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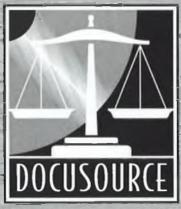






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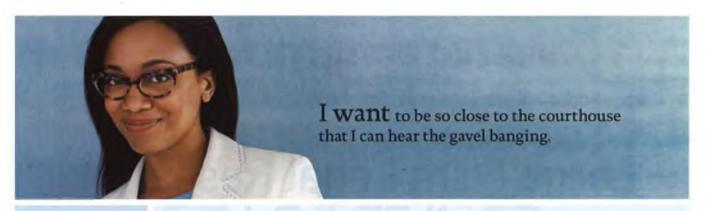
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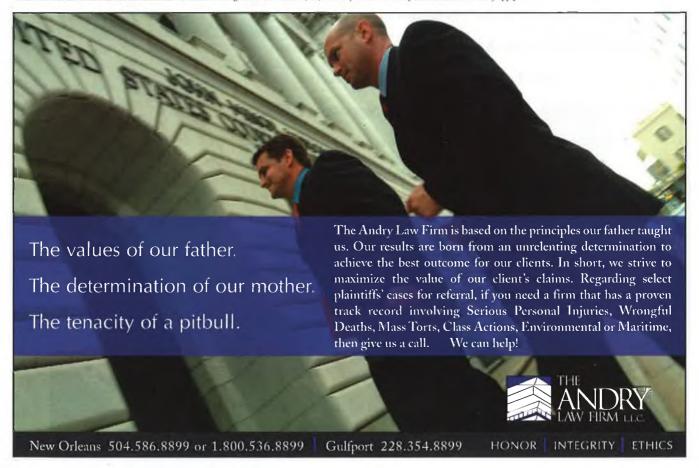
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President's MESSAGE

DEFENDING AND UPHOLDING THE RULE OF LAW

By Michael W. McKay

fter offering congratulations (and/or condolences) for my being appointed Bar president, people most often ask, "Why do you spend so much time working for the Bar Association?" I often make light of the question by saying, "I'm a sucker for unpaid jobs." The true reason, though, is that the Bar work gives me my best opportunity to serve my community and my country. Some may scoff at this belief. So, let me explain.

Our mission at the Louisiana State Bar Association (LSBA) is to serve the public by improving our profession and our system of justice. To improve the profession, we must develop programs that impact on lawyers' daily practice in a positive way. We need to ensure that our lawyers are ethically and professionally competent. Importantly, we not only need to require things of lawyers; we also need to do things for them. No law school graduate starts out to be a bad lawyer. The practice of law is very demanding. Sometimes the challenges are just too great for the individual. We must give lawyers the tools to assist them to meet these challenges.

That is why the LSBA has a number of current programs developed to assist a practicing lawyer. Examples are our Practice Assistance Program, the Ethics Advisory Service, Continuing Legal Education programs, the LSBA Opinion Service, and the Lawyers Assistance Program. With these and other programs, we seek to assist lawyers to meet the challenges of the practice of law.

However, the Bar Association is much more than just a trade association seeking to help its members. The law is a profession and lawyers as officers of the Members of the Bar are guardians of the Rule of Law.
While others seek to tear down or limit the Rule of Law, our goal must be to strengthen and maintain it. While others seek to act and profit while avoiding or limiting their responsibilities, we seek to maintain and broaden access to our courts. Every day a lawyer ethically and competently represents a client, the Rule of Law is strengthened.

court have broader and higher obligations.

We also serve the public by improving our system of justice. We do this by:

- 1. Improving the process by which laws are made;
- 2. Improving the process by which laws are administered; and
- 3. Improving the public's understanding of the process and the individual rights and obligations of the public.

To achieve these improvements, the LSBA currently has the Legislative Committee; the Bench Bar Committee; the Professional Committee on Codes of Lawyer and Judicial Conduct; the Access to Justice Committee; and the Pub-

lic Information Committee, among others. Additionally, the Bar works with and supports the Louisiana Center for Law and Civic Education and its Law Signature Program, as well as the recent *Brown v. Board of Education* Program which was put on in conjunction with the State Bar and the Center for Law and Civic Education.

Some will say that these committees sound nice and fine and may be interesting to some lawyers, but they are not important to the community and our way of life. These folks are wrong. The purpose of the LSBA's mission is to defend, promote and strengthen the Rule of Law. This principle that any person, regardless of station, can have a reasonable chance of enforcing or defending his or her rights on the basis of laws which are rationally related to a public purpose and have been adopted by public representatives is critical, vital, and central to our way of life.

Members of the Bar are guardians of the Rule of Law. While others seek to tear down or limit the Rule of Law, our goal must be to strengthen and maintain it. While others seek to act and profit while avoiding or limiting their responsibilities, we seek to maintain and broaden access to our courts. Every day a lawyer ethically and competently represents a client, the Rule of Law is strengthened. It's easy to forget this in the day-to-day practice and struggle to make a living. At the Bar, we cannot forget this vital fact. We have to promote and encourage such behavior.

The Rule of Law is an indispensable basis for a civil society. That does not mean it is perfect. The Rule of Law should not be confused with the achievement of justice. The law is an imperfect tool by which we seek to achieve the perfect result of justice. This does not diminish the importance of the Rule of Law.

For example, the Supreme Court of the United States handed down the decision of Brown v. the Board of Education of Topeka² 50 years ago. In that case, the court ruled for the minority over the majority. Many disagreed with this decision. Many criticized the particular court and the motivation of some of its members. However, even though the decision was vilified, it was followed with all deliberate speed — but followed nonetheless. Less than four years ago, the court handed down the decision in Bush v. Gore.3 Many disagreed with the decision. Many criticized this particular court and the motivation of some of its members. However, the Rule of Law prevailed and the decision was followed. The American people may not like lawyers in general, but they typically like their own lawyer. More importantly, they abide by the Rule of Law.

What would be the consequences if we allowed the Rule of Law to become so weakened that decisions were made primarily on political and economical power unbridled by the Rule of Law? If the day comes that ordinary citizens have realistically lost their rights to seek justice in our courts, can anyone really question whether decisions such as *Brown v.*

the Board of Education of Topeka and Bush v. Gore would lead to much different and more violent results? Americans are no different than anyone else in the world in having their own passions and prejudices. The single most determinant factor in preventing our country and our way of life from becoming embroiled in the maelstrom that we see in other parts of the world is the Rule of Law. Our job is to preserve, defend and strengthen it.

So, in a nutshell, that is what we are about at the Louisiana State Bar Association. We serve the public by improving our profession and system of justice to strengthen and preserve the Rule of Law. We do so, day in and day out, to save our country and our way of life.

I do so because I've come to understand that being a lawyer is not just what I do for a living; it's what I am. I confess to you that I love being a lawyer. I relish the chance to serve and lead the Bar in defending, upholding and promoting the Rule of Law.

FOOTNOTES

- 1. We are back in the legislative arena for the first time in more than 20 years.
- 2. Brown v. the Board of Education of Topeka, 347 U.S. 483 (1954), 74 S.Ct. 686.
 - 3. Bush v. Gore, 531 U.S. 98, 121 S.Ct. 525.



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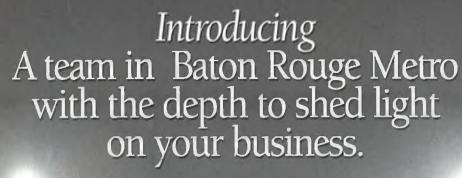
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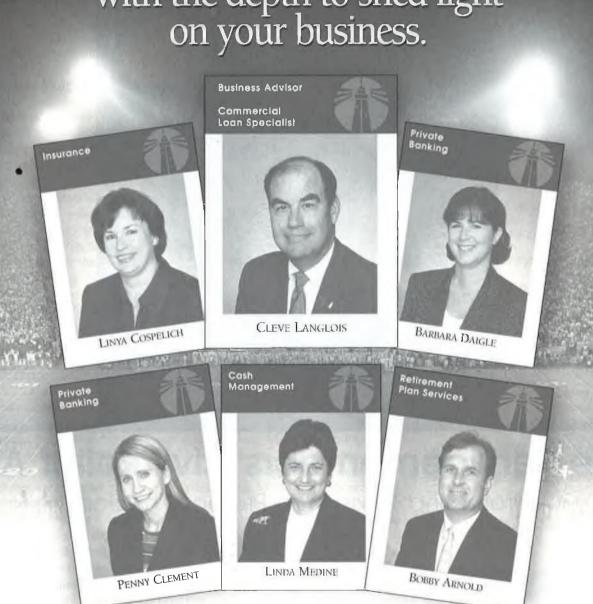
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The Servicemembers Civil Relief Act

Protecting Those Who Protect America¹

By Capt. Charlton Meginley

The following situation is all too common. A client walks into your office and says, "I'm being sued." You start asking the proper questions, figuring out when you need to respond to the court, prescriptive periods and, of course, strategy. But what happens when the person being sued tells you that he just got orders to come on active duty or that he is preparing to deploy overseas.² What do you do?

This fact pattern is exactly one of those situations where your knowledge of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C.

App. § 501 *et seq.*, will be important in your practice. The SCRA, signed into law by President Bush in December 2003, is a comprehensive revision of the former Soldiers' and Sailors' Civil Relief Act (SSCRA) (1940). The purposes of the SCRA are twofold:

- ▶ to enable servicemembers to devote their entire energy to the defense of our nation; and
- ▶ to provide for the temporary suspension of judicial and administrative proceedings that may adversely affect the civil rights of servicemembers during their military service.³

The act applies to current active duty servicemembers and those National Guard members⁴ and reservists who have been ordered to active duty as defined in Title 10 U.S.C. 101(d)(1).⁵ The revisions are significant and, even if you are aware of the old SSCRA, the SCRA provides substantially more benefits and protections to those currently serving in our United States Armed Forces.

Judicial Proceedings

For the civilian attorney, perhaps the most important section of the SCRA is the automatic stay provision.6 Under the prior act, stays were discretionary with the courts. In order for the servicemember to obtain a stay of proceedings, the burden was on the member to show that military service materially affected his ability to appear in court.8 However, under the SCRA, if a servicemember is being sued in a civil action, at any stage before final judgment, the act provides for an automatic 90-day stay of the proceedings upon application of the servicemember.9 The application does not constitute an appearance.10 This is significant because, under the previous law, if a servicemember made an appearance, either pro se or through counsel, he may have consented to personal jurisdiction and could have been denied a stay. In order to obtain the automatic stay, a servicemember must submit a letter to the court setting forth facts why his current military duty materially affects his ability to appear in court and stating when the servicemember will be able to appear. The servicemember will also need to submit a letter from his commander stating that military duty prevents the servicemember from appearing in court and that military leave is not authorized. The court can also grant a stay on its own motion.11 Additional stays are permitted based on continuing material affect; however, any additional stays are at the court's discretion.12 It should be noted that, if the servicemember is a co-defendant with others who are not entitled to the protections of the SCRA, the plaintiff can still proceed against the other defendants.¹³

The sections regarding default judgments and statute of limitation have remained virtually the same.14 A plaintiff still must file an affidavit asserting facts showing that the defendant is not in the military service. If the facts cannot be shown, or if the defendant is in the military service, the court will appoint an attorney to protect the servicemember's rights. If a default judgment is entered against a servicemember during his period of service, then the court that entered the judgment can, upon application by the servicemember, reopen the judgment to allow the servicemember to defend the action. In order to prevail, the servicemember must demonstrate three

- ▶ the servicemember is materially affected because of his military service in making a defense to the action;
- ▶ the servicemember has a meritorious or legal defense to the action; and
- ▶ the servicemember could not have made an appearance in the court. 15

As for statute of limitations issues, as either plaintiff or defendant the period is tolled during the servicemember's military service, for as long as the person is in the service. 16 This includes, among others, Merit System Protection Board actions¹⁷ and bankruptcy¹⁸ proceedings. Ordinarily, if a non-military client wants to sue in Louisiana for a personal injury, that client has one year from the date of the accident to sue for his personal injury. However, a servicemember injured while on active duty would have a year to sue from the date he leaves active duty because the prescriptive period for bringing a civil action is suspended while on active duty.19 However, the SCRA cuts both ways. If the servicemember causes an injury, the prescriptive period will be suspended, giving the plaintiff additional time to sue the servicemember. If a servicemember is injured or causes an injury before entering active duty, the prescriptive period stops on the day he enters active duty, and starts to run again



A servicemember injured while on active duty would have a year to sue from the date he leaves active duty because the prescriptive period for bringing a civil action is suspended while on active duty. However, the SCRA cuts both ways. If the servicemember causes an injury, the prescriptive period will be suspended, giving the plaintiff additional time to sue the servicemember.



A change in the law that is certain to raise eyebrows is a new provision giving servicemembers the right to terminate residential leases.

An active duty servicemember who has received permanent change-of-station orders or who is being deployed for not less than 90 days may terminate a housing lease with 30 days' written notice.

on the day he leaves active duty. Finally, this section does not apply to any period of limitation prescribed by internal revenue laws.²⁰

Rent and Leases

Servicemembers also have greater rights protecting them from eviction. If a servicemember enters a lease where the rent is less than \$2,465 a month (previously the maximum rent for eviction protection was \$1,200 a month),²¹ the servicemember and his or her dependants cannot be evicted by the landlord without a court order.

Per Section 301 of the SCRA, the maximum rent amount undergoes an inflation adjustment each year (in 2003, it stood at \$2,400 a month). The lease must be for premises that are to be occupied primarily as a residence. Also, a landlord cannot subject the premises to a distress during the servicemember's period of military service.22 If the landlord makes an application to the court to evict a servicemember, the servicemember, or someone acting on behalf of the servicemember, can request the court to stay the proceedings for 90 days, unless in the opinion of the court, justice and equity require a longer or shorter period of time. The servicemember will have to show that his ability to pay the agreed rent is "materially affected" by military service.23

A change in the law that is certain to raise eyebrows is a new provision giving servicemembers the right to terminate residential leases. An active duty servicemember who has received permanent change-of-station orders or who is being deployed for not less than 90 days may terminate a housing lease with 30 days' written notice.²⁴ (A servicemember who executed a lease before entering active duty still has the right to terminate that pre-service lease.)²⁵

Previously, a servicemember could be obligated to pay rent for housing he is unable to occupy because of a government-required move. However, this provision may only have limited effect. Under Section 517(a), a servicemember may

waive any of his rights under the act. This waiver is effective if made pursuant to a written agreement by the parties executed during or after the servicemember's period of military service. Fervicemembers will have to pay close attention to the military statement when signing a lease. Lack of attention to detail can result in forfeiture of this significant benefit.

Another new provision deals with the right to terminate automobile leases. Any active duty servicemember who has received permanent change-of-station orders outside the continental United States or who is being deployed for more than 180 days may terminate an automobile lease. The member must provide written notice of termination to the lessor with a copy of his orders and return the vehicle within 15 days of the written notice.²⁷ Previously, a servicemember had no right to terminate an automobile lease.

Although not new, Section 537 merits mention. If a self-storage facility holds a lien on the property of a servicemember who has leased a unit for storage, the self-storage facility cannot foreclose on the lien without a court order, unless the servicemember waives his rights. A servicemember can ask for a stay of the proceedings if he shows that his ability to pay the rent is materially affected by his service.²⁸

Repossessions

The SCRA has added protections for servicemembers who have installment contracts. Simply stated, if a military member has contracted for the purchase of real or personal property or the lease or bailment of such property, and has breached the terms of the contract before or during that person's military service, the property cannot be repossessed without a court order. However, the contract must have been entered into before the servicemember entered active duty.²⁹ Previously, no court order was required to repossess property. This section will be invoked frequently when repossessing vehicles.

Interest Rates

The SCRA addresses interest rate proand entitlements servicemembers coming on active duty. Although this provision was contained in the SSCRA, ambiguities resulted in inconsistent interpretations regarding the application of the interest rate cap. Previously, servicemembers were only able to reduce their interest rate obligation to a maximum of 6 percent if their military service materially affected their ability to pay the higher interest. However, the SCRA revision eliminates the need to show material effect. Under the SCRA, if a servicemember has a debt or liability (including any debt or liability held jointly with his spouse) that carries an interest rate above 6 percent (such as a credit card) and that was incurred before he enters active duty, any interest amount in excess of 6 percent is forgiven and the pre-service debt is capped at 6

percent interest.30 It is important to note that the 6 percent interest rate cap for servicemembers' debts and liabilities is applicable only to those debts and liabilities incurred prior to entry on active duty; any debt or liability incurred after a servicemember comes on active duty is not subject to the 6 percent cap. The servicemember also must provide the creditor written notice with a copy of his military orders, by not later than 180 days after the date servicemember's termination or release from military service. The 6 percent cap is effective as of date the servicemember is called to active duty.31

Tax Issues

The revision also addresses various tax issues and how military income may be taxed. Under the revision, a tax jurisdiction may not use the military compensation of a non-resident ser-

vicemember to increase the tax liability imposed on other income earned by the non-resident servicemember or spouse subject to tax by the taxing jurisdiction. Previously, multiple jurisdictions used this means to increase the income tax on a servicemember's non-military income and income of the member's spouse.32 Also, there are new income-tax protection laws. If a servicemember's ability to pay income tax is materially affected by military service, upon notice to the IRS and/or the tax authority of the state, the collection of tax on the income of a servicemember falling due before or during military service shall be deferred for a period not more than 180 days after termination of or release from military service. No interest or penalty shall accrue for the period of deferment by reason of nonpayment on any amount of deferred tax.33

These are just a few of the protections the Servicemembers Civil Relief Act pro-

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vides to those serving in the armed forces. The SCRA is sweeping legislation designed to expand and clarify the civil protections afforded to military members by suspending enforcement of certain civil liabilities. In a state such as Louisiana, which has so many residents being called to active duty, either in the reserves or the National Guard, every practicing attorney should have a general awareness and understanding of these rights.

FOOTNOTES

- 1. The views expressed in this publication are those of the author and do not reflect the official policy or the position of the Department of Defense, United States Government, or the United States Air Force. This publication has been reviewed by security and policy review authorities and is cleared for public release.
- 2. While realizing that servicemembers are of both genders, we use the pronouns "he" and "his" in their gender-neutral sense.
 - 3. 50 U.S.C.S. App. § 502 (2003).
- 4. The Louisiana Army and Air National Guard consists of 11,500 Army and Air Guardsmen. There are 74 units spread among 43 cities and towns in the state.
- 5. 50 U.S.C.S. App. § 511 (2003). For National Guard members to enjoy the benefits of the SCRA, they must have been called to active service for a period of more than 30 consecutive days under section 502(f). See Cavalier v. Nelson, 532 So.2d 899 (La. App. 5 Cir. 1988), where the court found that the defendant failed to prove he was protected by the SSCRA.
 - 6. 50 U.S.C.S. App. § 522 (2003).
- 7. See Brumfield v. Brumfield, 22 So.2d 556 (La.1945) (Supreme Court overruled a trial court's decision to deny a stay); Rogers v. Tangipahoa Parish Sheriff's Office (E.D La. 1997) (unpublished) (plaintiff failed to demonstrate that his military service would materially affect his ability to appear at trial); Williams v. Williams, 552 So.2d 531 (La. App. 2 Cir. 1989) (reversing trial court's judgment against defendant, finding that his ability to present a legal defense was materially affected).
- 8. Material affect is a term of art frequently mentioned in the SCRA. The servicemember will need to demonstrate why his military service has caused some disadvantage making him unable to address the circumstances of the civil suit adequately. In the vast majority of cases, "material affect" will usually be geographic or operational, either because the servicemember cannot make an appearance due to a deployment or because the servicemember's presence is vital to the mission at his station. For examples of material af-



In a state such as Louisiana, which has so many residents being called to active duty, . . . every practicing attorney should have a general awareness and understanding of these rights.

fect, see Lackey v. Lackey, 278 S.E.2d 811 (Va. 1981); Cromer v. Cromer, 278 S.E.2d 518 (N.C. 1981).

- 9. 50 U.S.C.S. App. § 524 (b) (2003).
- 10. 50 U.S.C.S. App. § 522 (c) (2003).
- 11. 50 U.S.C.S. App. § 522 (b) (2) (2003).
- 12. 50 U.S.C.S. App. § 522 (d) (1) (2003).
- 13. 50 U.S.C.S. App. § 525 (b) (2003).
- 14. 50 U.S.C.S. App. § 521 (a) (2003).
- 15. Taurus Leasing Corp. v. Nelke, 400 So.2d 303 (La. App. 5 Cir.), writ denied, 406 So.2d 604 (La. 1981) (where plaintiffs followed the proper procedures, the court refused to set aside judgments).
 - 16. 50 U.S.C.S. App. § 526 (2003).
- 17. Davis v. Dep't of Air Force, 51 M.S.P.R. 246 (1991).
- 18. In re A.H. RobinsCo. v. Dalkon, 996 F.2d 716 (4 Cir. 1993).
- 19. See Jennings American Legion Hosp. v. Jones, 02-0525 (La. App. 3 Cir, 10/30/02), 829 So.2d 1203. Plaintiff was on active duty when defendant was negligent in providing care. Defendant filed a peremptory exception of prescription. Held: the prescriptive periods of the Medical Malpractice Act did not apply as long as he was under active-duty orders.
 - 20. 50 U.S.C.S. App. § 526(c) (2003).
 - 21. 50 U.S.C.S. App. § 530 (1940).
 - 22. 50 U.S.C.S. App. § 531 (a)(1) (2003).

"Distress" is a common-law term for seizure of another's property to secure the performance of a duty, such as the payment of overdue rent.

- 23. 50 U.S.C.S. App. § 531 (b)(1) (2003).
- 24. 50 U.S.C.S. App. § 535 (d)(1) & (b)(1) (2003).
 - 25. 50 U.S.C.S. App. § 535 (a)(1) (2003).
 - 26. 50 U.S.C.S. App. § 517 (a) (2003).
- 27. 50 U.S.C.S. App. § 535 (b)(2) & (c) (1)(B) (2003).
 - 28. 50 U.S.C.S. App. § 537 (2003).
 - 29. 50 U.S.C.S. App. § 532 (a) (2003).
- 30. See Cathey v. First Republic Bank, (W.D. La. 2001) (unpublished), adopted by summary judgment granted, in part, summary judgment denied, in part by Cathey v. First Republic Bank, (W.D. La. 2001) (unpublished). Court found a local bank violated the provisions of § 526 of the SSCRA in failing to reduce the interest rate charged on plaintiffs' various obligations to them to no more than 6 percent per annum.
 - 31. 50 U.S.C.S. App. § 527 (2003).
- 32. 50 U.S.C.S. App. § 571(b) (2003). Tax preparers should note the "Kansas Rule," where some states have included the military income of the active duty servicemember in determining the appropriate tax rate for the member's non-military income or that of his spouse. The military income itself remains free of income taxation provided the member is not a domiciliary or legal resident of that state. However, in states that have followed the "Kansas Rule," the income is used to increase the tax rate applicable to the member's non-military income or the income of his spouse or other family members subject to taxation by the state. The SCRA prohibits this practice at Section 511(d). As many as 23 states have followed the "Kansas Rule," with only five providing specific guidance implementing the SCRA's prohibition of the "Kansas Rule" and providing guidance on how to complete the state income tax return for 2003. Louisiana does not follow the "Kansas Rule." (Courtesy Major Thomas Farmer, AFLSA/JACA.)
 - 33. 50 U.S.C.S. App. § 570 (a) & (b) (2003).

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Local Justice:

What Every Lawyer Should Know About Louisiana's Justices of the Peace

Parts II & III

By Seth B. Hopkins

Editor's Note: This is the last of the twopart series about Louisiana's Justice of the Peace courts. This issue's article profiles Abita Springs Justice of the Peace Lisa King and provides a practitioner's guide to the rules and practices of these unique courts.

Lisa King: A New Kind of Justice

ew people realize that bus drivers, real estate salespeople, small businessmen, mechanics and members of other unlikely professions have the power to issue judgments, impose fines and sign arrest warrants. Many of these people do not have law degrees, which means that they have never known the pain of a bar exam, the agonies of a four-hour contracts test, or the long silence as 40 fellow students wait for them to answer a particularly pointed question from an instructor.

Yet, the men and women who are Louisiana's justices of the peace hold powers that most lawyers only dream about. Many of them work from home, where they can perform marriages and



can seize property. When people write to them, protocol requires that their letters include the title "The Honorable."

Lisa King, 39, is one of these unique people. She is the justice of the peace for Abita Springs, the source of Louisiana's most famous beer and one of its best natural springs — a community that has prided itself on traditional values and its clean way of life for more generations than most families can trace.

Today, Abita Springs is a bedroom community bumped up against the growing sprawl of Covington. It retains its small-town roots, but boasts having a new breed of justice of the peace. Justice of the Peace King presides as one of Louisiana's youngest justices of the

peace, acknowledging herself as the "new kid on the block." She enters a profession where office-holders tend to have lengthy service credentials for a job that offers the luxury of six-year terms. She has an office in the local courthouse and speaks candidly about her job.

Despite having two weddings on this day, King insists that her jurisdiction of 17,000 people in this scenic, bustling brewery town does not keep her unduly busy, and she contrasts her job with those from larger areas. "In Jefferson Parish," she notes, "some of those justices have staffs! It can be a feast or famine depending on our location."

King admits that many in her district do not understand what a justice of the



Justice of the Peace Lisa King



A couple smiles after having just been married by Abita Springs Justice of the Peace Lisa King. King describes performing marriages as one of the best parts of her job, and she routinely uses this gazebo for the ceremony.

peace does and says that people often assume that she is a law enforcement officer. "When we run for office," she explains, "we try to educate people and let them know what they can come to us for."

King, a non-attorney, admires the legal system and holds great respect for both attorneys and other justices of the peace. But she admits that her court offers something that a traditional district court cannot and that justices of the peace are likely to become even more attractive to litigants as the years pass.

"Our system is so much quicker and cheaper. Some local attorneys refer their clients to justices of the peace because it's not economical for them to take the case, but they want for them to have justice and have their day in court."

King estimates that only 10 percent of her litigants are represented, and many of those bring attorney friends only for moral support rather than actual legal services. King believes that her office provides Abita Springs the sort of justice that every community seeks: inexpensive, quick and fair.

The Best Part of Our Job

"Officiating at weddings is the best part of our job," beams King. On a pleasant Friday evening last summer, she performed her second wedding of the day. The first, a hurried affair, was for a couple facing an unexpected military deployment. It was a quiet, private ceremony filled with the sort of emotions that a justice of the peace comes to expect under the circumstances.

But the evening event, meticulously documented in what King calls her wedding planner book, was a 45-minute parade of smiles.

Conducted with a full complement of bridesmaids and groomsmen in a gazebo a short distance from the Lake Pontchartrain Causeway along the Mandeville lakefront, King performed her ceremony for a young couple that had known each other most of their lives. "She was perfect," the groom boasted.

The groom's father was a local police officer and, as children, the couple spent many hours drinking coffee on the scenic lakefront. As they formed a relationship and contemplated marriage, they never hesitated to choose a justice of the peace to officiate at their wedding because, while religious, neither was a regular member of a particular church.

As the entourage left the service to join their friends at the reception, the couple lingered a few minutes in the setting sun and talked about how much King's ceremony meant to them. In some ways, it was obvious that King, with her energetic, compassionate style, provided them more than just her services as a tool to acquire a civil marriage. She offered a sense of optimism and energy.

What Cases Can a Justice of the Peace Hear?

As an attorney, you should be aware that your client may have the opportunity to utilize a justice of the peace court. Determining whether to file there or in district court is as important of a venue consideration as any other.

Jurisdiction

The Legislature provides that justices of the peace have concurrent jurisdiction with district courts in all civil matters set forth in Code of Civil Procedure articles 4911-4913. This includes all civil matters of up to \$3,000.² It also includes possession of movable property up to \$3,000, commercial and agricultural evictions of up to \$3,000 per month rent, and residential evictions, regardless of the amount of rent.³

Justice of the peace courts cannot handle cases involving title to immovable property, the right to public office, constitutional civil rights issues, most domestic and succession proceedings, interdictions, habeas corpus, or quo warranto proceedings, executory proceedings, in rem proceedings, or cases where a government entity is a defendant.⁴

Justices of the peace have a maximum fee schedule which is promulgated by statute. They may charge, for example, up to \$80 to file a suit or eviction with one defendant. The law enumerates 30 different actions and their fees.⁵

Special Factors to Consider

Justices of the peace have the power to hold people in contempt with a maximum penalty of \$50 and 24 hours in jail.⁶ No pleadings need to be written in justice of the peace court, and defendants should be prepared to orally state both their defense and any exceptions.⁷

Because pleadings and arguments are often made orally without a court reporter

present, attorneys should consider strategies for preserving evidence for appeal. The Code of Civil Procedure only requires that justices of the peace record basic information about each case, such as the litigant and witnesses' identification, a summary of the case, documents offered, and a list of motions and pleadings made.⁸

Defendants normally have 10 days to answer following service, and all default judgments are final. Litigants also should know that justices of the peace in larger parishes may have their own clerks.

Appeals can only be made to the parish or district court where the justice of the peace sits. Justices of the peace are required to issue written judgments, and the litigants have 15 days to file their appeals.¹⁰

Criminal Powers

Justices of the peace have limited powers to enforce and adjudicate criminal cases. They are considered committing magistrates with the power to bail or discharge in cases that are not capital or necessarily punishable at hard labor.

But they have the full power to try some minor criminal offenses. For example, they can try litter violations alleged to have occurred anywhere in the parish where they are situated. Convictions may be appealed to the district court within 10 days. ¹¹

They are also responsible for assisting other officials in impounding livestock illegally on state highways. 12

Justices of the peace also may issue a warrant authorizing the search and seizure of items in their jurisdiction which may be stolen, involved in a crime, or evidence tending to prove the commission of a crime. Under certain circumstances, a justice of the peace may also sell seized property.

Civil Functions

Perhaps the most well-known power of justices of the peace is their ability to perform wedding ceremonies. They can marry couples anywhere in the parish where they are situated and, under certain circumstances, nearby parishes. Any justice of the peace who served at least 18 years before retiring may continue to perform marriages for life.¹⁵

Justices of the peace also hold certain limited notary functions. They can administer oaths and affirmations and notarize sworn statements, affidavits and acknowledgments. They can make protests and notarize documents affecting movable property. Their title does not allow them to notarize documents dealing with immovable property, domestic, succession and estate matters, or to draft any notary documents. Of course, noth-

ing prevents a justice of the peace from qualifying as a notary independent of his judicial position. ¹⁶

FOOTNOTES

- 1. La. R.S. 13:2586.
- 2. La. C.C.P. art. 4911.
- 3. La. C.C.P. art. 4912.
- 4. La. C.C.P. art. 4913.
- 5. La. R.S. 13:2590.
- 6. La. C.C.P. art. 4914.
- 7. La. C.C.P. art. 4917.
- 8. La. C.C.P. art. 4918.
- 9. La. C.C.P. arts. 4920 and 4921.
- 10. La. C.C.P. arts. 4922 and 4923.
- 11. La. R.S. 13:2586.
- 12. La. R.S. 3:2804.
- 13. La. C.Cr.P. art. 161.
- 14. La. R.S. 13:2587.
- 15. La. R.S. 9:203.
- 16. La. R.S. 13:2586.1.

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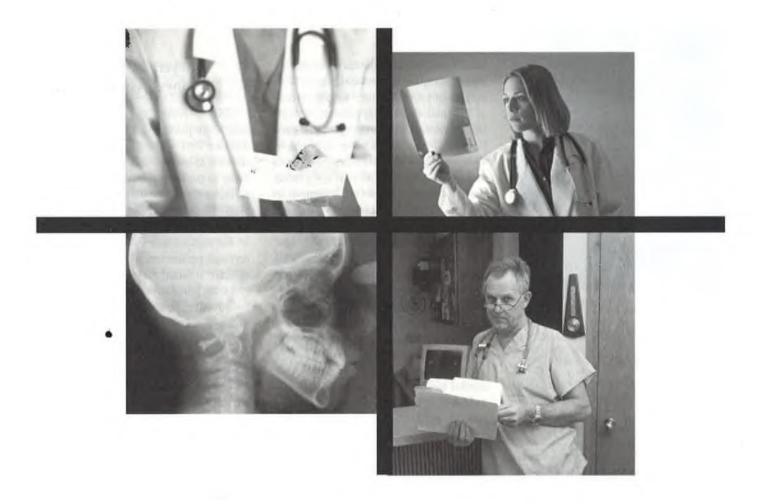
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HIPAA and the Practice of Law

By Clay J. Countryman

he Department of Health and Human Services (HHS), pursuant to the Health Insurance Portability and Accountability Act of 1996, promulgated the Standards for Privacy of Individually Identifiable Information (the HIPAA Privacy Regulations or privacy regulations) to address concerns with security and privacy of electronic healthcare transactions. HHS has issued several other regulations pursuant to HIPAA related to healthcare information, including electronic transaction and code set standards and security regulations. The HIPAA Privacy Regulations became effective on April 14, 2003 for healthcare providers and most health plans.²

The HIPAA Privacy Regulations have changed several long-standing practices used to obtain healthcare information in the course of providing legal services. Law firms also are discovering that the HIPAA Privacy Regulations impose several requirements through HIPAA business-associate agreements on how law firms use and maintain healthcare information. This article is intended to describe the effect of some of the requirements in the HIPAA Privacy Regulations on the use and disclosure of healthcare information by lawyers and law firms.

Overview of the HIPAA Privacy Regulations

The HIPAA Privacy Regulations specifically provide that a "Covered Entity" may not use or disclose protected health information (PHI) except as *permitted* or *required* by the privacy regulations.³ A Covered Entity is defined as a health plan, a healthcare clearinghouse, or a healthcare provider that transmits health information in electronic form through a transaction covered by the privacy regulations.⁴ A Covered Entity, such as a healthcare provider, is only *required* to disclose PHI to an individual under the access and accounting rights in the regu-



A common question is whether an individual has a cause of action for a violation of his or her HIPAA rights.

There is no private right of action under HIPAA. An individual who believes his privacy rights have been violated may file a complaint with the Office of Civil Rights (OCR), the federal agency charged with enforcing the privacy regulations.

lations, and when requested by HHS during a compliance investigation. Examples of *permitted* uses or disclosures of PHI include treating patients, obtaining payment, performing healthcare (business) operations, or in response to an individual's authorization. An important distinction here is that a Covered Entity is permitted (but not required) to disclose PHI pursuant to a valid authorization under the regulations. Thus, a healthcare provider covered by the regulations may still refuse to disclose PHI even if presented with a valid HIPAA authorization.

PHI is defined as individually identifiable health information that is transmitted or maintained in any medium (whether oral or written) and that relates to the past, present or future physical or mental health or condition of an individual, the provision of healthcare to an individual, or the past, present or future payment for the provision of healthcare to an individual.5 Information is individually identifiable if it actually identifies an individual or contains enough information to reasonably identify an individual. The definition of PHI specifically excludes employment records held by a Covered Entity in its role as an employer, such as FMLA or ADA information, sick-leave requests, occupationalinjury information, or information subject to the Family Educational Rights and Privacy Act.6

A common question is whether an individual has a cause of action for a violation of his or her HIPAA rights. There is no private right of action under HIPAA. An individual who believes his privacy rights have been violated may file a complaint with the Office of Civil Rights (OCR), the federal agency charged with enforcing the privacy regulations. The OCR may impose certain civil monetary penalties on a Covered Entity for violations of a standard or requirement of the privacy regulations. The Department of Justice may also enforce certain criminal sanctions on any person who knowingly obtains or discloses individually identifiable health information in violation of HIPAA.

Lawyers as HIPAA Business Associates

The privacy regulations allow healthcare providers and health plans to disclose PHI without a patient's authorization to other persons or entities for them to perform a business function or service on behalf of the provider or health plan. These "other persons or entities" are referred to as "business associates" in the regulations.7 The functions and services performed by business associates are referred to as "health care operations," which is defined in part as "conducting or arranging for legal services."8 Lawyers and law firms are HIPAA business associates when the performance of legal services for a HIPAA Covered Entity by a lawyer involves access to PHI. For example, a lawyer is a HIPAA business associate of a physician when the physician discloses PHI to defend the physician in a medical malpractice case.

The privacy regulations also require healthcare providers and health plans to enter into a written agreement with a business associate prior to the disclosure of PHI to a business associate. Thus, a lawyer must enter into a business-associate agreement with the client's healthcare provider or health-plan clients prior to the client disclosing any PHI to the lawyer. Lawyers may enter into a business-associate agreement with their Covered Entity clients or may include the required terms of a business-associate agreement in an engagement letter. A business-associate agreement must specify the purposes for which the business associate may use and disclose PHI, and indicate generally the reasons and types of persons to whom the business associate may make further disclosures. For example, a lawyer's business-associate agreement should include a general statement permitting the lawyer, in the course of the representation, to disclose PHI to people such as potential witnesses and opposing counsel. An important aspect here is that a lawyer as a business associate may not use or disclose information from his or her Covered Entity client unless such uses are permitted by the terms of the business-associate agreement, but regardless of the terms of a business-associate agreement, a lawyer cannot make any uses or disclosures of PHI that the Covered Entity is prohibited from making by the privacy regulations.

A HIPAA business-associate agreement must also require the business associate to:

- ► (i) have reasonable safeguards to protect PHI;
- ► (ii) "pass through" certain requirements to "agents and subcontractors" of the business associate:
- ▶ (iii) report improper disclosures to the Covered Entity client;
- ▶ (iv) make available PHI to provide an individual access to his PHI;
- (v) amend PHI if requested by the Covered Entity client;
- ▶ (vi) provide an accounting of disclosures of PHI by the business associate, if required;
- ▶ (vii) make available to HHS the internal practices, books and records of the business associate for a compliance review;
- ▶ (viii) provide the Covered Entity the ability to terminate the agreement for a material breach; and
- ► (ix) require the return or destruction of PHI at the termination of the engagement.9

HIPAA and Pre-emption

The pre-emption rules in the privacy regulations are important to lawyers for many reasons, *e.g.*, determining the impact of the privacy regulations on subpoenas and other discovery requests. In general, state laws that are *contrary* to any requirements in the privacy regulations are pre-empted by the privacy regulations. "Contrary" in this context means that it would be impossible for a Covered Entity to comply with both the state and federal HIPAA requirements, or that the provision of state law is an obstacle to accomplishing the full purposes and objectives of the privacy regulations. "0

The privacy regulations contain the following exceptions to the general rule of pre-emption by the privacy regulations for contrary state laws that:

- ▶ relate to the privacy of individually identifiable information and provide greater protection or privacy rights with respect to the information;
- ▶ provide for the reporting of certain healthcare-related events; or
- ► require health plan reporting, such as for management or financial audits. The privacy regulations also provide that any state, entity or person may request the secretary of HHS to determine that a particular provision of state law is not pre-empted by the privacy regulations.

HIPAA and Workers' Compensation

A common misunderstanding is that HIPAA does not apply to healthcare information in workers' compensation cases and that a healthcare provider must have an individual's written authorization to disclose PHI to an employer in a workers' compensation case. The privacy regulations do not apply to workers' compensation carriers, such as LWCC and LUBA, because the definition of health plan does not include such carriers. However, healthcare providers who provide services to an individual for a work-related injury are still subject to the privacy regulations. Thus, a healthcare provider who is covered by the privacy regulations may use or disclose healthcare information related to the treatment of a workers' compensation injury only as permitted or required by the privacy regulations.

The HIPAA Privacy Regulations specifically provide that a Covered Entity may disclose PHI as authorized by and to the extent necessary to comply with laws relating to workers' compensation or similar programs that provide benefits for work-related injuries. 12 This means that a healthcare provider may disclose healthcare information without an individual's written authorization if a state or federal workers' compensation law requires such disclosure. La. R.S.



The pre-emption rules in the privacy regulations are important to lawyers for many reasons, e.g., determining the impact of the privacy regulations on subpoenas and other discovery requests. In general, state laws that are contrary to any requirements in the privacy regulations are pre-empted by the privacy regulations.



Lawyers should continue to monitor the interpretations and comments by the OCR, especially the application of the business-associate requirements to lawyers, the authorization requirements, and the satisfactory-assurance requirements in § 164.512(e) for different discovery requests.

23:1127 provides a list of entities and individuals to whom a healthcare provider is required to disclose information related to a claim for workers' compensation benefits. Thus, a healthcare provider is permitted by the privacy regulations to make the disclosures of healthcare information to the persons or entities described in R.S. 23:1127 without an individual's authorization.

HIPAA and Litigation

The following discussion focuses on the options within the privacy regulations that a lawyer could use to obtain PHI from a healthcare provider covered by HIPAA. First, an individual may expressly request that the healthcare provider disclose the individual's medical records to his or her lawyer. For example, when a lawyer represents an individual, as in tort litigation, and needs copies of the individual's medical records to evaluate an injury claim, the individual may directly request his healthcare provider to send copies of the individual's medical records to the lawyer. A lawyer may also obtain PHI through a written authorization completed by the individual whose records are sought. Lawyers may use this option to obtain copies of a client's or another individual's medical records. The Covered Entity must ensure that the authorization has all of the information and statements required by the privacy regulations. 13

The privacy regulations provide another option for a lawyer to obtain medical records in litigation. Pursuant to § 164.512(e), a Covered Entity may disclose PHI in a judicial or administrative proceeding without an individual's authorization in response to a court order, subpoena, other discovery request, or a qualified protected order that meets certain requirements. This section provides that a Covered Entity may disclose PHI in response to an order of a court or administrative tribunal. Section 164.512(e) further provides that a Covered Entity may disclose PHI in response to a "subpoena, discovery request, other lawful process that is not accompanied by a court order, or a qualified protective order" if the Covered Entity receives satisfactory assurance that reasonable efforts have been made to provide notice to the individual whose records are requested.

A Covered Entity receives satisfactory assurance for purposes of a subpoena or other discovery request upon receipt of a written statement and documentation demonstrating that:

- ▶ (i) the party requesting the information has made a good-faith attempt to notify the individual whose records are requested;
- ▶ (ii) the notice included sufficient information about the proceeding to allow the individual to raise an objection to the disclosure; and
- ► (iii) the time to raise an objection has expired. 14

This section also contains certain requirements for the satisfactory assurance that apply to a qualified protective order. There has been very little guidance by the OCR on the effect of section 164.512(e) on federal and state court subpoenas and other discovery methods other than the statement by OCR that it does not intend to disrupt current practices under state law where a person waives the physician-patient privilege by putting the patient's condition at issue in litigation.¹⁵

Obtaining and further disclosing healthcare information from your Covered Entity client. As discussed above, a Covered Entity may disclose PHI to its lawyer without an individual's authorization provided the Covered Entity and lawyer enter into a business-associate agreement prior to such disclosure. A lawyer may further disclose PHI obtained from a Covered Entity client to potential witnesses, experts, litigation-support personnel and others in the course of representing the Covered Entity only if the business-associate agreement permits the lawyer to disclose PHI to these types of people. 16 The limitations in the businessassociate agreement as to how a business associate may use and disclose the PHI17

from the Covered Entity appear to affect many common litigation practices. For example, without a specific provision in the business-associate agreement, the lawyers for physician and hospital codefendants in a medical malpractice case may not share copies of medical records because such a disclosure would not be for the purpose of representation of the Covered Entity client.

Obtaining and further disclosing healthcare information from a healthcare provider that is not your client. When a lawyer needs to obtain healthcare information from a HIPAA Covered Entity that the lawyer does not represent in particular matter, the lawyer may obtain healthcare information through a court order, a written authorization that meets the requirements of the privacy regulations, or through a subpoena, a qualified protective order, or other discovery request that meets the satisfactory-assurance requirements in § 164.512(e). There are no restrictions on further disclosures of PHI obtained by a lawyer from a HIPAA Covered Entity under one of these options if the lawyer is not a HIPAA business associate of the Covered Entity.

Applying the HIPAA pre-emption rules, the affidavit process in La. R.S. 13:3715.1 for subpoenas arguably is not contrary to the requirements of a satisfactory assurance for subpoenas in the privacy regulations. On that basis, lawyers could continue to follow the requirements in La. R.S. 13:3715.1 for subpoenas in Louisiana state courts. However, other provisions in La. R.S. 13:3715.1 may be pre-empted by the privacy regulations. 18 In regard to subpoenas in federal court, lawyers may consider using an affidavit process similar to the affidavit required in La. R.S. 13:3715.1 to meet the satisfactory-assurance requirement in § 164.512(e). One of many challenges for Louisiana lawyers is to determine how to comply with the satisfactory-assurance requirements for other types of discovery, such as requests for production of documents.

This article only touched upon some of the areas of a lawyer's practice that may be affected by the HIPAA Privacy Regulations. Lawyers should continue to monitor the interpretations and comments by the OCR, especially the application of the business-associate requirements to lawyers, the authorization requirements, and the satisfactory-assurance requirements in § 164.512(e) for different discovery requests.

FOOTNOTES

- 1. Referred herein also as the "privacy regulations." 65 Fed. Reg. 82462 (Dec. 28, 2000) (original regulations); 67 Fed. Reg. 14776 (March 27, 2002) (proposed modifications); 67 Fed. Reg. 53182 (Aug. 14, 2002) (final modifications).
- 2. The compliance date for "small health plans" was April 14, 2004.
 - 3. 45 C.F.R. § 164.502(a).
- 4. 45 C.F.R. § 160.103 (defining Covered Enity).
 - 5, 45 C.F.R. § 164.501.
 - 6. 45 C.F.R. § 164.501.
 - 7. 45 C.F.R. § 164.103.
 - 8. 45 C.F.R. § 164.501.
 - 9. 45 C.F.R. § 164.504(e).
 - 10. 45 C.F.R. § 160.202.
 - 11. 45 C.F.R. § 160.203.
 - 12. 45 C.F.R. § 164.512(1).
 - 13. 45 C.F.R. § 164.508(c).
 - 14. 45 C.F.R. § 164.512(e)(1)(iii).
- 15. 65 Fed. Reg. 82462, 82530 (Dec. 28, 000).
 - 16. 65 Fed. Reg. at 82505.
- 17. State courts have just begun to reconcile the HIPAA satisfactory requirements with state discovery rules. In In re: PPA Litigation (N.J.

Super.Ct., Sept.9/23/03) (unpublished), the Superior Court of New Jersey barred the defendants from using New Jersey's informal process that allows a defendant's attorney to interview a plaintiff's physician without the plaintiff's attorney present because the state's patient notification process must be revised to reflect the HIPAA authorization requirements. See also Law v. Zuckerman, CBD-01-1429 (S.D. Md 2/27/04) (unpublished). In Zuckerman, the court concluded that a defense counsel in a medical malpractice case violated the HIPAA Privacy Regulations through ex parte discussions with the plaintiff's treating physician.

18. See United States ex rel. Stewart v. Louisiana Clinic, 99-1767 (E.D. La. 2/12/2002) (unpublished). In Stewart, the court concluded that the "contradictory hearing" in Louisiana law did not offer greater protection than the privacy regulations and that the requirements of the privacy regulations should be followed.

ABOUT THE AUTHOR

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1994 graduate of Loyola University Law School and received his undergraduate degree from the University of Oklahoma. He has coauthored a Physician Practice Compliance Manual and a HIPAA Handbook by Aspen Publishing. Comments to this article may be sent to clay.countryman@keanmiller.com or by mail. (P.O. Box 3513, Baton Rouge, LA 70821)



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Nominating Committee to meet Aug. 27

The Nominating Committee of the Louisiana State Bar Association will meet Friday, Aug. 27 to nominate a president-elect for the 2005-06 term and a secretary for the 2005-07 term. The president-elect will automatically assume the presidency in 2006-07.

Any member interested in seeking the position of president-elect or secretary should immediately contact members of the Nominating Committee. (Members' names, phone/fax numbers and e-mail addresses are provided in the box on this page.)

On Monday, Sept. 20, notices of the action of the Nominating Committee will be sent to all LSBA members, along with instructions for additional nominations by petition. Self-qualification forms for positions on the Board of Governors, House of Delegates, Young Lawyers Section Council, Nominating Committee and American Bar Association House of Delegates also will be mailed to all members on Sept. 20.

Deadline for return of nominations by petition and qualification forms is Monday, Oct. 18, by U.S. postmark. First election ballots will be mailed Monday, Nov. 15, for return on Monday, Jan. 10, 2005, by U.S. postmark.

Other positions open for the 2004-05 elections are:

Board of Governors (three-year terms): one member each from the First, Second and Third districts.

Nominating Committee (15 positions, one-year terms): District 1A, Orleans Parish, four members: District IB. parishes of Plaquemines, St. Bernard and St. Tammany, one member; District 2A, East Baton Rouge Parish, two members; District 2B, Jefferson Parish, two members; District 2C, parishes of Ascension, Assumption, East Feliciana, Iberville, Lafourche, Livingston, Pointe Coupee, St. Charles, St. Helena, St. James, St. Baptist, Tangipahoa, John the Terrebonne, Washington, West Baton Rouge and West Feliciana, one member; District 3A, Lafayette Parish, one member; District 3B, parishes of Acadia, Beauregard, Calcasieu, Cameron, Iberia, Jefferson Davis, St. Martin, St. Mary and Vermilion, one member; District 3C, parishes of Allen, Avoyelles, Evangeline, Grant, LaSalle, Natchitoches, Rapides, Sabine, St. Landry and Vernon, one member; District 3D, parishes of Bossier and Caddo, one member; and District 3E, parishes of Bienville, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Jackson, Lincoln, Madison, Morehouse, Ouachita, Red River, Richland, Tensas, Union, Webster, West Carroll and Winn, one member.

LSBA House of Delegates (two-year terms): 20th through 40th Judicial Districts and Orleans Parish.

Young Lawyers Section: chair-elect (one-year term); secretary (one-year term); and one representative each from the First, Second, Fourth, Fifth, Sixth and Eighth districts (two-year terms).

ABA House of Delegates (two-year term) (must be a member of the American Bar Association): one delegate to be elected at large.

For additional information on the nomination process or Association elections, contact Executive Assistant Ramona K. Meyers at (504)619-0115 or (800)421-5722, ext. 115.

Secret Santa Project Receives Award



The Louisiana State Bar Association/Louisiana Bar Foundation's Community Action Committee recently received an award from JEFFCAP (Jefferson Community Action Programs) for its Secret Santa Project. JEFFCAP is one of the agencies receiving Secret Santa gifts for the children. Tina White, co-chair of the Community Action Committee, accepted the award on behalf of herself, Co-Chair Devovce Stubbs and Secret Santa Project Chair Tricia Martinez.

Applications Being Accepted for Bankruptcy Law Certification

The Louisiana Board of Legal Specialization (LBLS) has announced that applications for 2005 certification in both Business Bankruptcy Law and Consumer Bankruptcy Law will be accepted during the first three quarters of this year (January through September).

Both certifications may be simultaneously applied for with the LBLS and the American Board of Certification, the testing agency. Information concerning the American Board of Certification will be provided with the LBLS application form(s).

If you meet the minimum five-year, full-time practice requirement and are interested in applying, fax or mail the following information to:

Catherine S. Zulli, Executive Director Louisiana Board of Legal Specialization 601 St. Charles Ave., New Orleans, La. 70130-3404 Fax (504)528-9154

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ATTORNEY-CLIENT ASSISTANCE PROGRAM

ince implementation six years ago, the Attorney-Client Assistance Program has handled 1,140 referrals from the Office of Disciplinary Counsel. The Attorney-Client Assistance Program is a voluntary program aimed at facilitating the resolution of client complaints about lawyer conduct. These complaints focus on minor problems or relational matters not rising to a level of ethical violations warranting investigation by disciplinary counsel. If an attorney and the complaining party choose to participate in the Attorney-Client Assistance Program, practice assistance counsel will attempt to facilitate a resolution of the complaint to the satisfaction of all parties. Complaints are returned to disciplinary counsel if either party is not satisfied after brief facilitation.

Director of Professional Programs Cheri Cotogno Grodsky has reported that the program is a tremendous success and that this is a positive way to resolve these kinds of disputes. "Attorneys want to resolve complaints and satisfy the concerns of their clients," she said.

After screening, disciplinary counsel has the discretion to refer complaints

where minor misconduct is alleged or relational type complaints to the Attorney-Client Assistance Program. Upon receipt of a referral from disciplinary counsel, practice assistance counsel will send a letter via fax to the respondent requesting participation in this voluntary program and explaining that the goal of the Attorney-Client Assistance Program is to resolve complaints promptly outside of the disciplinary system. If the attorney chooses to participate, practice assistance counsel will attempt to facilitate a resolution of the complaint between the respondent and complainant. There is no need for the respondent to submit a formal written response. Complaints are expeditiously resolved outside the disciplinary process.

Although many different kinds of complaints can be handled through the process, the most common involve:

- return of file from a previous attorney; and
- lack of communication with a current attorney.

Practice Assistance Counsel William N. King has advised that this program "is a win-win situation for both attorneys

and clients. Clients get their concerns addressed and attorneys are able to resolve the matter outside of the disciplinary arena."

In matters where a former attorney has not returned a file upon client request, a conference call is generally scheduled between the parties. The client, the attorney and practice assistance counsel discuss the matter. Generally, the client and the attorney work out how the file will be returned. When the file is released, the complaint is closed and the Office of Disciplinary Counsel is informed that the matter has been resolved satisfactorily. If the attorney fails to return the file after a brief facilitation, the matter must be returned to the Office of Disciplinary Counsel for handling. The overwhelming majority of such complaints are resolved.

Complaints involving a lack of communication are handled similarly. Many times communication complaints are a result of unrealistic expectations by the client or a busy trial schedule for an attorney. A brief facilitation between the parties can quickly resolve a complaint without the need for disciplinary counsel investigation. Rather than force the client to terminate the relationship, the program aims to repair the attorney-client relationship when possible. As a result, the attorney, client and the Office of Disciplinary Counsel are saved frustration, inconvenience and resources.

For more information on the Attorney-Client Assistance Program, contact Director of Professional Programs Cheri Cotogno Grodsky at (504)619-0107, (800)421-5722, ext. 107, or e-mail cgrodsky@lsba.org; or Practice Assistance Counsel William N. King at (504)619-0109, (800)421-5722, ext. 109, or e-mail bking@lsba.org.

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Developments

ADMINISTRATIVE TO PROF. LIABILITY



Is It Okay to Lose Public Records?

Three sides of Jackson Square in New Orleans, once busy thoroughfares, now comprise a pedestrian mall. The area adjacent to the exterior of the fence around the square is reserved for use by artists. Further from the fence is the area reserved for use by fortune tellers. The city placed metal benches in this area, much to the distress of the clairvoyants. A request for production of records pursuant to the Louisiana Public Records Act (LPRA) was directed to Councilwoman Jacqueline Clarkson, whose district includes Jackson Square. Although she did

not respond to the request the first time, she did respond the second time she received it. The documents she produced did not include relevant correspondence produced by another city agency in response to a separate public records request. The requestor claimed that this proved Clarkson had not obeyed the LPRA and sued for mandamus and financial penalties, including attorney's fees.

The trial court denied the petition, stating in its reasons for judgment that Clarkson did not arbitrarily or capriciously fail to produce certain records. The court noted that there appears to be a need for clearer guidelines regarding "the manner in which public officials are to maintain records in their control." In Ott v. Clarkson, 03-1287 (La. App. 4 Cir. 12/10/03), 863 So.2d 663, the appeals court affirmed the trial judge's decision, stating that simply because Clarkson failed to maintain and produce the relevant documents obtained from another source does not prove that Clarkson

failed to obey the law. The only mention of Clarkson's failure to timely respond to the initial request was a footnote stating the first request had been complied with by the time the suit was filed. The LPRA requires the retention of all documents deemed to be public records. No so long ago, the Louisiana inspector general (IG) castigated the executive director of a state agency for re-using cassette tapes he used to record parts of the agency meetings to assist him in preparing the minutes of those meetings. The IG concluded that erasing those cassette tapes violated the LPRA. One might read the Ott case to stand for the proposition that when public officials unintentionally lose public records they are not in violation of the law, but those who intentionally destroy them are in violation of it.

> — Brian M. Begue Chair, LSBA Administrative Law Section 2127 Dauphine St. New Orleans, LA 70116



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Alternative Dispute Resolution

Mediation Settlement Agreement Legally Binding and Enforceable

LeBlanc v. State Farm Ins. Co., 03-1522 (La. App. 3 Cir. 5/26/04), ____ So.2d

The court held that a mediation settlement agreement signed by a personalinjury plaintiff and all defendants in the case at the end of a mediation was a legally binding document and was enforceable under the terms of La. Civ.C. art. 3071. The plaintiff, who retained a different lawyer after the mediation, sought to renege on the previous settlement by arguing that the agreement was not legally binding because of language in the mediation settlement agreement stating that a formal settlement agreement would be executed at a later date. This language, argued the plaintiff, created a condition that amounted to an impediment to a legally binding settlement. The plaintiff further contended, under La. Civ.C. art. 1947, that the contemplation of an additional writing indicated that the parties did not intend to be bound until the formal agreement was executed. The court disagreed with the plaintiff, stating that the mediation settlement agreement constituted a meeting of the minds of all parties who signed it and was, therefore, legally binding.

Party Cannot Avoid Arbitration by Refusing to Pay Arbitration Fees

Lincoln Builder v. Raintree Investment Corp. Thirteen, 37,965 (La. App. 2 Cir. 1/28/04), 866 So.2d 326.

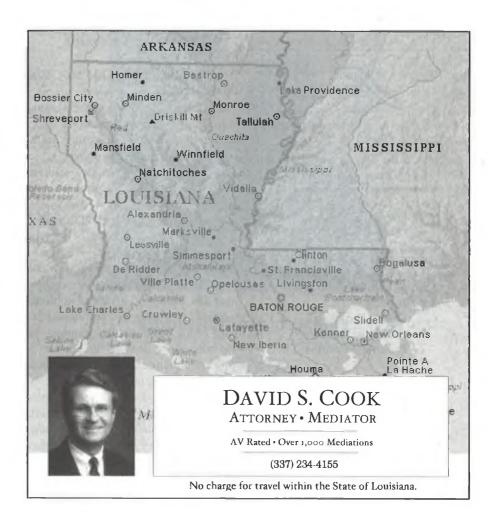
After an unsuccessful mediation attempt, the plaintiff sought to lift a stay of the lawsuit that was issued after a joint

motion of all parties. The plaintiff argued that the stay should be lifted because defendants did not pay the arbitration fees billed to the parties by the American Arbitration Association, the arbitration administrative agency. Arguing that the defendants had waived their right to arbitrate due to delays and their refusal to pay their share of the arbitration fees and costs, the plaintiff sought to have the matter decided by the district court. Since waiver of arbitration is not a favored finding and there is a presumption against waiver, the court held that the conduct of the defendants did not constitute a waiver. The court found that the plaintiff had not paid its share of the arbitration fees, that it had an adequate remedy in the case (the arbitration process), and that the plaintiff failed to prove that it had been prejudiced by the delays. Finding that all parties had

failed to pay their arbitration fees, the court stated that a party may not escape its duty to arbitrate a matter that it agreed to arbitrate by deliberately failing to pay its fee to the arbitrator. The judgment of the district court denying the motion to lift the stay of the lawsuit was affirmed by the court of appeal.

Former Judges Now Allowed to Serve as Child Custody Mediators

La. R.S. 9:334 allows a former Louisiana district or appellate judge or Supreme Court justice who has served at least 10 years on the bench to serve as a mediator in a child custody dispute after the judge or justice has received 20 hours of specialized mediation training in child custody disputes. Louisiana Senate Bill



No. 53, which was enacted by Acts 2004, No. 25, effective on Aug. 15, 2004, amends La. R.S. 9:334 to also allow former Louisiana city, parish, family and juvenile court judges with the same amount of experience and training mentioned above to serve as mediators in child custody disputes.

Department of Revenue Now Allowed to Contract with Mediation Service Providers

As a result of Acts 2004, No. 134, effective June 4, which amended La. R.S. 47:1522, the secretary of the Louisiana Department of Revenue, with the approval of the Louisiana attorney general, may now enter into contracts with individuals and organizations to conduct both mediations and arbitrations in order to assist in the collection of any taxes, penalties or interest due under Subtitle II of Louisiana Revised Statutes, Title 47,



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E.W. King B.S. Accounting/Finance Kate Prechter B.S., J.D. which is entitled "Provisions Relating to Taxes Collected and Administered by the Collector of Revenue." Prior to the amendment, the secretary was allowed to enter into contracts only with individuals and organizations for the arbitration of tax issues. The 2004 amendment broadens the secretary's power by allowing the secretary to also enter into contracts for the mediation of tax issues.

— Bobby Marzine Harges
Member, LSBA Alternative Dispute
Resolution Section
Loyola University Law School
7214 St. Charles Ave., Box 901
New Orleans, LA 70118



Bill of Rights

Defective Warrant

In Groh v. Ramirez, 124 S.Ct. 1284 (2004), an ATF agent (Groh) prepared and signed an application for a search warrant of a Montana ranch on which the Ramirez family lived, stating that the search was for specific weapons, explosives and records. A detailed affidavit and a warrant form the agent completed supported the application. The magistrate judge signed the warrant form even though it did not identify any of the items to be seized.

Groh led a team of federal and local law enforcement officers to the ranch the next day, but a search yielded no illegal weapons or explosives. The agent left a copy of the warrant at the premises, but did not leave a copy of the application with the Ramirez family. Ramirez sued Groh and others under 42 U.S.C. 1983 *Bivens v. Six Unknown Named Agents*, 91 S.Ct. 1999 (1971), claiming a Fourth Amendment violation. The district court granted summary judgment for defendants, finding no Fourth Amendment violation, and that, even if such a violation occurred, defendants were entitled

to qualified immunity. The 9th Circuit affirmed, except as to the Fourth Amendment claim, and held that the warrant was invalid because it did not describe with particularity the place to be searched and the items to be seized. The 9th Circuit also held that agent Groh was not entitled to qualified immunity because he was the leader of the search who did not read the warrant, determine its scope and limitations, and satisfy himself that the warrant was not obviously defective.

The United States Supreme Court held that the search was clearly unreasonable under the Fourth Amendment because the warrant was plainly invalid. The warrant did not meet the Fourth Amendment's unambiguous requirement that a warrant particularly describe the persons or things to be seized. The fact that the *application* adequately described these things does not save the warrant. The court emphasized that it has long held that the purpose of the particularity requirement is not limited to the prevention of general searches, stating that a particular warrant also:

assures the individual whose property is searched or seized of the lawful authority of the executing officer, his need to search, and the limits of his power to search.

(Notably, the court mentions that it was not necessary to decide whether the Fourth Amendment permits a warrant to cross-reference other documents because such incorporation did not occur here.)

The court rejected Groh's argument that the search was nonetheless reasonable. The court regarded the search as a warrantless search, and therefore presumptively unreasonable.

Finally, the court ruled that Groh was not entitled to qualified immunity despite the constitutional violation because no reasonable officer could believe that a warrant that did not comply with the particularity requirement was valid. Because Groh had prepared the warrant himself, he could not rely on the magistrate's assurance that it contained an adequate description. A reasonable officer cannot

claim to be unaware of the basic rule that, absent consent or exigency, a warrantless search of a home is presumptively unconstitutional.

Interestingly, Justice Thomas, in his dissenting opinion, points out that the Supreme Court has vacillated between imposing a categorical warrant requirement and applying a general reasonableness standard, all the while finding "a plethora of exceptions to presumptive unreasonableness." Citing ample authority, Justice Thomas concludes that:

our cases stand for the illuminating proposition that warrantless searches are *per se* unreasonable, except, of course, when they are not.

124 S.Ct. at 1298.

Border Searches

United States v. Flores-Montano, 124 S.Ct. 1582 (2004).

Flores-Montano, driving a 1987 Ford Taurus station wagon, attempted to cross the border from Mexico into the United States at the Otay Mesa Port of Entry in southern California. A customs inspector conducted an inspection of the vehicle and asked Flores-Montano to leave the vehicle, which was then taken to a secondary inspection station nearby. Another customs inspector inspected the gas tank by tapping it and noticed that it sounded solid. A mechanic on contract with the U.S. Customs Bureau subsequently removed the gas tank and found 37 kilograms of marijuana. A grand jury later indicted Flores-Montano for unlawfully importing marijuana and possession of marijuana with intent to distribute. Flores-Montano filed a motion to suppress the evidence, relying on *United* States v. Molina-Tarazon, 279 F.3d 709 (9 Cir. 2002), in which a divided panel of the 9th Circuit held, inter alia, that removal of a gas tank requires reasonable suspicion in order to be consistent with the Fourth Amendment. The district court granted the motion to suppress, and the 9th Circuit, citing Molina*Tarazon*, summarily affirmed the district court's judgment.

A unanimous Supreme Court reversed, concluding that the government's authority to conduct suspicionless inspections at the border includes the authority to remove, disassemble and reassemble a vehicle's fuel tank. The Supreme Court stated that the government's interest in preventing the entry of unwanted persons and effects is at its zenith at the international border.

It is axiomatic that the United States, as sovereign, has the inherent authority to protect, and a paramount interest in protecting, its territorial integrity.

124 S.Ct. at 1586. Further, the expectation of privacy is less at the border than it is in the interior. The court notes that, while the interference with a motorist's

possessory interest here is not insignificant, it is nevertheless justified by the government's paramount interest in protecting the border.

> — James M. Bookter Member, LSBA Bill of Rights Section La. Dept. of Transportation & Development P.O. Box 94245 Baton Rouge, LA 70804-9245



Corporate and Business Law

Single Business Enterprise Theory

According to La. R.S. 12:93, a share-holder of a corporation is not liable per-



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sonally for any liability of the corporation. The courts have developed limited exceptions to this broad rule, one of which is often referred to as "piercing the corporate veil."

Traditionally, Louisiana courts have pierced the corporate veil only in situations where the corporation is indistinguishable from its shareholders or where fraud or deceit has been practiced by a shareholder acting through the corporation. However, the fact that one individual owns a majority of stock in the corporation does not in itself make that individual liable for corporate debts. This is particularly true in the case of a closely-held corporation where business is conducted by the majority stockholder. Therefore, the Louisiana Supreme Court has advised courts to consider the following factors when determining whether to pierce the corporate veil:

- ► commingling of corporate and shareholder funds;
- ► failure to follow statutory formalities for incorporating and transacting corporate affairs;
- ▶ undercapitalization;
- ▶ failure to provide separate bank accounts and bookkeeping records; and
- ► failure to hold regular shareholder and director meetings.

Riggins v. Dixie Shoring Co., 590 So.2d 1164 (La. 1991).

Nonetheless, the 1st Circuit Court of Appeal of Louisiana has created its own theory for courts seeking to pierce the corporate veil, which it refers to as the "single business enterprise" (SBE) theory. The theory is not new; in fact, it has been the rule of the 1st Circuit since 1991, when the case of *Green v. Champion Insurance Co.*, 577 So.2d 249, (La. App. 1 Cir.), writ denied, 580 So.2d 668 (La. 1991), was decided. The SBE theory also has been adopted in the 3rd and 4th Circuit Courts of Appeal. However, the Louisiana Supreme Court has never addressed the SBE theory, and a recent 1st Circuit case illustrates why it is time for the state's highest court to address the viability of the theory.

Under the 1st Circuit's SBE theory, if one corporation is wholly under the control of another, the fact that it is a separate entity does not relieve the dominant corporation of liability for its debts when the separate corporations are operated as the same, single business enterprise. Holly & Smith Architects v. St. Helena Congregate Facility, 03-0481 (La. App. 1 Cir. 2/23/04), 872 So.2d 1147. Without an express finding that fraud or deceit had been practiced by its parent, the 1st Circuit held that a subsidiary was merely an "extension" of its parent and, therefore, that the parent was liable for the full amount of an arbitration award rendered against the subsidiary.

The facts of *Holly & Smith* are as follows: St. Helena Congregate Facility, Inc. (Congregate) contracted with Holly & Smith Architects, Inc. (Architects) to design, build and install 24 housing units for St. Helena Parish Hospital (Hospital). Congregate was incorporated by

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Hospital for the purpose of obtaining federal approval and financing for the project. Congregate terminated the contract, and Architects filed suit against Hospital, alleging that Hospital was the alter ego of Congregate and seeking a declaratory judgment that Hospital was liable for payment of damages that Architects suffered as a result of Congregate's decision to terminate the contract. The 1st Circuit held that the evidence supported piercing the corporate veil to reach Hospital's assets and ordered Hospital to pay the full extent of the damages award rendered against Congregate.

The SBE theory differs from the traditional veil-piercing theory, summarized in *Riggins*, in two important respects. First, the SBE theory is used to destroy the legal distinctions between affiliated corporations, and not to impose personal liability on a corporation's shareholders. In *Holly & Smith*, for example, Architects was not attempting to pierce the veil of Hospital to impose personal liability for corporate debts on the individuals who owned Congregate. Instead, Architects was trying to treat Congregate and Hospital as one consolidated entity.

Second, the factors used by the 1st Circuit differ from those provided by the Louisiana Supreme Court in *Riggins*. Instead of the traditional five-factor test, in *Holly & Smith*, the 1st Circuit applied a 17-factor test. Included among the factors are several items that would be present in all affiliated corporate groups, including:

- ► common offices;
- ▶ common directors or officers;
- ▶ unified administrative control;
- ▶ one corporation causing the incorporation of another; and
- ▶ centralized accounting.

Holly & Smith suggests that affiliated corporations can be held liable for the debts of their parent or sister corporations solely based upon their commonality. More specifically, the 1st Circuit's SBE theory, as summarized in Holly & Smith, liberalizes Louisiana's veil-piercing theory by disregarding the fundamental presumption that corporations are legally distinct entities. By doing so, the



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Los Angeles Tampa 1st Circuit has extended the jurisprudential theory beyond exceptional circumstances and into the everyday occurrences of affiliated corporate groups. The Louisiana Supreme Court should consider the effects of this case on business and industry and whether those effects are consistent with the beneficial role of the corporate concept. Meanwhile, corporate lawyers face uncertainty as to whether the corporate groups they structure will be disregarded by the courts and treated as a single business enterprise.

— Brock M. Degeyter
Member, LSBA Corporate and
Business Law Section
Correro Fishman Haygood Phelps
Walmsley & Casteix, L.L.P.
201 St. Charles Ave., 46th Flr.
New Orleans, LA 70170



Criminal Law

Felon in Actual Possession of Firearm by Imputed Concealment

Ean Lavar Johnson was charged with possession of a firearm by a convicted

felon in violation of La. R.S. 14:95.1, based on a traffic stop. The officer stopped the vehicle for a child-restraint violation after seeing a small child standing up in the vehicle. When the officer approached the vehicle, he smelled marijuana and saw that the driver appeared intoxicated. The officer further recognized the defendant, a passenger in the back seat of the vehicle, from prior drug arrests and maintained a spotlight on him to see if he attempted to discard narcotics from the vehicle. When the defendant exited the vehicle, the officer looked inside and found a .25 automatic pistol on the floorboard of the car where the defendant's feet had been. None of the occupants of the vehicle claimed the weapon when questioned by the officer.

At trial, the officers did not claim to have seen any furtive movements or passing of contraband before the defendant and the other passengers got out of the vehicle. None of the officers saw the defendant holding the weapon, and no fingerprints were found on the pistol. Six days after the arrest, one of the passengers told police in a written statement that the weapon was hers. This was corroborated by the second passenger. The defendant likewise testified that the weapon was not his and that the driver and passenger were friends of his who had given him a ride moments before

police stopped the vehicle. He further testified that he had not seen the driver or other passenger with the pistol.

The jury convicted the defendant. The 2nd Circuit overturned the conviction. The court of appeal found that the:

evidence was not sufficient to prove either who possessed the firearm or that it was the defendant, and not the other passengers in the car, that had sufficient dominion and control over the firearm to constitute constructive possession.

State v. Johnson, 36,854 (La. 2 Cir. 4/13/03), 839 So.2d 1247, 1255.

The Supreme Court granted the State's application for certiorari and reinstated the verdict of the trial court. Reviewing the testimony and the record, the Supreme Court reversed the appeal court's decision, finding that the court of appeal had substituted its own credibility determination for that of the trier of fact. The Supreme Court found that the defendant had been in actual possession, rather than constructive possession, based on the testimony of the officer who believed that the defendant had attempted to hide the weapon by placing his feet on top of the pistol. Justices Johnson and Knoll dissented, finding



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respectively that the evidence did not support the intent to possess the firearm and that the evidence was insufficient to prove any possession beyond a reasonable doubt. *State v. Johnson*, 03-1228 (La. 4/14/04), 870 So.2d 995.

Evidence of Conspiracy to Possess with Intent to Distribute

Nathaniel Mitchell, his girlfriend, his adult daughter and his infant grand-daughter were stopped on Interstate 20 in Webster Parish about 9 p.m. on June 26, 2000. The stated reason for the stop was improper lane usage and suspicion of DWI. Conflicting testimony was presented at trial regarding the consent to search, but the court of appeal affirmed the trial court's determination that the consent was valid. The search revealed:

36 bags of suspected crack cocaine, six baggies of suspected marijuana, six suspected marijuana blunts, over \$1,000 in cash and two handguns.

The defendant was arrested and charged with possession of cocaine and marijuana with intent to distribute, and two counts of conspiracy to commit possession of cocaine and marijuana with intent to distribute. Defendant appealed his conviction on all counts after a jury trial.

On appeal, the 2nd Circuit affirmed the possession of cocaine with intent to distribute, based on the manner of packaging and the volume exceeding reasonable personal consumption. The court found that the issue of the marijuana was "a much closer question," but found intent to distribute based on the fact that the baggies were in a fanny pack that would be easy to conceal and to discard and the absence of smoking paraphernalia in the vehicle, among other reasons.

The 2nd Circuit reversed the convictions for conspiracy because the State failed to produce evidence on the issue of cooperation between two or more people. The State failed to question the girlfriend and daughter about their possible roles in distributing the drugs, and no evidence was presented to show that they handled the drugs or hid the drugs when the vehicle was searched. The only effort by the State to "tie in" the conspiracy element came in closing argument, where the State argued that "someone" packaged the drugs for sale and that the defendant and "someone else" would distribute the drugs. Accordingly, the court ruled that the evidence was insufficient to support the jury's conclusion that a conspiracy existed. There was no evidence offered of specific acts to show a joint venture or enterprise between the defendant and his passengers, even when viewed in the light most favorable to the prosecution.

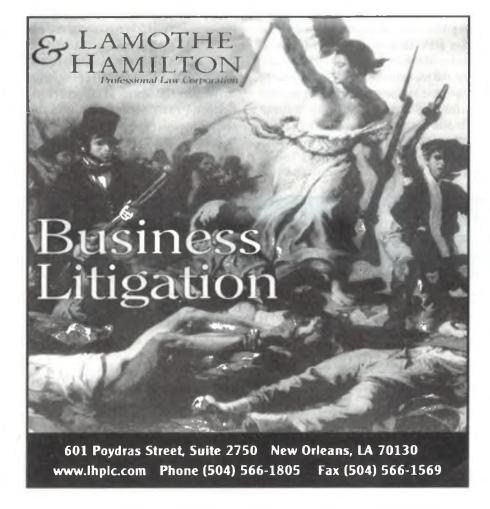
> — Michael S. Walsh Chair, LSBA Criminal Law Section and Joseph K. Scott III Member, LSBA Criminal Law Section Lee & Walsh 628 North Blvd. Baton Rouge, LA 70802



Environmental Law

Court to Decide Crucial Coastal Resource Issues

Among the most important environmental law recent developments is actually a pending development. The Louisiana Supreme Court heard oral arguments on May 26, 2004 in *Avenal v. State*, 03-3521. This class action on behalf of private oyster lessees in the Breton basin alleges the state took their leasehold interest by operating the Caernarvon Freshwater Diversion Structure (CFDS), which the lessees claim



renders oyster cultivation impossible due to the freshening of the water and the influx of sediment. The 4th Circuit upheld a judgment of \$21,345 per acre, which equates to up to \$2 billion for the class. *Avenal v. State*, 01-0843 (La. App. 4 Cir. 10/15/03), 858 So.2d 697. Dissenting, Judge Max Tobias opined that the leasehold interest had not been taken, but was merely damaged, subjecting the lessees' claims to a shorter prescriptive period and barring the lawsuit.

Avenal balances two environmental policy considerations: fair compensation for the bargained-for private use of the state's natural resources, and the public price of coastal restoration efforts. This battle attracted a diverse group of amici aligned in support of the state: the Business Council of New Orleans and the River Region, the Jefferson Business Council, LABI, the chambers of commerce of the greater Baton Rouge area and Shreveport, the Coalition to Restore Coastal Louisiana, Environmental Defense, Professor Oliver Houck, the City of New Orleans, the Police Jury Association of Louisiana, and four different state agencies. Supporting the lessees as amicus was the Fishermen and Concerned Citizens Association.

In addition to the prescription issue discussed in Judge Tobias's 4th Circuit dissent, issues briefed to the Supreme Court include:

- whether the cost to restore the state's water-bottoms, which was the basis for the \$21,345/acre judgment, could be awarded to the oyster lessees as compensation for the loss of the lease-hold interest (the court has previously decided in a tort case involving damage to an oyster reef by a third party that the state is the only proper recipient of damages awarded to restore its water-bottoms, *Inabnett v. Exxon Corp.*, 642 So.2d 1243 (La. 1994), but the *Avenal* plaintiffs have argued that *Inabnett* is distinguishable);
- whether restoration costs are a proper measure of compensation instead of the fair market value of the leasehold interest;
- ▶ whether the state's exercise of its po-

- lice power and public trust obligations trump the lessees' right to compensation; and
- ▶ whether a constitutional amendment and legislative provision enacted last year limit the potential compensation amount and entitlement to that available under federal takings law, which potentially might bar recovery based on the lessees' lack of reasonable investment-backed expectations.

The oral argument before the court (with retired Judge Thomas Wicker sitting in place of recused Justice Traylor) scrutinized several of these issues closely. On the federal-versus-state-takings-law issue, Justice Weimer grilled the lessees' counsel regarding whether the expansiveness of Louisiana's takings law extended to the existence of a taking or only provided for greater compensation once a taking was determined to have occurred. On the prescription issue, the lessees' counsel explained that the taking/damage distinction was without a difference, arguing that the lessees' cause of action accrued not with the commencement of operation of the CFDS two and a half years before filing suit, but with the operation of the CFDS at more damaging levels six months prior to suit being filed.

Following oral argument, the lessees offered a settlement at \$4,000/acre, 81 percent lower than the judgment awarded in the trial court. Jeffrey Meitrodt, "Blanco Rejects Oyster Settlement," *New Orleans Times-Picayune*, June 16, 2004,

at A2. Indicating that the state would not consider any settlement offer above \$1,000/acre, Governor Kathleen Blanco rejected the settlement, clearing the way for the court to continue to resolve the matter. Commenting on the settlement offer rejection, the court's spokeswoman indicated that a decision in *Avenal* should not be expected before the court reconvenes in the fall.

Oilfield Restoration Post-Corbello

In Terrebonne Parish School Board v. Castex Energy, Inc., 01-2634 (La. App. 1 Cir. 03/19/04), ____ So.2d ____, the 1st Circuit ventured into the post-Corbello world of oilfield restoration claims. Unlike in Corbello v. Iowa Production, 02-0826 (La. 02/25/03), 850 So.2d 686, the terms of the 1963 lease at issue did not include any provision regarding restoration obligations. Nevertheless, the 32nd Judicial District Court had found that the oil lessees were contractually obligated to restore the property to its pre-lease condition; the court then ordered that restoration be completed up to \$1.1 million, conditioning that award by ordering that it be filed in the registry of the court, that any portion of the award not used for the restoration be returned to the defendants, and by appointing a special master to oversee the design and implementation of the restoration.

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The 1st Circuit held that the award of restoration to pre-lease conditions instead of compensation at fair market value was proper under *Corbello*, but that the conditional quantum was impermissible under Louisiana law requiring a sum certain be awarded, and that the oversight by a special master was impermissible because a special master was not requested or consented to by the parties. Accordingly, the 1st Circuit vacated the quantum award of \$1.1 million and the appointment of the special master and ordered the defendant lessees to complete the restoration work themselves.

— Tad Bartlett Member, LSBA Environmental Law Section Liskow & Lewis Ste. 5000, 701 Poydras St. New Orleans, LA 70139



Family Law

Community Property

Graefenstein v. Graefenstein, 03-1077 (La. App. 5 Cir. 01/27/04), 866 So.2d 958.

The court of appeal affirmed the trial court's judgment of partition signed on the same day as Ms. Graefenstein's rule to have her descriptive list accepted as true was heard, because Mr. Graefenstein

did not appear to contest her list and had had ample time to file his own list after having been ordered to do so.

Sheridon v. Sheridon, 03-0103 (La. App. 3 Cir. 2/4/04), 867 So.2d 38.

The trial court erred in awarding reimbursement for payment on house and car notes between the last day of trial and the rendition of the judgment because it went beyond the evidence presented. It had also fixed these liabilities at the time of trial. The parties agreed in a consent judgment that Mr. Sheridon had a right to seek rental reimbursement for Ms. Sheridon's use of the home. The court, however, found that he was not entitled to rent because he never demanded occupancy and the reservation was not an agreement to pay rent. The court also resolved the split within its circuit and ruled that reimbursement is not due for automobile notes paid after termination of the community. The court interpreted La. Civ.C. art. 2365 as applying only to community debts paid with separate property during the marriage. The case also addressed numerous other community property issues, including valuation of vehicles, the burden of proof regarding family transactions, post-termination repairs to the home, expenses for pets, a sales agreement and delivery reached during the community with a bill of sale signed after termination, reimbursement for insurance premiums on an unused vehicle, and a credit card balance disputed between personal and business expenses. Notably, three of the 11 judges in this *en banc* opinion wrote dissents on various of the major issues addressed above.

Hano v. Latino, 03-0088 (La. App. 1 Cir. 11/7/03), 868 So.2d 61, *writ denied*, 03-3328 (La. 2/13/04), 867 So.2d 694.

Although Ms. Latino received immovable property from her parents during her marriage to Mr. Hano as a "cash sale," the court accepted her and her brothers' testimony that the transaction was actually a "disguised donation." The court found their testimony to be more credible than Mr. Hano's that he had paid for it and found the property to be her separate property. Although there was no "dual declaration" as required when the property was transferred in 1972, the court found that the later enacted rebuttable presumption of La. Civ.C. art. 2340 was procedural and thus retroactive. Ms. Latino sufficiently rebutted the presumption.

Lee v. Lee, 03-1483 (La. App. 3 Cir. 3/17/04), 868 So.2d 316.

Mr. Lee was entitled to 100 percent reimbursement for his separate property used to pay Ms. Lee's separate mortgage debt on her home, in which they had lived, pursuant to La. Civ.C. art. 2298 (enrichment without cause).

Gore v. Gore, 03-0491 (La. App. 1 Cir. 12/31/03), 868 So.2d 758.

As there was no judgment before the court of appeal holding Ms. Gore in contempt, the trial court's ruling that she pay Mr. Gore \$500 in attorney's fees was reversed. The court of appeal upheld the trial court's order that she pay one-half of the closing costs for the sale of the former matrimonial domicile as a "necessary expense" to sell the home, under La. Civ.C. art. 806.

Bordenave v. Bordenave, 03-1534 (La. App. 4 Cir. 2/25/04), 869 So.2d 249, writ denied, 04-0786 (La. 5/7/04), 872 So.2d 1089.

The trial court erred in not allocating movable properties and providing for a

Family Law continued on page 137

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Michael W. McKay, left, was sworn in as the 64th president of the Louisiana State Bar Association during the Annual Meeting in June. Administering the oath was Louisiana Supreme Court Associate Justice Catherine D. Kimball.

LSBA ANNUAL MEETING 2004

Let the Rhythm Move You to Jazz Fest!

All Photos by Tim Ard and Barbara Nazurek



The 2004-05 Board of Governors was sworn in during the Annual Meeting. Seated from left, Secretary James R. McClelland, Immediate Past President Wayne J. Lee, President Michael W. McKay, President-Elect Frank X. Neuner, Jr., Treasurer Kim M. Boyle and Young Lawyers Section Chair D. Beau Sylvester, Jr. Board members, standing

from left, are Edwin L. Blewer, Jr., S. Guy deLaup, William M. Ford, James R. Nieset, Michael J. Poirrier, James C. Peters, Donald W. North, Paula Hartley Clayton, Darryl J. Foster, Celia R. Cangelosi, Richard L. Fewell, Jr., Sheral C. Kellar, Pamela W. Carter, Mary H. Barrios, Kathryn V. Lorio, Shannon Seiler Dartez and Patricia A. Krebs.

President's Awards

Five LSBA Members Receive President's Awards

Five Louisiana State Bar Association (LSBA) members received President's Awards, presented by 2003-04 LSBA President Wayne J. Lee during the Annual Meeting in June. Award recipients were Harry S. Hardin III of New Orleans, John A. Hernandez III of Lafayette, Kelly McNeil Legier of New Orleans, Hon. Karen Wells Roby of New Orleans and Marta-Ann Schnabel of New Orleans.

▶ Harry S. Hardin III

Hardin has been a senior partner with the New Orleans firm of Jones Walker since 1993. He joined the firm in 1971 and became a partner in 1976. His practice is concentrated in commercial business litigation. He received an AB degree, *cum laude*, in 1976 from Harvard University and a JD degree in 1971 from Tulane Law School, where he was a member of the Moot Court.

An active leader of the LSBA for many years, Hardin chaired its Ethics 2000 Committee, which spent four years studying

and drafting revisions to the rules for attorney conduct. In March 2004, the Louisiana Supreme Court implemented new Rules of Professional Conduct based primarily on the committee's recommendations.

Hardin is a former president and secretary/treasurer of the LSBA. He is a Lifetime Fellow of the Louisiana Bar Foundation and has served as its president, president-elect and secretary-treasurer. A member of the New Orleans Bar Association, he is also active in the American Bar Association, where he has served as Louisiana state delegate and as a member of the Nominating Committee.

He is a Fellow of the American College of Trial Lawyers and the American Bar Foundation. He is a member of the International Association of Defense Counsel, the National Association of Railroad Trial Counsel, the Defense Research Institute and the International Trademark Association. He has served on the Council of the Louisiana State Law Institute and as a member of the Louisiana Judicial College Board of Governors.

Appointed by the Louisiana Supreme Court to chair its Judicial Campaign Oversight Committee, Hardin and the committee addressed 32 complaints in connection with judicial elec-



President's Award recipient Harry S. Hardin III of New Orleans, right, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.



President's Award recipient John A. Hernandez III of Lafayette, left, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.

tions. He also has served on the Louisiana Supreme Court Committee for the Revision of the Code of Judicial Conduct and on the U.S. 5th Circuit Lawyers Advisory Committee.

A frequent lecturer and published author, Hardin is chair of the Host Committee for the 2005 5th Circuit Judicial Conference to be held in New Orleans.

▶ John A. Hernandez III

Hernandez is a partner in the Lafayette law firm of Hernandez and Hernandez, A.P.L.C. He maintains an active civil practice in the areas of collection law, bankruptcy, family law and personal injury. He received a BA degree in history in 1990 from Louisiana State University and a JD degree in 1994 from Loyola University Law School, where he was a member of the Moot Court Program and founder of the Cajun-American Law Society.

He serves as chair of the LSBA Francophone Section and was instrumental in planning the section's activities commemorating the bicentennial of the Louisiana Purchase.

He serves in the LSBA House of Delegates and is a member of the American Bar Association, the Lafayette Young Lawyers Association and the Center for the Development of French in Louisiana (CODOFIL).

Hernandez serves as co-chair of the Judge Allen M. Babineaux International Civil Law Symposium, a bilingual seminar (French/English) held annually in Lafayette during Festivals Acadiens.

▶ Kelly McNeil Legier

Legier is currently of counsel with the New Orleans office of the international law firm Shook, Hardy and Bacon, L.L.P., where she practices primarily in the area of ERISA litigation. She received her BA degree, *magna cum laude*, in 1989 from Loyola University and her JD degree, *cum laude*, in 1993 from Loyola Law School. She was admitted to practice in 1993 and clerked from 1995-96 for Judge Carl E. Stewart at the United States 5th Circuit Court of Appeals. She was an associate at Stone, Pigman, Walther, Wittmann & Hutchinson, L.L.P., from 1993-99 and senior law clerk for Judge Ivan L.R. Lemelle of the United States District Court for the Eastern District of Louisiana from 1999-2002.

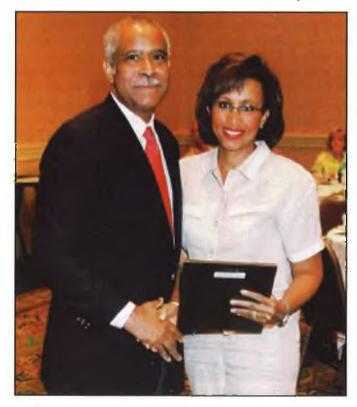
Active in the LSBA, Legier chairs the Bar Governance Committee and is a member of the Public Information Committee. She served as chair of the Minority Involvement Section from 1998-2002. During her tenure, she increased the section's membership and facilitated its involvement in pressing issues affecting minority attorneys.

She serves on the boards of the New Orleans Chapter of the Federal Bar Association, the Loyola University Law School Alumni Association and St. Mary's Dominican High School. She has served two terms on the Louisiana State Law Institute.

Legier was a co-founder and is immediate past president of the Louis Westerfield Legal Society, Inc., the Black Alumni Association of Loyola University Law School. She serves as



President's Award recipient Kelly McNeil Legier of New Orleans, left, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.



President's Award recipient Hon. Karen Wells Roby of New Orleans, right, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.

recording secretary of the Louisiana League of Good Government, Inc., a civic organization dedicated to creating an active and informed voting citizenry.

A Fellow of the Louisiana Bar Foundation since 2002, Legier was recently elected president-elect of the Louis A. Martinet Legal Society, Inc.

▶ Hon. Karen Wells Roby

Judge Roby has served since 1999 as a United States magistrate judge for the Eastern District of Louisiana. In this capacity, she conducts preliminary criminal proceedings and presides over civil jury and nonjury matters in the areas of Title VII, personal injury and § 1983 matters upon the consent of the parties. Judge Roby received her BS degree from Xavier University of Louisiana and is a 1987 graduate of Tulane Law School. Prior to her 1998 appointment as U.S. magistrate, she was a partner with Vial, Hamilton, Koch & Knox, and prior to that with Deutsch, Kerrigan & Stiles, L.L.P. She has also served as judge *pro tempore* on the Orleans Parish Civil District Court.

A strong supporter and activist in the area of public education, Judge Roby is a member of the board of directors of the Louisiana Center for Law and Civic Education. She served on the planning committee for the LSBA/Louisiana Center for Law and Civic Education *Brown v. Board of Education* 50th anniversary commemorative event and was also instrumental in establishing a partnership between the center and New Orleans public schools. In 2003, she organized the Eastern District Court's first Open Doors to Federal Courts Program, which introduced approximately 120 high school seniors to justice-related careers.

Judge Roby received the WDSU News Channel 6 and the Business Alliance of UNO Business Education Award, the LSBA Crystal Gavel Award and the Tulane Law School Black Law Students Association's Revius Ortique Award.

She has served as at-large member of the LSBA Young Lawyers Section Council and as an assistant bar examiner for the Committee on Bar Admissions. She is co-chair of the Women's Issues Committee of the New Orleans Bar Association, a member of the Eastern District's Bench Bar Relations Committee and a member of the Court's Case Management and Electronic Case Filing Committee.

▶ Marta-Ann Schnabel

Schnabel is a shareholder in the New Orleans firm of O'Bryon & Schnabel, P.L.C. She is a 1978 graduate of Memorial University of Newfoundland, Canada, with a BA degree in history. She received her JD degree in 1981 from Loyola University Law School, where she was a member of *Law Review* and the National Moot Court Team.

She has been active in the LSBA, serving as secretary and editor of the *Louisiana Bar Journal*, 2001-03; as First District representative on the Board of Governors, 1998-2001; and as a member of the House of Delegates, 1993-97. She is co-chair of the Access to Justice Committee and has served as co-chair



Accepting the President's Award for recipient Marta-Ann Schnabel of New Orleans is Sara O'Bryon, left, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.

of the Practice Assistance and Improvement Committee. She is a member of the Ethics Advisory Service Committee and the Ethics 2000 Committee. Schnabel has served as chair of the Young Lawyers Section Drug and Alcohol Committee and as a member of the section's Crime Victim Services Committee. She has been a member of the Construction and Surety Law Committee, the Law Practice Management Committee and the Bench and Bar Section.

Schnabel was appointed by the Supreme Court to serve on its Task Force on Legal Services and the Joint LSBA-Louisiana Supreme Court Task Force on Domestic Violence. She served as an assistant bar examiner from 1986-99. A Fellow of the Louisiana Bar Foundation since 1995, she served as chair of its IOLTA Administration Committee from 1998-2001 and again in 2003-04.

A past president of the New Orleans Bar Association, Schnabel has served on the boards of the Louisiana Client Assistance Foundation, New Orleans Legal Aid Bureau, New Orleans Legal Assistance Corp. and Louisiana Association of Defense Counsel. She is a member of the American Bar Association.

In her community, she is a member of the board of trustees of the St. Martin's Episcopal School and has served as treasurer of the Alliance for Good Government.

Pro Bono Publico Awards

Attorneys, Law Firm Receive Pro Bono Publico Awards

Attorneys Fred T. Crifasi of Baton Rouge, Anthony M. DiLeo of New Orleans, Marion Dean Floyd of Kenner, Edward P. Gothard of Metairie, W. Deryl Medlin of Shreveport, Richard D. Mere of Lafayette and Daniel T. Murchison, Sr. of Natchitoches and the New Orleans law firm of Morris, Lee & Bayle all received 2004 Pro Bono Publico Awards, presented during the Louisiana State Bar Association's (LSBA) Annual Meeting in June.

▶ Fred T. Crifasi

Crifasi is a sole practitioner in Baton Rouge, practicing primarily in criminal law matters in federal and state courts. He earned a BS degree in 1986 and a JD degree in 1992, both from Louisiana State University. Prior to starting his own practice in 2003, he was a partner with Marabella and Crifasi.

He was elected this year to serve his second term as director at-large of the Baton Rouge Bar Association (BRBA). Within the BRBA, he has previously served as chair of the Young Lawyers Section, as chair of the Law Day Committee and as a member of numerous other committees. He participates in the BRBA's Pro Bono Project by regularly accepting cases and volunteering for Thirst for Justice and Ask-A-Lawyer workshops.

Crifasi is a member of the LSBA, the National Association of Criminal Defense Lawyers and the Louisiana Association of Criminal Defense Lawyers.

► Anthony M. DiLeo

DiLeo is a partner in the New Orleans firm of Stone Pigman, where he has practiced since 1973. His practice is concen-



Pro Bono Publico Award recipient Anthony M. DiLeo of New Orleans, right, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.

trated in corporate, business and tax law, including transactional and litigation matters regarding health care law. He is an active speaker, author and teacher.

He earned his JD degree in 1970 from Tulane Law School and an LLM degree in 1971 from Harvard Law School. He was a member of the *Tulane Law Review* and won the Morrison Law Review prize. Prior to joining Stone Pigman, he served as senior law clerk to Judge Alvin B. Rubin and law clerk to Judge John Minor Wisdom.

DiLeo has held numerous positions within the LSBA, including serving as chair (2003-05) and vice chair (2000-02) of the Health Law Section; chair of the Section on Corporations, Business and Securities, 1984; and as a member of the Committee on Bar Admissions, 1982-84. He also assumed the two-year term of chair of the American Bar Association Health Law Section (Compliance, Fraud and Abuse Interest Group) in August 2003. He served on the New Orleans Bar Association Executive Committee from 1986-88 and as chair of its Committee on Articles of Incorporation from 1987-88.

He is an adjunct professor at Tulane



Pro Bono Publico Award recipient Marion Dean Floyd of Kenner, right, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.

Law School and serves on the faculty of the Tulane School of Medicine as a clinical assistant professor of medicine. He is a clinical assistant professor, gratis, in the Section of Health Law and Medical Ethics at the Louisiana State University School of Medicine.

DiLeo is a member of the American



Pro Bono Publico Award recipient Edward P. Gothard of Metairie, left, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.

Law Institute and the American Health Lawyers Association. He has been named to *The Best Lawyers in America*.

▶ Marion D. Floyd

Floyd is a sole practitioner with a criminal and civil practice. He is an assistant city prosecutor in the City of Kenner Court and serves as a member of the Criminal Justice Act Panel in the Federal Public Defender's Office. He received his BA and MA degrees from Louisiana State University and his JD degree from Loyola University Law School.

He serves as a member of the board of directors of the New Orleans Pro Bono Project and has received distinguished service awards from the Project, including 2002 Volunteer of the Year. He also volunteers for several community-based programs in Jefferson Parish, where he provides legal services to a drug rehabilitation center, the elderly and the Hispanic community.

Floyd is chair of the board of directors of the City of Kenner Housing Authority and serves as a volunteer baseball, basketball and track coach in the Kenner Recreation Department. He is also a soccer coach in the Lafreniere Soccer League and coaches the Bonnabel High School Mock Trial Team.

► Edward P. Gothard

Gothard is the managing partner of Nowalsky, Bronston & Gothard, A.P.L.L.C., where his primary area of practice is plaintiff personal injury litigation. He received a BA degree in 1982 from Brandeis University and a JD degree in 1985 from Loyola University Law School. He is a member of the Louisiana and American bar associations. He is also a member of the Louisiana Trial Lawyers Association, the American Trial Lawyers Association and the Jefferson Bar Association.

He has taught CLE seminars on premises liability, lectured to the Louisiana Chapter of the American College of Emergency Physicians on medical/legal issues of EMS, and participated in mock trial presentations for the National Organization of Forensic Social Work.



Pro Bono Publico Award recipient W. Deryl Medlin of Shreveport, right, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.

Gothard has volunteered to represent children in need of care in the Orleans Parish Juvenile Court, for which he received the New Orleans Pro Bono Project's 2003 Distinguished Service Volunteer Award.

In addition to law-related volunteer work, he was a big brother for Big Brothers/Big Sisters of Southeast Louisiana. He also has served as president of Congregation Beth Israel, as a board member for the Jewish Federation of Greater New Orleans, and as a board member of the New Orleans Jewish Day School.

▶ W. Deryl Medlin

Medlin received his accounting degree in 1974 from Louisiana Tech University and his law degree in 1978 from Louisiana State University Paul M. Hebert Law Center. He was managing editor of the *Louisiana Law Review*. Following law school graduation, he returned to Shreveport where he continues to practice in estate planning, taxation, successions, wills and trusts.

Certified by the Louisiana Board of Legal Specialization in both tax law and estate planning and administration, Medlin is a member of the American College of Trust and Estate Counsel.

He has served as chair of the boards of Northwest Louisiana Legal Services, Inc. and the Shreveport Bar Association



Pro Bono Publico Award recipient Richard D. Mere of Lafayette, right, with 2003-04 Louisiana State Bar Association President Wayne

Pro Bono Project, which in 1997, presented him with its first Outstanding Service Award. He is a volunteer member of the Juvenile Court Child in Need of Care Panel. Medlin is a board member and former treasurer of the Shreveport Bar Foundation.

▶ Richard D. Mere

Mere is a sole practitioner in Lafayette, who practices primarily in the areas of domestic law and personal in-



Accepting the Pro Bono Publico Award for recipient Daniel T. Murchison, Sr. of Natchitoches is Mrs. Barrett Beasley, left, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.



Pro Bono Publico Award recipients Edith Morris, Bernadette Lee and Suzanne Bayle with the New Orleans firm of Morris, Lee & Bayle, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.

jury. He has a bachelor's degree in psychology and received his JD degree in 1992 from Tulane Law School.

He is the chair of the Lafayette Volunteer Lawyers Advisory Board and a member of its Protective Order Panel, which offers representation to parties involved in Title 46 Protective Order proceedings. He is a board member of the Lafayette Parish Bar Association and a board member and past officer of Lafayette Teen Court. In addition, Mere is an active member of the Lafayette Parish Bar Association Family Law Section.

Mere has been selected by the United Way as a 2004 Hall of Fame honoree, and has received the Lafayette Volunteer Lawyers Outstanding Volunteer Attorney Award for his work with custody litigation and the Protective Order Panel.

Daniel T. "Tom" Murchison, Sr.

Murchison is the senior partner in the Natchitoches law firm of Murchison and Murchison, L.L.C. He received his law degree in 1962 from Tulane Law School,

where he served as managing editor of the *Tulane Law Review*. Upon graduation, he was named to the Order of the Coif and earned the Edwin I. Mahoney Award for Excellence in Criminal Law. He practiced general law for 35 years with Watson and Williams, the firm that eventually became Watson, Murchison, Crews, Arthur and Corkern.

He has served as the municipal attorney for the City of Natchitoches for more than 35 years and practices primarily in the areas of real estate, corporation, succession and probate law. He has taught real estate and probate law at Northwestern State University.

Named Outstanding Young Lawyer by the LSBA Young Lawyers Section in 1973, Murchison is active in church and community affairs and has served on a number of committees and boards. He is past chair of the Louisiana Baptist Civil and Moral Affairs Committee and is a senior member of the Louisiana State Law Institute.

► Morris, Lee & Bayle

Edith Morris, Bernadette Lee and Suzanne Bayle have practiced together for many years and in 2002 established the firm of Morris, Lee & Bayle.

The three are certified by the Louisiana Board of Legal Specialization as specialists in family law and also do interstate and intrastate private adoptions. They were all recently trained in collaborative divorce and were active in bringing the collaborative divorce process to the New Orleans area. All three lecture on family law, mediation and adoption issues throughout the state. The firm regularly represents children in need of care in New Orleans and St. Tammany Parish.

Morris is a Fellow of the American Academy of Matrimonial Lawyers. She loves mediation and is a practitioner member of the Association of Conflict Resolution and the Louisiana Family Mediation Council. She has served on the board of the American Academy of Adoption Attorneys and was on the board of Voices for Children.

Lee is a passionate advocate for her clients. She is on the New Orleans Pro Bono Project Board of Directors and works with screening its cases and mentoring volunteers. She is a member of the Louisiana Family Mediation Council.

Bayle is also a CPA and has served this year as president of the Greater Covington Bar Association. She is graduating this year from the Leadership St. Tammany West program and was chosen to sit on the program's board of trustees for 2004-07. She has been instrumental in securing volunteer lawyers for the New Orleans Pro Bono Project's Southeast Louisiana Legal Services offices in Covington and takes on domestic cases for the Project. She is a member of the Louisiana Family Law Mediation Council.

These busy women believe that all work and no play is not good. The firm's attorneys, paralegals and staff take annual shopping trips and excursions. The partners enjoy having their friends and associates at their bay house in Pass Christian, Miss.

Career Public Interest Awards

Jones, Mitchell Receive Career Public Interest Awards

Rowena T. Jones of New Orleans and Michael A. Mitchell of Baton Rouge received Louisiana State Bar Association (LSBA) Pro Bono Publico Career Public Interest Awards during the Annual Meeting in June.

Rowena T. Jones

Jones is managing attorney of the Employment and Public Benefits Unit of the New Orleans Legal Assistance Corp. (NOLAC), now an office of Southeast Louisiana Legal Services. She began public interest work in 1986 with Oakdale Legal Assistance and Projecto Libertad, where she represented asylum applicants. She later moved to Texas Rural Legal Aid and in 1990 joined NOLAC.

She has volunteered with various LSBA committees and other organizations. She administers two Web sites which are collaborative projects of the statewide justice community. The Web sites are designed to help meet the needs of low-income Louisianians (www.lawhelp.org/LA)



Career Public Interest Award recipient Rowena T. Jones of New Orleans, left, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.

and to assist pro bono/public interest advocates (www.probono.net/la). She is active in efforts within the justice community to address income-security needs of the indigent.

Jones has made a number of presentations on benefits and job-related issues and authored the employment law section of the Louisiana Legal Services and Pro Bono Desk Manual.



Installation of the Board of Governors during the Annual Meeting in June. Administering the oath was Louisiana Supreme Court Associate Justice Catherine D. Kimball.



Career Public Interest Award recipient Michael A. Mitchell of Baton Rouge, left, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.

She received her BA degree from Tulane University and her JD degree from the Louisiana State University Paul M. Hebert Law Center. She clerked with the Louisiana 1st Circuit Court of Appeal and the 9th Judicial District Court. She is also licensed in Texas and Oregon.

▶ Michael A. Mitchell

Mitchell has been the chief indigent defender for the 19th Judicial District since February 1993. Since 1991, he also has been a partner in the law firm of Jackson, Mitchell & Jackson, L.L.C. He previously served as assistant attorney general with the Risk Litigation Division of the Louisiana Department of Justice. He received his JD degree in 1978 from Southern University Law Center.

He is a member of the boards of directors of the Louisiana Appellate Project, the Louisiana Public Defenders Association and the Louisiana Association of Criminal Defense Lawyers. He is a member of the Baton Rouge Bar Association, the Louis A. Martinet Society and the Louisiana Trial Lawyers Association.

A presenter at numerous CLE seminars, Mitchell has served on the Governor's Louisiana Drug Policy Board. He also has served on various other law and community-related boards during his more than 25 years as a lawyer.

Lifetime Achievement Awards

Broussard, Neuner Receive David A. Hamilton Lifetime Achievement Award

Richard C. Broussard and Frank X. Neuner, Jr., both of Lafayette, received the David A. Hamilton Lifetime Achievement Award during the Louisiana State Bar Association's (LSBA) Annual Meeting in June.

▶ Richard C. Broussard

Broussard is a partner in the Lafayette law firm of Broussard & David, where he practices in the area of personal injury law with an emphasis on offshore/marine, aviation, product liability, industrial and automobile accident claims. He was admitted to the LSBA in 1974 after earning his JD degree from Louisiana State University Paul M. Hebert Law Center.

He is co-chair of the Lafayette Outreach for Civil Justice Campaign which has created an important source of revenue for Lafayette Volunteer Lawyers and Acadiana Legal Services. He served as president of the Lafayette Parish Bar Association in 1986-87 and has held numerous other offices in that association. He was a member of the LSBA Board of Governors from 1993-96 and served in its House of Delegates from 1980-81. He is a member of the Louisiana Trial Lawyers Association and served on its Executive Committee from 1996-97 and its Board of Governors from 1983-86 and in 1987. He is a member emeritus of the American Inns of Court, Acadiana Inn, having served as secretary/treasurer during its founding years of 1989-91.

Broussard is a member of the Million Dollar Advocates Forum and is certified in civil trial advocacy by the National Board of Trial Advocacy. He helped establish the Youngsville Magistrate Court and served as magistrate judge without compensation. He has served as chair of



David A. Hamilton Lifetime Achievement Award recipients Richard C. Broussard, left, and Frank X. Neuner, Jr., right, both of Lafayette, with 2003-04 Louisiana State Bar Association President Wayne J. Lee.

the Lafayette Regional Airport Commission and as a member of the St. Cecelia (Youngsville) School Board.

► Frank X. Neuner, Jr.

Neuner has been a partner with Laborde & Neuner in Lafayette since its formation in 1987 and currently serves as the firm's managing partner. He received his BS degree in 1972 and JD in 1976, both from Louisiana State University. Since his admission to the LSBA in 1976, he has practiced in admiralty, insurance, commercial and toxic litigation. He was admitted to the State Bar of Texas in 1994.

He is co-chair of the Lafayette Outreach for Civil Justice Campaign, which has created an important source of revenue for Lafayette Volunteer Lawyers and Acadiana Legal Services. He is a past president and former board member of the Lafayette Parish Bar Association and has served on the board of directors of the Lafayette Parish Bar Foundation.

Currently serving as treasurer and president-elect designee of the LSBA, Neuner served on the association's Board of Governors from 1997-99 and in its House of Delegates from 1980-96.

An elected delegate to the American Bar Association House of Delegates, Neuner is a member of the Southeastern Admiralty Law Institute, the Louisiana Association of Defense Counsel, the Defense Research Institute and the Maritime Law Association of the United States. He is a Fellow of the Louisiana Bar Foundation.

He has been a guest lecturer at LSU and Tulane law schools' CLE programs, and also has planned and spoken at seminars before the LSBA, the LPBA, the International Association of Drilling Contractors, the Louisiana Judicial College and the Louisiana Association of Defense Counsel. Neuner has published articles on professionalism in both the *Louisiana Bar Journal* and the *Tulane Law Review*.

Boisfontaine Award

Smith Receives Curtis R. Boisfontaine Trial Advocacy Award

Allen Lewis Smith, Jr. of Lake Charles received the 2004 Louisiana Bar Foundation's Curtis R. Boisfontaine Trial Advocacy Award, presented during the Louisiana State Bar Association's (LSBA) Annual Meeting in June.

Smith is a senior partner with Plauche, Smith & Nieset in Lake Charles. He began practice in 1964 with Plauche & Plauche, predecessor to his current firm. In addition to his defense practice, he currently serves as general counsel for the Calcasieu Parish Police Jury. He received a degree in petroleum engineering from Louisiana State University in 1959 and worked as a drilling and production engineer for a major oil company until returning to law school at LSU. He received his JD degree in 1964 and, while in law school, was a member of the Law Review, a member of the Order of the Coif and was inducted into Phi Kappa Phi Honor Society.



Boisfontaine Award recipient Allen Lewis Smith, Jr. of Lake Charles, left, with Louisiana Bar Foundation Immediate Past President John G. Swift.

He is a charter member of the LSU Law Center Fellowship Program. He was president of the Southwest Louisiana Bar Association in 1978 and president of the Louisiana Association of Defense Counsel in 1988. He received the LSBA President's Award in 1990 for his work

in the development of the Rules of Professionalism for the Bar.

Smith was inducted into the American College of Trial Lawyers in 1982. He is a life member of the American Bar Foundation

Victory Memorial Award



Victory Award recipient Kevin Robshaw of Baton Rouge, right, with Louisiana State Bar Association Secretary James R. McClelland.

Robshaw Receives Victory Award for Journal Article

Kevin Robshaw of Baton Rouge is the recipient of the 2004 Stephen T. Victory Memorial Award, presented during the Louisiana State Bar Association's (LSBA) Annual Meeting in June.

The award recognizes writing achievements in the *Louisiana Bar Journal*. Robshaw was honored for his article entitled "Interdiction 101," published in the December 2003/January 2004 issue.

Robshaw serves as director of the Mental Health Advocacy Service, an agency which provides legal representation for children and adults being civilly committed and helps ensure their legal rights are protected. He received his JD degree in 1977 from Tulane Law School. He is a member of the LSBA's Legal Services for Persons with Disabilities Committee and Elder Law Task Force. He serves on the Interdiction Committee of the Louisiana State Law Institute and has provided testimony on various interdiction bills in the Louisiana Legislature.

Louisiana Bar Foundation

Louisiana Bar Foundation Inducts Board, Presents Awards

The Louisiana Bar Foundation (LBF) inducted 2004-05 officers and board of directors members and presented several awards during its annual Fellows Breakfast on June 10 in Sandestin, Fla.

Officers, Board Inducted

Inducted by Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr. were David F. Bienvenu of New Orleans as the 11th president; Donna D. Fraiche of New Orleans as vice president; and John "Jock" W. Scott of Alexandria as secretary-treasurer.

A civil litigation lawyer, Bienvenu is a partner with Simon, Peragine, Smith & Redfearn in New Orleans. He is a Lifetime Fellow of the Foundation and has been a member since 1986. In 1996-97, he served as president of the Louisiana State Bar Association, where he is credited with the establishment of the Access to Justice program. He is a Fellow of the American Bar Foundation, and a member of the New Orleans Bar Association and American Bar Association, where he serves as Louisiana's state delegate.

Fraiche, a partner with Baker, Donelson, Bearman, Caldwell & Berkowitz in New Orleans, became a Fellow of the Foundation in 1989. She served as the secretary-treasurer from 2003-04 and has been a member of the board of directors since 2000. She served on the IOLTA Administration and Strategic Planning Committees.

An assistant professor of history at LSU-Alexandria and a sole practitioner, Scott has been a Fellow of the Foundation since 1989. Serving as the liaison to the Education Committee, he has been a member of the board of directors since 2001.

Other members of the 2004-05 board

of directors include Hon. Michael G. Bagneris, New Orleans; Elwood F. Cahill, Jr., New Orleans; Thomas A. Casey, Jr., New Orleans; Hon. Eldon E. Fallon, New Orleans; Calvin C. Fayard, Jr., Denham Springs; Marcel Garsaud,

Jr., New Orleans; Cyrus J. Greco, Baton Rouge; Harry S. Hardin III, New Orleans; Suzanne M. Jones, Covington; Wayne J. Lee, New Orleans; Marilyn C. Maloney, New Orleans; Hon. C. Wendell Manning, Monroe; Michael W. McKay, Baton Rouge; Frank X. Neuner, Jr., Lafayette; Joseph R. Oelkers III, Lafayette; Patrick S. Ottinger, Lafayette; Drew A. Ranier, Lake Charles; Garland R. Rolling, Metairie; Hon. John B. Scofield, Lake Charles; E. Wade Shows, Baton Rouge; Monique L. Svenson, New Orleans; John G. Swift, Lafayette; Henry C. Walker, Shreveport; and Paul W. Wright, Houston, Texas.

Awards Presented

John G. Swift, the LBF's outgoing president, presented awards to Catholic Charities/Archdiocese of New Orleans, Garner J. "Gary" Knoepfler, Jr., CPCU, and Marilyn C. Maloney.

Catholic Charities/Archdiocese of New Orleans received the LBF's 2004 Grantee Award for Excellence in Service and Programming for Project SAVE (Stopping Abuse through Victim Empowerment). The award recognizes a grantee for an innovative, imaginative program and/or public service in the legal arena. Project SAVE exclusively offers emergency civil legal representation to victims of domestic violence in Orleans Parish. Executive Director Theresa Marchese was in attendance at the meeting and accepted the award on behalf of the organization.

Knoepfler was awarded the LBF Hornblower Award in recognition of his outstanding support, dedication and vol-





Clockwise from
top left, David F.
Bienvenu
of New Orleans,
president; Donna
D. Fraiche of
New Orleans, vice
president; and
John "Jock" W.
Scott of Alexandria, secretarytreasurer.



unteer service to LBF's Kids' Chance of Louisiana Program which is designed to help students of permanently or catastrophically injured or deceased workers to complete their education.

Maloney was presented the LBF's 2004 President's Award for her dedication and commitment to the organization, volunteer service, leadership role in major LBF accomplishments, willingness to volunteer for new projects and assistance to the president in addressing concerns facing the LBF.

The LBF is a charitable organization existing to preserve, honor and improve the system of justice by funding, developing or otherwise promoting efforts which enhance the legal profession, increase public understanding of the legal system and advance the reality of equal justice under the law. Since 1989, the Foundation has awarded more than \$25 million in grants to Louisiana nonprofit organizations which provide legal services, law-related education and assist in the administration of justice.

Young Lawyers Section

Young Lawyers Section Presents Several Awards

The Louisiana State Bar Association's Young Lawyers Section presented several awards during the Annual Meeting in June.

- ► Outstanding Young Lawyer Award to Melissa M. Cresson of Baton Rouge.
- ▶ Bat P. Sullivan, Jr. Chair's Award to Karleen J. Green of Baton Rouge.
- ► Hon. Michaelle Pitard Wynne Professionalism Award to Todd E. Gaudin of Baton Rouge.
- ► Pro Bono Award to Gregory A. Koury of Lafayette.
- ► Local Affiliates Awards Service to the Public Award to New Orleans Bar & Grille Project; and Service to the Bar Award to Lafayette Mock Trial Guide.



D. Beau Sylvester, Jr. was sworn in as 2004-05 Young Lawyers Section chair during the YLS Awards Luncheon. Hon. Jimmie C. Peters administered the oath to Sylvester and other members of the Young Lawyers Section Council.



Outstanding Young Lawyer Award recipient Melissa M. Cresson of Baton Rouge, left, with outgoing Young Lawyers Section Chair Monique L. Svenson.



Bat P. Sullivan, Jr. Chair's Award recipient Karleen J. Green of Baton Rouge, left, with outgoing Young Lawyers Section Chair Monique L. Svenson.



Pro Bono Award recipient Gregory A. Koury of Lafayette, left, with outgoing Young Lawyers Section Chair Monique L. Svenson.



The 2004-05 Young Lawyers Section Council following its installation at the YLS Awards Luncheon. Hon. Jannie C. Peters administered the oath to council members. Seated from left, Mark E. Morice, secretary; D. Beau Sylvester, Jr., chair; Dona Kay Renegar, chair-elect; and Monique L. Svenson, immediate past chair. Standing from left, council members Beth E. Abramson, Melanie M. Mulcahy, J. Chris Peters, Valerie M. Briggs, Karleen J. Green, Brian J. Engeron, Shannan L. Hicks, William D. French, W. Michael Street and Joel M. Lutz.



D. Beau Sylvester, Jr., left, incoming Young Lawyers Section chair, received the gavel from outgoing Chair Monique L. Svenson.



D. Beau Sylvester, Jr., left, incoming Young Lawyers Section chair, presented a plaque of appreciation to outgoing Chair Monique L. Svenson.

Leadership LSBA

Members of the Leadership LSBA 2003-04 Class were recognized by 2003-04 Louisiana State Bar Association President Wayne J. Lee, left in photos. Not pictured is class member Cynthia M. Ceballos of Metairie.



Beth E. Abramson of New Orleans.



Fortune "Jim" A. Dugan, Jr. of Metairie.



Shannan L. Hicks of Shreveport.



James M. Williams of Metairie.

Golf...Run/Walk



Frank X. Neuner, Jr. and Michael W. McKay.



Golf Tournament Winners Named

Winners of the June 9 Annual Meeting golf tournament in Sandestin, Fla. are:

- ► First place team Beau Sylvester, Laura Sylvester, Clyde Norton and Charlie Weems.
- ► Second place team Judge Pegram Mire, Elvin Fontenot and Dave Mitchell.
- ► Third place team Joseph L. Shea, Jr., Mike Ciaccio, John G. Swift and Kenneth M. Carter.
- ► Closest to the hole Paul Tabary.
- ► Straightest drive John H. Musser IV.
- ► Longest drive David F. Andignac, Sr.

Winners Named in Guy Wootan Memorial Run/Walk

Winners in the June 11 Guy Wootan Memorial Run/Walk, with their winning times, are:

- ► Male Overall Jim Garvey, 18:35; Andre Garvey, 19:35; and Mike Pitman, 20:56.
- ► Female Overall Susan Fendlason, 22:57; Molly Adkins, 24:26; and Marianne Garvey, 24:49.
- ▶ Male Overall Masters Hal Adkins, 23:36; David White, 26:15; and John Swift, 26:55.
- ► Female Overall Masters Angele Thompson, 31:20; Laurie Reed, 33:15; and Winnie D'Angelo, 34:35.
- ► Male Overall Grandmasters Warren Byrd, 22:15; Morton Katz, 24:59; and Jerry Montalbano, 25:04.
- ► Female Overall Grandmasters Patricia Krebs, 30:46; Carolyn Dietzen,

33:51; and Kay Norwood, 47:00.

- ► Male Race Walker Division Ron Eaton, 40:23; Jim Williford, 41:00; and William O'Regan, 47:15.
- Female Race Walker Division Sharon Noble, 50:10; Valerie Schexnayder, 50:29; and Kathleen O'Regan, 51:33.

Male Age Divisions (5K)

- ▶ 14-under Richard Garvey, 25:38; Sebastian Schexnayder, 51:30; and Benjamin Schexnayder, 51:50.
- ▶ 15-19 Max Williford, 22:29; and Garrett Borne, 49:00.
- ▶ 30-34 Brian Katz, 22:36; Paul Garvey, 23:56; and Marcus Fontenot, 29:30.
- ▶ 35-39 Dan McNamara, 27:42; Michael Street, 28:24; and Bill King, 29·46
- ▶ 40-44 Lenny D'Angelo, 27:47; Rob McCorquodale, 31:51; and Chip Coulter, 56:52.
- ▶ 45-49 Dave Johnson, 35:00; Elwood Cahill, 36:40; and Cooter Hale, 37:17.
- ▶ 50-54 Tom McNamara, 25:29; Tom Daly, 25:40; and Glenn Adams, 32:49.
- ▶ 55-59 Mike McDonald, 26:52.
- ▶ 60-69 Frank Hayne, 37:41; and Cyrus Greco, 48:49.
- ▶ 70-over Ralph Brewer, 56:51.
- ▶ 1-mile male overall Michael Cusimano, 7:25.

Female Age Divisions (5K)

- ▶ 20-24 Renelle Borne, 49:00.
- ► 25-29 Katie Cusimano, 30:00; and Mary Fontenot, 34:59.
- ▶ 30-34 Lisa Katz, 30:44; Laura Sylvester, 30:59; and Brandi Beck, 31:56.
- ▶ 45-49 Jan Swift, 37:33.
- ▶ 60-69 Louise Callaway, 55:16.
- ▶ 1-mile female overall Allison Garvey, 8:01.

And the Rest



Plaque of appreciation to outgoing LSBA President Wayne J. Lee from incoming President Michael W. McKay.



President Wayne J. Lee presented flowers to incoming President Michael W. McKay's wife Leah.



Adesola Badon, Jennifer Lee Badon and Wayne Lee, Jr.



Michael W. McKay and his wife Leah and Wayne J. Lee and his wife Pamelia.



Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr.



Chief Disciplinary Counsel Charles B. Plattsmier



Panel discussion with, from left, Randy Hayden, Frank Simoneaux, Judge Fitzsimmons, Judge Thibodeaux, Judge Beasley and Tom Thornhill.

The Flip Side



Top right photo, Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr. and friend. Right photo, Judge Ivan L.R. Lemelle, left, Kathryn V. Lorio, right, and guests. Other photos are various Annual Meeting events.











FAMILY Law continued from page 120

setoff where the parties had stipulated to the value of the movables in each other's possession. It also erred in not ordering a partition of their respective retirement plans. Although they had each worked during the marriage for the same company, he had worked 23 months longer, which was substantial enough to establish a difference in the value of each of their benefits. It also failed to award her reimbursement for payments after the termination of the community on the house notes, interest, insurance and property taxes, all of which were due to her under La. Civ.C. arts. 2365 and 2369.3.

Custody

Lindmeier v. Lindmeier, 03-1392 (La. App. 3 Cir. 3/3/04), 867 So.2d 165.

The court found that it was not bound to recognize a Canadian judgment of divorce and custody because (1) Ms. Lindmeier was not given reasonable notice or an opportunity to be heard, and (2) an affidavit allowing her child to reside with Mr. Lindmeier in Canada was signed under duress, as he required her to sign it before he would allow her to gain access to the child. Under these circumstances, the court also found that Canada was not a "state" under the UCCJA definition. Further, Louisiana, not Canada, had significant connections with the child to establish subject matter jurisdiction in Louisiana. Louisiana was also not an inconvenient forum to support jurisdiction in Canada.

Spousal Support

Speight v. Speight, 03-1152 (La. App. 3 Cir. 2/4/04), 866 So.2d 344.

The trial court erred in ruling that Ms. Speight's interim periodic support terminated on the divorce instead of 180

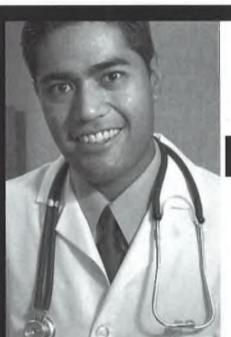
days after the divorce or on the date of her remarriage.

Carmouche v. Carmouche, 03-1106 (La. App. 5 Cir. 2/23/04), 869 So.2d 224.

The court of appeal affirmed the interim spousal support award in the amount of \$300 per month to Ms. Carmouche, who had "a shortfall of \$300.00 per month on nominal, bare subsistence living expenses." It also affirmed the trial court's award of child support under Schedule B and its order that the parties pay equally uncovered medical expenses.

Roan v. Roan, 38,383 (La. App. 2 Cir. 4/14/04), 870 So.2d 626.

The trial court's finding that Ms. Roan was free from fault was affirmed because she was justified in leaving the matrimonial domicile due to subjective pressures and her fears, and because Mr. Roan did not ask her to return. Even



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though Mr. Roan was 70 years old, he was vigorous and capable of continuing to work, especially compared to Ms. Roan, who, although younger, had suffered two strokes and was functionally impaired. He also had sufficient assets and continuing business ventures so that he could pay final spousal support. "Good cause" to extend interim spousal support past 180 days after the divorce must be determined case by case and must involve a compelling and significant reason so that it would be inequitable not to continue the support.

Continuance of the interim-spousalsupport period is not an appropriate remedy or punishment for dilatory discovery responses or delays in trying the case. Further, a motion to continue the support should be filed. Ms. Roan was entitled to reimbursement for Mr. Roan's separate business debts paid with community funds, although he claimed they were debts related to inventory and equipment constituting operating expenses used to produce community income. The court of appeal did not disturb the trial court's valuation of movables where there was no evidence in the record showing the values were wrong. A second motion for new trial filed before judgment was signed on a first motion for new trial was untimely if not filed within the original delay period after the original judgment.

> — David M. Prados Member, LSBA Family Law Section Lowe, Stein, Hoffman, Allweiss & Hauver, L.L.P. Ste. 3600, 701 Poydras St. New Orleans, LA 70139-7735



U.S. 5th Circuit Busy in Healthcare Arena

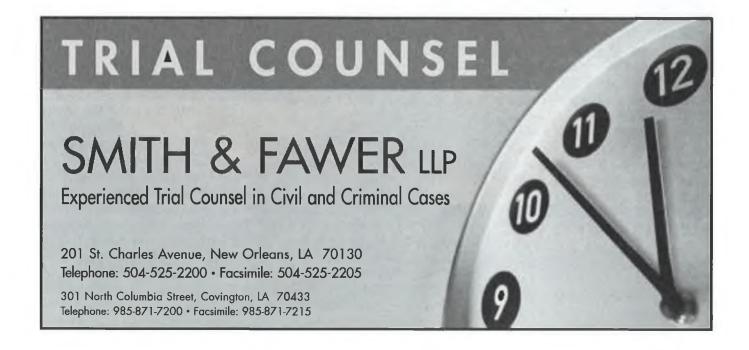
The U.S. 5th Circuit Court of Appeals in New Orleans has stayed active in the healthcare-fraud arena with two recent cases of note.

United States ex rel. Riley v. St. Luke's Episcopal Hosp., 355 F.3d 370 (5 Cir. 2004).

This qui tam case arising out of the Southern District of Texas has been the subject of numerous district court and 5th Circuit opinions. The most recent deci-

sion by the 5th Circuit on Jan. 9, 2004 reversed the district court's dismissal of the complaint under Rule 12(b)(6) for failure to state a claim. Under the False Claims Act, a person who knowingly submits or causes to be submitted a false or fraudulent claim to the United States for the purposes of payment, or who makes or uses a false record or statement to get a false or fraudulent claim paid, is subject to penalties including three times the amount of the damages to the government and mandatory fines between \$5,500 and \$11,000 per claim. False Claims Acts cases may be brought by individuals (the relator) on behalf of the government. In Riley, the relator brought an action against the hospital and other defendants alleging that the defendants submitted false claims by allowing a nonlicensed physician to provide services to patients for which services Medicare was billed, and that a large number of heart transplant cases were medically unnecessary.

The district court dismissed all claims against all of the defendants under Rule 12(b)(6). *United States ex rel. Riley v. St. Luke's*, 200 F.Supp. 2d 673 (S.D. Texas 2002). The 5th Circuit recognized that, while claims for medically unnecessary treatment are actionable under the



False Claims Act, the False Claims Act requires a statement that is known to be false, which means that a lie is actionable but an error is not. The court found that medical necessity is a condition for payment and, thus, an express false certification on a claim form that the services were medically indicated is actionable under the False Claims Act. The 5th Circuit held that the district court acted prematurely in dismissing the complaint and that a district court should dismiss a complaint only if it appears beyond doubt that the relator can prove "no set of facts" to support her cause of action.

The court also discussed whether the submission of a claim for services rendered by an unlicensed physician could be considered false. By executing the certification of the claim form to Medicare, the physician who bills for the services is certifying that the services were furnished either personally by the physician or by his employee under his immediate

personal supervision. Where the physician did not personally render the services or did not supervise the services, that physician is subject to liability for a false claim.

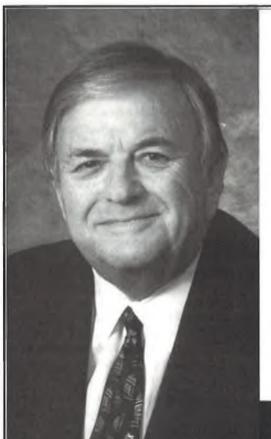
The court also found that a person who "knowingly assists in causing" the payment of a claim grounded in fraud can be liable under the False Claims Act. In *Riley*, the court found that the hospital that allegedly knowingly allowed an unlicensed physician to render services in its facility could be liable under the False Claims Act.

United States v. Miles, 360 F.3d 472 (5 Cir. 2004).

In this case, the 5th Circuit reversed and affirmed several convictions against the defendants, who operated a homehealth service. The 5th Circuit reversed convictions for money laundering where the proceeds of the fraudulent transactions were used to pay the operating ex-

penses of an otherwise legitimate business enterprise. The court held that, in evaluating specific intent, the court must make a distinction between payments that further or promote illegal money laundering and payments that represent the customary cost of running a legal business. The court reversed the conviction, finding that use of funds to pay rent, payroll and payroll-tax expenditures of a business that was not totally illegitimate could not support a money-laundering conviction.

The 5th Circuit also reversed convictions for violation of Section A of the Medicare Anti-Kickback Statute, 42 U.S.C. § 1320a-7(b)(2)(A), where the defendants paid a marketing firm to distribute information regarding the defendant's home-health services in the local area and paid \$300 to the marketing firm for each Medicare patient who became a client of the home-health agency. Section A prohibits the payment



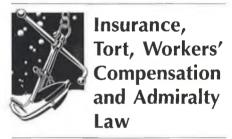


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of remuneration to any person to induce the person to refer an individual to the person making the payment for any item or service to be paid by a federal healthcare program. The court found that payment to the marketing company did not represent a kickback for referrals where the marketing company had no authority to refer the patient to the homehealth provider. As the payments were not made to the decision maker who referred the patient, there was no violation of Section A of the Anti-Kickback Statute.

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LHWCA: Situs Requirement

Thihodeaux v. Grasso Prod. Mgt., ___ F.3d (5 Cir. 2004).

Randall Thibodeaux worked for Grasso as a pumper/gauger on a fixed oil and gas production platform in the territorial waters of Louisiana. The platform rested on wooden pilings driven into a bank next to a canal, and extended over marsh and water: it was accessible only by boat. His duties included monitoring gauges on the platform and on nearby wells, which he reached using a 17-foot skiff. He also piloted a 24-foot vessel, the M/V Katie Elizabeth, transporting employees, their personal gear and, occasionally, production equipment from Venice, La. The platform had docking facilities for the two watercraft. Thibodeaux was injured when a portion of the platform structure not in the docking area failed, plunging him into the marsh. Thibodeaux filed claims under the Longshore and Harbor Workers'

Compensation Act (LHWCA), 33 U.S.C. § 901, et seq. (2000). An administrative law judge (ALJ) found that Thibodeaux's injury was covered by the LHWCA. The Department of Labor Benefits Review Board (board) reversed, finding that the platform was not a "pier" within the meaning of the statute, so as to meet the situs requirement of §903(a):

upon the navigable waters of the United States (including any adjoining pier, wharf, dry dock, terminal, building way, marine railway, or other adjoining area customarily used by an employer in loading, unloading, repairing, dismantling, or building a vessel.

Thibodeaux appealed to the 5th Circuit.

In deciding whether the platform was a pier within the meaning of § 903(a), the ALJ relied on the 9th Circuit's holding in *Hurston v. Dir., Office of Workers' Comp. Programs*, 989 F.2d 1547 (9 Cir. 1993), that appearance wholly determined identity: "[I]f it appears to be a pier, if it is built like a pier and adjoins navigable waters, it's a pier." The 5th Circuit court rejected *Hurston*. Instead, it applied its previously adopted functional analysis annunciated in *Jacksonville Shipyards v. Perdue*, 539 F.2d 533 (5 Cir. 1976), to conclude that:

the term "pier" in § 903(a) does not include every conceivable structure built on pilings over land and water, but rather only those serving some maritime purpose [T]he purpose of the platform is to further drilling for oil and gas, which is not a maritime purpose.

Petition for review of the board's decision denied. The relatively short opinion (16 pages) is worth reading for its historical account of the 1972 LHWCA amendment, and its tortuous linguistic analysis, including the Latin maxim noscitur a sociis, i.e., "a word is known by the company it keeps." As my sainted momma would say, that is how we all are known.

Jones Act: Applicability to Casino Riverboats

Howard v. Southern Illinois Riverboat Casino Cruises, 364 F.3d 854 (7 Cir. 2004).

Forty-six plaintiffs brought negligence claims under the Jones Act, 46 U.S.C. app. §688(a), for injuries caused by exposure to noxious chemicals sustained while working aboard the riverboat casino M/V Players II, permanently (indefinitely?) moored at dockside on the Ohio River. It was connected to land-based utilities, but licensed and classified by the Coast Guard as a passenger vessel, with a captain and crew qualified to move the vessel, which could be done in 15 to 20 minutes. In fact, it was only unmoored during an annual propulsion test in which it would move about 100 feet into the river and return to dock: a 45-minute exercise. The question before the 7th Circuit was: "whether Players II was a vessel 'in navigation' covered by the Jones Act, such that the plaintiffs employed on board were Jones Act 'seamen."

The court characteristically referred to the seminal case of Chandris, Inc. v. Latsis, 115 S.Ct. 2172 (1995), holding that Congress enacted the Jones Act to provide seamen with heightened legal protection because of their exposure to "perils of the sea." The term "seaman" is not defined in the statute, but the Supreme Court, in Chandris, established a two-prong test: (1) the employee's duties must contribute to the function of the vessel or to the accomplishment of its mission; and (2) the employee must have a "substantial employment-related connection to a vessel in navigation" (emphasis in original). The court applied a pragmatic analysis, concluding that the vessel's status:

did not hinge upon whether the vessel was ready and able to cruise, but looked to the vessel's purpose and actual use.... W]hether a ship is a vessel for state law purposes, while perhaps one factor to take into account, does not govern the question whether it is a vessel in navigation for purposes of the Jones Act.

Interestingly, the court's opinion morphed from the term "permanently moored" to the more accurate "indefinitely moored." Reversed and remanded for summary judgment in favor of defendants, dismissing plaintiffs' Jones Act claims.

Tort: The Good Samaritan

Bujol v. Entergy Servs., 03-0492 (La. 05/25/04), So.2d .

Actions by or on behalf of three employees of Air Liquide America Corp. (ALAC) killed or injured in a plant accident sought damages from the employer and its parent corporation, Air Liquide, S.A. (ALSA), on theory that ALSA assumed a duty for safety at the plant. The jury's finding and the appellate court's affirmation of ALSA's liability were based upon the "Good Samaritan Doctrine" found in § 324A of the Restatement (Second) of Torts:

One who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person or his things, is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to protect [perform] his undertaking, if

- (a) his failure to exercise reasonable care increases the risk of harm, or
- (b) he has undertaken to perform a duty owed by the other to the third person, or
- (c) the harm is suffered because of reliance of the other or the third person upon the undertaking.

Justice Victory's lengthy and scholarly opinion is careful to differentiate between § 324A and La. R.S. 9:2793, which refers to persons who gratuitously in good faith

render emergency care or transportation to another. The Supreme Court held that ALSA had not assumed the duty for safety at ALAC's plant, reversing the judgments of the trial and appellate courts.

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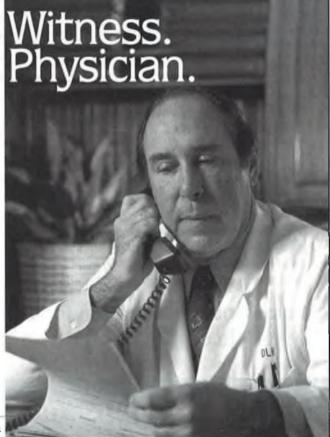
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Slater Steels Corp. v. United States, Slip Op. 04-22 (Ct. Int'l Trade 2004), remanded a dumping investigation to the Department of Commerce to further examine the "substantial retooling" prong of the collapsing regulation. Commerce's collapsing regulation, 19 C.F.R. 351.401(f), involves "treating a group of affiliated producers as a single entity for the calculation of dumping margins." Commerce, in order to "collapse" affiliated companies into a single entity, must find that the companies are "affiliated," that the affiliated companies "have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities" and that "there is a significant potential for the manipulation of price or production."

The Department of Commerce, in an investigation of stainless steel bars from India, "collapsed" three companies in the

Viraj Group. The court remanded the matter to Commerce, holding that the "substantial retooling" and "manipulation" prongs of the regulation are separate elements. The decision stated that it was insufficient to conclude that the production facilities of affiliated entities would not require "substantial retooling" because the facilities produced similar merchandise.

Customs Rulings and Reliquidation

The Court of Appeals for the Federal Circuit in *Fujitsu Compound Semiconductor v. United States*, 363 F.3d 1230 (Fed. Cir. 2004), held that Customs and Border Protection (CBP) was not required to reliquidate, on its own initiative, entries that had liquidated within 90 days of the issuance of a CBP ruling letter. The importer entered merchandise under a Harmonized Tariff Schedule of

the United States (HTSUS) subheading that had a 4.2 percent rate of duty. CBP subsequently determined that identical merchandise of another importer was properly classified under an HTSUS subheading that had a 2 percent rate of duty.

The court held that CBP's failure to voluntarily reliquidate the importer's entries was not a "mistake of fact" correctable under 19 U.S.C. 1520(c). The burden, the court stated, was on the importer to timely protest Customs liquidation in order to take advantage of the new classification.

Foreign Sovereign Immunities Act

The United States Supreme Court, in Republic of Austria v. Altmann, 124 S.Ct. 2240 (2004), held that the Foreign Sovereign Immunities Act (FSIA) applies to conduct such as alleged to have been

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conducted by Austria that occurred prior to the enactment of the FSIA in 1976 and prior to the adoption by the United States of the "restrictive theory" of sovereign immunity in 1952. The complainant instituted these proceedings to recover art that had been taken by the Nazis during World War II or expropriated by an instrumentality of Austria after the end of the war. The decision of the court emphasized that Congress intended that all claims against foreign states be resolved in accordance with the FSIA, regardless of when the conduct in issue occurred.

Food Imports and the Bioterrorism Act

The Food and Drug Administration (FDA) issued a final rule and a notice in the Federal Register relating to the Public Health Security and Bioterrorism Preparedness and Response Act of 2002. The final rule, published in 69 Fed. Reg. 31659 (2004), addresses the administrative detention of imported food for human and animal consumption. The notice, published in 69 Fed. Reg. 24070 (2004), publicized the availability of guidance addressing FDA's interim final rule requiring "prior notice" to the government of food imports. Requests for copies of the FDA guidance may be obtained from the Office of Regulatory Affairs, Office of Regional Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 or from the Prior Notice Help Desk at: (800)216-7331.

Countervailing Duties and "Same-Person" Methodology

The Department of Commerce and domestic steel producers appealed a decision of the Court of International Trade in *Allegheny Ludlum Corp. v. United States*, 367 F.3d 1339 (Fed. Cir. 2004), arguing that the "same-person" methodology for calculating a countervailing duty rate does not violate either statutory law or precedent. Commerce's "same-person" methodology stems from 19 U.S.C. 1677(5)(F), which provides that:

[a] change in ownership . . . of a foreign enterprise . . . does not by itself require a determination by [Commerce] that a past countervailable subsidy received by the enterprise no longer continues to be countervailable

The enterprise in Allegheny Ludlum was Usinor, a French steel producer that received nonrecurring government subsidies before being privatized. The court held that "a change in ownership neither necessarily extinguishes nor necessarily carries over a countervailable subsidy." The decision stated that the countervailing-duty statute requires:

a fact-intensive inquiry into the circumstances surrounding the transfer of ownership, beyond the simple inquiry into whether the transaction occurred at arm's length.

The court further stated that the lower court correctly concluded that Commerce must examine the three requirements set forth in *Delverde, SrL v. United States*, 202 F.3d 1360 (Fed. Cir. 2000).

Non-Tariff Barriers

The Department of Commerce published Standards and Competitiveness—Coordinating for Results, a report intended to improve Commerce's effectiveness in working with the private sector and other governmental agencies in addressing standards-related barriers to trade. The report is available on the Web site of the Technology Administration of the Department of Commerce at: www.technology.gov.

The views expressed do not necessarily represent the views of U.S. Customs and Border Protection or the United States government.

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Labor and Employment Law

Retaliation Rules Revisited

It appears to be such an easy question: What constitutes retaliatory action under Title VII? It's become totally mucked up, and it all started with the 5th Circuit's decision of *Mattern v. Eastman Kodak Co.*, 104 F.3d 702, 707 (5 Cir. 1997), cert. denied, 118 S.Ct. 336 (1997), which held that only "ultimate employment decisions" such as "hiring, granting leave, discharging, promoting, and compensating" can be considered "adverse employment actions" for purposes of a retaliation claim under Title VII.

Plaintiff lawyers hate Mattern as it seems to ignore the reality of the workplace world. Defense lawyers happily cite it in every motion for summary judgment as it is a bright-line test that is easily followed. The EEOC rejects Mattern's "ultimate employment decision" test and advocates that retaliation should be found when there is any action reasonably likely to deter employees from engaging in the protected activity of complaining, EEOC Guidance on Investigating, Analyzing Retaliation Claims (1998). The circuit courts are split. Only the 5th and 8th Circuits have adopted the "ultimate employment decision" requirement articulated in Mattern. The 1st, 4th, 7th, 9th, 10th and 11th do not impose the extra requirement. See Wideman v. Wal-Mart Stores, 141 F.3d 1453 (11 Cir. 1998) (collecting cases), and Von Gunten v. Maryland, 243 F.3d 858 (4 Cir. 2001). The 6th Circuit has now rejected it as well in an en banc opinion, White v. Burlington N. & Santa Fe R.R., 364 F.3d 789 (6 Cir. 2004) (en banc).

In White, the plaintiff complained of being sexually harassed by her foreman who repeatedly told her women should not work on a railroad. After complaining, the plaintiff was transferred to a lower position and replaced by a male employee. Plaintiff filed an EEOC charge alleging sex discrimination and harassment and later filed a second charge alleging that she had been placed under increased scrutiny and suspended without pay for insubordination. She ultimately filed suit, and the jury returned a verdict rejecting her discrimination claims but finding in her favor on the retaliation claim. The defendant railroad appealed, and the 6th Circuit panel, applying the "ultimate employment decision" test, ruled that, because plaintiff did not suffer an adverse employment action, there was no retaliation. An application for rehearing en banc was filed and granted, and the 6th Circuit's en banc court disagreed finding that neither the EEOC test nor the "ultimate employment decision" standard was acceptable

and instead creating a middle ground. The *White* decision puts the continued validity of *Mattern* in play.

An analysis of *Mattern* reveals that the legal foundation on which it is based is entirely questionable. In Mattern, the 5th Circuit relied upon Dollis v. Rubin, 77 F.3d 777 (5 Cir. 1995), to justify its adoption of the "ultimate employment decision" standard. Dollis adopted this rule with only a mere citation to a 4th Circuit case. Interestingly, the 4th Circuit shortly thereafter indicated that it was not sure where it stood on the issue. See McNair v. Computer Data Sys., 98-1110 (4 Cir. 01/26/99) (unpublished), and Johnson v. DiMario, 14 F.Supp.2d 107 (D.D.C. 1998) (predicting that the D.C. Circuit would join the majority). In 2001, the 4th Circuit ultimately rejected the Mattern rule. Von Gunten, 243 F.3d at 864 ("ultimate employment decision is not the standard in this circuit."). *Mattern*'s viability is questionable on just a quick review of its legal support.

It is equally clear that *Mattern*'s test can have harsh consequences. Any employee will tell you that, if an employer wants to retaliate, it can find ways to do so that do not rise to the level of *Mattern*'s "ultimate employment decision."

But in *White*, the 6th Circuit found the EEOC's more liberal test to be equally unworkable in that it does not go far enough in setting a workable standard for the courts or excluding "petty annoyance and trivial annoyances." The 6th Circuit seems to have created an intermediate test requiring that the plaintiff must only show a "materially adverse change in the terms of her employment" to establish retaliation.

Confused? So, it seems, are the courts. With the 6th Circuit now weighing in, the issue appears ripe for further review at the 5th Circuit or perhaps even review at the United States Supreme Court. No matter which side of the schism you are on, it is clearly an issue needing attention. We can all agree that a uniform rule would be nice.

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Constitutionality of Three-Year Prescriptive Period

Walker v. Bossier Medical Center, 38,148 (La. App. 2 Cir. 5/12/04), ____ So.2d

Walker received a blood transfusion in January 1981 at the Bossier Medical Center (BMC). The transfusion infected her with Hepatitis C, but the condition was



not discovered until 1992. Within one year from the date of discovery, Walker filed a petition for a medical review panel. The panel ruled in favor of BMC, and suit was filed in district court alleging strict liability and naming as an additional defendant Lifeshare Blood Center and the Louisiana Attorney General.

BMC filed an exception of prescription, arguing that the three-year limitation period of La. R.S. 9:5628 barred the claim. The trial court sustained the exception. The court also found that the strict liability claim was one of medical malpractice because the transfusion occurred after the 1976 amendment to the MMA, which defined malpractice to include legal responsibility for defects in blood products. The appellate court found that the medical malpractice action was subject to La. R.S. 9:5628, affirmed the granting of the exception of prescription, but remanded for a hearing on the plaintiff's constitutional claims.

Following the remand, the Louisiana Supreme Court held that damages caused by a transfusion of tainted blood fell under the ambit of strict liability and not of medical malpractice. *Williams v. Jackson Parish Hosp.*, 00-3170 (La. 10/16/01), 798 So.2d 921. Then, in *David v. Our Lady of the Lake Hosp.*, 02-2675 (La. 7/2/03), 849 So. 2d 38, the Supreme Court reversed itself, holding that La. R.S. 9:5628's prescriptive period was applicable to a strict liability claim for damages caused by a transfusion of tainted blood.

Numerous Louisiana cases have considered the issue of whether the three-year prescriptive period of Section 5628 applies to a cause of action brought by a plaintiff suffering from a disease with a latency period in excess of three years.

The Walker court said that applying the three-year time limit to plaintiffs who cannot discover their injuries until well after that three-year period would:

prevent a small number of the least blameworthy, yet most seriously injured claimants from having their day in court. To do so would divest such plaintiffs of their fundamental right to due process through the legal system while allowing defendant health care providers to avoid accountability and litigation.

Louisiana's MMA was patterned on Indiana's MMA. The *Walker* court noted that the Indiana Supreme Court found that its malpractice statute of limitations was unconstitutional when applied to plaintiffs who could not possibly know of malpractice, or that they had sustained any injury, until the injury manifested itself.

To hold otherwise would be to require a plaintiff to bring a claim for medical malpractice before becoming aware of her injury and damages, an essential element of any negligence claim, and this indeed would be boarding the bus to topsy-turvy land.

La. R.S. 9:5628 was found unconstitutional as applied to the Walkers, and the granting of BMC's exception of prescription was reversed.

Walker was before a five-judge appellate court, and two judges dissented, reasoning that La. R.S. 9:5628 is constitutional and that it satisfies both the due process and equal protection requirements of the Louisiana state constitution.

Court Costs/Future Medical Expenses

LeRay v. Bartholomew, 03-1370 (La. App. 5 Cir. 3/30/04), 871 So.2d 492.

Following a judgment in favor of the patient, two health care providers were cast in judgment for \$100,000 each, and the PCF was cast for \$300,000 plus past and future medical expenses. The defendant doctors and the PCF were also cast in judgment for court costs. One issue on appeal involved the responsibility for court costs.

The plaintiffs made a pre-trial offer to each defendant to settle for \$100,000, pursuant to La. C.C.P. art. 970. The offers

were rejected, and the judgment exceeded the offers by more than 25 percent. However, the doctors argued that, since their maximum liability under the MMA was \$100,000 and since they were cast in judgment for that amount, art. 970 did not apply. The PCF, which intervened at the appellate level, argued that the assessment of court costs should be assessed against the defendant doctors and not against it. The appellate court ruled that the MMA is legislation in derogation of the general rights of tort victims and must be strictly construed. La. R.S. 40:1299.42(B) is clear in limiting the liability of a qualified health care provider to \$100,000 plus interest, whereas the liability of the PCF is limited to the remainder of the \$500,000 cap plus interest and costs. The LeRay court recognized that, although the art. 970 offer of judgment distinguished this case from others involving court costs, the result remained the same: costs in a medical malpractice case can be taxed only to the PCF.

"Future" medical expenses under the MMA include both those expenses incurred prior to trial and those that will be incurred after trial. Interest is due on the past expenses, and the future expenses are to be paid by the PCF as they are incurred. Here, there was a jury verdict for \$8 million in future medical expenses, but the court's judgment included no specific amount for future medical expenses that would be incurred after trial. Rather, the judgment recognized the plaintiff's right to bring a claim for future medical expenses to the PCF. The court found:

no merit in the LPCF's argument that the trial court was without jurisdiction to send the question of need for future medical expenses and the amount to the jury, and in reducing the jury finding to a written judgment.

> — Robert J. David Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C. 2800 Energy Centre 1100 Poydras St. New Orleans, LA 70163

CHAIR'S MESSAGE. . . LOCAL AFFILIATES

CHAIR'S MESSAGE

Get Involved in YLS Projects

By D. Beau Sylvester, Jr.

Oliver Wendell Holmes once stated in a speech about the law: "Shall I ask what a court would



be, unaided? The law is made by the bar, even more than by the bench." I did not understand the context of the above statement until I had the opportunity to get involved with the Louisiana State Bar Association (LSBA). For the past six years, I have had the opportunity and privilege of serving on the LSBA Young Lawyers Section Council. I have had the opportunity to serve on the LSBA House of Delegates. During this time, I have learned of the numerous services to the public and the Bar provided by our Bar Association. I have learned how the LSBA plays an important role in the administration of the practice of law in this state. I encourage you to learn more about the services and benefits of the LSBA.

It is indeed a pleasure and honor to have been selected as chair of the LSBA Young Lawyers Section (YLS) for this coming year. The YLS acts as a public service arm for the LSBA. The YLS sponsors programs and events throughout the year that focus on public service and on its members' interest. If you are 39 years old or younger or have been admitted to practice law for five or fewer years, then you are a member of the LSBA YLS. Membership in the YLS is automatic and there are no fees associated with our section.

The YLS operates on an annual bud-

get of approximately \$55,000, which is administered through the YLS Council. The YLS Council consists of a chair, chair-elect, secretary and immediate past chair, along with 11 representatives from eight districts around the state, an at-large representative and a ABA/Young Lawyers Division representative. Members of the YLS Council chair no fewer than 12 committees on various service projects.

Each year, our section sponsors two statewide competitions for high school students. Our High School Essay Competition Committee is chaired by Shannon L. Hicks of Shreveport. A topic pertaining to the law and current national events will be selected and sent to high schools across the state. The returned essays are then judged by young lawyers, with the winners receiving a cash prize and having the winning essay published in a Bar publication. We also coordinate a high school mock trial tournament. The tournament this year is co-chaired by J. Chris Peters of Jena and W. Michael Street of Monroe. The High School Mock Trial Competition is administered on a state and local level. This is a public service administered through a combined effort of the state Young Lawyers Section and the various affiliate Young Lawvers' Sections throughout the state. There are several district competitions, with those winners then competing in the state competition. The winner of the state competition is then sent to the national competition. Our section is responsible for the drafting of the problem, aiding in the administration of the local competition, facilitating the state competition and awards banquet and aiding financially in sending the winner of the state competition to nationals.

The YLS also sponsors a law school mock trial competition and outreach program which is chaired by Greg P. Aycock of Baton Rouge. Again, our section is

responsible for administering the competition as well as providing the problem and judges for the competition which rotates locations between each of the four law schools.

The YLS also sponsors a Service to Seniors Handbook project, chaired by Joel M. Lutz of Lake Charles. The handbook covers legal issues common to the senior citizens of this state.

Our section is also active in providing services to our members. Each year, we participate in the Bridging the Gap Seminar. The seminar specifically provides CLE on topics tailored to the young lawyer. The Bridging the Gap Seminar is a joint effort of the LSBA and the YLS. We also sponsor a free Professional Development Seminar, a one-day seminar on subjects selected to benefit young lawyers. This year, we are attempting to sponsor, with the help of local affiliates, several low-cost, lunch-time CLEs at various locations around the state. We are hoping these CLEs will be a service to the young lawyer who is trying to complete the required CLE hours on a basebones budget. Our co-chairs for the CLE seminars are Kiana M. Aaron and Valerie M. Briggs of New Orleans.

Finally, the YLS is active and involved with the American Bar Association. This year, our ABA/YLD representative is Beth Abramsom of New Orleans. Our section sends members to the various ABA events in order to gain knowledge of new programs that we can bring back to the state for the benefit of the public and our members.

As you can see, the YLS has a busy calendar this year. We need your help. If you are interested in getting involved in any of the above projects, please e-mail me at dbs2374@aol.com. I can promise you that the time given to any of our projects will bring you greater rewards than the effort involved.

LOCAL AFFILIATES

NOBA Golfers Tee Off for NOLAC

Participation in the New Orleans Bar Association's (NOBA) annual Young Lawyers Section (YLS) Golf Tournament to benefit the New Orleans Legal Assistance Corp. (NOLAC) exceeded even Tournament Chair Todd Wallace's expectations. More than 100 golfers participated in the tournament at the Audubon Park golf course. NOLAC provides free legal assistance to disadvantaged people.

The tournament was organized in the "blind bogey" scramble format, in which each of the teams's four golfers plays from the previous best shot.

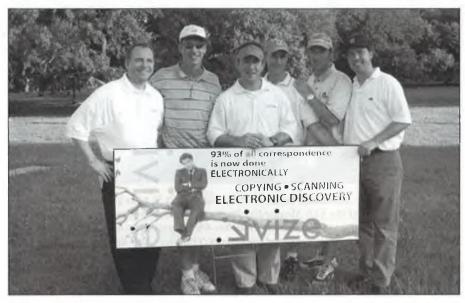
The team to beat proved to be last year's winning team of Chuck Galligan, Cris Jackson, Philip La Nasa and Art Renaudin. Prizes were also awarded to the group with the lowest net score, absent any handicap adjustments. This year's winning team was Aris Cox, David McLendon, Sean Reid and Ed Trapolin.

New Orleans Bar Association Young Lawyers Section Golf Tournament Chair Todd K. Wallace and assistant Kendra L. Duay.

New to the tournament was the Saints' Putting Contest, the winner of which received an official Saints football signed by Deuce McAllister. The two finalists were Greg Johnson and Lou Bonnaffons, with Bonnaffons edging out Johnson for the win. Johnson went on to win the "Closest to the Pin" prize.

"Longest Drive" honors went to Terry Brennan.

A crawfish boil immediately followed the tournament. Tournament Chair Wallace was assisted by Kendra Duay and Golf Committee members Joe Giarrusso III, Tommy Hayes IV, Rachel Maestri and Deborah McCrocklin.



The low net winners of the New Orleans Bar Association Young Lawyers Section Golf Tournament are with representatives from IVIZE, sponsors of the golf tournament's Players' Party. From left, IVIZE representative Clint Shirley, Aris Cox, IVIZE representative Bryan Foster, Ed Trapolin, Sean Reid and David McClendon.



The winners of the 2004 New Orleans Bar Association Young Lawyers Section Golf Tournament are, from left, Chuck Galligan, Art Renaudin, Philip La Nasa and Cris Jackson.

NOBA YLS Mentorship Program Launched



The New Orleans Bar Association Young Lawyers Section (YLS) hosted a reception on May 26 for the inauguration of the YLS Mentorship Program. The mentorship program will provide new admittees (protégés) to the Louisiana State Bar with mentors who have at least three years of experience from the New Orleans legal community. YLS Vice Chair Bradford E. Adatto is the chair of the Mentorship Committee. From left, Adatto; Todd "T.J." Johnson from Cypress Litigation, which sponsored the function; YLS Chair-Elect Michael A. Golemi; and protégé Karen Comeaux.

Region V Mock Trial Winning Team



Attorney coach James Carver and teacher coach Deanna Wimberly with the winning Region V High School Mock Trial team from Baton Rouge Magnet High School. Whitney Breaux, far right, received an award for best overall performance. They were honored and presented with their trophy at the June 3 Baton Rouge Bar Association monthly luncheon.

NOBA YLS, Louis A. Martinet Foundation Co-Sponsor Legal Fair

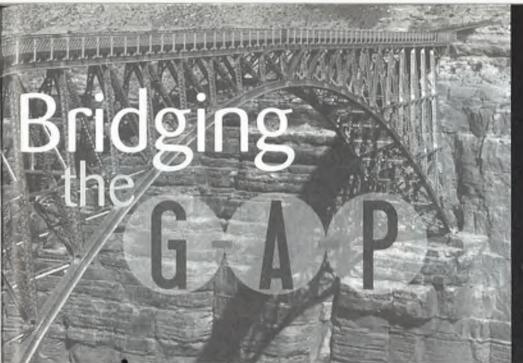
Chris Ralston, New Orleans Bar Association Young Lawyers Section (NOBA YLS) Public Service chair, and Devoyce Stubbs, chair of the Legal Fair Committee of the Louis A. Martinet Foundation, co-sponsored a legal fair at Full Gospel Church of God in Christ in New Orleans on May 15. The purpose of this fair was to provide free legal advice to those in need.

Volunteers included Hon. Ernestine S. Gray, chief judge of Orleans Parish Juvenile Court; Bernadette D'Souza; NOBA YLS Executive Board member Larry Demmons; Brian DeVoss; Natacha Hutchinson; Rowina Jones of NOLAC; Jeffery May of Fair Housing; Lauren McGhee; and Kathy Roux. They covered areas of law regarding civil, domestic, criminal and juvenile issues. Bishop Charles E. Brown, host of the fair, opened the church to members of the community, as well as church congregation members. In addition to answering the attendees' questions, some of the participating attorneys or their organizations are providing pro bono representation for some of those who attended the fair.



New YLS Web Site Launched

The Louisiana State Bar Association Young Lawyers Section (YLS) has launched a new Web site that may be linked directly from the LSBA Web site, www.lsba.org. The new site contains updated contact information for the YLS officers and board members, as well as for local YLS affiliates. The site also provides information regarding current YLS committees, projects, events and meetings.



Louisiana State Bar Association Young Lawyers Section

44th Annual Bridging the Gap Semina

Tuesday & Wednesday, October 19-20, 2004

U.S. District Court 500 Camp St., 5th Fl New Orleans

General Information

Bridging the Gap has been planned to acquaint recent law school graduates with many of the practical aspects of a law practice and to afford newly admitted active members of the Louisiana Bar the opportunity to obtain their mandatory continuing legal education.

Join us for this two-day program presented by skilled, highly respected practitioners and jurists to learn practical information that hopefully will serve you well throughout your legal career.

Registration Fee, Cancellation and Refund

New Admittees/Young Lawyers

\$75

The fee includes course materials, seminar attendance, lunch and coffee/refreshment breaks.

Cancellation of registration must be received in writing by the LSBA no later than Oct. 15.





Visit www.lsba.org for complete schedule.

This program is designed especially for newly admitted attorneys. Attendance is limited only to attorneys admitted after March 12, 2002. Approved for 13 hours of CLE credit, including 8 hours of ethics, professionalism and law office management.

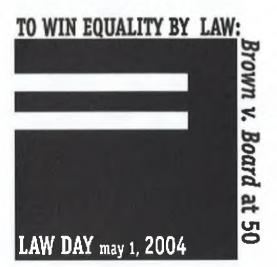
Registration Form

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☐ Please check here or contact the LSBA if you have a disability which may require special accommodations at this conference. The LSBA is committed to ensuring full

accessibility and participation for all registrants.



LAW DAY 2004

Alexandria Bar Holds Law Day Luncheon, CLE Seminar

The Alexandria Bar Association held its annual Law Day luncheon and CLE seminar for ethics and professionalism on May 3. The theme was "Brown v. Board of Education at 50 Years." Judge F.A. Little, Jr., United States District Court, Western District of Louisiana, spoke regarding his experiences in a segregated New Orleans in the late 1950s and early 1960s.

The annual Liberty Bell Award was presented to Millie Ezernack, clerk of court and court administrator of the Alexandria City Court.

A crawfish boil was held for the Alexandria Bar Association members later that evening.

Law Week 2004

The Lafayette Parish Bar Association celebrated Law Week 2004 with a variety of activities. In addition to the traditional activities, such as the service at St. Joseph's Diner and the Annual Barrister's Boil, the Lafayette Young Lawyers Association sponsored a local school to participate in the Louisiana State Bar Association's *Brown v. Board of Education* symposium in New Orleans.

The Lafayette Young Lawyers Association sponsored Lafayette High because of the school's outstanding participation in the recent High School Mock Trial Competition. Ten students and teachers from Lafayette High joined students from

Baton Rouge Bar Association



Baton Rouge Bar Foundation Law Day keynote speaker Joe Douglas, Jr. stands between his wife Nathalia and granddaughter Erin Wilder-Donnes



The Baton Rouge Bar Foundation Law Day celebration took place on May 3. The Marching Band from Southern University performed immediately after the welcome, starting the program out with plenty of energy and excitement.

Northside High, sponsored by Laborde & Neuner, for the trip to New Orleans where they met other students from around the state and participated in activities about the monumental Supreme Court decision.

The week's activities continued with service at St. Joseph's Diner. Community Service Committee Chair Jennie Pellegrin once again did an outstanding job recruiting and scheduling volunteers. Many attorneys, their support staff and Lafayette Parish Bar Association staff gave their time to help the less fortunate by preparing and serving lunch on May 5.

Law Week in Lafayette concluded with the annual Barrister's Boil held at the UL-Lafayette Alumni Center. This event was hosted by the Lafayette Parish Bar Association, Lafayette Young Lawyers Association and the Lafayette Bar Association Auxiliary. Additionally, Mark Surprenant and Judge Jay Zainey were guests of the Lafayette Parish Bar Association to share the success of the SOLACE program and to encourage all to consider giving their time and energy to this cause.



Chris Walker, Jessica Cantave, Jolene Broussard and Monica Marse, back row from left, and Tiffany Thornton, front, volunteered their time at St. Joseph's Diner, one of the Law Week activities of the Lafayette Parish Bar Association.



Judge Byron Hebert, front, and Judge Michael Hill, back, and his guest Brenda Keeling were among the many guests enjoying the crawfish at the Barrister's Boil, an annual Lafayette Parish Bar Association Law Week event.



Libby Heinen, from left, Jason Wilson, Susan Holliday, Judge Francie Bouillion, Jennie Pellegrin, Judge Michael Sullivan, Danielle Guilbeau of Eatel and Tribbey Thornton of West Group all attended the Barrister's Boil, an annual Lafayette Parish Bar Association Law Week event.



Mark Surprenant, from left, Louisiana State Bar Association President-Elect Frank X. Neuner, Jr., Hon. Jay Zainey and Lafayette Parish Bar Association President Dean Cole at the Barrister's Boil, an annual Lafayette Parish Bar Association Law Week event.

New Orleans Bar Observes Brown v. Board of Education on Law Day

In recognition of Law Day, the New Orleans Bar Association (NOBA) Young Lawyers Section's (YLS) Law Day Committee, chaired by Kelly T. Scalise, teamed up with the NOBA Minorities in the Profession Committee, chaired by Phoebe A. Roaf, to organize numerous activities. This year, the NOBA Law Day activities were designed to commemorate the 50th anniversary of the *Brown v. Board of Education* decision.

Numerous activities involving hundreds of school children over several days occurred in area schools and in Orleans Civil District, Federal, Juvenile and Criminal Courts.

Hon. Carolyn W. Gill-Jefferson presided in Civil District Court for the presentation of the Liberty Bell Award to Ruby Bridges, who as a young child led the desegregation of the William Franz Elementary School in New Orleans. Hon. Bernette J. Johnson of the Louisiana Supreme Court, Gill-Jefferson, NOBA President Phillip A. Wittmann, YLS Chair Chauntis T. Jenkins and Bridges spoke to the children. The winner of the essay and poster contests from Franz School were announced and prizes awarded.

Federal Court Law Day activities had students from St. Augustine High School and Warren Easton High School in Judge Ivan L.R. Lemelle's U.S. District courtroom reading their essays on "Did *Brown v. Board of Education* actually effect desegregation of the public school system 'with all deliberate speed'?" Judges Lemelle, Mary Ann Vial Lemmon and Louis Moore, Jr. hosted a discussion with the students after their recitations.

Juvenile Court Judge Ernestine S. Gray visited Augustine Middle School for oral presentations made by the students. Volunteer attorneys met with the students prior to the program to engage them in thinking about the effects of the *Brown* decision, as well as about other issues troubling today's youth.

Hon. Arthur L. Hunter, Jr. was host to Criminal Court Law Day to students from Thurgood Marshall Middle School. Students observed criminal proceedings that included preliminary examinations and a judge trial. After fielding questions from the students, Judge Hunter led the students on a tour of the holding cells and jury rooms.

Members of the judiciary volunteering their time for the Law Day events were Judges Michael G. Bagneris, Ernestine S. Gray, Carolyn Gill-Jefferson, Piper D. Griffin, Sheryl M. Howard, Arthur L. Hunter, Jr., Ivan L.R. Lemelle, Mary Ann Vial Lemmon, Lloyd J. Medley, Louis Moore, Jr. and Sonja M. Spears.

Assisting event chairs were YLS Vice Chair Brad Adatto, Gary Armstead, Attie Babin, Regina Bartholomew, YLS Executive Board member Tad Bartlett, Larry Centola, Monique Davis, Bonita Hawkins, past YLS Chair Justin Homes, Lakeisha Jefferson, YLS Chair Chauntis Jenkins, Sandra Jenkins, Katie Lasky, Kelly Legier, Carey Lyon, Darleene Peters, Julie Vaicius, Lisa Walsey and Donna Young.



Students of William Franz Elementary School in New Orleans with their posters. With them are, from left, New Orleans Bar Association Young Lawyers Section (YLS) Law Day Chair Kelly Scalise, YLS Chair Chauntis Jenkins and Attie Babin.



On the steps of the Orleans Parish criminal courthouse are students from Thurgood Marshall Middle School. During a Law Day event, students observed criminal court proceedings after which Judge Arthur L. Hunter, Jr. led the students on a tour of the holding cells and jury rooms.



Hon. Ivan L.R. Lemelle, Hon. Louis Moore, Jr. and Hon. Mary Ann Vial Lemmon hosted Law Day in federal court in New Orleans. With students from St. Augustine High School and Warren Easton High School are, from left, Judges Lemelle and Moore.

Ruby Bridges Receives NOBA Liberty Bell Award

A local television camera zooms in on New Orleans Bar Association President Phillip A. Wittmann as he presented Ruby Bridges with the 2004 Liberty Bell Award. The Liberty Bell Award recognizes nonlawyers for outstanding contributions in encouraging respect for the law and courts. Bridges was the first black student to desegregate William Franz Elementary School in New Orleans. She has, throughout her life, continued to promote and encourage the values of tolerance, respect and appreciation of all differences.



Shreveport Pro Bono Project Receives Community Service Award

The Shreveport Bar Foundation's Pro Bono Project received the 2004 Community Service Award given each year by the Red Mass Society during Law Week. The May 7 service was held at Holy Trinity Catholic Church in Shreveport and was sponsored by the Diocese of Shreveport and the Red Mass Society of the Shreveport Bar Association. Most Rev. William B. Friend, bishop of the Diocese of Shreveport, presided at the Red Mass. Bishop Thomas J. Paprocki, auxiliary bishop of Chicago, delivered the homily.

The Shreveport Pro Bono Project's mission is to provide free legal services to low-income individuals in civil and juvenile matters. The project, which began in 1986, now has more than 80 lawyer volunteers who counsel individuals and provide law-related education to client groups and to social service and community organizations. The project works with North Louisiana Legal Services and other social service organizations to assess local needs and to develop appropriate programs.



The Shreveport Bar Foundation's Pro Bono Project received the 2004 Community Service Award given each year by the Red Mass Society during Law Week. Attending the event were, from left, Joel Pearce, Anna Maria Sparke Keele, Ruth Moore and Bishop William Friend.

Civil Rights Attorney Featured Speaker at SBA Law Day Luncheon

More than 200 Shreveport Bar Association (SBA) members and guests were on hand to hear noted civil rights attorney Fred D. Gray talk about the impact *Brown v. Board of Education* had not only in ending racial segregation in schools but in challenging other forms of segregation.

Gray began his dynamic civil rights career shortly after graduating from law school, when in 1955, he represented Rosa Parks. Mrs. Parks was arrested because she refused to give up her seat on a bus to a white man, which ignited the Montgomery bus boycott. Gray was also the first civil rights attorney for Dr. Martin Luther King.



Civil rights attorney Fred D. Gray, center, was the featured speaker at the Shreveport Bar Association's Law Day luncheon. With him are Law Week Chair Shannan Hicks, left, and SBA President Allison Jones.

The list of civil rights cases that Gray won can be found in most constitutional law textbooks. They include Browder v. Gayle, which integrated the buses in the City of Montgomery in 1956; Gomillion v. Lightfoot, decided in 1960, a landmark case that opened the door for redistricting and reapportioning the various legislative bodies across the nation and laid the foundation for the concept of "one man one vote;" Williams v. Wallace, a class action suit that led to the enactment of the Voting Rights Act of 1965; and Mitchell v. Johnson, decided in 1966, one of the first civil actions brought to remedy systematic exclusion of blacks from jury service.

Gray was one of the first African-Americans to serve in the Alabama Legislature since Reconstruction and was the first person of color elected as president of the Alabama State Bar Association, serving in 2002-03.

Issuing the joint Law Day Proclamation at the luncheon were Shreveport Mayor Keith Hightower and Bossier City Mayor George Dement. First Judicial District Court Judge Scott Crichton presented U.S. 5th Circuit Court of Appeals Judge Carl Stewart, Sr. with the annual Liberty Bell Award, presented by the SBA to an individual or organization for outstanding community service.

The Law Day luncheon was one of many activities sponsored by the SBA. On May 3, lawyers participated in a live call-in television program on KTBS Channel 3, where people could call in and get free legal advice. On May 4, the SBA Women's Section hosted lunch for the judges and clerk's staff of the 2nd Circuit Court of Appeal. The SBA also sponsored a poster and essay contest for area school students, with the winners being honored at a reception at the Louisiana State Exhibit Museum on May 7. A professional clothing drive was also conducted to benefit the local Dress for Success program sponsored by the Highland Center and the Shreveport-Bossier Rescue Mission's back-to-work program. Capping off the week was the annual Red Mass sponsored by the Catholic Diocese of Shreveport and the Red Mass Society of the Shreveport Bar Association.

Heading up this year's Law Day Committee was Shannan L. Hicks. Committee members were Chris Johnson, Karmel Willis, Alex Washington, Miranda Zolot, Allison Duncan, Amy Greenwald, Jennifer Johnston, Carol Paga, Karen Fox, Allison Jones and Patti Guin.

Judge Stewart Receives SBA's Liberty Bell Award

U.S. 5th Circuit Court of Appeals Judge Carl E. Stewart, Sr. has been named this year's recipient of the Shreveport Bar Association's (SBA) Liberty Bell Award. The SBA presents the award annually to an individual or organization for outstanding and exemplary community service. First Judicial District Court Judge Scott J. Crichton presented Stewart with the award at the SBA's annual Law Day luncheon on May 5.

Stewart, a Shreveport native, is a graduate of Dillard University in New Orleans (magna cum laude) and Loyola University Law School. He has practiced many phases of law as a military lawyer, staff attorney with the Louisiana Attorney General's Office, assistant United States attorney, special assistant city and district attorney and private practitioner. On March 30, 1985, he was elected district judge for the 1st Judicial District Court of Caddo Parish, and then re-elected without opposition. In 1991, he was elected without opposition to the 2nd Circuit Court of Appeal and served on that court until he was nominated by President Bill Clinton and unanimously confirmed by the U.S. Senate as a federal judge on the U.S. 5th Circuit Court of Appeals in 1994. Stewart was the first African-American to serve on the 5th Circuit as it is presently constituted.

In making the presentation, Judge Crichton remarked that "the fact that he [Stewart] has had a multifaceted and outstanding legal and judicial career does not in and of itself qualify him for this award . . . This is a man who is truly involved in his community, and this involvement should not go unnoticed." Crichton further remarked that "it is this level of dedication and involvement which qualifies him for the Liberty Bell Award."

In honoring Judge Stewart with this award, the selection committee also considered this year's Law Day theme of "Brown v. Board of Education at 50." This case, decided on May 17, 1954, changed the civil rights landscape in America forever by ending segregation in school systems. Crichton added that "it was the federal courts, and in particular, the judges of the United States 5th Circuit Court of Appeals [the court in which Judge Stewart sits] who served as the heroes in overseeing the



First Judicial District Court Judge Scott Crichton, right, presented U.S. 5th Circuit Court of Appeals Judge Carl E. Stewart, Sr. with the 2004 Liberty Bell Award presented by the Shreveport Bar Association.

implementation of the *Brown* decision, and that for the past decade, our recipient has heroically continued that tradition." In closing, Crichton stated that the award was being given to "one who has generously contributed as a community leader, a judge at both the state and federal levels, a mentor to many, a hero to all, and one who has lived an exemplary life with grace and dignity."

Judge Stewart has been involved with numerous community organizations through the years, including serving as immediate past chair of the Community Foundation of Shreve-port-Bossier. He currently serves on the Centenary College Board of Trustees and Community Hope and Opportunity for Inner City Enrichment (C.H.O.I.C.E.) Advisory Committee and many other organizations.

He has been presented with many awards, most recently, in 2004, the Shreveport-Bossier Concerned Citizen's "Steward of the Dream . . . Keeping the Dream Alive" Award.

Professionally, Stewart is a member of the Black Lawyers Association of Shreveport-Bossier, the National, Federal, Louisiana and Shreveport bar associations, and the Federal Judges Association. He is a charter member of the Harry V. Booth and Judge Henry Politz Chapter of American Inns of Court. He is married to the former Jo Ann Southall and they have three children.

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DICIA

By Robert Gunn, Louisiana Supreme Court

NEW JUDGES... APPOINTMENTS

New Judges

H. Stephens Winters, 41, was elected

to Division D, 4th Judicial District Court, Ouachita and Morehouse parishes. He earned his undergraduate degree from Louisiana State University in 1985 and his JD degree from Southern H. Stephens Winters University Law



Center in 1988. Prior to his election to the bench, he served as an assistant district attorney for 151/2 years in Ouachita and Morehouse parishes. From 1991 until taking his seat on the bench, he served as felony prosecutor in Ouachita Parish. He is a member of the Fred Fudickar American Inn of Court and previously served on the board of directors of the 4th Judicial District Bar Association. He is also a former regional representative of the Louisiana District Attorney's Association. He is admitted to and has practiced before the U.S. Supreme Court; U.S. 5th Circuit Court of Appeals; and U.S. District Court, Western District of Louisiana. He also has served as an annual instructor at the North Delta Police Academy. He and his wife, Sandie, are

the parents of three children.

Judge Roland L. Belsome, 46, was elected to the 4th Circuit Court of Appeal. He earned his undergraduate degree from the University of New Orleans in 1980 and



Judge Roland L. Relsome

his JD degree from Tulane Law School in 1984 where he was a member of the National Trial Team. He was elected to Division C of Orleans Parish Civil District Court in 1996 where he served until his election to the 4th Circuit seat. He is the parent of two children.

Appointments

- ▶ Richard A. Swartz, Jr. has been appointed, by order of the Louisiana Supreme Court, as judge pro tempore of Slidell City Court, St. Tammany Parish. Swartz will fill the vacancy created by the death of Judge Gary J. Dragon. He will serve for the period of June 1, 2004 through Nov. 30, 2004, or until the vacancy is filled, whichever occurs sooner.
- ▶ Donna D. Fraiche was appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a term of office which began April 22 and will terminate on April 21, 2008.
- ▶ Jeffrey M. Cole was appointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for a term of office which concludes on Dec. 31, 2004.
- ▶ Retired Justice Harry T. Lemmon, Barry Erwin and Darrell Douglas Teats were reappointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for terms of office which began April 22 and will terminate on April 21, 2008.
- ▶ Richard E. Gerard, Jr., Clarence Roby, Jr. and Dawn Hendrix Mims were reappointed, by order of the Louisiana Supreme Court, to the Mandatory Continuing Legal Education Committee for terms of office which began Jan. 1 and will expire on Dec. 31, 2006.

- ▶ Robert J. David, Jr., by order of the Louisiana Supreme Court, was reappointed to the Committee on Bar Admissions for a term of office which concludes on April 30, 2008.
- ▶ Richard A. Goins, by order of the Louisiana Supreme Court, was reappointed to the Committee on Bar Admissions for a term of office which concludes on May 8, 2006.

Deaths

- ▶ Slidell City Court Judge Gary J. Dragon, 57, died May 3. He earned his undergraduate degree from Louisiana State University in 1968 and his JD degree from LSU Paul M, Hebert Law Center in 1971. He served as assistant district attorney with the 22nd Judicial District and was assigned to Slidell City Court eight years prior to election. He was elected to Slidell City Court in 1999 and served there through 2004.
- ▶ Retired 6th Judicial District Court Judge Cliff C. Adams, 92, died April 19. A World War II veteran, he served in the European theatre for 18 months and separated with the rank of major. A graduate of Louisiana State University, he practiced law in Madison Parish from 1936-63. He served as alderman of the Village of Tallulah from 1946-48, when he resigned to accept an appointment as assistant district attorney, which office was held until his election to the bench. He was first elected, without opposition, by a special election called to fill the unexpired term of the late Frank Voelker, and took office Oct. 1, 1963. He was re-elected in 1966 without opposition. He served in that judgeship until his retirement in 1984.

PEOPLE

LAWYERS ON THE MOVE

- ▶ Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., announces that John W. Joyce has joined the firm as an associate.
- ► Chaffe, McCall, Phillips, Toler & Sarpy, L.L.P., announces a new partner, Nannette V. Jolivette, and a new associate, Katherine L. Young.
- ► The Conroy Law Firm announces that Deborah G. Marx has joined the firm.
- ► Curry & Friend, A.P.L.C., announces that Terese M. Bennett has joined the firm as an associate.
- ▶ Gibson-Gruenert, L.L.P., announces that W. Corey Grimley has joined the firm as an associate in its Lafayette office.
- ► Gieger, Laborde & Laperouse, L.L.C., announces that Robert I. Siegel has become of counsel to the firm and that Daniel G. Rauh and Emily K. Greenfield

have joined the firm as associates.

- ▶ Gordon, Arata, McCollam, Duplantis & Eagan, L.L.P., announces that Eric R. Miller has joined the Baton Rouge office as a partner. He is licensed in both Texas and Louisiana and is board certified in labor and employment law by the Texas Board of Legal Specialization.
- ► Hargrove, Smelley & Strickland announces that Glenn L. Langley has joined the firm.
- ▶ Paige M. Harper is heading the newly



Dean M. Arruebarrena



Lauren Fajoni Bartlett



Eric R.G. Belin



Terese M. Bennett



Jason R. Bonnet



R. Jeffrey Bridger



Angie Christina



Shaun G. Clarke



Craig M. Cousins



Edgar Dean Gankendorff



Joseph I. Giarrusso III



Emily K. Greenfield



W. Corey Grimley



Timothy W. Hardy



Thomas M. Hayes



James Eric Johnson



Nannette V. Jolivette



John W. Joyce

reorganized regulatory department of Amerisafe, Inc. in DeRidder, La.

- ▶ Leake & Andersson, L.L.P., announces that Dean M. Arruebarrena, Craig M. Cousins and J. Roumain Peters have become members of the firm and that R. Jeffrey Bridger has become special counsel. Lauren Fajoni Bartlett, Jason R. Bonnet, Angie Christina, Rachel A. Maestri, Jennifer L. Sinder and Juana L. Winfield have become associates.
- ▶ Lemle & Kelleher, L.L.P., announces that Timothy W. Hardy and V. Joyce Matthews have joined the firm as partners in the Baton Rouge office.
- ► Liskow & Lewis, A.P.L.C., announces that Joseph I. Giarrusso III has joined the firm as an associate.
- ▶ Louisiana Attorney General Charles C. Foti, Jr. announces the addition of several new personnel to the Attorney General's office to represent the Department of Justice: Mary Blackley in Shreveport; John Maloy in Alexandria; Thomas Brahney, Paul Deal and Deborah McCrocklin in New Orleans; and Emma Devillier, Kathan Fontenot-Free, Michael Guy, Charlotte Hayes, Russell Hodges, Thomas Lane, Kathi Logan, David Marquette, John Ray, Jo-

- seph Roussel, Clement Story III and David Young in Baton Rouge.
- ► Middleberg, Riddle & Gianna announces that Lisa Anne Finn, Scott D. Greenwald and Jonathan M. Herman have joined the firm.
- ► Miranda, Warwick, Milazzo, Giordano and Hebbler, A.P.L.C., announces that Gina Puleio Campo has become a partner in the firm and that Amie D. Stassi has joined the firm as an associate.
- ▶ Porteous, Hainkel and Johnson, L.L.P., announces that James Eric Johnson and Anthony M. Williams have been named partners and that Thomas M. Hayes and Amber Davis have joined the firm as associates.
- ▶ Provosty, Sadler, deLaunay, Fiorenza & Sobel New Orleans, L.L.C., announces that Henry

St. Paul Provosty and Edgar Dean Gankendorff are co-managing partners and that Walter R. Wellenreiter, Christophe B. Szapary and Eric R.G. Belin are associates.



Rachel A. Maestri



Ronald J. Scalise, Jr.

Marilyn C. Maloney



▶ Roy, Kiesel, Keegan & DeNicola an-

nounces that Christopher D. Kiesel has

► Sher Garner Cahill Richter Klein

McAlister & Hilbert, L.L.C., announces

that Alvin Charles Miester III was

► Simien & Miniex, A.P.L.C., announces

that Todd M. Swartzendruber and Aimee

► Stone Pigman Walther Wittmann,

L.L.C., announces John P. Farnsworth

as a new member, Carmelite M. Bertaut

and Daria Burgess Diaz as special coun-

sel and five new associates: J. Dalton

Courson, Kathryn M. Knight, Julie A.

Richards, Ashlee M. Robinson and

been named director of the firm.

elected as a member in the firm.

L. Foreman have joined the firm.

V. Joyce Matthews



Eric R. Miller



J. Roumain Peters



Henry St. Paul Provosty



Daniel G. Rauh



Robert I. Siegel



Jennifer L. Sinder



Christophe B. Szapary



Walter R. Wellenreiter



Anthony M. Williams



John M. Wilson



Juana L. Winfield



Katherine L. Young

NEWSMAKERS

- ► Shaun G. Clarke, a shareholder with Liskow & Lewis, A.P.L.C., has been named one of the nations's best criminal defense lawyers in the May 2004 edition of *Corporate Counsel* magazine.
- ► Kean Miller Hawthorne D'Armond McCowan & Jarman, L.L.P., announces that five partners from the Baton Rougebased law firm are listed in the 2004 edition of *Chambers USA America's Leading Business Lawyers*: G. William "Bill" Jarman, William R. "Bill" D'Armond, Ben R. Miller, Jr., Charles S. McCowan, Jr. and Melanie M. Hartmann.
- ► Marilyn C. Maloney, a shareholder with Liskow & Lewis, A.P.L.C., has been elected a Fellow of the American Bar Foundation.
- ▶ Phelps Dunbar, L.L.P., has received national recognition from the Spring 2004 issue of *The Minority Law Journal* for having the highest percentage of African-American lawyers among the 250 largest law firms in the United States.
- ▶ John M. Wilson, a shareholder with Liskow & Lewis, A.P.L.C., has been elected a Fellow of the American Bar Foundation.

People Deadlines & Notes

Note the following deadlines for submitting People announcements (and photos) in future issues of the *Louisiana Bar Journal*:

Publication	Deadline	
Dec. 2004/Jan. 2005	Oct. 4, 2004	
Feb./March 2005	Dec. 3, 2004	
April/May 2005	Feb. 4, 2005	

Announcements are published free of charge to members of the Louisiana State Bar Association. Only the names of Louisiana State Bar Association members are published. Firms (particularly firms with multi-state offices) should note that, when announcements are submitted, all names are checked against the Louisiana State Bar Association database and only the names of individuals with LSBA bar roll numbers are published. LSBA members may publish photos with their announcements at a cost of \$50 per photo. Firms submitting multiple photos for publication must remit \$50 for each photo.

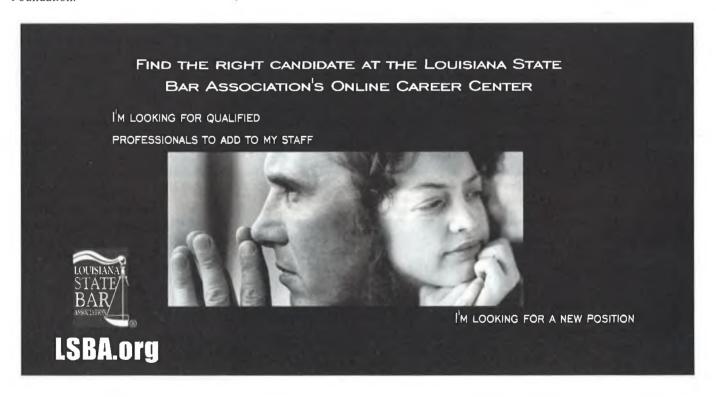
• Payment for photos must be submitted when the announcement is submitted (adhering to the submission deadlines above). All photos must be paid for prior to publication; no invoices are sent, either before or after publication.

Any announcement (and photo) submitted past the deadline for one issue will automatically be included in the next issue.

Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to:

Publications Assistant Caryl M. Massicot

Louisiana Bar Journal
601 St. Charles Ave., New Orleans, La. 70130
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DISCIPLINEReports

REPORTING DATES 6/1/04 & 6/3/04

REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date June 3, 2004.

Decisions

Stanley R. Aaron, Baton Rouge, (2004-B-0739) Consent disbarment ordered by the court on May 7, 2004. JUDGMENT FINAL and EFFECTIVE on May 7, 2004. Gist: Failure to have written contingency fee agreement; commingling and conversion of client funds; and violating or attempting to violate the Rules of Professional Conduct.

Michael M. Christovich, New Orleans, (2004-OB-0516) Permanent resignation in lieu of discipline ordered by the court on April 13, 2004. JUDGMENT FINAL and EFFECTIVE on April 13, 2004.

Barry E. Edwards, Shreveport, (2003-B-2190) Three-year suspension, two years shall run concurrently to the suspension imposed in *In Re: Edwards*, 99-1782 (La. 12/17/99), 752 So.2d 801, and one year shall run consecutively, subject to conditions, ordered by the court on Jan. 21, 2004. JUDGMENT FINAL and EFFECTIVE on Feb. 4, 2004. *Gist:* Lack of diligence; failure to communicate with client; failure to account for and refund unearned fees; failure to cooperate in a disciplinary investigation; and engaging in unauthorized practice of law.

Jo Ann Gines, Shreveport, (2003-B-2827) **Disbarment** ordered by the court on

March 19, 2004. JUDGMENT FINAL and EFFECTIVE on April 2, 2004. Gist: Lack of diligence; failure to communicate with client; failure to refund unearned fees; excessive fee; conflict of interest; commingling; failure to deposit disputed funds in trust; failure to cooperate in a disciplinary investigation; conduct involving dishonesty, fraud, deceit or misrepresentation; and conduct prejudicial to the administration of justice.

Paul E. Graugnard. Alexandria, (2003-B-2899) Disbarment ordered by the court on March 26, 2004. JUDGMENT FINAL and EFFECTIVE on April 9, 2004. Gist: Conversion; commingling of funds; failure to account for and refund unearned fees; engaging in conduct involving dishonesty, fraud, deceit and misrepresentation; and failure to communicate with clients.

Robert F. Fadaol, Gretna, (2004-B-0811) Consent suspension of one year, fully deferred, conditioned upon two years' probation, ordered by the court on May 14, 2004. JUDGMENT FINAL and EFFECTIVE on May 14, 2004. Gist: Conflict of interest.

Barry G. Feazel, Shreveport, (2004-B-0859) Guilty of additional violations which warrant discipline and may be considered upon any application for reinstatement from his suspension in *In re: Feazel*, 98-

2060 (La. 10/9/98), 718 So.2d 969, and *In re: Feazel*, 01-2309 (La. 11/9/01), 800 So.2d 771, after becoming eligible to do so, by consent, ordered by the court on May 7, 2004. JUDGMENT FINAL and EFFECTIVE on May 7, 2004. *Gist:* Lack of diligence; failure to communicate with client; and failure to account for and refund unearned fees.

Jo Anne Fleming, Baton Rouge, (2004-B-0783) **Interim suspension** ordered by the court on April 7, 2004. JUDGMENT FINAL and EFFECTIVE on April 7, 2004.

Jessie N. Gros III, Harvey, (2003-B-3076) Permanent disbarment ordered by the court on April 23, 2004. JUDGMENT FINAL and EFFECTIVE on May 7, 2004. Gist: Unauthorized practice of law while disbarred; felony conviction in connection with conversion of settlement funds; and failure to cooperate in numerous disciplinary investigations.

Heyward G. Jeffers, Jr., Baton Rouge, (2003-B-3345) Suspension of six months ordered by the court on April 14, 2004. JUDGMENT FINAL and EFFECTIVE on April 28, 2004. *Gist:* Failure to prepare for a jury trial in a criminal case in that he neglected to conduct a pre-trial investigation, contact any witnesses, or file any motions on behalf of his client.

Dana P. Karam, Alexandria, (2004-OB-1031) Permanent resignation in lieu of discipline accepted and ordered by the court on May 7, 2004. JUDGMENT FINAL and EFFECTIVE on May 7, 2004.

James E. Kurzweg, Metairie, (2003-B-2902) Suspension of one year and one day ordered by the court on April 2, 2004. JUDG-MENT FINAL and EFFECTIVE on April 16, 2004. *Gist:* Neglect of his client's legal matter; failure to communicate with his client; failure to expedite litigation causing harm to his client; and failure to cooperate in a disciplinary investigation.

Alex O. Lewis III, New Orleans, (2004-OB-0945) Permanent resignation in lieu of discipline accepted and ordered by the court on May 14, 2004. JUDGMENT FINAL and

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EFFECTIVE on May 14, 2004.

Frederick Lewis, Jr., Shreveport, (2003-B-3314) Suspended for three years, with one year deferred, ordered by the court on May 7, 2004. JUDGMENT FINAL and EFFECTIVE on May 21, 2004. Gist: Lack of diligence; lack of communication; failure to pay third party providers; conversion of funds owed to a third party; failure to safeguard client's property; failure to withdraw from representation; and failure to cooperate in a disciplinary investigation.

Jean Marie Lacobee, Shreveport, (2003-B-2010) Three-year suspension with one year deferred, retroactive to Oct. 30, 2002, ordered by the court on Feb. 20, 2004. JUDG-MENT FINAL on March 5, 2004 and EF-FECTIVE on Oct. 30, 2002. *Gist:* Failure to account for and refund unearned fees; conversion; and engaging in conduct involving dishonesty, fraud, deceit and misrepresentation.

Reginald J. McIntyre, Hammond, (2004-B-0943) Consent public reprimand with Ethics School ordered by the court on May 14, 2004. JUDGMENT FINAL and EFFECTIVE on May 14, 2004. *Gist:* Violating the scope of the representation; failure to act with reasonable diligence; failure to properly communicate with his client; and violating the Rules of Professional Conduct, all of which occurred during a personal injury representation.

Walter E. Moak, Mesa, AZ, (2003-B-2892) Suspension of six months and one day ordered by the court on April 30, 2004.

JUDGMENT FINAL and EFFECTIVE on May 14, 2004. *Gist:* Reciprocal discipline identical to that imposed by the Arizona Supreme Court for misleading conduct.

Richard Lee O'Brien, New Orleans, (2004-OB-0946) Permanent resignation in lieu of discipline accepted and ordered by the court on May 14, 2004. JUDGMENT FINAL and EFFECTIVE on May 14, 2004.

William Charles Passman, Jonesville, (2004-B-0942) Consent interim suspension ordered by the court on April 21, 2004. JUDGMENT FINAL and EFFECTIVE on April 21, 2004.

Val K. Scheurich III, New Orleans, (2003-B-3264) Suspension of three years ordered by the court on April 30, 2004. JUDGMENT FINAL and EFFECTIVE on May 14, 2004. *Gist:* Commingling and conversion of client's funds.

Marvin L. Schwartz, Monsey, N.Y., (2004-B-0519) Interim suspension (reciprocal discipline) ordered by the court on April 2, 2004. JUDGMENT FINAL and EFFECTIVE on April 16, 2004.

Robert W. Stratton, Baton Rouge, (2003-B-3198) Suspension of three years ordered by the court on April 2, 2004. JUDG-MENT FINAL and EFFECTIVE on April 16, 2004. *Gist:* Filing meritless litigation to harass and burden third persons.

Gregory L. Thibodeaux, Lafayette, (2004-B-0991) Consent suspension of one year, fully deferred, conditioned upon two years' probation, ordered by the court on May 21, 2004. JUDGMENT FINAL and

EFFECTIVE on May 21, 2004. *Gist:* Neglect of a legal matter and failure to communicate with a client.

Edwin Jerome Wilson, Baton Rouge, (2004-B-0861) Consent interim suspension ordered by the court on April 21, 2004. JUDGMENT FINAL and EFFECTIVE on April 21, 2004.

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No. o Violation	
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and disburse funds due to	
a third party	l
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Failure to protect a client's	
interest upon termination of	
representation	1
Failure to refund fees for work	
not completed	1
Lack of communication	2
Violating or attempting to violate	
the Rules of Professional Conduct	1
Engaging in conduct prejudicial	
to the administration of justice	2
Conflict of interest	1
TOTAL INDIVIDUALS	
ADMONISHED	Z

DISCIPLINARY REPORT: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of June 1, 2004.

Respondent	Disposition	Date Filed	Docket No.
Joseph W. Thomas	Disability inactive.	4/13/04	01-1531 "F"
Donald Ray Pryor	Suspended.	4/19/04	04-597 "I"
Robert T. Defrancesch	Suspended.	4/26/04	04-601"R"
Hilliard C. Fazande	Suspended.	4/29/04	04-598 "C"
Keith J. Labat	Interim suspension.	5/4/04	04-819 "B"
Patricia Ann Givens Dean	Suspension deferred – one-year probation.	5/4/04	04-599 "T"
Greer E. Goff	Reinstated.	5/6/04	03-560 "T"
Alex O. Lewis	Disbarred.	5/7/04	04-266 "J"
Chester John Caskey	Suspension deferred – one-year probation.	5/6/04	04-602 "N"
David C. Willard	Disability inactive.	5/18/04	04-969 "I"
Joseph Nicholas Breaux	Disability inactive.	5/24/04	04-772 "K"
Michael M. Christovich	Permanent resignation.	6/3/04	04-1143 "A"

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California counsel. Also admitted in

Louisiana. Former associate, blue chip New Orleans firm; 18 years' experience in all aspects of commercial, banking, creditors rights and other litigation and bankruptcy, application of Louisiana law in California courts, California law in Louisiana courts, jurisdiction and conflicts of law. Contact William F. Abbott, (415)863-9337.

Florida health care attorney. Graduate of Tulane and Tulane Law (cum laude) and member of the Bars of Florida and Louisiana available for consultations, cocounsel on Florida cases involving health care providers, opinion letters and client referrals. Experienced in transactional and litigation matters; licensing, regulatory and administrative proceedings; Medicare/Medicaid, corporate and business litigation. Statewide practice. Certified by the Florida Bar in the legal specialty of health care law. LL.M. (with honors), George Washington University. Contact George F. Indest III, The Health Law Firm, Ste. 2030, 220 E. Central Parkway, Altamonte Springs, FL 32701; (407)331-6620; www.thehealthlawfirm.com.

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- 1. The attorney shall be admitted to practice law in the state of Louisiana unless the action is pending in another state in which event the attorney shall be admitted to practice in the state where the action is pending.
- 2. If the action is pending before a federal court or other court of special admission requirements, the attorney shall be admitted to practice before such court.
- 3. The attorney shall not be under suspension by the Louisiana Supreme Court or any court in which the action is pending.
- 4. The attorney and any attorney with whom he is engaged in the practice of law shall not represent any plaintiff in any tort claim against the state and/or its departments, commissions, boards, agencies, officers, officials or employees.
- The attorney shall not have a conflict of interest as provided by the Rules of Professional Conduct of the Louisiana State Bar Association.
- 6. The attorney shall have and maintain professional malpractice insurance with minimum coverage of \$1 million per claim with an aggregate of \$1 million.
- 7. The attorney should have a Martindale-Hubbell rating of "bv" or better.
- **8.** The attorney should have been admitted to and engaged in the practice of law for a minimum of three years.
- 9. The requirements set forth in 7 and 8 may be waived by the attorney general in which event the attorney will be placed on a probationary status for a period of three years. During the period of probation, the attorney's performance will be evaluated annually by the claims manager of the Office of Risk Management and the director of litigation of the attorney general's office.

In the event that the attorney's performance is acceptable during the three years probationary period, he shall be removed from probationary status and placed on the approved list.

In the event that the attorney's performance is unsatisfactory, he may be removed from the probationary list or, in the discretion of the claims manager and director of litigation, his probationary period may be extended.

- 10. Any attorney appointed by the attorney general serves at the pleasure of the attorney general and may be removed by the attorney general at any time without cause.
- 11. The state commissioner of administration may withdraw his concurrence of any attorney only for cause.
- 12. If a state legislator is a member of a law firm, he shall be completely screened from participation in any matter in which the firm represents the state and/or its departments, etc. and (s)he shall not be apportioned any portion of any fee derived from any such representation.

Additional Requirements for the Defense of Medical Malpractice Claims

- **13.** The attorney should have three years experience in the defense of medical malpractice claims.
- **14.** The attorney should have participated as counsel of record in at least two medical malpractice trials.
- 15. Professional malpractice limits shall be at least \$1 million per claim and with an aggregate of \$1 million.
- 16. Requirements 14 and 15 may be waived by the attorney general in which event the attorney will be placed on probation as to medical malpractice defense as provided in paragraph 9 above.

We Want Your News!

Deadline for submitting news items in the December 2004/January 2005 Louisiana Bar Journal is Oct. 4, 2004.

Send news items/photos to: Louisiana Bar Journal, Louisiana State Bar Assn., 601 St. Charles Ave., New Orleans, LA 70130; or e-mail to Communications Director Michele C. Norris at mnorris@lsba.org.

UPDATE

Neuner, LSBA Receive Isaac Hecht Law Client Protection Award

Frank X. Neuner, Jr. of Lafayette, president of the Louisiana Client Assistance Foundation (LCAF) and current president-elect of the Louisiana State Bar Association (LSBA), and the LSBA were presented with the Isaac Hecht Law Client Protection Award on June 4. Neuner was recognized for his leadership and guidance in reforming the LSBA's Client Protection Program.

Neuner and the LSBA received the inaugural award at the American Bar Association's (ABA) 20th National Forum on Client Protection in Naples, Fla. The award recognizes an individual, law client protection fund or other professional organization that has demonstrated excellence in the field of client protection. The Hecht Award honors the memory and career of Isaac Hecht and his pioneering support of law client protection funds. These funds reimburse clients for the loss of property or money due to the dishonest conduct of their lawyer. Neuner and the LSBA were recognized for their extraordinary efforts and commitment to improving the client protection program in Louisiana.

Writing in support of the award, Louisiana Chief Disciplinary Counsel Charles B. Plattsmier stated, "Genuine success stories of this magnitude are rare. Success stories which accomplish as much good for the public on behalf of a state bar are even more rare. No other individual deserves more credit and recognition for what has been accomplished in Louisiana than Frank Neuner."

While Louisiana has for decades sup-



Frank X. Neuner, Jr., third from left, and the Louisiana State Bar Association were presented with the Isaac Hecht Law Client Protection Award. From left, Carole R. Richelieu, National Client Protection Organization (NCPO) president from Hawaii; Janey Green Marbley, NCPO past president from Ohio; Neuner; Cheri Cotogno Grodsky, Louisiana State Bar Association director of professional programs and practice assistance counsel; Fred Miller, NCPO counsel; and Eleanor Hecht Yuspa, Isaac Hecht's daughter.

ported the concept of a client protection fund or client assistance fund to assist individuals who have suffered financial loss due to their own attorney's unethical actions, permanent funding mechanisms were never in existence. Five years ago, the LSBA's Client Protection Fund had severe funding problems. In June 1999, the Fund had less than \$1,000 in reserves to pay the claims of qualified individuals. Although the LSBA Client Protection Fund Committee was ably chaired by James P. Doherty, Jr. and comprised of dedicated volunteers who thoroughly investigated and recommended payment to worthy applicants, the only source of funding was volunteer contributions by lawyers and LSBA budget appropriations.

Recognizing the limitations of this method, Neuner, with the LSBA's support, explored ways to rectify the situation. In June 2000, LSBA President E. Phelps Gay appointed Neuner to serve as chair of a Client Protection Study Committee, with Michael W. McKay, Hon. Sharon M. Morrow, Marta-Ann Schnabel and Arthur E. Stallworth serving as members. That committee was charged with formulating recommendations to improve Louisiana's client protection fund program and to examine funding sources. The Study Committee spent a year and a half reviewing the

history, purpose, effectiveness and impact of the Client Protection Fund, comparing it to similar programs in other states and, most importantly, seeking input from lawyers, bar leaders, the judiciary, the ABA and the public about the future of the fund. The Study Committee invited an ABA consultation team, consisting of Lynda C. Sheley, William D. Ricker, Jr. and John A. Holtaway, to Louisiana to evaluate the program in October 2000 and they rendered a report with recommendations in November 2000.

The Study Committee and Neuner aggressively sought new and innovative ways to finance the Fund. Through the Study Committee and Neuner's efforts and vision, the Louisiana program was redesigned in 2002 and sufficient funding was secured. Many of the ABA team's recommendations were implemented. The LCAF was established in 2002 as a vehicle to receive tax-deductible donations, with Neuner as the incorporator. There are nine LCAF board members, including two lay people, appointed by the LSBA Board of Governors and they are charged with the management of the Fund, including approving all payment recommendations received from the LSBA Client Assistance Fund Committee (formerly called the Client Protection Fund Committee) which investigates applications for reimbursement.

The main funding source for LCAF has been the Louisiana Outside Counsel Health and Ethics Foundation (LOCHEF). Since 2002, the LCAF has received more than \$600,000 from LOCHEF, a private non-profit founded by attorneys who represented Louisiana in litigation against major tobacco companies. Additionally, the LCAF received \$100,000 from the LSBA Board of Governors in 2003. The LOCHEF funding commitment to the LCAF is \$300,000 annually until 2012 and \$500,000 annually for the following 10 years. Although much of the donated funds pay worthy claims, a significant portion is dedicated each year to forming a corpus that will perpetually fund client protection in Louisiana.

Potential claimants are made aware of the fund whenever a complaint is received by the Office of Disciplinary Counsel (ODC). Once a complaint is made to the ODC, the complainant receives information about LSBA services and the LCAF. THE LCAF has processed 298 claims since August 2000 and paid 57 claims totaling more than \$302,000.

Cheri Cotogno Grodsky, LSBA director of professional programs, also writing in support of this award, stated, "Frank was a key person in turning around our client protection fund. Frank is respected and recognized for his dedication to client protection."

Attorney General's Summer Law Clerk Fellowship Program Underway

Attorney General Charles C. Foti, Jr. welcomed Chancellor John J. Costonis from the Louisiana State University Paul M. Hebert Law Center and Vice Chancellor Arthur E. Stallworth from the Southern University Law Center on May 25 for orientation day of the first Summer Law Clerk Fellowship Program.

"These students are all top law students and possess a variety of valuable experience that will enhance this office," Foti said. "I look forward to working with them and showing them what the Attorney General's Office has to offer not only as an employer, but as a citizen as well."

The Summer Law Clerk Fellowship Program will employ 25 students from the law schools of Loyola, LSU, Southern and Tulane. The law clerks will work in the Baton Rouge, New Orleans, Lafayette and Alexandria offices of the Department of Justice. Students participating in the program have the opportunity to work in specific areas of interest, such as consumer protection, while rotating every two weeks among the different sections of the Attorney General's Office, according to the needs of each division.

Foti welcomed the students and discussed public service and provided information about his office. Every week, the law clerks will gather for presentations by various public officials who will speak and answer questions about public service and how different governmental agencies are impacted by the work of the Attorney General's Office.

The 2004 summer clerks are: Missy Edwards Taylor, LSU; Lauren Bailey, Southern; Shad Haston, Southern; Cory Wilson, Southern; Chanell Hamilton, Southern; Miranda Conner, Southern; Charlette Jackson, Southern; Caulette Jackson, Southern; Derrick Key, Southern; Stephen Kabel, Tulane; Ken Jones, Southern; Gary Franklin, Southern; Larry Camm, LSU; Stanton Hardee, Southern; Ted James, Southern; James Jolivette, Southern; Shana Shirley, Southern; Jennifer Simmons, Southern; Nykeba Walker, Southern; Kevin Dantzler, Southern; James Bayard, Loyola; Rebecca Hudcock, Loyola; Phyllis Glazer, Tulane; Julia Marie Autin, LSU; and William Guste IV, LSU.

Attorneys Sponsor "High Voltage" TV Program

Several attorneys helped sponsor the July 10 episode of "High Voltage" on WLAE-TV Channel 32. This episode discussed tobacco use prevention for youth. Dominique M. Glendening and Michael W. Aiken hosted the program. Program guests included Dr. Thomas Houston, director of the Louisiana Campaign for Tobacco-Free Living; Anna B. Alcala, Council on Alcohol and Drug Abuse; Tammy Louk, Cancer Association of Greater New Orleans; and jazz saxophonist Lance Ellis.

Funding for this episode of "High Voltage" was provided by Adams and Reese, L.L.P.; Gertler, Gertler, Vincent and Plotkin, L.L.P.; Levy and Associates; Employment Benefit Specialists; the Louisiana Campaign for Tobacco-Free Living; Morton Katz, Attorney at Law; New Orleans Jazz and Heritage Foundation; Louisiana State Senator Paulette Irons and the Community Volunteers Association; and Westbank Electric.

Profiles of Louisiana Bar Foundation's Scholars-in-Residence

Professor David W. Gruning

The Louisiana Bar Foundation (LBF)

2002-04 Scholar-in-Residence (S-I-R) Professor David W. Gruning presented his scholarly work to the LBF Education Committee in July. His project is an evaluation of the process of codification and especially of re-codification of



Professor David W. Gruning

private law in Louisiana.

Gruning, a Loyola University Law School professor, received a BA degree Wesleyan University Middletown, Conn., a MA degree from Middlebury, Vt., and a JD degree, magna cum laude, from Tulane Law School. While at Tulane, he was the Law Review articles editor and a member of the Order of the Coif. He moved to New Orleans in 1975 where he worked on the docks, had a stint as a waiter in the French Quarter, then worked as a manuscript librarian at Tulane. He practiced law in New Orleans at Stone, Pigman, Walther, Wittmann & Hutchinson, joining the law faculty at Loyola in 1986. He teaches and works in both the civil law and the Anglo-American common law. Recently, he helped design and institute a new graduate program in North American Common Law (le Diplôme des etudes superieures specialisees en common-law nord americaine) at the University of Montreal as professeur titulaire (2001-03). He also lectured on American and comparative law at the Université de Lyon III (Jean Moulin), the Université de Paris V (René Descartes) and the Université de Caen (Normandy), and served as a consultant to the United States Information Service in Madagascar and to the International Foundation for Election Systems in Morocco.

Recent publications include Mapping

Society Through Law: Louisiana Civil Law Recodified, a chapter in Ysolde Gendreau, ed., Dessiner la société par le droit/Mapping Society Through Law (Thémis, Montréal, 2004); Marbury v. Madison: The Reach of Review: Of Judges, Cases, and Constitutions, 37 La revue juridique Thémis 317 (2003); and Bayou State Bijuralism: The Common Law and the Civil Law in Louisiana, University of Detroit Mercy Law Review.

Named the Louisiana Outside Counsel Health and Education Foundation Distinguished Professor this year, Professor Gruning credits his father and Shael Herman as influencing him on law and life.

Professor Evelyn Wilson

The LBF selected Professor Evelyn

Wilson as the 2004-06 S-I-R recipient. Her project will look at the Louisiana Supreme Court in Reconstruction from 1865-80.

Professor Wilson received a BA degree from Oberlin College in Ohio, a MS degree from the Uni-



Professor Evelyn Wilson

versity of Utah, Salt Lake City, and a JD degree from Louisiana State University Paul M. Hebert Law Center. She also received a certificate in International and Comparative Law from a University of San Diego summer program held in Guadalajara, Mexico, and a Financial Planning Designation from the College of Financial Planning in Denver, Colo.

She worked in city and state government positions in New York, in Taxation and Securities in Lake Charles, La. and in the Office of General Counsel at Exxon in Houston, Texas. She clerked for Louisiana Supreme Court Chief Justice John A. Dixon, Jr. and practiced law with the firm of Losavio and Weinstein in Baton Rouge. In 1986, she began teaching at Southern University Law Center. She also spent a year teaching at Washington and Lee University School of Law in Lexington, Va.

Released this summer, Professor Wilson's most recent work is a biography of Charles Hatfield, Jr. The story of the desegregation of Louisiana's public law school traces Hatfield's genealogy against Louisiana history from 1817-2002.

She credits Professors George Pugh and Lucy McGough of LSU as being her inspiration. She studied Federal Courts with Professor Pugh and now teaches that subject at Southern. She also studied Trusts and Estates with Professor McGough and admired the way the professor balanced teaching, family, writing and contributing to the law, making the "adventure seem possible."

S-I-R Program

In 1991, the LBF board of directors established the S-I-R program to incorporate an academic and scholarly dimension to the organization. The program is intended to enhance the LBF's overall educational program and to support legal education in Louisiana by bringing the practicing bar and Louisiana's law schools closer together. The Education Committee gathers applications then reviews and recommends a professor to the board. The S-I-R term is for two years and includes a stipend to supplement the salary of the chosen professor. During these two years, the scholar shall pro-

duce an academic work suitable for the intended LBF purpose.

The first S-I-R recipient was Professor Paul R. Baier of Louisiana State University Paul M. Hebert Law Center for his work titled Time and the Court. The original work,



Professor Paul R. Baier

taken from an Oration on the Occasion of the Bicentennial of the Supreme Court of the United States and delivered on Feb. 2, 1990, first appeared in the *Louisiana Bar Journal*, Vol. 38, No. 1.

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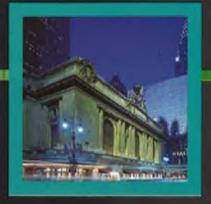
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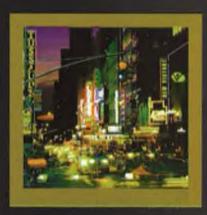
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(800)421-LSBA.



Mary Ann Sherry, left, chair of the Law League of Louisiana Awards Committee, presented Law School Merit Awards to law students Maurice D. Hall of Southern University Law Center and Brandi Y. McKenzie of Louisiana State University Paul M. Hebert Law Center at the League's annual installation banquet May 12.

Law League Presents Merit Awards to Students

The Law League of Louisiana annually presents the Taylor, Porter, Brooks and Phillips Law School Merit Award to a student at each of the four Louisiana law schools. The award, based upon grade point average, consists of a monetary stipend and a certificate of merit.

Recipients for this year are James R. Cummiskey, Jr., Tulane Law School; Maurice D. Hall, Southern University Law Center; William M. Mason IV, Loyola University Law School; and Brandi Y. McKenzie, Louisiana State University Paul M. Hebert Law Center.

Baton Rouge Bar Association



Honored at the Baton Rouge Bar Association June 3 luncheon were attorneys who have practiced law 30 to 39 years. From left, top row, Byron R. Kantrow, Jr., Henry D. Salassi, Jr., Kenneth F. Sills, Capt. Bob Bell, Emile Rolfs and Michael Zelden. From left, bottom row, Judge Frank J. Polozola, Wendell Lindsay, Donald L. Beckner, James E. Toups, Jr. and Thomas Watts.

LOCAL AND SPECIALTY BARS

Baton Rouge Easter Project



Dufrocq Elementary students take a break from looking for Easter eggs to pose with the Easter bunny and Baton Rouge Bar Association volunteers Alex Prochaska, Anna Jackson and Michelle Lorio.



Baton Rouge Bar Association Volunteer Committee members Bridget Denicola, Karleen Green, Anderson Dotson, Dominick Bianca and Deidre Robert hid eggs at Baton Rouge inner city schools as part of the Volunteer Committee's Easter Project.

Baton Rouge Bar Association Block Party



Danny McGlynn, Jeanne Comeaux, Jay Jalenak, Jr. and Len Kilgore were instrumental in the planning of the Baton Rouge Bar Association's 75th Anniversary Block Party on May 8.

Baton Rouge Bench Bar Conference



Baton Rouge judges Mike Erwin, Tony Marabella and Alex "Brick" Wall participated in the golf tournament at the annual Baton Rouge Bar Association Bench Bar Conference. They won the first place net award.



Baton Rouge Bar Association Bench Bar Conference 2004 participants Chad and Rose Olivier, Judge Duke Welch and Jason Bonaventure attended the Thursday night pig roast. The conference was held at the Marriott Grand Hotel in Point Clear, Ala., from April 1-4.



Doug Cochran, Stephen Babcock and Michael Lutgring were awarded the second place net score price at the Baton Rouge Bar Association Bench Bar Conference annual golf tournament. Not in photo, team member Judge Guy Holdridge.



Judge Suzan Ponder, Rodney Messina, Judge Susan Davis, Judge Alex "Brick" Wall and Mike McKay enjoyed the Baton Rouge Bar Association Bench Bar Conference Hospitality Suite.

Baton Rouge Bar Association Block Party



Deborah Gibbs, Paul West, Judge Ralph Tyson, Mark Upton and Amy Counce attended the 75th Anniversary Block Party, held by the Baton Rouge Bar Association on May 8.



Baton Rouge Bar Association President Michael Ferachi sings "I'm a Believer," while judges Kay Bates, Tim Kelley and Suzan Ponder provide backup vocals.

Lafayette Bar, Lafayette-Acadiana FBA Chapter Host Social

The Last Appointment, an after-hours social for attorneys and judges, was hosted by the Lafayette Parish Bar Association and the Lafayette-Acadiana Chapter of the Federal Bar Association on May 27 at the John M. Shaw Federal Courthouse.

Lafayette attorneys and judges from the 15th Judicial District, as well as federal judges, were invited to socialize with other members of the bench and the bar. The social was sponsored and attended by Eatel Sales Manager Kip Guerin and his sales team.



Attending the Last Appointment social in Lafayette were, from left, Dean Cole, Doug Truxillo, Judge Durwood Conque, Judge Tucker Melancon, Matt Jones, Kenny Oliver, Kip Guerin and Lamont Domingue.

Lafayette Bar Delivers Easter Baskets



The Lafayette Parish Bar Association continued its tradition of making Easter a little brighter for the less fortunate children in the community with its annual Easter basket delivery project on Good Friday. Community Service Chair Jennie Pellegrin coordinated the event in which attorney and staff volunteers and their children brought baskets filled with candy, books, toys and other treats to kids at the Children's Shelter, Faith House and the pediatric ward of University Medical Center. From left, Yvette Dumas, Vicki Truxillo, Mike Hebert, Jennie Pellegrin as the Bunny, Monica Marse, Susan Holliday, Jamie Roy, Blake David and Amber Rains. Front, children of volunteers and David Bankston.



Blake David, from left, Greg Koury, Bobby Odinet, Angela Barbera, Peggy Perry and Cullen Ryan at the Last Appointment social in Lafayette.



Among those in attendance at the Last Appointment social in Lafayette were, from left, Alec Alexander, Louis Simon, Mike Skinner, Jim Diaz, Sr. and Greg Mier.

Martinet Legal Society/Greater Lafayette



New officers of the Louis A. Martinet Legal Society, Inc. Greater Lafayette Chapter were installed in March at the general membership/installation banquet. Hon. Edward D. Rubin was guest speaker and installed the officers. Valerie Gotch-Garrett is president; Tricia R. Pierre, vice president; Suzanne Siner, secretary; and Lloyd Dangerfield, treasurer. (Valex Amos, Jr. stood in for Dangerfield during the installation.)

NOBA Bench Bar Conference: "Lovers, Lunatics, Poets & Lawyers"

Outstanding CLE with a Shakespearian twist set the tone for the New Orleans Bar Association's (NOBA) annual Bench Bar Conference at Point Clear, Ala. The theme was "Lovers, Lunatics, Poets & Lawyers: The Bard Teaches the Law." In addition to a session showing Shakespeare's intertwining of the law with literature, there were programs on leadership skills, maintaining proper balance between life and work, ethics and professionalism. Highlighting one session was the administration of personality profile tests to participants with subsequent discussion on how various personality types interact. The use of "roving" microphones insured interaction between panelists and the audience.

Welcoming remarks were by Conference Chair Carmelite Bertaut. NOBA President Phillip Wittmann delivered the keynote speech. Michael A. Golemi was conference vice chair.

Two parties highlighted the evenings. Friday night's Bench Bar Grammys featured members of the bar and judiciary performing on stage. Saturday night's progressive dinner entitled "From Law School Hell to Heaven" began with par-

ticipants enjoying hors d'ouevres and theme drinks around a bonfire on the beach. Purgatory was a candlelit steak dinner on the Point Clear pier. The evening ended in Heaven — on the patio with gourmet desserts and a live band.



Point Clear Southern belles were on hand to welcome New Orleans Bar Association (NOBA) Bench Bar Conference attendees upon their arrival. From left, Bench Bar Vice Chair Michael Golemi, Bench Bar Chair Carmelite Bertaut and NOBA President Phillip Wittmann.



In costume for the Shakespeare portion of the New Orleans Bar Association Bench Bar CLE Conference are, from left, Anne Keller and Grady S. Hurley. Standing is U.S. Eastern District Chief Judge Helen "Ginger" Berrigan, panel moderator.



Attending the Progressive Dinner at the New Orleans Bar Association Bench Bar Conference are, from left, Alice C. Snee, Judge Rosemary Ledet, Kim M. Boyle, Judge Michael G. Bagneris, Madlyn Bagneris and Judge Carolyn Gill-Jefferson.

Shreveport Bar's Women's Section Hosts Easter Party

The Shreveport Bar Association's (SBA) Women's Section sponsored its annual Easter party April 2 for the children of Providence House and the YWCA Family Violence Program. About 50 children and their family members attended.

This year's event at the Providence House Education Center included various games for the children, refreshments donated by Pie Works, and a surprise visit by the Easter Bunny, a/k/a Assistant District Attorney and SBA member Brian Barber.

Volunteers who helped with the party were SBA Women's Section President Amy Greenwald, Robin Jones, Renee King, Catherine Politz, Donna Frazier and Kim Ramsey.

Huynh Winner of 2004 St. Mary Bar Scholarship

David Huynh, a senior at Morgan City High School, is the winner of the 2004 St. Mary Bar Association Scholarship. The \$2,000 scholarship was awarded based on three academic criteria — grade point average, ACT score and an original essay. This year the topic involved the Electoral College system.

"We are very pleased to award our scholarship to such an outstanding young man as David Huynh. In addition to his excellent academic achievements in grade point average and ACT score, his essay was scored the highest of all the applicants," said Marsha McNulty, president of the St. Mary Bar Association.

Huynh is the son of Dang and Le Huynh. He is the 2003-04 St. Mary Parish High School Senior of the Year. He has worked as a volunteer for the Adopt-A-Grandparent program, the St. Mary Parish Special Olympics, the St. Mary Parish Outreach Food Drives and as a volunteer archivist with the Morgan City Archives. He is leaning toward attending Loyola University in New Orleans and majoring in history and political science, with hopes of later becoming an attorney.



The Easter Bunny (a/k/a Assistant District Attorney Brian Barber) paid a visit to the children of Providence House at the Shreveport Bar Association's Women's Section-sponsored Easter party.



"Pin the Tail on the Rabbit" was just one of the games children played at the Easter party sponsored by the Shreveport Bar Association's Women's Section. SBA Women's Section member Kim Ramsey is preparing to blindfold one of the children.



Marsha McNulty, left, president of the St. Mary Bar Association, presented David Huynh with the Association's 2004 scholarship. With them is Le Huynh, David's mother.

LOUISIANA BAR FOUNDATION

Raising the Bar Contributors Acknowledged

The Louisiana Bar Foundation acknowledges all who have made a contribution to Raising the Bar from Jan. 1 to May 31, 2004.

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For more information about the LBF, go to www.raisingthebar.org or call (504)561-1046.

Carter B. Wright New Orleans

LBF Announces Fund for A.P. Tureaud Biography

The Louisiana Bar Foundation (LBF) officially created the "Louisiana Bar Foundation for A.P. Tureaud Fund" in

May. The LBF formed an alliance with authors Rachel Emanuel and A.P. Tureaud, Jr. to publish a biography on Louisiana civil rights advocate and pioneer A.P. Tureaud. To get the fund started, attorneys Ike Spears of New Orleans and Walter Dumas of Baton Rouge each made a donation to the fund on April 30.

This project began as an academic publication but, because of its vital importance to Louisiana and the United States, the co-authors must hire a developmental editor to reach a wider audience. Funds must be raised to pay for this final phase of the project. All donations are designated for costs associated with the book. The book manuscript is under contract for publication by LSU Press.

To donate to this fund, make checks payable to "Louisiana Bar Foundation for A.P. Tureaud" and mail them to the Louisiana Bar Foundation-A.P. Tureaud Fund, 601 St. Charles Ave., New Orleans, LA 70130.

Louisiana Bar Foundation Welcomes New Fellows

The Louisiana Bar Foundation welcomes the following new Fellows: Patricia G. Cripps Shreveport Tracy P. Curtis Lafayette C. Frank Holthaus Baton Rouge R. Joshua Koch, Jr. Metairie Brandt M. Lorio New Orleans Lisa A. Montgomery Mandeville Sheri Morris Baton Rouge Lynn P. Perez Braithwaite Allen L. Smith, Jr. Lake Charles John A. Stassi II New Orleans Ford E. Stinson..... Benton Paul A. Tabary III Chalmette Chet D. Traylor New Orleans David J. Utter New Orleans

For membership information, contact Wendy Cooper at (504)561-1046 or wendy@raisingthebar.org. To learn more about the LBF, go to www. raisingthebar.org.

Alcohol and Drug Abuse Hotline

Director William R. Leary 1(866)354-9334 Ste. 4-A, 5789 Hwy. 311, Houma, LA 70360

Area	Committee Contact	Phone
Alexandria	Stephen E. Everett	(318)640-1824 • (337)443-6312
Shreveport	Bill Allison	(318)222-0337 • (318)226-9901
	Ed Blewer	(318)227-7712 • (318)865-6812
	William F. Kendig	(318)222-2772 • (318)869-3164
Monroe	Robert A. Lee	(318)387-3872 • (318)388-4472
Baton Rouge	James R. Clary, Jr	(225)926-6788 • (225)658-0745
	George M. Pierson	(225)293-4560
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The Lawyers Assistance Program, Inc. provides confidential assistance with problems such as alcoholism, substance abuse, mental health issues, gambling and all other addictions.

Lucid TERVA S

By Vincent P. Fornias

LOOSE KEYS SHRINK FEES

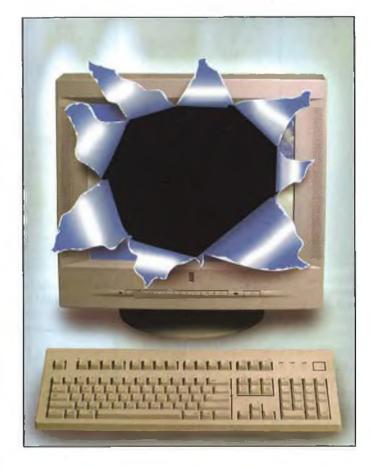
ur intrepid observer(s) at the legal beachhead somewhere in cyberspace (a/k/a René deLaup, who still cannot seem to find a semblance of a life) has monitored with some bemusement the escalation of the brazen confidentiality warnings that seem to follow every lawyer's e-mail.

These missives run neck and neck with books of the Old Testament in their sternness and guarantees of swift and cruel annihilation of anyone violating their decrees of secrecy. In an effort to end this arms race of disclaimers and infuse some much needed realism to these messages, we (mostly René) came up with the following alternatives

► All right, so we hit the wrong key and you've got us over a barrel. Here's our schedule of payola to buy your discreet deletion:

If it:	. We'll pay you:
is an intra-office romance overture	\$5.00
is an intra-office romance spurning	\$100.00
reveals associates' salaries	\$2.50
reveals partners' salaries	\$5,000.00
reveals legal secretaries' salaries	\$10,000.00
reveals the name of a reliable and	
affordable computer geek:	\$25,000.00

- ▶ Look into the black dot in the middle of your monitor. You are getting drowsy. Your eyelids feel like the entire compilation of the Acts of the Legislature. Repeat after me: "When I open my eyes, I will not recall one scintilla of what I have just read. I will have the memory of a Nazi war criminal at Nuremberg. I know nothing. Absolutely nothing."
- ▶ Oooops! Our bad.
- ➤ "Now that you got this message by mistake, you may as well get to know a little more about us. We are a full-service law firm with more than 10,000 years of combined legal experience. We offer unmatched expertise in the broadest areas of practice ranging from administrative law to zoning
- ► Accidents do happen! Speaking of, have you recently lost your balance on spilled coffee in the lunchroom? How are



your wrists feeling from all that time at the keyboard? Ever hear of carpal tunnel syndrome? How about those paraspinous neck muscles? Feel the spasms yet? Use our email address below to request a free consultation on how you may never have to look at a monitor again.

▶ So you got this message and you're thinking of forwarding it. Riiight. And we're thinking of sending out your e-mail address and DID number to every software salesman, stock broker, Girl Scouts cookie chairman, group health insurer and judicial campaign manager this side of the Sabine River. It's called *quid pro quo*. Latin for "make my day."

Better yet, you could just append a standard lawyer joke to every e-mail. Everyone knows we all immediately delete these transmissions without reading the rest.

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Percentage of Income Derived from the Following	g Areas of Practice:		_2	GILSBAR
Admiralty/Marine - Defense Admiralty/Marine - Plaintiff Anti-Trust Trade Regulation Banking/Financial Institution Business Transaction/Comm. Law Civil/Commercial Litigation - Defense Civil/Commercial Litigation - Plaintiff Civil Rights/Discrimination Collection/Bankruptcy Construction (Bldg. Contracts) Consumer Claims Corporate Business Organization	Criminal Environmental Law Family Law Government Contrac Immigration/Naturali Intellectual Property (Patent, Trademark, International Law Labor Law - Manag Labor Law - Union I Local Government Natural Resources/O	Perso Real cts/Claims Real zation Secui Taxat Copyright) Wills, Worke ement Rep. Worke Rep. Other	onal Injury Prop. Damage/De conal Injury Prop. Damage/Platestate/Title Commercial Estate/Title Residential rities (SEC) tion Estates, Probate & Planning ters' Compensation-Defense ters' Compensation -Plaintiffer, describe	efense aintiff
List of Attorneys by Name (If more than 3 attorneys, attach a separate page.)	Date Each Attorney Passed the Bar	Date of Hire or Individ Prior Acts Date	dual Relation to Firm (use codes)	Number of Hours Work for Firm Per Week
Codes: [O] Officer [OC] Of Counsel			,	
Name of Current Carrier:				
2. Present Liability Limit:			Premi	um:
Number of Claims/ Suits/ Incidents I Filed? Pending			Total Reserve	ed:
4. Does your firm do mass tort or class	action work?	If so, is it plaintiff or	defense related?	
5. Has any attorney with the firm ever	been disciplined or de	nied the right to prac	etice?	

