Death by Installments
By Roger A. Stetter

Many years ago, I was shocked to read about the case of a black juvenile offender by the name of Willie Francis who is best known for being the first recipient of a failed execution by electrocution in the United States. He was sentenced to death by the State of Louisiana in 1945 for allegedly murdering Andrew Thomas, a pharmacist in St. Martinville who had once employed him. Since no one had witnessed the crime and the gun allegedly used to kill Thomas was allegedly lost in the mail, the State’s evidence consisted almost entirely of Francis’s confession, taken when he was 15 years old. During his trial, the court-appointed defense attorneys offered no objections, called no witnesses and put up no defense. Two days after the trial began, Francis was convicted of murder and sentenced to death. No appeal was filed.

Instead of transporting condemned criminals to a central prison, Louisiana executed its citizens “on the spot,” moving a portable electric chair from town to town on a truck operated out of the state penitentiary at Angola. The electric chair failed to kill Willie Francis, apparently having been set up by a drunken prison guard and an inmate. After the switch was thrown, and the supposedly lethal current entered his body, the condemned boy was heard to scream, “Take it off! Take it off! Let me breathe!” The sheriff then halted the execution and Francis was returned to his prison cell to await further action by the authorities. Eventually, the issue was presented to the U.S. Supreme Court of whether it violated the Constitution to put a defendant through the agonies of electrocution twice. Writing for four members of the Court, Justice Stanley Reed concluded that there was no constitutional bar to another attempt at execution:

The fact that an unforeseeable accident prevented the prompt consummation of the sentence cannot, it seems to us, add an element of cruelty to a subsequent execution... The situation of the unfortunate victim of this accident is just as though he had suffered the identical amount of mental anguish and pain in any other occurrence, such as, for example, a fire in the cell block.

_Louisiana ex rel. Francis v. Resweber_, 329 U.S. 459, 464 (1947). In a concurring opinion, Justice Felix Frankfurter wrote:

_I cannot bring myself to believe that for Louisiana to leave to executive clemency, rather than to require, mitigation of a sentence of death duly pronounced upon conviction for murder because a first attempt to carry it out was an innocent misadventure, offends a principle of justice "rooted in the traditions of conscience of our people."_

_Id. at 470 (citation omitted).^1^ Willie Francis was successfully executed the following year.^2^ Our country, nearly alone among developed countries in the world that have not abolished capital punishment, is still a long way from carrying out the death penalty without unnecessary suffering.^3^ Last year saw at least three botched executions — in Arizona, Oklahoma and Ohio — resulting in the convicts gasping for breath in apparent distress during their draw-out executions by lethal injection.^4^ The execution of Joseph Wood in Arizona, put to death for the murders of his former girlfriend and her father in 1989, was perhaps the most ghastly. Injected with drugs that were
supposed to be lethal with one injection, Wood ultimately received 15 injections and his execution lasted almost two hours. The procedure lasted so long that Wood’s lawyers were able to seek an emergency stay of execution but he died before the judge could make a ruling.

Clayton Lockett was executed last year for the murder and rape of a young woman in Oklahoma. He suffered a heart attack after a failed execution lasting almost 45 minutes, during which he writhed, groaned, convulsed and spoke during the process, and attempted to rise from the execution table 14 minutes into the procedure, despite having been declared unconscious. Inexpert placement of an injection line into Lockett’s groin caused the lethal drugs to course through local tissue rather than directly into his bloodstream. (The same flawed lethal injection protocol was subsequently adopted in Louisiana.)

Ohio death row inmate, Dennis McGuire, was put to death for the 1989 murder of a 22-year-old woman. McGuire gasped, choked, clenched his fists and appeared to struggle against his restraints for about 10 minutes after the administration of a two-drug lethal injection cocktail. It took 26 minutes for him to die.

The United States has wrestled for decades with the issue of capital punishment and, while no one should minimize the severe trauma and loss to the families of murder victims, executions do not help these people heal nor do they end their pain. The extended process prior to executions prolongs the agony of families. The infliction of the death penalty, arbitrary and plagued by delay, does nothing to deter the murder of innocents, and the cost of death penalty cases far exceeds the expense of life imprisonment without pardon or parole. There is also the problem of people sentenced to death for crimes they did not commit, only some of whom have been exonerated based upon DNA evidence or other factors.

In Cold Blood, the 1967 film based on Truman Capote’s book of the same name, should dispel any illusion that the death penalty can be administered humanely. Viewing the final scene of the movie — the hanging of two convicts from a scaffold inside a prison building in the dead of night — is a truly awful spectacle and a harrowing experience.

As evidenced by the Willie Francis case and many more recent examples, botched executions are a recurring problem in the United States and a painful reminder that capital punishment is the wrong choice for a society which prides itself on equality and fairness. An 18th century Italian philosopher and criminologist, Cesare Beccaria, aptly summed the matter up in these words: “The punishment of death is perversive to society, from the example of barbarity it affords.” Cesare Beccaria, An Essay on Crimes and Punishments (1764) (The Federalist Papers Project), at p. 40.

FOOTNOTES

1. Deeply troubled by his decisive vote, Justice Frankfurter wrote to his old Harvard Law School roommate, Louisiana attorney Monte Lemann, and asked him to use his influence with Louisiana Gov. Jimmie Davis to have the death sentence commuted to life imprisonment but to no avail. See, Gilbert King, The Execution of Willie Francis (2008), at pp. 233-37.


3. Japan, South Korea and the United States are the only established democracies in the world that still conduct executions. The U.S. Supreme Court has limited capital punishment to aggravated murders committed by mentally competent adults but has never ruled the death penalty to be per se unconstitutional. It is still legal in 36 states and for federal crimes, including murder, treason, espionage and crimes under military jurisdiction, such as desertion during
w Wartime. The Death Penalty Information Center provides a comprehensive online database and history of capital punishment, dating back to Colonial times. The first recorded execution in the colonies was that of Captain George Kendall who was executed in the Jamestown colony of Virginia in 1608 for acting as a spy for Spain.

4. Electrocution was the preferred method of execution during the 20th century. Lethal injection, permissible in all states which still retain capital punishment, is now the standard method of execution.

5. The homicide rate in those states with the death penalty is almost double the rate of those states without the death penalty.

6. A tiny fraction of convicted murderers, most of them poor and black, are executed in the United States each year, with death row inmates who lose the “lethal lottery” spending an average of 16 years between the date of their crimes and their execution date. Since 1976, more than 75 percent of the murder victims in cases resulting in execution were white, even though nationally only 50 percent of murder victims generally were white. In Louisiana, the odds of a death sentence are 97 percent higher for those whose victim was white than those whose victim was black. In Texas, which far exceeds any other state in the number of executions per year, a death penalty case costs about three times the cost of imprisoning someone in a maximum security cell for 40 years.

7. Since 1976, 150 persons have been exonerated from death row, largely though the work of The Innocence Project, a national organization dedicated to exonerating wrongfully convicted people through DNA testing and reform of the criminal justice system.

8. If governments want to kill people legally, they should do it where we can see it.

Roger A. Stetter, a graduate of Cornell and UVA Law School, is a trial lawyer in New Orleans and former member of the Louisiana State University Paul M. Hebert Law Center faculty. His books include Louisiana Civil Appellate Procedure; In Our Own Words: Reflections on Professionalism in the Law; and Louisiana Environmental Compliance.

(rastetter@bellsouth.net; Ste. 1435, 228 St. Charles Ave., New Orleans, LA 70130)
Experiential Learning in Legal Education: The Future is Now at Tulane Law School
By James B. (Jim) Letten

Law schools for generations have been criticized for training new lawyers how to think, but not how to practice. In fact, Tulane Law School (the Law School), which has long been a leader in experiential learning as a pioneer of clinical education and pro bono legal services in the community, is helping to change that perception through innovations in legal education... all with the ultimate goal of producing “market-ready” graduates.

Indeed, the legal profession — and, with it, the job market for graduating lawyers entering the profession — has changed dramatically during the last several years. The Law School is acutely cognizant of this change and of the increasing competition for legal employment, not only in this region but nationally and internationally. Moreover, the added component of the economic downturn and its resultant effect on competition among young graduates entering the profession has provided new urgency to fuel development of new, creative approaches to legal education.

With an already robust menu of experiential offerings, the Law School’s commitment to innovation has been further demonstrated by a major push to expand opportunities for what is often called experiential learning. Stated simply, the Law School has embraced a mode of education based in “learning by doing” that involves students in the performance of professional skills.

The resultant goal is at once ambitious, demanding and essential — to make all Tulane graduating lawyers truly “practice-ready” upon graduation. Building upon its highly successful, existing experiential learning offerings such as the long-standing trial advocacy program and the fourth consecutive annual intersession “Boot Camp,” the Law School also is crafting more practical skills experiences for students, from entering 1Ls to graduating JD candidates.

Along with the commitment to a strong energy law program, as a part of the Law School’s partnership with Valero Energy Corp. (a Fortune 500 international manufacturer and a marketer of transportation fuels and other petrochemical products), groups of participating students are provided with day-long “close-up and personal” tours (complete with in-depth briefings) of Valero facilities in the area, including the Valero refinery outside of New Orleans. At the conclusion of the tour, students meet with lawyers and engineers for Valero to learn about how a major energy producer manages the complexities of environmental compliance, the role of in-house counsel, and the practice of law in a business context.

The Law School also has a large and diverse externship program whereby students earn academic credit for classroom instruction combined with field work in public sector or public interest law offices. In addition to externships available locally during the school year, summer externships include regional, national and international field placements. For instance, recent international placements have included an assignment to a nonprofit working closely with the Cambodian government in Phnom Penh on recovery of stolen antiquities; an assignment to the Supreme Court of the People’s Republic of China; a Guatemalan government environmental placement; and assignment to a United Nations-related international trade organization in Thailand. Domestic placements are numerous and have ranged from the San Diego, Calif., Coast...
Keepers environmental project to the New Orleans Bio Innovation Center and various placements with the U.S. Department of Justice, both locally and in Washington, D.C.

Also underway is development of a bold and expansive social entrepreneurship project (working with other colleges within Tulane University as well as local incubators) to provide students with unique opportunities to use their legal training in new fields. For instance, in a new Law and Entrepreneurship course offered last fall, students had the opportunity to prepare and individually pitch business proposals to a panel of experienced local entrepreneurs and consultants.

The Law School is building on an impressive grouping of existing skills courses. This semester alone, the Law School introduced three new courses taught by highly skilled and experienced adjuncts — Human Trafficking, Military Law and Business Planning — all of which incorporate experiential elements.

The Law School also is partnering with doctrinal professors to insert practical skills components into existing courses. Believing strongly that experiential education should begin in the 1L year, maintaining that it can be very effective when merged into traditional doctrinal classroom settings, and working under the philosophy that experiential value is increased exponentially when traditional lecture/Socratic methods and selected skills exercises are merged into a single offering, the Law School this semester successfully introduced hands-on student exercises into several courses, including Contracts I, Obligations II, Criminal Law, and Advanced Criminal Law/Death Penalty.

For example, in Contracts I, students are provided with a fact pattern (derived from actual events) in which shiploads of coal are sold and delivered by a company in Argentina to a purchasing entity in the United States — all based upon a series of informal emails and without the construction of a formal, written contract. When the price of coal plummets, causing the buyer to decline further shipments contemplated in the communications, the students acting as counsel are called upon to determine whether an enforceable contract exists by virtue of the emails.

In Obligations II, students are given the opportunity to individually test and hone their hands-on client counseling skills to determine if an enforceable purchase option exists in the provisions of a lease agreement made under Louisiana law.

The 1L students in substantive Criminal Law get the opportunity to apply their critical thinking skills and judgment — as well as their practical senses of equity — as they step into the role of new prosecutors by making decisions to charge or not charge a criminal shoplifting offense, based upon varying witness statements and subtle evidentiary considerations, including the defendant’s use of medications, age and other factors.

Advanced Death Penalty students are guided by experienced prosecutors through the complex federal process in which teams of students (assigned alternatively as prosecutors and defense counsel) replicate an actual protocol seeking to convince the U.S. Department of Justice capital crimes review committee (also students) to recommend either for or against the government seeking the death penalty against a charged defendant. Students in this exercise engage in persuasive writing, arguing and decision-making processes based upon existing federal law and policy, providing them with a unique and in-depth practical perspective of an important charging mechanism.

These successful and diverse exercises not only yield great results but also draw positive feedback from both professors and students.
While recently recognized by *National Jurist* as one of the country's most innovative law schools by virtue of the first-of-its-kind legal immersion boot camp, Tulane Law School is not willing to rest on its laurels. To the contrary, the Law School is propelled forward to meet existing and emerging challenges and to forge the finest practice-ready attorneys anywhere. There is much work to be done. It's being done here at Tulane. Now!

*James B. (Jim) Letten is Assistant Dean for Experiential Learning at Tulane University Law School. He is a former United States Attorney for the U.S. District Court for the Eastern District of Louisiana. (jletten@tulane.edu; Ste. 216-B, 6329 Freret St., New Orleans, LA 70118)*
EPA’s Clean Power Act
By Anne J. Crochet

The interplay among the branches of our government continues to be most active in the area of environmental law. Though established by the Legislature, environmental laws are executed through agencies. Both legislation and executive agency actions are the subject of judicial review as the result of appeals and direct actions.

Among the agency actions, rulemaking by the United States Environmental Protection Agency (EPA) is an exemplar of the interaction of legislative, executive and judiciary powers. When Congress writes an environmental law, EPA is often the agency that implements it by writing regulations. EPA’s rulemaking reflects increasingly complex social, economic and political factors, being reshaped by current scientific debates, theories on economic growth and political agendas. An added dimension is the role of the states as EPA often sets national standards that states enforce through their own regulations.

An apt illustration is EPA’s proposed Clean Power Plan to limit carbon pollution from existing fossil fuel-fired power plants, 79 Fed. Reg. 34,830 (June 18, 2014). This plan attempts a 30 percent reduction in carbon dioxide (CO₂) emissions from electric utility generating units (EGUs) by 2030 (from 2005 levels). According to EPA, power plants are the largest source of carbon pollution in the United States, accounting for roughly one-third of all domestic greenhouse gas emissions.¹ EPA asserts that its plan will lead to climate and health benefits worth an estimated $55 billion to $93 billion in 2030, including avoiding 2,700 to 6,600 premature deaths and 140,000 to 150,000 asthma attacks in children.²

Congress, through Section 111 of the Clean Air Act, requires EPA to identify categories of stationary sources that cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Section 111(b) of the Act requires EPA to promulgate “standards of performance” for new sources within each listed category. Section 111(d) also allows EPA to impose “standards of performance” for existing sources within a listed category via federally enforceable plans developed by states. The “standard of performance,” as defined by Section 111(a), is a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which the Administrator determines has been adequately demonstrated, taking into account the cost of achieving such reduction and any non-air quality health and environmental impact and energy requirements.

EPA’s proposed Clean Power Plan for Existing Power Plants seeks to implement this mandate and defines the “best system of emission reduction,” or BSER, for CO₂ emissions from EGUs, and the state-specific reductions EPA purports are achievable through application of the BSER. EPA asserts that each state has broad flexibility to meet the rate by 2030 by lowering the overall carbon intensity of the power sector in the state. More specifically, the proposed plan provides four different “building blocks” that states can implement to meet these targets. Building block 1 requires coal-fired EGUs to improve their heat rates by 6 percent (on average); building block 2 reflects an increase in the average utilization rate of natural gas combined cycle (NGCC) units to 70 percent, thereby displacing electricity that would have otherwise been generated by coal or less efficient natural gas-fired boilers; building block 3 involves the
increased use of existing or development of new renewable energy (RE) sources (e.g., wind and solar); and building block 4 addresses increasing demand-side energy efficiency programs, thus reducing electrical demand.

According to EPA, a state does not have to put in place the same mix of four “building blocks” that EPA used to set the goal. Rather, it contends that states are in charge of these programs and can draw on a wide range of tools, many of which they are already using, to reduce carbon pollution from power plants and meet the goal, including renewable energy portfolios and demand-side energy efficiency measures.3

The Louisiana Department of Environmental Quality (LDEQ) submitted one of more than 2 million public comments received by EPA by the Dec. 1, 2014, comments deadline. Supplementing its initial set of comments made in fall 2014, LDEQ’s Secretary demanded the immediate withdrawal of the rule: “Quite simply, there is no provision in the Act — or in any other statute — that gives EPA the authority to fundamentally change the way electricity is dispatched in a state, to require investment in uneconomic (for Louisiana) renewable energy sources, or to mandate programs reducing the demand for electricity.”

The LDEQ contends that the proposed rule “unequivocally exceeds the authority provided to EPA by Section 111 of the Act, violates Section 307 of the Act, jeopardizes the reliability of the electrical grid, unfairly imposes vastly different requirements on states, overestimates purported health benefits, attempts to supplant the sovereign authority of Louisiana by establishing a de facto renewable portfolio standard, and contains numerous other deficiencies.” LDEQ claims that EPA has overstepped its statutory authority by effectively mandating “beyond-the-unit” measures (i.e., building blocks 2, 3 and 4) needed to achieve its pre-selected CO2 reduction goals. More recently, in January of this year, EPA announced that it will develop a federal plan for states that fail to provide a plan or meet the agency’s emissions criteria.

At the federal level, Republicans in Congress will try to curtail funding for the Clean Power Plan and other rules relating to greenhouse gases. Riders can be attached to spending bills that prohibit agencies from spending money on greenhouse gas regulation. Other attempts to affect EPA will likely continue in 2015. For example, the Science Advisory Board Reform Act, sponsored by Rep. Chris Stewart (R-UT), passed the House in November 2014. The bill would change the rules for appointing members to the Science Advisory Board, which provides scientific advice to the EPA Administrator. It would revise the procedures for providing advice and comments to the EPA Administrator and add guidelines for conduct for board advisory activities (e.g., barring panelists from discussing their own research and limit non-scientific advice from the panel). The Secret Science Reform Act (H.R. 4012), which also passed the House toward the end of 2014, would require that the data from any study that EPA draws upon to inform its regulations, risk assessments and guidance documents be “reproducible” and released publicly as long as the law doesn’t forbid it.

Meanwhile, EPA’s final plan will undergo judicial review. The U.S. Chamber of Commerce, among many others, claims the Clean Power Plan is an unlawful legislative reach. Environmental activist groups contend that the plan does not reach far enough to reduce carbon released from EGU’s. Suits have already been filed challenging EPA’s proposed plan.

Once the rulemaking is finalized, expected in mid-summer along with EPA’s carbon pollution standards for new, modified and reconstructed power plants, many more lawsuits certainly will be filed. The courts then will determine if the rules will be stayed pending litigation. Ultimately, the courts will decide if EPA’s rulemaking exceeds the authority provided
to EPA or is otherwise unlawful. Pending litigation, if no stay is issued by the courts, the states will have to submit their plans to EPA to reduce greenhouse gas emissions from the power sector. EPA will then initiate the process to review their implementation. By that time, however, there will be a new president — and another chapter of the interplay of the powers will begin.

FOOTNOTES

2. Id.

Anne J. Crochet is a partner in the law firm of Taylor, Porter, Brooks & Phillips, L.L.P. She has practiced in the area of environmental law for more than 30 years and is a former chair of the Louisiana State Bar Association's Environmental Law Section. She is a contributing author of Louisiana Environmental Compliance. (anne.crochet@taylorporter.com; 8th Flr., Chase Tower South, 451 Florida St., Baton Rouge, LA 70801)
What’s New in Retirement Benefits for 2015?
By Edward J. Walters, Jr.

Social Security
The annual cost-of-living adjustment increases Social Security benefits by 1.7 percent in 2015. The maximum taxable earnings amount will increase from $117,000 to $118,500 in 2015.

Medicare
The Medicare Part A hospital inpatient deductible will increase from $1,216 in 2014 to $1,260 in 2015.

The standard Medicare Part B premium will remain $104.90 monthly in 2015. High income beneficiaries pay a larger amount. The deductible remains at $147 per year.

Medicare Part D premiums vary by plan. They are expected to increase by 4 percent to an average of $38.83 in 2015. The maximum possible Part D deductible will be $320 in 2015. Some plans may charge a smaller deductible or no deductible at all. Beneficiaries have an opportunity to switch Part D plans each year during the open enrollment period; therefore, the open enrollment period is a good time to review whether the plan will continue to be offered next year and, if so, how that plan might be changing in terms of the premiums, the annual deductible and the costs paid for prescription medications.

401(k)s
The 401(k) contribution limit is increased by $500 to $18,000. The catch-up contribution limit for workers aged 50 and older is increased by $500 to $6,000.

IRAs
The IRA contribution limit will remain $5,500, and savers aged 50 and older may contribute an additional $1,000 as a catch-up contribution.

Workers with a retirement account at work may claim a tax deduction for making a traditional IRA contribution until their modified adjusted gross income is between $61,000 and $71,000 for individuals and $98,000 to $118,000 for couples, up $1,000 and $2,000, respectively.

The Roth IRA income limits will also increase by $2,000 to between $116,000 and $131,000 for individuals and $183,000 to $193,000 for married couples.

Investors who earn more than these limits may be able to convert traditional IRA assets to a Roth IRA. High-income employees typically aren’t eligible for Roth IRAs, but they can add after-tax dollars and then roll that directly into their Roth IRA.

Conclusion
The information in the above article is gleaned from various sources. The author is not a tax lawyer. Before you make any decisions based upon this information, it is recommended that you contact your tax professional.
Edward J. Walters, Jr., a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C., is the chair of the LSBA Senior Lawyers Division and editor of the e-newsletter, Seasoning. He is a former Louisiana State Bar Association secretary and a former editor-in-chief of the Louisiana Bar Journal. He currently is a member of the Journal’s Editorial Board.
(walters@lawbr.net; 12345 Perkins Rd., Building 1, Baton Rouge, LA 70810)
The Value of a State Court Clerkship

By D'Ann R. Penner

Prized clerkships, everyone knows, are federal. In fact, federal clerkships are so competitive that a computer program with a complicated ranking matrix narrows the selection pool to the most elite of stellar candidates. Employers will hold job offers for a year or two to allow their star summer interns to clerk for federal judges. Why then would anyone want to clerk for a state court judge?

From the summer of 2010 through the summer of 2014, it was my privilege to work in various capacities for four different judges at the Orleans Parish Civil District Court (CDC). In addition, Judge Kern Reese generously mentored me throughout my time at the CDC. From these experiences, I have concluded there is much to be learned from a clerkship for a state judge, depending on the type of law one intends to practice. For example, if one plans to be a transactional lawyer, clerking for a state court judge would be of little benefit. But if one’s interest lies in complex tort litigation or contract disputes, including oil field contamination or asbestos claims, then courtroom experience from a state court judge’s viewpoint is invaluable.

The diversity of judges before whom one appears in state court and the wisdom of tailoring one’s approach to a particular judge’s style become readily apparent when one works closely with more than one judge. I had the privilege of working for retired Judge Michael Bagneris, pro tempore Judge Val Exnicios, Judge Paulette Irons and pro tempore Judge Lynn Luker. Two of them were elected and two were appointed. One had more than two decades of experience as a defense attorney. Two had an average of 20 years of experience as plaintiffs’ lawyers before taking the bench. The fourth was a very successful state representative. Some judges prepare for Rule Day by carefully scouring the pleadings and the exhibits in advance. Others prefer to size up the issues during oral arguments or after reading their law clerks’ briefings on the issues. Some judges take the letter of the law quite seriously. Others are more activist judges, seeking to align their rulings with an internalized sense of justice. Some value complex arguments and scholarly writing. Others prefer colorful stories and a writing style more reminiscent of Hemingway than of Faulkner. In short, in the words of now retired Judge Michael Bagneris, “know your judge” is the first lesson provided by a state clerkship.

State clerkships provide a second advantage: the opportunity to learn firsthand the difference between effective and ineffective trial advocacy. As a law clerk, one usually knows how a judge intends to rule on an issue before he takes the bench. It is enlightening to watch the arguments and styles that convince a judge to rethink an issue in real time. Likewise, a live performance where an inept attorney pushes a judge to rule against a client the judge was previously inclined to rule in favor of makes a lasting impression on the young observer. Similarly, jury trials at the CDC sometimes teach that juries are not always impressed by experienced lawyering or rules of evidence. Instead, runaway juries may bestow astounding amounts of money upon their sentimental favorites, occasionally against all of the evidence. An added bonus to this benefit is that clerking for a state court judge can open unique doors to jobs in private practice or in the public sector.

Finally, spending time as a member of a state court judge’s staff in any capacity offers a future litigator the chance to see how much discretion an individual judge has in tasking his staff with responsibilities that greatly impact an attorney’s ability to represent his client to the best of his ability. Law school teaches one that writing to a law clerk’s predilections can sometimes be
important. Less obvious is the importance of the person tasked with giving out trial settings, perhaps the minute clerk, or setting exceptions for hearing, possibly the crier. Disrespecting a member of a judge's staff or an employee of the clerk's office is rarely in a client's best interests. Complex litigation with tens of millions of dollars at stake frequently occurs in Louisiana state courts. A clerkship for a state court judge offers a unique vantage point on how decisions are reached by finders of fact.

D'Ann R. Penner is an associate at Kelly Hart & Pitre. She received her Ph.D., summa cum laude, in history in 1995 from the University of California at Berkeley. She received her JD degree in 2010 from Loyola University College of Law. Dr. Penner was a professor of history at the University of Memphis from 1997-2007 and director of the Benjamin L. Hooks Institute from 2004-06. Currently, she is completing her LLM in Energy and Environmental Law at Tulane Law School. (d.ann.penner@kellyhart.com; Ste. 1812, 400 Poydras St., New Orleans, LA 70130)
Movie Recommendation: *Last Vegas*
By Edward J. Walters, Jr.

Aging pals Billy (Michael Douglas), Paddy (Robert De Niro), Archie (Morgan Freeman) and Sam (Kevin Kline) have been best friends since childhood — The Flatbush Four.

Fifty-eight years later, Sam has retired with his wife to Naples, Fla., Archie is living with his son in New Jersey. Paddy lives alone in Brooklyn after his wife died, and Billy is wealthy and living in Malibu with a woman less than half his age.

When Billy finally proposes to his much-younger girlfriend, all four friends go to Las Vegas for a bachelor party to celebrate the end of Billy’s longtime bachelorhood and relive their glory days.

They — and Vegas — have changed over the years.

The movie, *Last Vegas*, gives all of its actors — all heavyweights and Oscar winners — real moments that send a message, each one different.

Mary Steenburgen (also an Oscar winner) plays a quick-witted lounge singer who makes the movie work.

In my humble opinion, it is a wonderful movie — not just a “guy flick” or even an “old guy flick.” It’s a “must see.”

*Edward J. Walters, Jr., a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C., is the chair of the LSBA Senior Lawyers Division and editor of the e-newsletter, Seasoning. He is a former Louisiana State Bar Association secretary and a former editor-in-chief of the Louisiana Bar Journal. He currently is a member of the Journal’s Editorial Board. (walter@lawbr.net: 12345 Perkins Rd., Building 1, Baton Rouge, LA 70810)*
By Sally Balch Hurme
Reviewed by Edward J. Walters, Jr.

“Where do I begin?” is the usual lament of a family member burdened with the daunting task of dealing with the death of a family member. Now, there’s practical help on the way.

This book is basically a detailed “hands-on” manual which provides a step-by-step guide, with comprehensive checklists, to the hundreds of details which arise from the death of a loved one. It gives the reader a “heads-up” on what steps to take in anticipation of a death, and a checklist of actions to take after death occurs.

The book includes a personal record-keeping workbook with detailed checklists in several areas:
- Getting a personal history of the deceased.
- Building a team you can rely on.
- Applying for Survivors’ Benefits.
- Inventorying accounts at banks, financial institutions and investments including the location of safe deposit box keys and authorization.
- Inventorying insurance benefits, including life insurance.
- Dealing with immovable property.
- Paying outstanding debts.
- Sorting through “the stuff and paper,” both physical and digital, including a place to record passwords.
- Writing the obituary and dealing with the funeral home.
- Navigating the grief process and taking care of yourself.

The book also includes checklists of matters you may not have thought of, such as making sure the homeowner’s insurance remains in effect if no one is going to be living in the home. There are excellent practical suggestions as well; for instance, if you are the executor, immediately videotape or photograph the contents of the decedent’s home, including closets,
toolsheds, jewelry and small items, not just to protect yourself, but to be sure that things of sentimental value land in the right hands.

This also is an excellent book for YOU to fill out to make things easier for YOUR family member who will have to deal with all of these matters.

As a lawyer, you also should ask someone to take over your law practice should you unexpectedly leave our midst. The Louisiana State Bar Association’s Lawyers in Transition Committee is presently working with the Louisiana Supreme Court on this issue, but you do not have to wait. Speak to someone about handling your practice should you be unable to do so. And tell someone.

Checklist for Family Survivors — A Guide to Practical and Legal Matters When Someone You Love Dies is a joint publication of the AARP and the ABA Senior Lawyers Division. The forms are contained on a CD easily uploaded to your computer (in Microsoft Word and as an Adobe .pdf). The book is available from the ABA at www.Shop.ABA.org or call (800)285-2221; cost is $19.95 ($15.95 for ABA members).

Edward J. Walters, Jr., a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C., is the chair of the LSBA Senior Lawyers Division and editor of the e-newsletter, Seasoning. He is a former Louisiana State Bar Association secretary and a former editor-in-chief of the Louisiana Bar Journal. He currently is a member of the Journal’s Editorial Board. (walters@lawbr.net; 12345 Perkins Rd., Building 1, Baton Rouge, LA 70810)
Article Review: “Love in a Time of Dementia”
By Professor Frederick Smock
Reviewed by Edward J. Walters, Jr.

If you are not a member of the American Bar Association’s (ABA) Senior Lawyers Division, you should be. I am not trying to hustle enrollment for the ABA, but, along with membership to its Senior Lawyers Division, you receive the excellent magazine Experience.

I found one recent article very interesting — “Love in a Time of Dementia” by Frederick Smock. My wife and I are currently dealing with the care of my 93-year-old mother and her 88-year-old mother.

The Editor’s Note to this article states: “Helping your clients deal with the decline and death of a loved one is profoundly difficult. Not everyone can find the words to walk clients gently through this difficult time. Poets, though, can provide a different perspective.” The article then references Professor Frederick Smock, who teaches poetry and creative writing at Bellarmine University in Louisville, Ky. Professor Smock discusses his mother’s dementia and death:

The elderly so often lose control of their lives. To have been accomplished — she took a master’s degree in sociology, taught, painted, traveled — and then to lose agency of your own life must feel quite awful, especially with a limited understanding of what is happening. For her, the end was long in coming; at the least, it was merciful.

At my mother’s funeral, I read a poem by Jane Kenyon, “In the Nursing Home”:

She is like a horse grazing
a hill pasture that someone makes
smaller by coming every night
to pull the fences in and in.

She has stopped running wide loops,
stopped even the tight circles.
She drops her head to feed; grass
is dust, and the creekbed’s dry.

Master, come with your light
halter. Come and bring her in.

I thought the metaphor was beautiful and I wanted to share it with you in case you are dealing with a client or family member in a similar condition.

Edward J. Walters, Jr., a partner in the Baton Rouge firm of Walters, Papillion, Thomas, Cullens, L.L.C., is the chair of the LSBA Senior Lawyers Division and editor of the e-newsletter Seasoning. He is a former Louisiana State Bar Association secretary and a former editor-in-chief of the Louisiana Bar Journal. He currently is a member of the Journal’s Editorial Board. (walters@lawbr.net; 12345 Perkins Rd., Building 1, Baton Rouge, LA 70810)