confidential, it's at least possible that one of the inquiries flagged the April 2022 email Wallace had sent to a Department of Public Safety attorney asking about the validity of a Mexican driver's license in Oklahoma. In the email, Wallace used a racial slur to describe one of the parties in a divorce case she was handling.

"Is a Mexican DL valid here if the individual is here illegally? No green card, no visitor visa etc.," Wallace wrote, before adding in parenthesis: "wet back basically."

As controversy spread in late 2023 and early 2024 about Kimmons' forced departure from OSBI for saying the phrase "my n—a" when answering a phone call from a fellow agent, rumors of the Wallace email's existence were relayed to NonDoc. Kimmons said he had not heard of the email, but speaking on background other law enforcement officials said they had been told it existed.

After NonDoc requested copies of all emails sent to DPS staff by Wallace using the term, the agency provided the email under the Oklahoma Open Records Act.

Two weeks later, Wallace asked whether NonDoc had obtained the email, saying she did not recall sending it.

"I don't use that word. That's why I'm — I don't remember doing it because that is not my terminology. That is not vernacular that I use," Wallace said when asked if she believed the term constituted appropriate language. "I will ask the Supreme Court. Well, I don't know if I can ask, but maybe the [attorney general] can ask them to go back through my email, because emails can be altered."

Asked why she had resigned as district judge, Wallace said she had "just gotten burnt out, basically."

NonDoc provided Wallace a copy of the email before noon May 2 at the State Capitol, where she also served as one of OSBI's legislative liaisons. By the end of the day, she had resigned.

"Thank you for sending it to me. I want you to know that I have resigned my position at OSBI effective immediately. It was an honor to serve such a wonderful group of people at the OSBI and the state of Oklahoma!" Wallace said in a text message. "When I make a mistake I own it. I didn't remember it."

The next morning, Tulsa County Sheriff and OSBI Commission Chairman Vic Regalado said in an interview that Wallace's resignation was appropriate.

"As chair of the OSBI Commission, we certainly expect better of our people and certainly don't expect them to foster any kind of racial or discriminatory feelings or thoughts or otherwise toward any group," Regalado said. "So again, I think that was appropriate of her to go ahead and resign."

Regalado, who has served on the OSBI Commission since 2018, said he did not know about the Wallace email “until just recently.”

“My understanding in talking to the director is that no one knew about that. My understanding — and again, I’m just finding out about this in the last couple of weeks — is that it was an email from 2022,” Regalado said. “I don’t know that the OSBI when they hired her were aware of it. I highly doubt that.”

Now faced with two OSBI employees leaving the agency after using inappropriate racial language, Regalado said he could not speak to why either Kimmons or Wallace said the things they said.

“First and foremost, any law enforcement agency — or really anybody — should not be using racially charged language or words, especially the two that were used by Ms. Wallace and Agent Kimmons,” he said. “At minimum, it’s really inappropriate, and at most it’s something that doesn’t belong in our language, especially at a law enforcement agency. We serve all people, and it should be done fairly and without racial prejudice.”

OSBI Commission to review Drummond report



The Oklahoma State Bureau of Investigation Commission conducts a meeting Wednesday, Feb. 21, 2024, to send complaints against OSBI’s director to the Oklahoma Attorney General’s Office for further investigation. (Michael McNutt)

As chairman of the OSBI Commission, Regalado was the listed recipient of the two-page April 12 letter Drummond wrote to conclude the investigation into Kimmons' complaint, which claimed Spurlock targeted him for termination outside of the agency's prescribed discipline matrix.

Asked about the situation, Regalado said "the investigation says it all."

"I think the OSBI was appropriate in their findings and in their actions, and that's really what we wanted to know as a commission — to make sure that policies weren't violated or that past practices weren't violated and that the outcome was appropriate," he said. "I thought that it was prudent to have a third party look at that, under the circumstances, so that there would be no — or at least lessen the chances of — people pointing fingers and saying, 'Well, you know, the Commission is attached to the OSBI director and of course they're gonna side on her side.'"

Kimmons, however, questioned the thoroughness and practices of Drummond's investigators. Kimmons said they told him he was the last person they interviewed, even though complainants are typically interviewed first. He also said he was told some interviews of OSBI employees were conducted at OSBI headquarters as opposed to "a safe place."

"They did not interview crucial witnesses. There was a witness who had meetings with the director about my case, and they never took the time to interview them when I informed them (of those meetings)," Kimmons said. "Investigators told me that, during their interviews, they had conflicting statements from people they interviewed about my case and that there was a serious issue with communication in the Oklahoma State Bureau of Investigation."

Whether the OSBI Commission will review anything Wednesday from Drummond's office beyond his two-page summary remains unclear. The situation has featured overlapping timelines and characters, and Drummond's inquiry did not examine the odd dynamics among the agency's attorneys late last year.

Wallace was still getting up to speed at OSBI when she emailed Smothermon at his OSBI address Dec. 8 with a summary of their discussion about Kimmons visiting a doctor, obtaining medical leave and withdrawing his complaint as a way to avoid termination. Smothermon forwarded the email to his personal account, and from there he sent it to Kimmons, who became concerned about Smothermon's competing allegiances and forwarded it to another attorney, Gary James, for review.

Kimmons said James — who represented him in separate shooting investigations that were deemed justified while he was an Oklahoma Highway Patrol trooper — reached out to Wallace but did not hear back.

“That was slightly irregular, at least in my eyes, to have an attorney working both sides potentially,” Regalado said. “So again, that was part of the reason why we sent it over to the AG’s Office so that they could take a look at it and make a decision on that in regards to that.”

But Drummond’s office said those considerations were not examined and are solely the responsibility of the Oklahoma Bar Association and Supreme Court.

Regalado said he wanted to speak with his fellow commissioners at their May 15 meeting before answering more questions about the medical leave proposal made to Kimmons.

“But I would tell you that oftentimes when you want to allow somebody to bow out, you know, in order — there might be a circumstance where they are close to retirement or could retire and you want to allow them to retire as opposed to potentially ruining their career or what’s left of it, and allowing them to resign, those are things that are not new or abnormal,” Regalado said. “When appropriate and you can do that, sometimes employers will give an employee that option. Now, whether or not that was the frame of mind with the director or anyone else involved in the situation, I can’t speak for them. But those circumstances aren’t abnormal.”

District Attorney Angela Marsee, who also serves on the OSBI Commission, said May 3 she had been provided Drummond’s letter about the investigation into Kimmons’ complaints but that she had yet to form an opinion on the situation.

“I don’t know. I have not had an opportunity to review the AG’s findings, like an investigation or anything along those lines,” Marsee said. “I know that the AG sent out that letter. But knowing any other background as to their investigation? I’m not aware of it because I was not involved in the investigation.”

Asked whether Spurlock or the OSBI Commission knew of Wallace’s 2022 email containing a racial slur when she was hired last year, Marsee expressed uncertainty.

“I do not know whether the agency was aware of that,” Marsee said. “I was not aware of it, and I do not know about other individual commission members. (...) I don’t think it’s appropriate to make those kind of statements.”

Asked whether it was appropriate for Smothermon to work as an attorney for OSBI while simultaneously serving as counsel for the OSBI Agents Association, Marsee declined to offer an opinion.

“That was part of the subject of the attorney general’s investigation — it was part of the underlying facts of that,” she said. “So to comment on that at this time, I don’t think it would be the appropriate time to do that.”

Marsee noted that attorneys must be aware of and comply with the Rules of Professional Conduct.

“There are absolutely conflict of interest ethical rules that every lawyer has to comply with,” she said.

Marsee said she wanted to review “the full findings in the investigation.”

“Facts and details and evidence matter. And so just because things are said, that doesn’t mean that’s what the evidence ultimately bears out,” she said.

OSBI also facing wreck lawsuit, culture concerns and mold



The Oklahoma State Bureau of Investigation’s headquarters in Oklahoma City has a mold problem that has caused part of the building to be decommissioned. (Tres Savage)

If questions about Kimmons’ departure, Wallace’s hiring and Smothermon’s legal relationships were not enough, the OSBI Commission is also facing at least four other situations of note:

- A lawsuit filed against OSBI and Special Agent Ryan Woolley by a car mechanic who was severely injured in May 2023 when Woolley answered a phone call, accidentally veered off the Turner Turnpike and hit 64-year-old Doug Edinger as he changed a motorist’s tire;

- Three criminal counts of sexual abuse of a minor filed against resigned OSBI sex crimes investigator Jordan Toyne by federal prosecutors;
- Allegations of poor workplace culture and several employee departures, including two people who left OSBI to join the State Department of Education despite that agency's own internal turmoil; and
- Uncertainty over funding for a new OSBI headquarters and questions about mold problems at the current building, a portion of which has been closed owing to health concerns.

Regalado emphasized that specific events should not “overshadow the great work that the overwhelming majority of the OSBI does on a daily basis,” but he said it's important for an agency director and its governing body to be aware of issues.

“As head of an agency, I want to find out what's going on,” Regalado said. “Sometimes as head of an agency, you find things out that you didn't know. You can't know everything. I know from my perspective, I have no problem finding out the bad things that are going on, because we want to fix them.”

Asked about the lawsuit over Woolley's turnpike wreck and the charges facing Toyne — who is accused of molesting a friend's daughter and suggesting he could “unalive” her — Regalado said he was unaware of the situations.

“I have no idea what you're talking about,” Regalado said. “You do know that the role of the commission is not to run the OSBI, right? [We] kind of oversee it, and our main task is overseeing the director.”

However, OSBI Commission agendas routinely feature items instructing the agency's director and other staff to brief commissioners about “bureau activities,” key investigations, personnel matters and litigation. The OSBI Commission's strong, independent agency governance was highlighted as a main reason to oppose law enforcement “consolidation” proposals in 2022.

To that end, Kimmons said he and his wife filed their complaints specifically about his own situation, but he said the agency has serious morale issues that should be examined.

“The director plays favorites. That's obvious, because she ignored the policy and procedure manual with me to get rid of me, yet ignored it to keep [Wallace]. She's had a history of taking care of her close people, and the recent promotions that have happened have been her friends,” Kimmons alleged. “There have been a lot of high-ranking and crucial members of OSBI resign and find other jobs because of her. There is no communication. People are saying up there at headquarters that it's her way or the highway.”

Speaking of OSBI's headquarters at 6600 Harvey Parkway in Oklahoma City, the agency's primary legislative liaison, Derek White, answered questions last week from the Senate Appropriations and Budget Subcommittee on Public Safety about a pair of funding requests:

\$3 million to remediate a mold problem at the current building and \$27.5 million to build a new one.

Sen. Cody Rogers ([R-Tulsa](#)) asked Chairman Brent Howard if “we know what our exposure is if this turns into a class action?”

“No, I really do not know,” responded Howard, an attorney. “I know that that was raised as a concern as to not good working conditions and what that might be. I don’t know that there’s been specific complaints (...) But things could arise ongoing. This could be building right now.”

Rogers asked White about conditions at OSBI headquarters, such as whether the mold can be smelled by employees.

“Yes, you can smell it,” White said. “We have vacated various areas and currently have no employees working in that area where the mold issue is.”

Rogers asked if the mold-ridden area is sealed off to avoid “cross contamination.”

“We don’t have anyone working in the area, but no, there is not like an air barrier separating employees from that piece of the building,” White said.

Howard ([R-Altus](#)) said construction estimates to build a new OSBI headquarters run between 16 and 24 months.

It’s not the first time OSBI has faced serious concerns about mold in one of its buildings. A decade ago, the agency’s Southwest Region office in Lawton saw several employees develop health conditions allegedly caused by a severe mold problem. A 2014 OSBI memo said seven of 48 employees in the building had been diagnosed with cancer.

Although NonDoc did not ask Regalado during his May 3 interview about the mold issue in the current OKC building, he did say Spurlock has faced a series of challenges.

“I don’t know the theme of your story. It sounds like it’s a demolish OSBI type of story,” Regalado said. “But what I can tell you from my standpoint is that, one, I think the director has had a lot put in her lap lately. I think she has responded accordingly, and I think that these incidents, unfortunately, have overshadowed the overwhelming majority of the agents who work for OSBI who do an outstanding job on a daily basis and continue to do their job in order to solve crimes, further investigations and serve the state of Oklahoma.”