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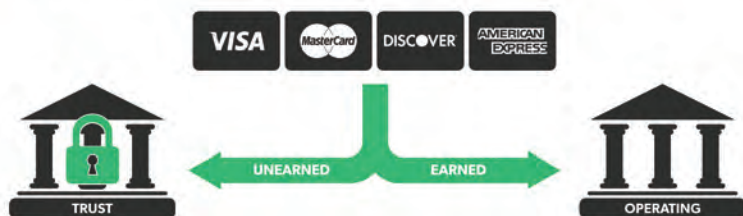
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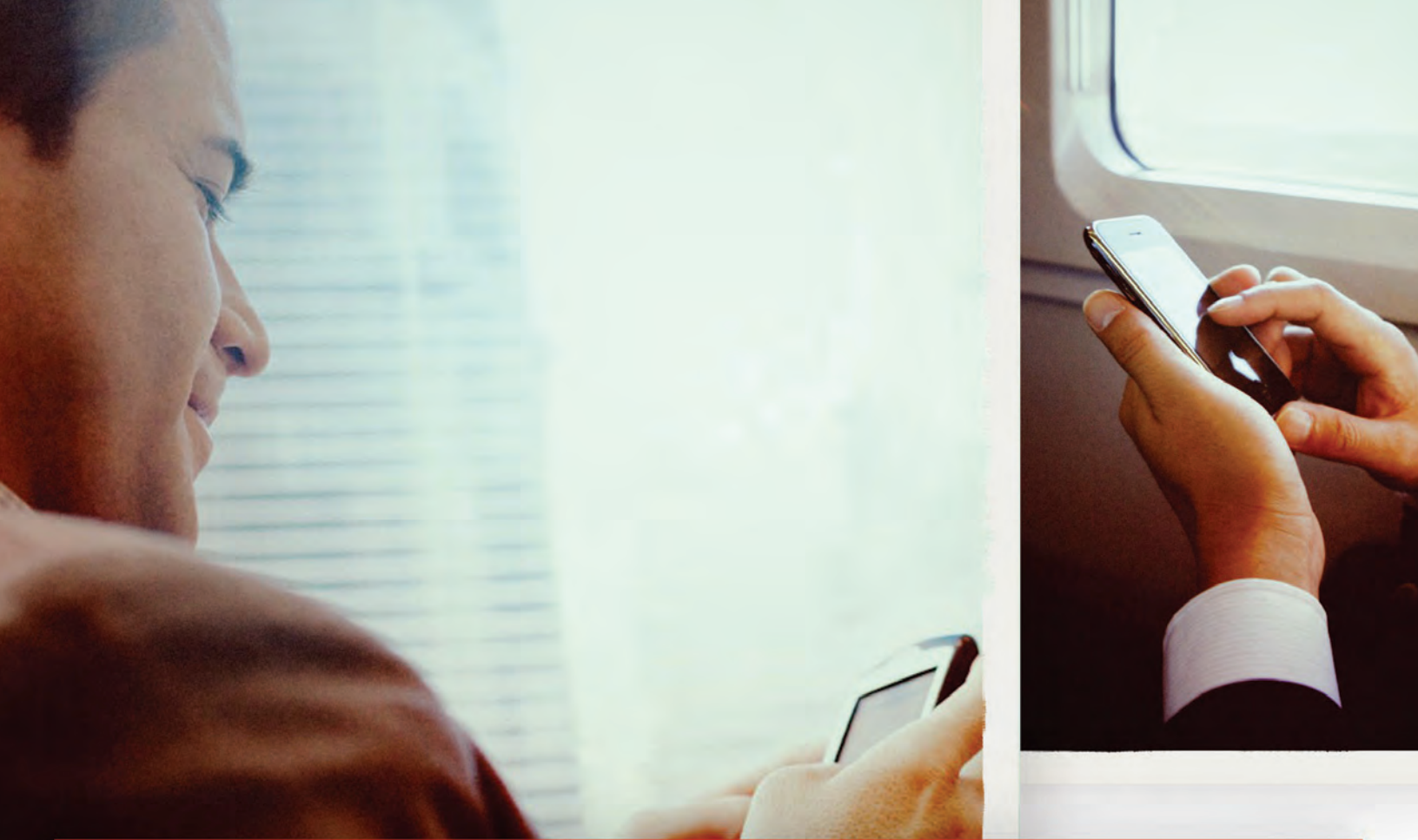
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**2015 Expert Witness, Consultant
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mailed with this issue!

“Sunset,” a photograph by attorney/photographer
Randy P. Roussel. For more of Roussel’s work and his
thoughts on “Capturing a Sense of Place,” see page 300.

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2015 Judicial Interest Rate is 4%

Pursuant to authority granted by La. R.S. 13:4202(B)(1), as amended by Acts 2001, No. 841, the Louisiana Commissioner of Financial Institutions has determined that the judicial rate of interest for calendar year 2015 will be four (4.0%) percent per annum.

La. R.S. 13:4202(B), as amended by Acts 2001, No. 841, and Acts 2012, No. 825, requires the Louisiana Commissioner of Financial Institutions to determine the judicial interest rate for the calendar year following the calculation date. The commissioner has determined the judicial interest rate for the calendar year 2015 in accordance with La. R.S. 13:4202(B)(1).

The commissioner ascertained that on Oct. 1, 2014, the first business day of the month of October, the approved discount rate of the Federal Reserve Board of Governors was three-quarters (.75%) percent.

La. R.S. 13:4202(B)(1) mandates that on and after Jan. 1, 2002, the judicial interest rate shall be three and one-quarter percentage points above the Federal Reserve Board of Governors-approved discount rate on Oct. 1, 2014. Thus, the effective judicial interest rate for the calendar year 2015 shall be four (4.0%) percent per annum.

La. R.S. 13:4202(B)(2) provides that the publication of the commissioner's determination in the Louisiana Register "shall not be considered rulemaking within the intendment of the Administrative Procedure Act, R.S. 49:950 et seq., and particularly R.S. 49:953." Therefore, (1) a fiscal impact statement, (2) a family impact statement, and (3) a notice of intent are not required to be filed with the Louisiana Register.

— **John P. Ducrest, CPA**
Commissioner of Financial Institutions
 Date: October 1, 2014

Judicial Interest Rate Calculator Online!

Need to calculate judicial interest? Check out the Judicial Interest Rate Calculator (courtesy of Alexandria attorney Charles D. Elliott) on the Louisiana State Bar Association's website.

Go to: www.lsba.org/Members/JudicialInterestRate.aspx.

Or visit the "For Members" page and find it under the "Member Tools and Services" box on the www.LSBA.org website.

Judicial Interest Rates Through 2015

Date	Rate
Prior to Sept. 12, 1980	7.00 percent
Sept. 12, 1980 to Sept. 10, 1981	10.00 percent
Sept. 11, 1981 to Dec. 31, 1987	12.00 percent
Jan. 1, 1988 to Dec. 31, 1988	9.75 percent
Jan. 1, 1989 to Dec. 31, 1989	11.50 percent
Jan. 1, 1990 to Dec. 31, 1990	11.50 percent
Jan. 1, 1991 to Dec. 31, 1991	11.00 percent
Jan. 1, 1992 to Dec. 31, 1992	9.00 percent
Jan. 1, 1993 to Dec. 31, 1993	7.00 percent
Jan. 1, 1994 to Dec. 31, 1994	7.00 percent
Jan. 1, 1995 to Dec. 31, 1995	8.75 percent
Jan. 1, 1996 to Dec. 31, 1996	9.75 percent
Jan. 1, 1997 to July 31, 1997	9.25 percent
Aug. 1, 1997 to Dec. 31, 1997	7.90 percent
Jan. 1, 1998 to Dec. 31, 1998	7.60 percent
Jan. 1, 1999 to Dec. 31, 1999	6.73 percent
Jan. 1, 2000 to Dec. 31, 2000	7.285 percent
Jan. 1, 2001 to Dec. 31, 2001	8.241 percent
Jan. 1, 2002 to Dec. 31, 2002	5.75 percent
Jan. 1, 2003 to Dec. 31, 2003	4.50 percent
Jan. 1, 2004 to Dec. 31, 2004	5.25 percent
Jan. 1, 2005 to Dec. 31, 2005	6.00 percent
Jan. 1, 2006 to Dec. 31, 2006	8.00 percent
Jan. 1, 2007 to Dec. 31, 2007	9.50 percent
Jan. 1, 2008 to Dec. 31, 2008	8.50 percent
Jan. 1, 2009 to Dec. 31, 2009	5.50 percent
Jan. 1, 2010 to Dec. 31, 2010	3.75 percent
Jan. 1, 2011 to Dec. 31, 2011	4.00 percent
Jan. 1, 2012 to Dec. 31, 2012	4.00 percent
Jan. 1, 2013 to Dec. 31, 2013	4.00 percent
Jan. 1, 2014 to Dec. 31, 2014	4.00 percent
Jan. 1, 2015 to Dec. 31, 2015	4.00 percent

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The following vendors have agreed to discount rates for LSBA members.

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- ▶ CoreVault – (866)945-2722
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Use corporate rate code LABAR

*Discounts not guaranteed at every hotel property within a national chain. Contact specific property to inquire about availability of LSBA discounted rates.

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The following hotels have agreed to corporate discount rates for LSBA members. Call, e-mail or check the website link for the current discounted rates. When making reservations, you must identify yourself as an LSBA member.

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By Barry H. Grodsky

Three Calls...and Some Thanks!

I was trying to figure out a way to put 2014 in perspective from my Bar Association point of view but was not sure how to do so. Then I thought about three phone calls I received this year and the idea came to me. It's all about "thanks."

The first call came from an attorney who criticized the new mentoring program (as many of you may know, I am the chair of the Committee on the Profession which created and implemented that program). Most of what he said was incorrect and said very loudly. I explained and corrected when I could — very politely — but to no avail. The call ended with no "thank you."

The second call was from a rather irate attorney who complained (for about 10 minutes) that he didn't like the photos in the *Bar Journal* and really didn't like one of the *Journal* covers I had selected. There was no placating this attorney so it was best just to listen. His positions were indeed discussed with the Editorial Board and the Bar staff. That call also ended without a "thank you."

Then came the third call a few days ago. It was from a young woman who was recently admitted into practice. She works for a well-respected, medium-sized law firm and had questions about becoming a mentee in the Transition Into Practice mentoring program. During the conversation, she said that as a summer law clerk a while back she happened upon the *Bar Journal* and enjoyed

reading it. That 10-minute call ended with her saying "thank you."

I was not sure if she was giving thanks for the mentoring program or the *Bar Journal*. Maybe she was just being polite and thanking me for discussing these issues. Nonetheless, it was courteous, professional and much appreciated.

Giving thanks is easy. It only takes a second or two and is remembered. As we get to the end of 2014, I want to be sure, from my Bar perspective, that my "thanks" are given, so here goes:

► I am thankful for our judiciary. These hard-working jurists are the cornerstone of our system. We all appreciate their hard work and dedication.

► I am thankful for the Bar staff. I work with so many of them on a regular basis. They are committed and diligent. Special thanks to Executive Director Loretta Larsen and Associate Executive Director Cheri Grodsky (and, for full disclosure . . . yes, indeed, she is my wife).

► I am thankful for those who give CLE presentations. Not only is there a considerable amount of work that goes into putting on these programs but their importance cannot be overstated.

► I am thankful for those who have signed up to be mentors. Well over 200 members have done so, many of whom are having their first endeavor with a Bar activity.

► I am thankful for all who volunteer for Bar committees and other Bar programs. As I have said before, the success of all our programs is based on the strength of the volunteers.

► I am thankful for (and I know I have thanked them before) the *Journal* Editorial Board. The board members work hard and perform an excellent service.

► I am thankful for our past Presidents. They have led the way and created and implemented important goals and initiatives. I am sure that most members of the Bar do not realize how much time, effort and energy goes into this position.

► I am thankful for our current and incoming Presidents (Larry Shea, Mark Cunningham and Darrel Papillion). The Bar is in great hands with these leaders. We owe them all not only our thanks but our gratitude.

► I am thankful for all those attorneys who use their legal skills and training outside of their practices. It is a great part of professionalism when we participate in civic and non-profit organizations, charities, schools and homeowners' associations or religious entities.

► I am thankful to hear about a lawyer who reaches a milestone or accomplishes a great achievement. Good deeds, good acts and good work need to be acknowledged.

► I am thankful for our Rule of Law.

► I am thankful for those legal experiences from which I can walk away with a smile, a handshake and, yes, even a "thank you."

Happy holidays to all!

Barry Grodsky

Thank You, John!

In the August/September 2014 issue of the *Louisiana Bar Journal*, "The Last Word" was a "Letter to the Bar" from John A. Broadwell. When we lawyers hear or read the ugly jokes, the snide comments and the "ambulance chaser" diatribes aimed toward us, let us remember John's letter to all of us. I hope his experiences with lawyers are ones we've all had and continue to have.

John was in my Loyola Law School class and, after getting to know him, it was not hard to understand why he has had such good interaction with fellow lawyers. John is a born talker and master of personal relationships which, when added to his intelligence and wit, are a recipe for a friend and a lawyer. I've never met

a more disparate group of people than our class but also never met such a group of intelligent and interesting people. With fellow students like John, my years of law school weren't just an endless grind but contained fun and enjoyment.

In his "Letter to the Bar," John glided past his medical problems (which are more complicated than stated) and sailed right into his appreciation for the profession of law as he has experienced it. In my experiences with John, this is typical. He just kept on keeping on. In the very best sense of the meaning, he is a *bon vivant*. Thank you John for enriching my life.

– Patricia A. Goodwin
Alexandria



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1. At the discretion of the Editorial Board (EB), letters to the editor are published in the *Louisiana Bar Journal*.

2. If there is any question about whether a particular letter to the editor should be published, the decision of the editor shall be final. If a letter questioning or criticizing Louisiana State Bar Association (LSBA) policies, rules or functions is received, the editor is encouraged to send a copy of that letter to the appropriate entity for reply within the production schedule of the *Louisiana Bar Journal*. If the editor deems it appropriate, replies may be printed with the original letter, or in a subsequent issue of the *Louisiana Bar Journal*.

3. Letters should be no longer than 200 words.

4. Letters should be typewritten, signed and, if applicable, include LSBA member number, address and phone number. Letters from non-members of the LSBA also will be considered for publication. Unsigned letters are not published.

5. Not more than three letters from any individual will be published within one year.

6. Letters also may be clarified or edited for grammar, punctuation and style by staff. In addition, the EB may edit letters based on space considerations and the number and nature of letters received on any single topic. Editors may limit the number of letters published on a single topic, choosing letters that provide differing perspectives. Authors, editorial staff or other LSBA

representatives may respond to letters to clarify misinformation, provide related background or add another perspective.

7. Letters may pertain to recent articles, columns or other letters. Letters responding to a previously published letter should address the issues and not be a personal attack on the author.

8. No letter shall be published that contains defamatory or obscene material, violates the Rules of Professional Conduct or otherwise may subject the LSBA to civil or criminal liability.

9. No letter shall be published that contains a solicitation or advertisement for a commercial or business purpose.



By Joseph L. (Larry) Shea, Jr.

This Holiday Season

As I write this message, we are entering the holiday season and anticipating celebrations for Thanksgiving, Christmas and Hanukkah. I find this time of year to be a truly joyous one. It is a time that I am most thankful for my family and friends who provide me with so much support and encouragement throughout the year (especially over the last few years during which much of my time has been spent “on the road”). I am particularly thankful this year for the opportunities I have had as president of the Louisiana State Bar Association (LSBA).



Louisiana State Bar Association President Joseph L. (Larry) Shea, Jr., far right, attended several “Lawyers in Libraries” events in south Louisiana on the Oct. 23 Day of Service, including the program at the St. Charles Parish Library’s East Regional Branch in Destrehan. From left, Day of Service lawyer volunteers Bryant S. York and Jeremy T. Grabill, library branch manager Tara Lombardi, Public Relations and Adult Programming Librarian Lauren Pitz and Shea.

I will never forget being accorded the privilege of participating in the ceremonies admitting and welcoming new attorneys into the profession, and then also participating in the solemn ceremonies recognizing and honoring those lawyers who have passed on. These gatherings by the state and local Bars are a valuable part of the traditions of our profession.

On Oct. 23, I enjoyed spending time visiting several libraries in south Louisiana where lawyers were helping the public on our Day of Service. But what I will remember most of that event, and the days leading up to it, is the hard work of

LSBA Access to Justice Director Monte Mollere and his staff and all of the many lawyers who unselfishly volunteered their time to make that day such a success. There were lawyers in libraries in every parish of the state. I am proud that the LSBA launched the Legal Education and Assistance Program (LEAP) and the Lawyers in Libraries component of that program during my term as president. It is an admirable undertaking and one that I hope will make a difference in improving access to justice in the years to come.

It is my impression that most people, just like me, are thankful and find the



LSBA President @LSBA_President · Oct 6

@LSBA_President Larry Shea honoring deceased members of the bench & bar at the LSBA Memorial Exercises.



Follow LSBA President Joseph L. (Larry) Shea, Jr. on Twitter @LSBA_President.

holiday season to be a fun time of the year filled with parties, celebrations and social gatherings. Most of us will enjoy family dinners with turkey and dressing, cranberry sauce, green bean casseroles and cornbread (in the south, and maybe even gumbo the further south you go), followed by apple and pecan pies (or, if relatives are coming to north Louisiana from the south, a pie or two from Lea's). Many of us will delight in being with friends united together in front of TVs watching parades and bowl games. For many more of us, there will be festive office parties where our business associates and their families take time from their busy lives to get together and visit about the past year's activities. There will be numerous religious gatherings and celebrations, whether they be for Christmas, Hanukkah or other reasons to celebrate the season, at which a large number of us will find contentment and inspiration.

Unfortunately, for all too many people, and particularly for all too many lawyers, the holiday season is a time filled with sadness, self-reflection, loneliness and anxiety. It is a season that comes with a "holiday depression" of its own which can affect anyone, whether it be due to time pressures, family issues, financial worries, memories of past holidays or just loneliness. This "holiday depression" is far more serious for those who already suffer from some form of depression. Studies show that clinical depression is

experienced by nearly 10 percent of the general population of the United States. There are other studies that suggest lawyers are 3.6 times more likely to suffer depression than non-lawyers. Right now, we do not know exactly why this occurs. Many guess that the higher rate of depression is due to demanding schedules and other sources of stress inherent in the practice of law. And this depression is not without consequences, the most serious of which is suicide. A study in 2009 indicated that suicide was the 10th leading cause of death in the United States. The staggering number of suicides in the legal profession ranks fourth when compared to the frequency of suicides in all other occupations. It deeply saddens me to know personally that we have not escaped this problem in Louisiana.

Due to this increasingly disturbing crisis in the legal profession, this issue of our *Louisiana Bar Journal* is devoted to mental wellness. We have included articles concerning mental illness and substance abuse among lawyers and how these problems may be effectively recognized and treated. The LSBA knows all too well the importance of addressing issues of depression, substance abuse and suicide within our profession. The LSBA leadership has worked hard over the last few years with our Committee on Alcohol and Drug Abuse and our Lawyers Assistance Program (LAP) and

its Executive Director Buddy Stockwell to establish a lawyers' assistance program designed to meet the needs of our members. Through proper funding and direction, your Board of Governors has approved a program that will properly staff LAP, expand LAP's mental health services in the areas of depression, stress management and professional burnout, and provide preventive services and programs to assist our members. All of this will be available to our members on a confidential basis.

In addition, Buddy Stockwell and I wrote to you on Nov. 5 asking you to participate in a survey by the American Bar Association's Commission on Lawyer Assistance Programs designed to ascertain the current rates of substance abuse, depression and anxiety among legal professionals. This will be of benefit to "virtually all sectors of the legal profession." I again encourage you to participate in the survey.

The holiday season is a time of both "thanks" and "giving." For those of us fortunate enough to be enjoying this holiday season, let us keep in mind that there are many of our colleagues who are suffering during this time of year. You may recognize it in an uncharacteristic lack of interest in personal appearance or social withdrawal or even increased complaints about aches and pains. If you see it, take that opportunity to "give." I am no expert in this but I understand that asking how you might be able to help and offering kind words of encouragement could make a difference. If you observe a situation that appears to be a truly serious one, or if you yourself are experiencing depression, do not hesitate to contact LAP for help.

"They might not need me; but they might. I'll let my head be just in sight. A smile as small as mine might be precisely their necessity."

—Emily Dickinson

It is my sincere hope that each and every one of you has a safe and Happy Holiday!

Joseph L. Shea, Jr.

FOCUS

Mindfulness, Mental Health and Lawyers Assistance

By Hon. Jay C. Zainey

When I was a second-year law student, one of my professors preached to my class that the “occupational hazard of an attorney is the bottle.” Times have changed since my professor made that statement in 1973.

Because of the enormous amount of stress that many members of our profession experience, our occupational hazards have expanded to include not only alcohol abuse but other very serious mental health issues such as compulsive gambling, compassion fatigue and depression. In fact, depression now outstrips all other mental health risks and has become our biggest occupational hazard of all. Experts report that the depression rate in our legal profession is as high as 30 percent. With these increased rates of depression, tragically, suicide rates have also risen dramatically in our profession.

As members of our honorable profession, we have a common bond. Many of us studied hard together during law school, celebrated with glee when we graduated, then anxiously took the bar exam and waited for what seemed to be an eternity for our bar exam results. When we learned that we passed the bar exam, we again celebrated together. When some of our classmates might not have successfully passed the exam, we were there to comfort them. In short, in experiencing this common bond, some of us somehow felt responsible for each other.

Because of this feeling of responsibility for each other, the Louisiana State Bar Association's SOLACE program (Support of Lawyers/Legal Personnel — All Concern Encouraged) was developed more than a decade ago. The program was created as a means for members of the legal community to assist each other in their times of need.

On several occasions within the past year, in my capacity as administrator of the SOLACE program, I was contacted either by fellow attorneys who were considering taking their own lives, or by family members of attorneys who reported to me that their loved one either committed suicide or attempted suicide.

I immediately contacted the Louisiana Lawyers Assistance Program's (LAP) Executive Director Buddy Stockwell. As soon as I hung up the phone with Buddy, he and his team at LAP sprang into action — saving lives, saving families and saving careers — and, in every case, on a completely confidential basis.

The Lawyers Assistance Program is NOT an arm of the Disciplinary Board. Rather, I have seen firsthand that if a person seeks assistance with LAP on his/her mental health issue, the members of LAP, upon request and with the permission of the person receiving assistance, will support that person who might be facing discipline problems based on his/her mental health issues.

The leaders of the Louisiana State Bar Association (LSBA) recognize the mental health and wellness issues and other challenges faced by the members of our profession and are dedicating this issue of the *Louisiana Bar Journal* to raise

awareness of the mental health issues that we face and, more importantly, the resources available through the Lawyers Assistance Program.

In this issue of the *Journal*, we are fortunate to have articles written by some nationally recognized contributors:

► Lawyers Assistance Program, Inc. Executive Director J.E. (Buddy) Stockwell provides a comprehensive look at the life-saving services that the program provides, as well as presenting a brief history of the program and the statutory and jurisprudential basis for its confidential assistance to the members of our profession.

► Lawyers Assistance Program, Inc. Clinical Director Leah Rosa discusses suicide prevention using QPR (Question, Persuade, Refer).

► Scott L. Rogers, director of the Mindfulness in Law Program at the University of Florida College of Law, discusses the practice of mindfulness and offers step-by-step guidance on how to best incorporate its elements into daily life.

► Ann H. Abbrecht, in private practice in New Orleans and specializing in anxiety, depression, stress, grief and life transitions, further discusses mindfulness techniques to reduce stress and create balance in life.

► Dr. Geralyn Datz, a licensed clinical health psychologist in Hattiesburg, MS., discusses techniques to address chronic stress and burnout, focusing specifically on the landscape of pressure and stress in the legal profession and how people with no pathologies of addiction or depression can still develop the serious syndromes of compassion fatigue and burnout.

► Dr. Jay A. Weiss, the psychiatrist and addictions doctor who heads the professional staff of Palmetto Addiction Recovery Center in Rayville, La., discusses the high rate of addiction among professionals and what it takes to successfully treat licensed professionals and high-functioning individuals such as lawyers, doctors and nurses.

► Dr. Daliah Bauer, a licensed clinical psychologist and co-founder of DBT Nola in New Orleans, offers insight into the emerging role of Dialectical Behavior Therapy and how it can help patients with

depression or substance abuse issues.

► Jeff Jay, co-author of the preeminent book on intervention titled *Love First: A Family's Guide to Intervention*, discusses how early interventions are key to treating substance use disorders before severe consequences are incurred. I am pleased to note that our LAP staff members have completed the *Love First*, Betty Ford-hosted, certification training course and are well equipped to provide all types of professional interventions to Bar members and their families.

► Dan T. Lukasik, a national figurehead for the depression recovery effort in the legal profession, talks about his personal journey through depression and introduces readers to his nationally renowned website for lawyers with depression and offers some reading options for more information.

I would like to thank LAP Executive Director Buddy Stockwell for assembling this incredible group of mental health professionals and for the work he and his LAP team do on a daily basis in saving the lives and careers of many of our colleagues.

I also would like to thank our Bar leaders, especially LSBA President Joseph L. (Larry) Shea, Jr. and President-Elect Mark A. Cunningham, for their commitment to the mental health and well-being of each and every member of our profession and for their strong support of the Lawyers Assistance Program.

Hon. Jay C. Zainey has served as a judge for the United States District Court, Eastern District of Louisiana, since 2002. He is a former president of the Louisiana State Bar Association and created the Community Action Committee and the Legal Services for Persons with Disabilities Committee during his term. He is a co-founder of the SOLACE Program (Support of Lawyers/Legal Personnel — All Concern Encouraged). In 2004, he organized the Homeless Experience Legal Protection (H.E.L.P.) Program. Both programs have gained traction outside of Louisiana and have been instituted through bar associations nationwide. He has served in leadership positions on local, state and national professional organizations and has written a chapter in "Lawyer's Working to End Homelessness," a book published by the American Bar Association's Commission on Homelessness and Poverty. (jay_zainey@laed.uscourts.gov; 500 Poydras St., C-455, New Orleans, LA 70130)



LAP, Inc.

Offers Comprehensive Life-Saving Services

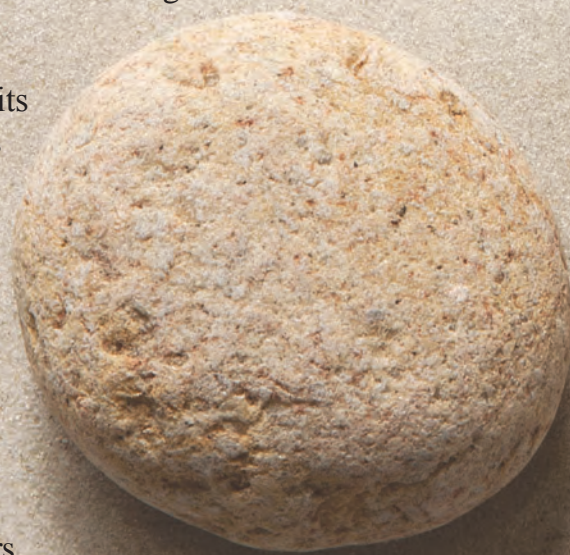
By J.E. (Buddy) Stockwell III

The Louisiana Lawyers Assistance Program, Inc. (LAP) has come a long way from its roots 30 years ago when a small group of Louisiana State Bar Association (LSBA) members first formed the LSBA Impaired Professional Committee to reach out to fellow attorneys suffering from alcoholism. Those initial efforts culminated in LAP's non-profit incorporation in February 1992.

Today, LAP has developed into a professionally staffed, full-service corporation that offers comprehensive, life-saving clinical and mental health monitoring services to Louisiana's legal profession.

Over the past two years, LAP has expanded its professional staff and services to meet the challenges of serving a population of more than 22,000 LSBA members and their families, as well as law students. LAP now has four full-time employees including an executive director, a clinical director, a clinical case manager and an administrative assistant.

Practicing law is not getting easier and mental health issues are on the rise in the profession. Problem drinking rates are estimated to be between 18 percent and 25 percent depending on years of practice.¹ Lawyers also rank number one in depression when compared to other professions.²



With alcoholism and depression rates soaring, attendant suicides are on the rise, too. Louisiana is not immune and, in recent years, our legal profession has suffered several suicides each year. This disturbing trend is occurring nationwide.

In January 2014, CNN published an article headlined “Why Are Lawyers Killing Themselves?” The article said that “prominent lawyers keep turning up dead. They came one a month in Oklahoma around 2004. South Carolina lost six lawyers within 18 months before July 2008. Kentucky has seen 15 known lawyer suicides since 2010.”

Against this backdrop, it is of primary importance to truly comprehend that no one is immune to developing mental health issues. Moreover, underlying mental health issues often cause or contribute to behavior that harms the public and damages the profession’s reputation. It is conservatively estimated by the Office of Disciplinary Counsel that at least 50 percent of disciplinary complaints are rooted in substance abuse or other mental health concerns.

LAP’s challenge is to promote early intervention and facilitate confidential help to impaired lawyers and judges *before* mental health issues ripen into disciplinary issues. This is not an easy task. Most of us are not good at asking for help. For one thing, there is the myth that it makes a person appear weak. In fact, however, asking for help empowers people because it allows them to face chronic problems head on instead of being stuck in a quagmire of secret misery.

More Than Ever, Lawyers and Judges Reach for LAP’s Confidential Help

Pursuant to La. R.S. 37:221 and Supreme Court Rule XIX(16)(j), any information received by LAP and the LSBA’s Committee on Alcohol and Drug Abuse is strictly confidential. LAP is making headway in assisting greater numbers of people who seek help early on before discipline is involved. LAP strives to produce and provide high-quality educational tools to reduce stigmas and increase the profession’s utilization of LAP’s free and confidential help.

In 2013, LAP fielded approximately 1,750 incoming telephone calls, processed 16,933 incoming emails and handled all correspondence received daily via regular mail.

Telephone calls and emails to LAP are

received from several sources, but mainly:

- ▶ People seeking confidential help for themselves, family members or peers;
- ▶ Bar applicants referred by the Louisiana Supreme Court’s Committee on Bar Admissions (COBA);
- ▶ Lawyers referred for evaluation by the Office of Disciplinary Counsel (ODC);
- ▶ Mental health professionals evaluating, assessing or treating people referred by LAP;
- ▶ Lawyers, conditionally admitted lawyers and bar applicants formally monitored by LAP;
- ▶ Drug screening program doctors, managers and specimen collection centers;
- ▶ Inquiries by COBA and ODC regarding the status of referrals to LAP; and
- ▶ Formal inquiries regarding individuals’ LAP monitoring compliance.

Total referral sources of new matters at LAP in 2013 were:

- ▶ Judiciary: 2 percent;
- ▶ Law firms: 5 percent;
- ▶ Family members: 11 percent;
- ▶ ODC referrals: 12 percent;
- ▶ Self-help: 30 percent; and
- ▶ Bar admissions: 40 percent.

LAP continues to achieve new levels of success and has in the past year assisted a greater ratio of impaired lawyers and judges in complete confidence than ever before. By so doing, the entire profession and the public all benefit.

Remember: *In all instances without exception, only the person who contacts LAP can waive confidentiality.*

LAP’s Wellness Group Initiative

LAP continues to focus great effort on raising awareness about the epidemic of depression in the legal profession and developing LAP-facilitated tools and solutions that will aid in the profession’s fight against mental illness and depression.

Free LAP Wellness Groups are now available in Shreveport, Baton Rouge and New Orleans. These professionally moderated groups are absolutely confidential and participation does not create any medical records. All stigmas and barriers to entry have been removed: there is no obligation incurred by participants other than the simple

promise of adhering to strict confidentiality and group decorum. Participants do not even have to give their name.

It has long been established that participation in a quality support group can significantly increase a person’s chances of long-term recovery in most cases. Group participation renders a demonstrable increase in coping skills that develop more quickly in a group setting.

Also, group participation is particularly advantageous in depression cases because depression is a disease rooted in isolation. Group participation can be instrumental in helping the depressed individual break through that isolation, begin to share experiences and learn from other’s experiences, and become valuable participants in a fellowship that generates hope and trust.

Now, through LAP, members of the profession can obtain free clinical support in a matter of days and not have to wait weeks or months for an appointment.

LAP’s Suicide Prevention Initiative

As to suicide prevention, all employees at LAP are certified “suicide prevention gatekeepers” via training through the QPR Institute, an educational organization dedicated to preventing suicide.

The QPR program has developed a plan of action to save lives. Just like CPR (cardiopulmonary resuscitation) is an acronym for emergency actions that may save a heart attack victim, “QPR” is an acronym for “Question, Persuade and Refer,” a series of immediate action steps that may prevent a suicide.

LAP’s Clinical Director Leah Rosa, MHS, NCC, LPC, is certified to train and certify others in QPR. Louisiana’s legal professionals are encouraged to contact LAP and participate in QPR training. Becoming QPR-certified gatekeepers will increase the fabric of suicide prevention support within the professional ranks.

Alcoholism and Addiction Challenges

LAP’s heightened focus on fighting depression and preventing suicides should not be misconstrued as an indication that alcoholism and addiction issues have become

a lower priority. On the contrary, LAP continues to witness greater numbers of cases seeking help with substance use disorders.

The latest and most alarming development in recent years is the astounding increase in addiction to opioid prescription pain medications. Opioids are a synthetic form of opiates (heroin) and include hydrocodone, oxycodone and other drugs in the opioid prescription pain medication family.

According to the Centers for Disease Control and Prevention (CDC) in its online publication, "Policy Impact: Prescription Painkiller Overdoses" (July 22, 2013), drug overdose death rates in the United States have more than tripled since 1990. Nearly three out of four prescription drug overdoses are caused by prescription painkillers. The unprecedented rise in prescription medication overdose deaths in the United States parallels a 300 percent increase since 1999 in the sale of prescription opioid painkillers. In 2008, prescription pain medication caused more overdose deaths than *cocaine and heroin combined*.

Predictably, LAP is seeing more prescription pain medication addiction cases. LAP continues to interact with leading experts and facilities in the industry that specialize in treating impaired professionals both to address the addiction and to provide alterna-

tive pain management techniques that do not involve mood-altering addictive substances that impair executive function.

LAP Facilitated Interventions

All imaginable permutations and combinations of concerned individuals and entities in the legal profession call upon LAP for support, beginning with intervention help. Law firms, family members, peers, judges, clients and people simply concerned about the well-being of a lawyer or judge call LAP for professional advice on how to reach someone in trouble.

LAP's executive director and clinical director are certified interventionists through the *Love First* certification course sponsored by the Betty Ford Center. LAP also facilitates referrals to independent intervention service providers that meet LAP's professional standards.

LAP has the professional tools to reach out in the most effective way to someone in trouble. Well-intended "kitchen table" attempts by family or peers to reach out to an alcoholic or addict often fail and can even cause the person to withdraw further. LAP encourages family and peers to reach

out to LAP for professional advice on interventions. It does not cost a penny to confidentially access LAP's professional intervention advice and expertise.

LAP's Monitoring Services in Cases Referred by Other Entities

In cases where an impaired person has run afoul of the disciplinary system for impairment-related conduct, or is a bar applicant with substance abuse or mental health fitness-to-practice issues, or when impairment concerns have arisen among law partners due to the person's behavior, it often becomes advantageous for that person to qualify for and participate in LAP monitoring.

A successful LAP monitoring record objectively establishes that the person is stable in long-term recovery, has turned a previously impaired and unmanageable life into one of competency, dependability and responsibility, and that his/her uninterrupted success in recovery has been verified. LAP monitoring is a reliable methodology by which those who were previously impaired by chemical dependency or mental illness can demonstrate their recovery to COBA,



A Brief History of LAP, Inc.

By J.E. (Buddy) Stockwell III

In 1985, a small group of Louisiana State Bar Association (LSBA) members formed the Impaired Professional Committee. That committee eventually became the LSBA's Committee on Alcohol and Drug Abuse (CADA), created by then-LSBA President Eldon E. Fallon. The committee's mission was to provide assistance to Bar members who have become impaired by alcohol and drug abuse.

In 1986, the Louisiana Supreme Court, upon the recommendation of the LSBA's House of Delegates, amended Article XV, Section 13, of the LSBA's Articles of Incorporation to recognize the Committee on Alcohol and Drug Abuse and mandate confidentiality among its members and agents while assisting impaired Bar members.

Beginning in 1988, the Louisiana Supreme Court acknowledged that alcoholism is a treatable disease. In *Louisiana State Bar Ass'n v. Longenecker*, 538 So.2d 156 (La. 1989), the court stated:

This consideration (alcoholism and subsequent rehabilitation) is particularly appropriate as a factor in mitigation when the attorney has subsequently undertaken to rehabilitate himself and has been

continually successful in recovering from the disease of alcoholism, especially if the clients did not sustain substantial harm.

The very next year, the Louisiana Supreme Court revisited the issue of alcoholism in *Louisiana State Bar Ass'n v. Arthur F. Dumaine*, 550 So.2d 1197 (La. 1989):

... the primary issues we must consider are whether the attorney's lapses stemmed mainly from chemical dependency rather than lack of moral fitness and whether his recovery has progressed to the extent that he may be permitted to practice without undue risk of harm to his clients, the legal profession or the Courts.

With commitment, support and encouragement from the Louisiana Bar Foundation (IOLTA Program), the Louisiana Supreme Court and the LSBA as a whole, in February 1992, the Lawyers Assistance Program, Inc. (LAP) was formed as a 501(c)(3) non-profit corporation to operate under the auspices of the LSBA, with the LSBA president annually appointing the members of the Committee on Alcohol and

the ODC, their employer and, ultimately, the public.

Many monitoring cases come to LAP as a result of a direct referral by the COBA, the ODC or managing partners in a law firm because a question has arisen about a person's mental health and fitness to practice law.

In these formal monitoring cases, confidentiality has been voluntarily waived by the participant so that LAP can report compliance (or non-compliance) to the entity that referred the person. In these cases, it is important to recognize that LAP's role as a monitor is that of an *objective reporter* and LAP is not an advocate for the person being monitored. The person being monitored by LAP is solely responsible for his/her own record of compliance, be it a success or a failure.

Other monitoring cases come to LAP when the individual is not referred by any entity but wants to be accountable under LAP monitoring so as to support healthy recovery compliance and develop habits that will increase the odds of successful long-term recovery. Also, there may be the possibility that the "wreckage of the past" caused by the person's substance use-related behavior may generate future disciplinary inquiries, and successful LAP compliance can be of utility in the fullness of time if disciplinary

trouble ever does surface.

LAP's standards for approved evaluations, assessments, treatment and subsequent recovery monitoring are based upon industry standards established by lawyers' assistance programs and other professionals' programs, including the Physicians' Health Programs (PHP), the Nurses Regulatory Programs (NRP) and the Human Intervention Monitoring System (HIMS) for airline pilots. All these programs facilitate appropriate treatment and recovery monitoring for licensed professionals who hold the public's trust.³

LAP Speaking Engagements, CLEs and Publications

Quite often, a person confidentially reaching out to LAP has decided to do so after hearing a live presentation by LAP. Sometimes the call does not come immediately. The person may wait months, or even years, to call, but many times the conversation begins with, "I heard a LAP presentation and I think I might need some assistance from LAP."

By conducting 40 to 50 presentations each year, LAP personally reaches out to lawyers and judges and some of them

reach back for help. Whether through CLE courses, local bar association functions, Inns of Court meetings, law student orientations, law school professionalism classes or the LSBA's Ethics School, LAP makes an all-out effort to reach out in person to the profession.

Also each year, LAP endeavors to choose a timely topic or theme. LAP presentations in 2014 focused on compassion fatigue as a centerpiece topic because that syndrome affects such a wide range of people practicing law. Many have reached out and received LAP-facilitated help to address this syndrome.

LAP publishes an article in every issue of the *Louisiana Bar Journal*, focusing on LAP's services and mental health trends. The mission is to provide information while also attenuating stigmas surrounding alcoholism, addiction and depression in order to encourage members of the legal profession to reach out early to LAP for confidential help. The *Journal* also publishes staff-created advertisements for LAP to raise awareness about mental health and LAP's confidential services.

The LSBA coordinates the annual Bar Admissions Education Initiative in all Louisiana law schools. LAP representatives participate on the panel to inform law students about challenges in the legal profession,



Drug Abuse to provide the leadership for LAP.

Soon after the formation of LAP, confidentiality became law under La. R.S. 37:221 and La. Supreme Court Rule XIX, Sec. 16(J), guaranteeing by law that those who reach out to LAP and LSBA's CADA do so in absolute privacy.

By design, LAP's independent offices promote confidence in its promise of confidentiality. A call to LAP is not a call to the LSBA, the Louisiana Bar Foundation, the Louisiana Supreme Court or the Office of Disciplinary Counsel. It is extremely difficult for people to seek help for mental health issues, and the LSBA rightly created LAP, Inc. to make it easier for Bar members to reach out for confidential help.

LAP was pioneered by many courageous people but, in large measure, by the legendary Edwin L. Blewer, Jr. of Shreveport. William R. (Bill) Leary of Houma was hired to be the LAP executive director and his unflagging dedication for almost 20 years helped LAP grow. After his retirement in 2010, LAP has continued to grow to meet the demands of the profession.

Today's LAP now provides diverse, vital, independent services to assist all impaired lawyers (be it alcohol, drugs, anxiety, depression, compassion fatigue, burnout or other issues). Also, LAP provides critically related monitoring services at the request of various entities in the legal profession. In that role, LAP's services have now become

germane to the regulation of the profession.

Practicing law is getting harder. Mental health issues are on the rise. In recent years, the LSBA leadership has met the challenge and redoubled its efforts to promote and support LAP by significantly increasing funding and providing LSBA leadership support and involvement — elements needed to truly transform Louisiana's LAP into a comprehensive and professionally staffed organization that can effectively promote *and* deliver a range of mental health services to impaired members of Louisiana's legal profession. Also, the expansion of LAP's infrastructure will allow it to deliver well-designed mental health care presentations and services to the profession as a whole and promote wellness and self-care to lawyers and judges.

With the increased support from the LSBA leadership, the Louisiana LAP is poised to become more effective than ever in delivering confidential, life-saving services to the LSBA membership and their family members, while also providing vital services to other entities in the legal profession when issues arise in the regulation of the practice of law due to mental health concerns.

J.E. (Buddy) Stockwell III is the executive director of the Lawyers Assistance Program, Inc. (LAP) and can be reached at (866)354-9334 or via email at LAP@louisianalap.com.

particularly with emphasis on maintaining long-term mental health under the pressures of practicing law. This outstanding LSBA program was recognized with the 2009 ABA Standing Committee on Professionalism's E. Smythe Gambrell Professionalism Award. LAP is honored to be part of the LSBA's ongoing efforts to help law students prepare for the challenges of being admitted to the bar and successfully practicing thereafter.

The LAP's website, currently linked through the LSBA's website, www.lsba.org/LAP/, continues to be a valuable source of information for lawyers and judges seeking help. LAP is currently constructing a new website with an eye toward keeping pace with new technology and increasing the capability to quickly incorporate updates and new information about addiction, depression, mental illness and treatment for conditions that impair lawyers and judges. Also, confidential tools and resources for LAP monitoring participants will be added to LAP's online services.

LAP: It's for Judges, Too!

Under the extraordinary leadership of Judge Benjamin Jones, with the 4th Judicial District Court in Monroe, much progress has been made to better promote LAP's services to judges. Several judges have volunteered to help and have received intervention education through LAP.

LAP has always received calls from judges about impaired lawyers appearing before them. But now, judges also are beginning to reach out confidentially to LAP for advice, help and assistance regarding a fellow judge who may be exhibiting signs of impairment.

LAP's services are very effective in providing help to members of the judiciary. The concept of "judges helping judges" through LAP is working. In 2015, look for new LAP products and promotions designed specifically to assist judges.

LAP and the SOLACE Program

Each year, LAP receives direct, confidential referrals from the SOLACE (Support of Lawyers/Legal Personnel — All Concern Encouraged) program, spearheaded by U.S. District Court Judge Jay C. Zainey, Eastern District of Louisiana. In the course of fielding

requests for assistance, SOLACE occasionally receives a call involving a person in crisis with drugs, alcohol, depression or even suicidal ideations. SOLACE confidentially refers these cases to LAP. In some of these cases, SOLACE and LAP have literally saved lives by effectively reaching out to people who were seriously considering taking their own lives.

In the future, LAP hopes to produce updates for electronic distribution to SOLACE volunteers to help them spot signs of mental health distress and know when a referral to LAP may be in order.

Aging and Dementia in the Legal Profession: A Coming Tsunami

A new, major challenge on the horizon for Louisiana's LAP (and all sister LAPs across the nation) will be addressing mental health issues emanating from aging and dementia in the legal profession. The "Baby Boomer" generation is now reaching retirement age and the issue of aging in the legal profession is coming our way in huge proportions.

Often referred to as the "Senior Tsunami," an unprecedented number of lawyers and judges are at the threshold of retirement. Very difficult questions loom large. How will we determine when an aging member of our profession is no longer competent and poses a threat to the public and profession such that the lawyer should retire? How can we respectfully help the impaired lawyer let go and decide to retire in dignity before clients are harmed and the ODC is involved?

In April 2014, the National Organization of Bar Counsel (NOBC), the Association of Professional Responsibility Lawyers (APRL) and the ABA Commission on Lawyer Assistance Programs (ABACoLAP) published its Final Report on Aging Lawyers. The report indicates that the vast majority of jurisdictions will rely heavily on their state's LAP to address age-related challenges.

Summary

Your Louisiana LAP is professionally staffed and offers comprehensive mental health and substance abuse assistance that spans the entire process — from intervention through assessment, treatment facilitation and professional recovery monitoring.

LAP remains dedicated to improving the percentage of cases where the person obtains confidential, effective LAP assistance *before* unethical conduct occurs and potentially harms the person, the profession and the public.

If you are in need of LAP's help, or if you think a colleague is in need of LAP's assistance, don't wait! Make the decision to trust LAP and reach out immediately. No matter how isolated you feel or how reticent you are to share your situation, put those feelings aside and trust LAP. You do not even have to give your name. All you have to do is make the call to LAP at (866) 354-9334 or email LAP@louisianalap.com. For more information, go online to: www.lsba.org/LAP/ or www.louisianalap.com.

FOOTNOTES

1. Per Hazelden citing a 2012 Butler Center for Research report on a study published by the *International Journal of Law and Psychiatry*, it is estimated that during law school, problem drinking rates rise from 8 percent at admission to 24 percent as third-year law students. As lawyers, from two to 20 years, there is an 18 percent drinking problem rate that increases to 25 percent for attorneys who have practiced more than 20 years. This occurs in contrast to the general population suffering problem drinking at the much lower rate of 10 percent.

2. Per a Johns Hopkins study that compared 104 professions, lawyers suffer the highest rates of depression.

3. Article in *British Medical Journal* (BMJ), "Five-Year Outcomes in a Cohort Study of Physicians Treated for Substance Use Disorders in the United States," available online at www.bmj.com/content/337/bmj.a2038, establishing the superior reliability and success rates for PHP-approved inpatient treatment followed by intensive outpatient treatment and a five-year recovery monitoring professionals' program such as that offered by LAP.

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Reach Out!

Suicide Prevention Using QPR (Question, Persuade, Refer)

By Leah Rosa

Why do people avoid reaching out for help when they need it most? Is it because 1) they are afraid of exposure and vulnerability, 2) they have feelings of hopelessness, or 3) they do not know how to find a trustworthy ally?

Why don't people reach out to others who are in need? Is it because 1) of a lack of concern, 2) of a lack of compassion, or 3) they do not know how to help?

The suicide prevention process called "QPR" (Question, Persuade, Refer) offers a guideline for helping those who may be at risk for suicide.

Suicide occurs in every culture, race, religion and socioeconomic class. To people experiencing good mental health, it seems unfathomable why someone would make the choice to commit suicide. When people are tasked with facing the same problem day after day, and none of their attempts to solve it are effecting positive change, they may resort to desperate solutions. For people in tremendous psychological pain, suicide is the solution to a problem they perceive as unsolvable. They may start to believe that the annihilation of the emotional pain they are experiencing is necessary, even if it means annihilation of the self.

Most of the time suicidal ideations are the primary symptom of an untreated mood disorder. More than 90 percent of people who die by suicide are suffering from a major psychiatric illness at the time of their deaths. The good news — mood disorders, like depression and substance abuse disorders, are highly treatable conditions.

Cultural attitudes are shifting as people become more educated about mental health issues that increase risk factors for suicide. For instance, the Golden Gate Bridge will soon have anti-suicide nets. Many believe that this progressive step represents the evolution of public attitudes toward the suffering of others. The nets represent empathy and compassion for those who are contemplating ending their lives. Moreover, this gesture sends the fundamental message that someone cares.

There are some common factors that increase the risk for suicide. Some of these

factors include grief caused by a significant and recent loss, maximum stress levels for an extended period of time with no relief in sight, and poor adjustment after significant life changes.

Paul Quinnette, Ph.D., founder of the QPR Institute, says, "The only thing worse than change is sudden change." This reminds people that sudden life changes can catapult a person into overwhelming emotional distress. When people have no time to prepare or acclimate to a new circumstance, the dissonance caused can be very painful. Even highly anticipated, welcomed events like moving, marriage, the birth of a child or retirement can cause unexpected sadness. This can be compounded with feelings of confusion, guilt, shame and hopelessness.

When a peer, co-worker or family member is going through a rough time and just does not seem like himself/herself anymore, people can be hesitant to reach out. Even when friends, family members and colleagues are concerned, they are afraid to offend or overstep and often opt to "mind their own business." Suicide prevention specialists suggest that if the word suicide has crossed your mind about someone who seems depressed, then it has probably crossed that person's mind, too.

One highly prevalent myth is the belief that if someone is going to commit suicide, there is nothing anyone can do to stop him/her. We know that suicide is, in fact, the most preventable cause of death. Sometimes people are fearful that talking to someone about suicide will only make them angry and increase the risk of suicide, when actually the opposite is true. Asking someone about his/her suicidal intent has been shown to lower the person's anxiety and open up communication, which lowers the risk of an impulsive act. People also may believe that only a professional can prevent suicide, but loved ones are ideal candidates for persuading a suicidal person to seek professional help.

QPR offers a framework for a loved one to intervene with some confidence. It is a highly effective method for suicide prevention and intervention that is simple and requires minimal training. QPR is essentially the CPR of mental health. It requires training

and a willingness to step in immediately with bravery in the face of a frightening situation. When a person takes part in a QPR intervention, he/she is only required to help the person until professionals arrive. Instead of chest compressions and rescue breaths, QPR provides active listening and support.

The QPR method focuses on active listening, rather than on changing the suicidal person's feelings. A QPR intervention is an opportunity to allow a suffering person to feel heard and connected. It is important to recognize that one of the most painful emotions surrounding depression and suicide is the sense of isolation and the belief that there is no solution. Having someone willing to reach out and simply sit and listen with an open and compassionate heart can be the inflection point where a suicidal person finds hope.

QPR (Question, Persuade, Refer) is a process that requires appropriate training before jumping in. It is important to understand that QPR is not intended to be used in place of counseling or as treatment for someone who is suicidal. It is an intervention for the specific purpose of identifying someone in need of help and getting that person to an appropriate point of contact. Becoming QPR-trained gives everyone the ability to reach out to someone in need.

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What do we want? Mindfulness in Law!

By Scott L. Rogers



About a year ago, the comic strip *Bizarro* depicted a group of monks gathered at an assembly where their leader, megaphone in hand, shouted, and the throng replied:

“What do we want?”

“Mindfulness!”

“When do we want it?”

*“NOW!”*¹

The rapidly growing presence of mindfulness across the legal landscape — from Bar conventions and section meetings, to law firms and government agencies, to law school programs and course offerings — echoes the urgency of the *Bizarro* message. Indeed, if you’ve kept up with the influx of mindfulness training for lawyers and judges, as well as the publication of books, Bar Journals and law review articles discussing mindfulness,² you’ve likely marveled at the pace of change over the decade. More than 20 law schools, recognizing the crucial role they play in equipping future lawyers with a robust set of tools to navigate the challenging terrain of law practice and life, offer mindfulness courses and training to their students.³ At the same time, just as the humor embedded in Dan Piraro’s image relies on paradox, so too the very idea of infusing into the law the practice of mindfulness — often regarded as a New-Age, touchy-feely subject associated with navel-gazing and spacing out — appears to many as an oxymoron.

In fact, mindfulness is a form of mental training that carries with it benefits in the areas of cognitive performance, emotional intelligence, and health and well-being — areas of great importance to lawyers and to those who look to lawyers for their wise counsel, reflective demeanor and problem-solving expertise. It is receiving widespread attention in the popular culture, largely owing to a compelling body of medical and neuroscientific research vouching for its efficacy. There is perhaps no more important time than today in the evolution of law and society — where distraction, distress and distrust are so prominent — for a tool that serves these important ends to be introduced to lawyers and other members of the legal profession.

What is Mindfulness?

Mindfulness is a practice of paying attention to present-moment experience in a manner that is engaged and unassuming. “Engaged” means attentive, interested and observant, and “unassuming” means being without judgment — open and receptive to what arises in the field of awareness.⁴ By intentionally paying attention, moment by moment, we cultivate a more direct and clear relationship to what is arising, and, to the extent we are able to remain connected to this experience, are more responsive to what a given situation requires. As attorneys, our being responsive to the continually changing and demanding landscape of our professional life is fundamentally important in order for us to excel at the work we do, and to do it, day in and day out, without losing our edge or being worn down.

Consider for a moment the importance of paying careful attention to colleagues, clients and adversaries, and the times when your mind is focusing on something else or misinterpreting what is being said. Consider also the benefit of being able to keep your cool amid emotionally charged encounters with difficult people and upon learning undesirable news. It’s not so much that we can’t navigate our way through these situations, as it is that we are not doing so as effectively as we can. And, there are times when, notwithstanding our clear intention to remain calm and collected, the situation simply overwhelms us.

The Science of Mindfulness

Over the course of the last decade, an exceptional body of medical and scientific research has been directed to studying mindfulness. Thanks to new technology allowing us to peer more deeply than ever into the activity, function and structure of the brain, there has been an accelerated growth in attention to, and volume of, mindfulness-focused research.

On the medical front, research has found mindfulness practices to be connected with decreased levels of the stress hormone cortisol, to lead to improved functioning of the immune system, and

to alleviate the suffering of chronic pain, help heal psoriasis and reduce cardiovascular disease and diabetes. Delving even deeper, recent findings report mindfulness to influence the “expression” of genes associated with inflammation and to slow the rate of cellular aging.

In the neuroscience realm, researchers have found mindfulness practices to be associated with a thickening of the regions of the brain associated with focus and concentration. They have also found that meditators have stronger connections between brain regions, show less age-related cortical thinning when compared to a control group, and reveal greater amounts of gyrification (“folding” of the cortex), which may allow the brain to process information faster.

In the mental health arena, along with being a helpful tool for working with anxiety and depression relapse, mindfulness has been found to be helpful in treating conditions such as obsessive-compulsive disorder, borderline personality disorder and addiction.

My colleague, Paul Singerman, experienced in bankruptcy law and who has taken a strong interest in mindfulness, tells audiences that while it may seem that mindfulness is “too good to be true,” in his opinion, it just may be as good as it seems. But, anyone who takes an interest in mindfulness soon learns that practicing mindfulness is hard work!

The Practice of Mindfulness

The practice of mindfulness is easy to learn. It involves a subtle shift in the attention you bring to what you are doing, moment by moment. For example, while you have been reading this article, it is likely your mind became distracted by people, sounds or even your own thoughts. Mindfulness involves realizing that the mind is distracted and having the mental wherewithal to direct your attention back to the task at hand. In a moment, I’ll share with you a mindfulness exercise that involves placing attention on the breath. But do not lose sight of the fact that at this moment you are placing your attention on these words, and doing so intentionally and with the capacity to notice when

your mind wanders and, if you choose, to return your attention to these words is . . . well, mindfulness.

You might wonder why this is important. After we practice the following mindfulness exercise, I'll share with you some of the reasons why it may be one of the most important things we do, personally and professionally. First, let's shift gears and move from thinking about these words to thinking about something else — the breath. We'll also try to move beyond thinking, to experiencing the breath in a more direct manner.

1. *Begin (with eyes open) by placing your attention on your breathing.*

2. *Think to yourself: "I am breathing in . . . I am breathing out," as you follow each of your next three breaths.*

3. *Now, more directly experience the breath by feeling the rising and falling of your belly with each of the next three breaths. It may be helpful to close your eyes.*

What did you notice? First, were you able to *think* about the in-breath and out-breath? This involved shifting your focus and speaks to the *faculty of attention*. You have the ability to place your attention where you choose, a skill not to be taken lightly. Next, were you able to shift from "thinking" about the breath to experiencing it more directly? This more immediate "knowing" likely became pronounced when you *shifted your attention* to feeling the breath moving through your body with the rising and falling of your belly. Lastly, how would you describe the experience? For many, the experience of placing attention on the breath for a few moments can be calming or relaxing. While this isn't always the case — and it isn't the primary objective of mindfulness practice — it is a nice benefit you likely will experience from time to time.

In a moment, we'll take our exploration of mindfulness to the next level and where the scientific community is focusing its attention.

But, first, lower or close your eyes and pay attention to your breathing for the next five breaths.

Mindfulness Exercise #1

1. *Begin (with eyes open) by placing your attention on your breathing.*

2. *Think to yourself: "I am breathing in . . . I am breathing out," as you follow each of your next three breaths.*

3. *Now, more directly experience the breath by feeling the rising and falling of your belly with each of the next three breaths. It may be helpful to close your eyes.*



Did you notice your mind wandering? If you're like most people, you did. Spoiler alert: If you continue to practice mindfulness, you will come to realize just how much your mind wanders. This can be a source of distress as you realize your mind has a mind of its own, so to speak. It also creates an invaluable opportunity to do something about it. Mindfulness is a *training* of the mind. Research points to the extraordinary capacity of the brain to be trained and to restructure itself in alignment with the training — a phenomenon known as neuroplasticity.

A recent Harvard study addressed both the mind's tendency to wander and its consequences, highlighting why it can be helpful to train your mind to wander less (or to be more aware of its wandering). Dan Gilbert and Matthew Killingsworth had subjects report, at random moments during the day, whether or not they were on task. For example, if they were working on a project but at the time they were prompted realized that their thoughts were elsewhere, they were off task. The researchers found that people's minds wandered about 47 percent of the time. It's like our minds are puppy dogs that are continually distracted.

A cautionary lesson is that we tend not to realize when our mind wanders; this can have implications for our pro-

ductivity, focus, organization, listening and decision-making. This alone is cause to take seriously the adverse effects of a distracted mind and consider a tool like mindfulness. A second finding that Gilbert and Killingsworth report — and one which claimed many headlines — was that when the mind was off task, people reported experiencing lower mood. Hence, "A Wandering Mind is an Unhappy One."⁵

What can we do about this? Let's return to the exercise and add an important instruction.

1. *Bring yourself into a posture that is upright and stable.*

2. *Lower your eyes (or close them if you prefer, after you learn the complete instruction).*

3. *Bring your attention to your breathing, following the in-breath, following the out-breath.*

4. *Rest your attention on the flow of the breath through your body, with the intention of keeping it there.*

5. *When you notice your mind wandering, bring your attention back to the breath.*

6. *Do this for a few moments, then lift your gaze or open your eyes.*

Do you notice what was added to the instruction? An important mindfulness insight is that it makes sense that the mind wanders, and there is nothing about mindfulness practice that tries to stop the mind from wandering, or clear the mind of thoughts. Mindfulness is oriented around allowing the moment to be *as it is* — thoughts, feelings, body sensations and all. Rather than resist or react unthinkingly to what may be unpleasant or unwanted, the practice is to recognize what is arising and bring attention back to the original object of attention — be it the legal case you are reading, the person you are listening to, or the breath. We practice with the breath in order to strengthen our ability to notice a wandering mind and become more expert at bringing it back.

While the mindfulness instruction may

seem simple, many find it to be extremely challenging — even frustratingly so. My colleague, cognitive neuroscientist Amishi Jha, compares the mental training of mindfulness with the physical training of lifting weights. It is hard work. Each repetition in the gym is akin to noting that the mind has wandered and bringing it back to the object. Just as physical exercises bring measurable benefits to muscle mass and strength, so too mindfulness is regarded as exercising the “muscle” of attention.⁶ Just as a competitive advantage comes to those who find the discipline to work out at the gym, so too the manifold fruits of mindfulness are realized by those who find the discipline to practice it.

Bringing Mindfulness into Your Workday

You can bring mindfulness practice into your workday in ways that are considered “formal” and “informal.” A formal mindful sitting practice entails sitting for a set period of time (say, five to 10 minutes) and following the above six-step instruction. It can be helpful to listen to a guided recording; many can be found on the Internet. On the website listed at the end of this article, you will find a series of one- to 20-minute guided mindfulness exercises that you can listen to or download.

Another formal practice I highly recommend, which might not seem so formal, is called “mindful walking.” Much like mindful sitting, you take your footstep as the object of your attention and, when you notice your mind wandering, you return attention to your footstep. This practice can be seamlessly embedded into a workday.

An informal practice you may find helpful is called the “But For Pause,” which involves taking a series of breaths — with awareness of the sensations of the breath flowing through your body and of the activity of your mind — when you detect that you are becoming agitated. In time, you’ll notice that *but for the pause* you may well have acted in a way that disserved your interests. There is nothing profound in these insights — what is profound is how you notice yourself

Mindfulness Exercise #2

1. Bring yourself into a posture that is upright and stable.

2. Lower your eyes (or close them if you prefer, after you learn the complete instruction).

3. Bring your attention to your breathing, following the in-breath, following the out-breath.

4. Rest your attention on the flow of the breath through your body, with the intention of keeping it there.

5. When you notice your mind wandering, bring your attention back to the breath.

6. Do this for a few moments, then lift your gaze or open your eyes.



gaining greater mastery over situations and personal exchanges that previously may have gotten the better of you.

The Big Picture

The rule of law evolved to bring order out of chaos and establish a vehicle for human beings to rise to the highest levels of intellectual achievement, commerce, social connection, and health and well-being. Today, the practice of law is regarded by many as having re-entered a state of nature where rules are subverted, civility is lost, and the bottom line has become the top priority. Mindfulness, like the rule of law, serves as a vehicle for establishing a more enduring stability. In many ways, it is refreshing to see the legal profession — charged and equipped to serve society, resolve conflict and establish a more stable order — looking to mindfulness as a tool to help serve this noble end.

Learning More

The webpage, www.mindfulnessinlaw.com/lbsa, provides information and resources you will find helpful for furthering your understanding and practice of mindfulness.

FOOTNOTES

1. Dan Piraro, Bizarro Blog, Aug. 23, 2013, available at: <http://bizarrocomics.com/2013/08/23/gimme-gimme/>.

2. Scott L. Rogers, “Mindfulness in Law,” *The Wiley-Blackwell Handbook of Mindfulness* (Amanda Le, Christelle Ngounoumen and Ellen Langer, eds., 2014).

3. The University of Miami School of Law established a Mindfulness in Law Program, www.mindfulness.law.miami.edu, and the University of California-Berkeley formed an Initiative on Mindfulness in Law, www.law.berkeley.edu/mindfulness.htm. Other law schools with mindfulness offerings can be found online: www.themindfulnessschool.com.

4. Scott L. Rogers, “Mindfulness Across the Curriculum: Infusing and Integrating Mindfulness into the Law School Classroom,” 36 U. Ark. Little Rock L. Rev. (forthcoming 2014).

5. Jason Castro, “A Wandering Mind is an Unhappy One,” *Scientific American*, Nov. 24, 2010; www.scientificamerican.com/article/a-wandering-mind-is-an-un/.

6. Amishi P. Jha, “Mindfulness Can Improve Your Attention and Health,” *Scientific American Mind*, March 1, 2013; www.scientificamerican.com/article/mindfulness-can-improve-your-attention-health/.

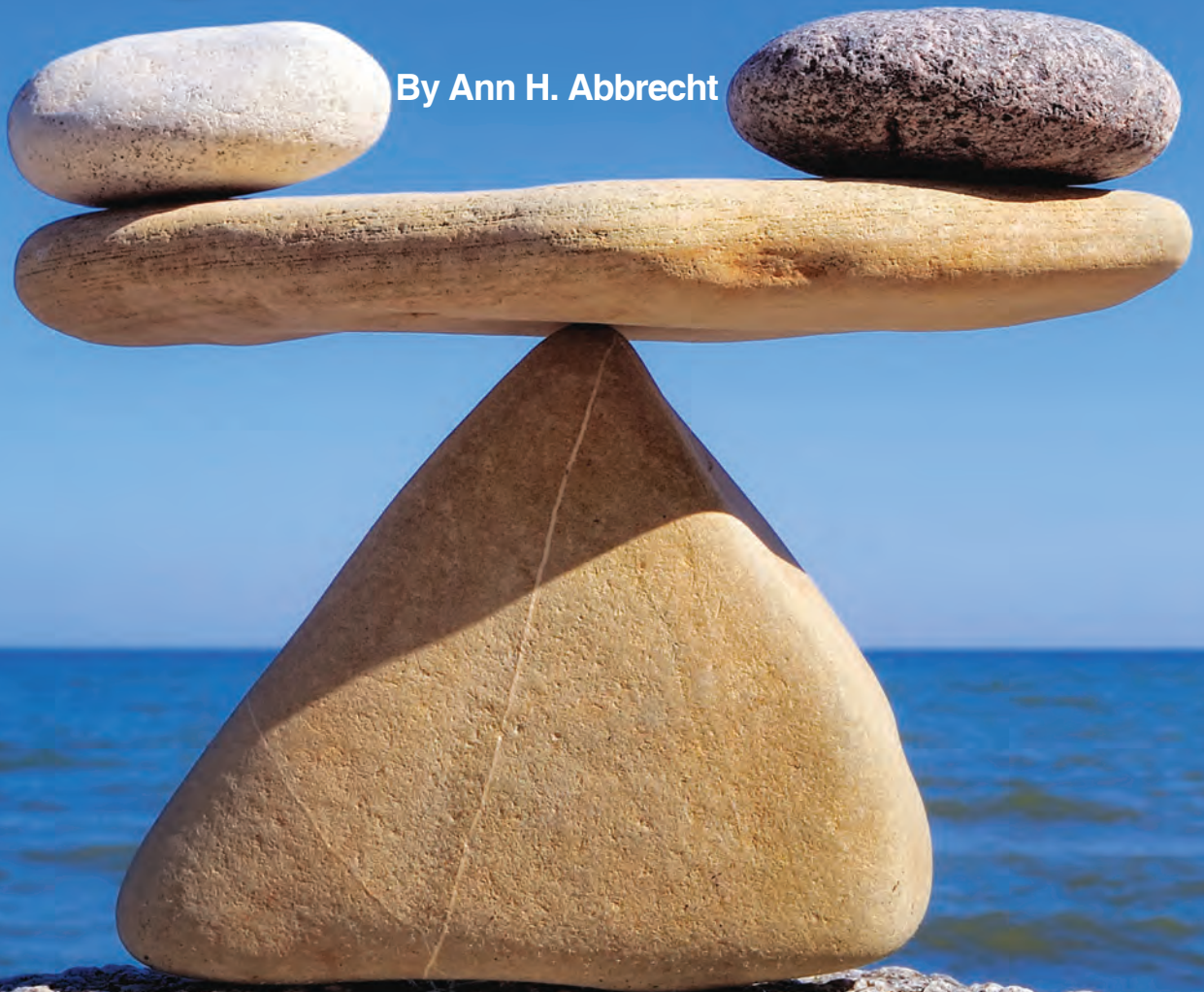
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Establish Mindfulness and Reduce Your Stress:

*Be Pro Active
and
Create Balance*

By Ann H. Abbrecht



Do you know how to reacquaint yourself with the positives in your life? Do you take responsibility? Do you accept who you are? Do you create a balance of all things in your life by giving back and taking time to live and laugh? If you do not, you can! Being a person who can live a healthy, well-balanced life should be top priority.

A well-balanced life — where you are of service to your profession, family, friends and community — can be attained by becoming aware (or *mindful*) of yourself, your emotions, your goals and your stress. To do so, you are essentially establishing **mindfulness**, a mind-body medicine practice and an internal resource we already have. Mindfulness is being aware of your thoughts and emotions and using this awareness to transform your relationships with stress, emotions, pain and illness. Mindfulness interventions have been shown to promote greater conscious control over emotion. There are several *mindful* things you can do to proactively change your stress.

Meditate. Practice mindfulness meditation. In mindfulness meditation, one sits quietly, paying attention to breath, while watching thoughts float by in a stream of consciousness. Normally, we would immediately react to our thoughts, but, through mindfulness meditation, we learn — slowly — to let the thoughts and feelings float by without reacting to them.

Take responsibility. Where does the respect for yourself, life, behavior and stress lie? If you don't take responsibility, you effectively delegate it to someone or something else (consciously or not). By doing this, you effectively delegate control over your life — and your stress level — to someone or something else.

List your principles, values and goals. Make a list of what you want out of life and behave consistently. This process alone helps relieve distress in your life. The more your behavior matches your values and principles, the less distress you will experience. Make sure your principles, values and goals apply to you and your behavior. If a strong family life is most important to you, yet you repeatedly take on tasks that make it impossible for you to be with your family, you will feel distress. If your values are centered on everyone else in your life acting fairly and appropriately, you set yourself up to be distressed because people don't always act

the way we want. Finally, make sure your principles, values and goals are flexible and account for your being human. If it is important to you to be perfect and never make mistakes, you will live your life in a constant state of distress.

Acknowledge who you are. Take an inventory of yourself. Identify your own personal internal stressors. Are you a “people-pleaser?” Do you have a hard time saying “no?” Are you a perfectionist? Does every mistake negatively affect your self-worth? Identification is half the battle of resolution. If you need help dealing with these issues, get it. Identify your own personal cues for when you are distressed. Do you tense up? Do you get headaches? Are you irritable, angry or defensive? Are you confused or having a more difficult time than usual making decisions?

Talk to someone. Sharing your life, thoughts, emotions, hopes, fears, highs and lows with someone else is important. Learn how to interact with others, particularly your family and close friends, as a genuinely present human being. Connect with them by conversing *with* them. Try not to practice interrogating cross-examination techniques. Practice listening to someone else and really try to understand what they are saying. Find a few people whom you trust enough to share the intimate details of your failures as well as your victories. You can't handle this by yourself. It's not your fault. It is a problem bigger than any individual person.

Get help. Seek professional assistance. Initially, psychotherapy may seem difficult. Just relax and, with energy and insight, you can work on your problems. Prescribed medications may help and that's okay. You may have a chemical imbalance that needs to be addressed. Medications do not solve problems; they simply level the playing field. With or without medication, you will need to confront your negative thinking with a therapist. You really can't do this effectively with friends or family alone. A lot of research suggests that cognitive behavioral therapy is a particularly effective form of treatment for depression. Interview a couple of therapists before you settle on one, and re-evaluate your therapy after three or four sessions to see whether it is a good match. There should be empathy, trust and a feeling of emotional safety. If those are not apparent, discuss it with the therapist and consider changing clinicians.

Be kind to yourself. It sounds so simple, and yet lawyers are not trained to do this. They have rarely, if ever, thought about it and don't know how to start. It begins with a conscious intention — “Today I am treating myself kindly.” Such a simple refrain can help. Depression is often built on poor mental/emotional and physical habits. We must learn to acknowledge that we are worthy of love from ourselves and others and that part of such love involves taking care of ourselves.

Practice acceptance and gratitude. Things won't always go your way. Focus more of your attention where you have influence. At the beginning of the week, create a list of five things for which you are grateful. Do this on the same day, at the same time, each week. At the end of the day, recognize three things that went well. By doing this, you focus on the positive rather than the negative things. This process will serve as a guide toward your kindness and concern for others, thus bringing you closer to those around you and increasing your level of well-being.

If you have a spiritual practice, do it. If you don't, think about starting one. Spirituality doesn't necessarily mean religion. This could include anything from a formal meditation practice, going to traditional religious rites, or walking in the park. Research suggests that those who have a spiritual practice handle depression better. If you believe in God or a higher power, you can avail yourself of help and support from someone who is bigger than your depression. If you do not believe in God, maybe you believe in some other form of spirituality you can tap into. Spiritual growth and development are important to a healthy lifestyle. Look inward and find what works for you, then pay attention to what you find. Whatever you choose, do it regularly and let it give you some perspective on your life by allowing it to help reduce anxiety, worry and guilt.

Restructure your legal practice. Nobody likes changes. Yet we all have choices around what we are willing to change. Maybe you will have to leave your job. Stressful? Yes. The end of the world? No. Maybe you will have to change careers. There are a number of lawyers who haven't been particularly happy with lawyering since day one. But they continue to do it because they don't know what else to do — it pays well, it appears

prestigious, they are in debt, etc. These are very real concerns. However, good health has to re-establish itself as a top priority in your life. Change the nature and variety of your practice. Perhaps that means doing less litigation, or handing some clients off to someone else. The idea here is to reduce stress, long known to be a powerful trigger for depression, anxiety, substance abuse and physical problems.

Take control of your physical self. The practice of law is a strenuous endeavor. It is physically demanding and it requires endurance, strength, stamina, perseverance and physical health. You need to train for the staggering physical toll that the practice of law places upon you. In short, you will become your own personal trainer when you . . .

► **Eat well.** Treat your body like a friend. Eat breakfast and lunch. Avoid excessive fatty and sugared food. Eat vegetables and fruits. Think about the amount of caffeine and alcohol you consume. Find and keep to a diet or way of eating that fuels the processes of your body and does not result in hurt or harm.

► **Get enough sleep on a daily basis.** Make it a priority because increased stress levels can affect sleep patterns. Trouble sleeping at night because your mind will not stop mulling over the day's events? If so, you probably suffer from a pattern of being sleepy in the day and not at night. Why is sleep so important? As your body sleeps, your brain is actively playing the part of mental janitor. It is clearing out the junk that has accumulated as a result of your daily thinking. When sleep is disturbed, the cleaning system breaks down. At the extreme end, the result could be the acceleration of neurodegenerative diseases like Alzheimer's and Parkinson's. While we do not know whether sleep loss causes the disease, or if the disease itself leads to sleep loss, we know that the two are closely connected. Along with the sleep disturbances that characterize neurodegenerative diseases, there is a buildup of proteins (like beta-amyloids and tau) that the glymphatic system normally clears out during regular sleep; both are associated with Alzheimer's and dementia. Sleep loss may allow the things that cause neural degeneration to pile up unchecked. Regardless, we know the result of sleep deprivation is an inability to integrate facts, a key component of the practice of law.

► **Exercise.** If you don't already have an exercise routine, *get one in your daily*

schedule. Minute for minute, the benefits of exercise far outweigh any time spent away from your practice. It helps clear your mind for the times when you are in the thick of that discussion, negotiation, trial or dispute. The value of exercise is widely known. It is simply good for everybody. For a person with depression, it becomes not just about a healthy habit, but about a critical choice. It can be as simple as walking 30 minutes four to five times per week or as much as training for a triathlon. Find something you like to do, and do it to reduce and alleviate the daily accumulation of stress. Run. Walk. Play tennis, handball, racquetball or soccer. Take a yoga or Tai Chi class and get twice the bang for your buck (exercise and meditation). **JUST MOVE!**

► **Quit smoking.** Enough said!

Create balance. It is crucial to create and maintain a sense of balance and perspective in a stressful life like yours. Because the practice of law is such a physical and mental endeavor, it is essential that you pay attention to the other more intangible, but not less important, aspects of your life. This is not only necessary to be a good lawyer, but also to be a whole person, a kind person, a successful person, a healthy person, a well-liked and respected person and a stress-resilient person. Here are a few things to remember . . .

► **Spend some time alone.** All of us need some time alone. Take time to refill your emotional reserves and to give your mind a chance to quiet down and rest. The better you can learn (through meditation, relaxation, restful activity or recreation) to quiet your mind about deadlines, delays, court dates, briefs, finances, what you said (or didn't say), what you did, should have done, have yet to do or should do, the more effective your solitude will be. Take some time to shut your office door, turn off the pager and the cell phone. Go fishing. Go for a walk. Watch the clouds, the rain, the birds, other people or the stars. Breathe deeply. Meditate. Let go. Enjoy the time by yourself.

► **Develop outside interests.** Try to develop, or maintain, interests completely unrelated to the practice of law. This allows you an opportunity to take a well-deserved break and helps to make you a far more emotionally well-developed and interesting person. It helps you find a place within your community and provides you with a sense of commitment and responsibility. You will meet new friends and contacts that

will help give perspective on your own life and choices.

► **Build pleasure into your schedule.**

Busy lawyers tend to have an "I will get to it later" mentality — especially when it comes to things that are healthy for them. Discard that approach and begin to take time — *now* — to enjoy pleasurable things. Create a space where you experience and relish such feelings.

► **Give back.** Try to do something kind for someone at least once a week. The more anonymous you can be about it, the better. Start small. If you have the time, volunteer. Develop compassion and take action. Helping others builds your self-esteem, helps you put your own life in perspective, and serves to develop and maintain a vital connection with the community as a whole.

► **Laugh.** Don't take yourself so seriously! It doesn't matter how big and important you are, how successful, or what case you just won. If you can't laugh at yourself, you're a heart attack waiting to happen. At least once a week, do something fun that involves no competition. Try something new and get out of your "comfort zone."

Schedule stress management items into your week. Try to make these suggestions a habit in your life. Structure time to do all of the above. Schedule solitude. Structure in silliness. Schedule exercise. Try some or all: exercise, meditation, relaxation techniques, recreation, music, church or other spiritual practice. Use them regularly.

Now, go and be kind to yourself. Reacquaint yourself with the positives in your life. Take responsibility. Accept who you are. Create a balance of all things in your life. Give back. Take time to live and laugh!

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The Enlightened Lawyer:

Overcoming Stress and Creating Balance

By Dr. Geralyn Datz



You've already been at the office for nine hours. The senior partner is on your case about a research memo you haven't had a chance to begin. That difficult client who insists on calling several times a week to complain about everything under the sun is at it again. Oh, and you've got a brief due tomorrow and you have no idea how you're going to finish it on time. You're exhausted and overwhelmed. It's only Monday!

The Environment and Culture of Law

Most people have no idea how they get "burned out" or why. It's hard to grasp that we could actually harm ourselves while trying to work hard or helping others. This is a very real, and very misunderstood, problem in the legal profession.

The practice of law can be so all-encompassing that there doesn't seem to be an "off" switch — irrespective of the practice environment (sole practitioner, large firm, small firm) or practice area (criminal, corporate, entertainment, immigration, health, family, personal injury, real estate, tax, intellectual property, labor or international). The boundaries of personal, work, family and spiritual life may cease to exist, either temporarily or permanently. That can take an enormous toll on a person. When the toll becomes toxic to health and well-being, this is called "burnout."

It is important to understand why the legal profession is uniquely positioned to take a toll on a human being. Being a lawyer places one in a unique environment of "demandingness" — from the clients who are distressed, self-focused and sometimes entitled, to the employers who expect top-quality, super-human results. Also a daily foe is an uncontrolled, high-contact, often urgent schedule that does not understand daycare pickups, birthdays, vacations, sporting events or sleep. Lawyering can be a hyper-stressful setting where the rewards are few and far between. While some cases may be won, the time between "wins" can be long and arduous. Sometimes a "no-win" media-

tion or ambiguous success can leave a lawyer feeling over-compromised and empty. There is always the pressure to perform, to log hours and to appear "together" despite chaotic circumstances.

Finally, the context of practicing law is based on an adversarial paradigm, often involving some conflict, dispute or wrongdoing. Sometimes there is resolution, but not always. Cases are won and lost through the distortion of reality. This can create a tainted reality for the practicing attorney. Legal cases and clients themselves pertain to social deviations, misbehavior, law breaking, mistreatment and injustice. There is a side to the world, your city and your workplace that may be sinister. It is inspiring to overcome the odds, bring justice where there is none, and contribute to a precedent. However, at other times, it can feel like you against the world. The outcome of a case can be dark and unfair, and there are other compromises that must be made in the interest of income, time or tenure in the job.

Humans, as a group, tend to fare poorly under these circumstances.

Are You in Balance?

In the same way that we need air, water and food to survive, our minds need certain conditions to feel vital and healthy. We need to feel as if we have accomplished something, that we have a purpose, that we are loved and understood, and that we have "down" time away from intense stress. When we do not have these opportunities, we become out of balance.

When we are out of balance, we often try to create balance in ways that will never achieve it. We create doses of pleasure by overeating (particularly carbohydrates and "junk" food) or by drinking alcohol. We isolate and stay sedentary, thinking we need more rest, when, in fact, we should exercise.

We seek outward relief and escape from recreational drugs when we should be turning inward and creating peace and new habits. We ignore the sources of support that would normally bring us relief (spouses, children, family, parents, friends, even pets!) because we

are in a "bad mood," judgmental or just too exhausted to socialize. We structure our time so we can't take a break or feel too drained to reach out to our spiritual community when we need replenishment. Under extreme stress, we tend to make poor and impulsive decisions. Some turn to sexual infidelity or take risks (such as fast driving or aggressive behavior), which release temporary "feel good" hormones and neurotransmitters but are ultimately self-sabotaging.

When our levels of stress become toxic, this can progress to burnout. Burnout is a state of overwhelming, long-term exhaustion and diminished interest in work. Professional symptoms of burnout include depression, cynicism, boredom, loss of compassion and discouragement. The problem of burnout results from working long hours with limited resources, experiencing ambiguous success, and having contact with difficult clients.

The opposite of burnout is engagement. Engagement is the state of feeling energized, effective, and connected to one's life, career and surroundings.

Which category do you fall into?

The Effects of Stress

Stress can become toxic to our bodies and mental health. Constant exposure to adversity, or stressful work conditions, can activate our fight-flight-freeze response. This is a biological response that, when used in small doses, is very helpful. It helps in the courtroom when you need to be on your feet and convincing. It can help you be aggressive in a meeting, and it gives you the edge over the competition when they aren't as passionate as you. It also can help you "walk away" from a bad negotiation rather than continuing to argue. The stress response can help you "freeze," when provoked, which may allow a better negotiating position later.

However, when the fight-flight-freeze system is *constantly* activated, health concerns may follow. The body and mind become depleted by the constant flux of hormones (cortisol) and neurotransmitters (adrenalin and epinephrine). Healthy tissues are degraded in the body, such as

cardiac tissue. The immune system is suppressed. Sleep patterns change and lessen. Fatigue increases due to the constant rushes of stress hormones. Digestion changes and the body's ability to lose weight is reduced. Sex drive decreases. Headaches, depression and panic attacks increase.

The effects of chronic stress often bring people to the doctor, but that "stress" usually carries other names — insomnia, impotence, constipation, frequent colds or flu, weight gain, fatigue, uncontrollable temper, high blood pressure, canker sores, ulcers, eczema, psoriasis, nightmares, chest pains, anxiety attacks, infertility, concentration problems, bodily pain, painful muscle tension or muscle spasms, and headaches.

Contrary to some beliefs, you don't have to have a diagnosed mental health condition to be affected by stress and burnout. Stress and burnout have their own independent effects on the body and mind. But, if another mental health problem is present, the stress and effects of burnout are going to make the original problem worse because any remaining emotional and physical resources that the person has will be expended with the additional effects of chronic stress and burnout. Burnout and stress will actually hasten a depressive episode, a drug relapse or chronic pain, and increase the frequency of panic attacks. That is why it is so important to address the signs of burnout as soon as they appear.

Taming Burnout

If you are experiencing the effects of chronic stress and burnout, there is hope. One method is to begin looking at your "energetic bank accounts," consisting of the physical, emotional and spiritual areas in your life. I encourage and coach clients to take an inventory of their physical health, their emotional state and spiritual connectedness.

Ask yourself the following questions:

► How is your health? Your energy level? What is your weight and strength level?

► How do you feel emotionally? Are you getting your needs met in relationships? At work?

► How connected are you to feeling like your work makes a difference? Is your work a meaningful path for you? Are you connected to any kind of faith, healing, charity or spiritual community?

If your answers are not what you wish them to be, it is important to start making "deposits" into these areas of your life.

For example, physical health can be changed by paying attention to eating habits and activity levels. Exercise is crucial to regulation of stress hormones, sleep, appetite and energy levels.

Emotional health can be refueled by increasing positive social interactions, learning meditation and relaxation techniques, attending psychotherapy or counseling, and learning time management and assertiveness skills (e.g., learning how to say no!).

Spiritual practices can be enhanced formally or informally through re-identification with religious beliefs, attendance at services, or spending time acknowledging a higher power or developing connectedness and mindfulness. The method must always match the person's preferences and needs. This is often the most challenging part of overcoming burnout: changing behaviors. Assistance from an experienced professional can help.

The importance of a program like the Louisiana Lawyers Assistance Program, Inc. (LAP) cannot be underscored enough. It is crucial to have support available from people in your profession, confidential and continuously available. Buddy Stockwell, the LAP executive director, is easy to talk to and not pressuring. He knows when a problem is serious and needs immediate help and when someone just needs to talk. Asking for help is hard, but the LAP program makes it easy. Stockwell and his team know all the best resources and can easily demystify the process of treatment support and recovery. They help people CHANGE and take control of their lives again. They will literally save months of extended suffering and many hours of searching for answers (and might just save your life).

The LAP program is a tremendous resource that should not be a last resort. Frequently in my mental health practice, I hear clients tell me they waited until things were really bad before coming to see me. Why? Why do we wait so long for help? Help can be given at any stage of suffering, but certainly it makes sense to use resources that are useful BEFORE a problem becomes severe (from a physical and mental health perspective, as well as a familial, personal and occupational standpoint). In the case of burnout, it is an avoidable phenomenon when the right steps are taken, early in the process.

The journey from burnout to recovery is well described in Joan Borysenko's book, *Fried: Why You Burn Out and How to Revive*. "Revival from burnout is always about the recovery of lost authenticity. It's waking up to who we really are and realizing that heaven is not a destination, but a state of mind. If being fried can bring us to a point where we reconnect to our own true nature, then it's worth every moment of separation to rediscover the heaven that has been inside of us all along."

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Improving Attorney Quality of Life: *The Emerging Role of Dialectical Behavior Therapy*

By Daliah Bauer, Ph.D.

Depression and substance abuse are known to have high prevalence rates in the legal profession. This article provides information about the impact of depression and substance abuse and describes a form of psychological therapy that is useful in managing them. Emotional turmoil, depression and problems of alcoholism and drug use are common among professional groups in general. However, according to a 1990 Johns Hopkins study, among 104 groups of professionals, lawyers lead the nation in incidences of depression.¹ Further, researchers in Washington found that one-third of all lawyers in that state suffered from depression.² The American Bar Association (ABA) also estimates that 15-20 percent of lawyers suffer from alcoholism or other forms of substance abuse, and male attorney suicide rates are double that of other professions.³ The ABA also determined that, over the course of an attorney's career, many feel increasingly dissatisfied with their practices.

The survey

also found links between dissatisfaction and the deteriorating conditions of a work environment, increased mental and physical distress, and poor abilities to use effective coping strategies, such as exercise, social support and humor. The long-term effects of this chronic dissatisfaction are dangerous to an attorney's overall health and well-being and have an adverse effect on his/her ability to practice competently. Lawyers often discuss the difficulties they experience attempting to balance productivity and their individual well-being. Time management is difficult and there is a tendency to feel as if one is "choking" under the pressure of the demands of work.⁴

G. Andrew Benjamin, a professor of law and psychology at the University of Washington, suggests that emotional problems for lawyers and bad habits with regard to good mental hygiene can date back to law school and may be related to the overall educational style of legal education. Young attorneys

are faced with excessive workloads and academic competition, and instructors may not provide concise feedback which can be isolating, invalidating or intimidating. Moreover, overemphasis on analytical and linear thinking may cause a loss of connection with emotion, values, morals and a sense of self.⁵ Benjamin concludes that law school dynamics encourage behaviors such as taking on too much work and having trouble maintaining healthy relationships. In doing so, Benjamin identified three problem areas plaguing lawyers that warrant intervention: dysphoria, substance dependency, and hostility and cynicism. Dysphoria can present itself through increased social isolation or feelings of unhappiness, dissatisfaction with aspects of life, poor sleep and chronic feelings of being overwhelmed. Substance abuse may consist of frequent drug or alcohol use, managing sleep with substances, using drugs or alcohol in a fashion that causes problems in romantic or other relationships, and neglecting obligations. Hostility emerges as persistent negative thoughts in relationships, chronic impatience, frequent irritability and deficits in empathy.

Of additional concern, many law students and young lawyers fear that they will not be allowed to practice because the state bar will not admit applicants if they have received substance abuse or mental health treatment. This situation encouraged law students and young lawyers to keep their problems private and thus allow them to fester and pervade their professional careers.

Factors that Make Lawyers and Other Professionals Vulnerable to Emotional Problems

Perfectionism

Most attorneys are highly ambitious and overachieving. They are taught to be aggressive/perfect and detached from their world. This drive for perfectionism and a constant tenacity often leads lawyers to achieve great success and to receive praise and respect from colleagues and leaders in their field. However, they are also among the chief reasons responsible for lawyer depression. These traits can lead to inflexibility in life and extreme over-thinking. When a drive for perfectionism is combined with a highly challenging work environment loaded with demanding schedules and complex and emotional situations, anxiety and depression can easily occur. Additionally, when attorneys feel pressures from work, social arenas, family and clients, life can be difficult to balance and can often lead to self-destructive behaviors and explosive emotional responses. These behaviors create greater divides between an individual and his/her support system, and the general work product can suffer as well.

Anger

Another factor associated with the health problems in attorneys is the litigation strategy of directed anger and hostility. Planned and controlled aggressiveness can serve as an essential tool for a winning trial lawyer. Over time, however, it may be difficult to turn the anger off when dealing with close relationships or family. A lawyer may be reproached for the very attribute that makes him or her successful.⁶

Anger also is linked to alcohol use, and it is generally believed that alcohol amplifies anger. Our culture accepts drinking as a way to vent emotions. However, anger management problems combined with substance abuse can lead to unnecessary violence and can wreak havoc on relationships.

Dialectical Behavior Therapy: How Can It Help?

Dialectical Behavior Therapy (DBT) is an internationally recognized and empirically validated program of psychotherapy. It is most frequently used in outpatient settings; however, it has been adapted for use in inpatient and residential treatment facilities as well. DBT was originally designed to

address the problems of extreme emotions and erratic and impulsive behaviors demonstrated by individuals with Borderline Personality Disorder. This therapy has resulted in the considerable reductions of suicidal and self-harm behaviors and is regarded as the gold standard for treatment of Borderline Personality Disorder. DBT also improves outcomes among individuals who suffer from the need to be over-controlling, eating disorders, substance abuse, trauma, depression and anxiety. Although DBT may not be the most parsimonious or efficacious treatment for many disorders, it has a solid evidence base for severe emotion dysregulation and co-occurring substance and mental health disorders.

Dr. Marsha Linehan, the noted psychologist and behavioral therapist, created DBT in 1993 after recognizing that many other treatment protocols, including standard Cognitive Behavior Therapy, did not produce the needed results for many individuals with a certain constellation of symptoms.⁷ While DBT shares elements with psychodynamic, client-centered, Gestalt, and strategic approaches to therapy, DBT is best described as a synthesis of behavioral science, mindfulness and dialectical philosophy, all combined for the purpose of reducing dysfunctional behaviors and increasing skillful living.⁸ Mindfulness is a core skill. It is drawn heavily from Zen Buddhism, but the skills are consistent with most eastern meditation and western contemplative practices. The goal of mindfulness is to participate in one's life with awareness. It is assumed that participation without awareness can be a key component for impulsive and mood-dependent behaviors.

Dialectical thinking requires the ability to "transcend polarities, and, instead, to see reality as complex and multifaceted; to entertain contradictory thoughts and points of views and to unite them and integrate them."⁹ In other words, dialectical thinking helps individuals refrain from extreme patterns of thinking and feeling and begin to appreciate that multiple perspectives contain the truth. Personality traits such as perfectionism or cynicism, which can be found among attorneys and other driven professionals, can encourage extreme thinking and subsequent experiences of anger and dissatisfaction.

Behavioral treatment involves targeting and monitoring a specific set of target behaviors. These are individual and unique to each patient and are jointly selected with an individual and his/her therapist.

Biopsychosocial Theory of Emotion Regulation

The main focus of DBT is to address problems related to the emotion regulation system (the ability to manage feelings and reactions). It is hypothesized that problems with this system are developed and maintained by biological and environmental systems. In other words, individuals are born with a unique and individual temperament and may be vulnerable to difficulties in regulating their feelings due to their genetic and biological constitutions. Simply, some individuals are just more sensitive or more excitable than others. Certain individuals may experience more intense emotional experiences and remain activated. Problems arise, however, when a person who is vulnerable to emotional upsets is in a particularly invalidating environment. Often family, teachers or peers fail to validate adequately an individual's experience and certain emotions can become suppressed. Those individuals learn that those around them do not understand their emotional experience, and they subsequently develop maladaptive coping mechanisms. Often individuals suppress emotions as they appreciate that others are not sensitive to their experience of emotion. At other times, individuals respond to distress with extreme outbursts. When an individual achieves a response to an extreme outburst, they may learn that this behavior is effective in being noticed and understood but may be ineffective with respect to long-term goals. For example, one may express anger in an outburst, which may provide the individual with control and the experience of being understood and respected, but such an outburst may have protracted relationship costs. Aggression may encourage others to avoid the individual in the future or may reduce the ability of the individual to experience joy in relationships.

DBT Treatment Targets

DBT involves working with clients through various stages of their treatment, focusing first on developing a commitment to the therapeutic process collaboratively with the therapist. Stage 1 focuses on the most severe problems of dyscontrol, first addressing any life-threatening behaviors (suicidal behavior, self-harm, substance abuse, severe depression), then moving towards addressing those patterns that compromise the person's quality of life (dysphoria, anger, anxiety). Later stages emphasize connection to the environment, mastery, self-respect,

self-efficacy, and resolving problems of living in such a way as to allow for a life of joy and fulfillment. At the early stages of treatment, individuals may experience significant emotional pain. The therapist, through empathic listening and validation, helps the client find a balance between acceptance of certain emotional pain and the change needed to achieve one's life goals.

DBT therapists work with clients to help solve problems. They use empirically supported behavior therapy protocols — behavior analysis, solution analysis, didactic training, cognitive restructuring and self-monitoring — to treat problems. Specifically, DBT therapists encourage monitoring of events, emotions and target behaviors, and assist clients in identifying distorted thinking patterns and developing ways to change them.

DBT begins with a focus on addressing problems of interpersonal chaos, emotion dysregulation, impulsivity and confusion about oneself by teaching mindfulness skills, distress tolerance and strategies to become more interpersonally effective. DBT also teaches one to find a middle path, to think dialectically and to understand the process of experiencing emotions.

Modes of Treatment

DBT utilizes several different modes of treatment. Clients attend individual therapy sessions to explore behavior patterns that reduce one's quality of life (e.g., excessive drinking, arguing, excessive passivity, avoidance tendencies, disordered eating). Clients work with therapists to understand the triggers related to these problem behaviors and create techniques to produce change in their lives. Therapists also utilize a variety of techniques to help their patients learn to expose themselves to their emotions and validate themselves as they experience the stresses of life.

DBT also includes the utilization of psychoeducational groups that teach skills designed to address various interpersonal and emotional problems. Skills groups provide education on core mindfulness, emotion regulation, distress tolerance and interpersonal effectiveness. Mindfulness involves the focusing of attention (both for purposes of observing and describing) on something and participating completely in the moment, effectively and without judgment. Distress tolerance involves the use of impulse control skills, distracting, self-soothing and meditative, and problem-solving strategies designed to help the client survive a crisis

situation without engaging in automatic dysfunctional behaviors. Attorneys and other professionals are frequently faced with unexpected events in the course of their work. Certain responses such as "shutting down," drinking, using drugs or arguing can make the situation worse. DBT clients learn skills to distract themselves from extreme emotional pain and learn how to accept real but difficult inevitable professional and personal realities.

Interpersonal effectiveness refutes myths of interpersonal situations, helps individuals identify their own priorities in social settings, and teaches assertiveness. Emotion regulation classes help clients begin to understand both the physiological and cognitive processes involved in the experience and the expression of emotion. Awareness and understanding of the steps that comprise the emotional sequence assist individuals in developing more positive experiences and reduces their vulnerability to negative experiences. Clients also learn specific strategies to improve positive emotions, to stop avoiding feelings and to change unwanted negative emotional states. These particular skills are useful to many individuals who experience interpersonally stressful events and painful episodes.

The Therapeutic Relationship

Most individuals who attend therapy for mental health and substance abuse problems want to feel as if their counselor can empathize with them. DBT clinicians understand the extreme emotional sensitivity of their clients and work to help clients feel understood by showing them that their thoughts, feelings and behaviors are valid. DBT takes the relationship between the patient and the therapist very seriously. But, in order for the client to bring about change, the client needs to trust the therapist. DBT therapists also provide their clients with skills coaching outside of treatment sessions. Life crises often occur outside of a therapist's office and after hours. DBT therapists know that, at times, it can be extremely supportive and helpful to have a therapist available to guide one through a stressful situation with emotional support and a clear depiction of how to access a skillful solution to a problem.

DBT therapists often work as a team to provide each other with guidance and support. This support helps therapists remain faithful to the clinical protocol, prevents burnout and provides the most effective care to clients.

Conclusion

In summary, the problems of depression and substance abuse that are prevalent among those in the legal profession are treatable. Dialectical Behavior Therapy and other psychotherapies and psychiatric interventions, such as Cognitive Behavior Therapy, mindfulness, medication and 12-step programs, can produce tangible changes in a suffering person's life. Although it is easy to feel overwhelmed with the demands of work in a stressful environment, there is help available to facilitate a greater balance in life.

FOOTNOTES

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Procrastination,
file stagnation &
neglect, inability to
meet professional or
personal obligations or
deadlines

Inability to open mail
or answer phones,
“emotional paralysis”

Feelings of bafflement,
confusion, loneliness,
isolation, desolation
and being overwhelmed

Persistent
apathy or
“empty” feeling

Drug or
alcohol
abuse

Changes
in energy,
eating or
sleep habits

Trouble
concentrating
or remembering
things

Loss of interest
or pleasure,
dropping
hobbies

Guilt, feelings of
hopelessness,
helplessness,
worthlessness, or
low self-esteem

A Johns Hopkins study found that
lawyers suffer from depression
at a rate 3.6 times higher than the
general employed population.

We Can Help.

The signs of depression aren't easy to read. No one is completely immune.
If you or a colleague experiences signs of depression, please call.



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Addiction and Treatment *in a Professional Population*

By Dr. Jay A. Weiss

Drug and alcohol problems are common within our society, but we are not the first society to have them. The great physicians Hippocrates and Galen in Greek and Roman societies wrote of the symptoms and damage caused by substances. Indian and Chinese physicians were describing similar problems long before Greece and Rome emerged as civilizations. Our own history records a significant morphine problem after the American Civil War in the mid-1860s. By the early 1900s, we had even more significant problems with over-the-counter heroin and cocaine. We were sufficiently concerned as a society to pass the Harrison Act in 1916. This act placed a physician with prescribing authority in between the consumer and the provider of addictive and dangerous substances. We also were sufficiently concerned with a nationwide alcohol problem to pass the 18th Amendment to our Constitution (prohibition) in 1918. We then repealed it in 1933 after we discovered a number of unintended consequences and decided to live with the damage caused by alcohol as opposed to damage caused by the consequences.

Addiction problems are widespread. They know no social boundaries, and they include a high cost to society and high mortality rates. There is no quick recovery from an addiction problem. Such problems follow a chronic disease model requiring lifelong management and monitoring.

This article addresses the high rate of addiction among professionals and outlines

successful treatment for licensed professionals. Source documents include the American Society of Addiction Medicine (ASAM) Principles of Addiction Medicine Textbook and the American Society of Addiction Medicine overview article published in April 2011.

All addictive substances affect and stimulate a very primitive part of the brain called the limbic system. This area lies just above the spinal cord and controls survival mechanisms such as thirst, hunger and fear. Adjacent areas control the fight-or-flight mechanism and reward mechanisms. This area of the brain is present in all animals and necessary for survival. Addictive substances convince this area of the brain that it must have more of the drug in question as a matter of survival. Addictive substances also simultaneously shut down the higher areas of the brain that control judgment, executive function, and a sense of right and wrong. The main neurotransmitter involved in all addictive substances is dopamine, and this is also the main neurotransmitter involved in schizophrenia. All addictive substances increase the secretion of dopamine in the brain, and an excess of dopamine is well known as an important factor in schizophrenia. All antipsychotics decrease the level of dopamine available to the brain. It should, therefore, come as no surprise that addictive behavior can look a lot like schizophrenia with attendant poor judgment, paranoia and impaired reality testing. It also should come as no surprise that addictive substances can cause some very intelligent people to do

some very stupid and dangerous things.

We as professionals are not immune from medical illnesses, including addictions. We have a higher than average rate of addiction due to the higher levels of stress to which we are subjected. Our addiction rates must be seen within the context of significant long-term drug problems within our society including an accelerating rate of prescription drug addiction. Fortunately, we also have a high rate of success in treatment of addictions and availability of professional health programs like the Louisiana Lawyers Assistance Program, Inc. (LAP). A professional health program has dual roles of enhancing public safety and assisting with rehabilitation and practice reentry of licensed professionals with potentially impairing medical conditions including addiction. LAP in Louisiana provides a confidential opportunity for its professionals to access comprehensive and well-supervised evaluation, treatment, aftercare and monitoring. LAP provides an alternative to severe licensing and disciplinary action with emphasis on rehabilitation and accountability carefully facilitated and documented over time.

Professional populations including attorneys, judges, physicians, nurses, pharmacists, dentists, accountants, engineers and others all share a number of important characteristics. These include lengthy professional training, a body of knowledge unique to the profession, service to the public, a fiduciary responsibility to the public, and licensing boards which moni-

tor professional performance throughout the professional's career. Professionals are held to a higher standard of education and behavior than the average citizen and live under much greater scrutiny than the average citizen. Professionals must master a large database of information which must then be applied in a high-pressure environment requiring superior powers of observation, judgment, and executive function in a dynamic setting where the price for a mistake is very high.

A universal policy among professional licensing organizations is prohibition of alcohol or controlled medications from legal or illegal sources while practicing the profession due to the potential for significant impairment and subsequent erosion of performance. Side effects are variable and unpredictable, but the danger to the public greatly outweighs any possible benefit to the individual professional from consumption of impairing substances while practicing the profession. Important side effects often seen with controlled substances or alcohol include dizziness, drowsiness, insomnia, vomiting, anxiety, blurred vision, confusion, decreased attention, mood swings, impaired executive function, impaired judgment, slurred speech and delirium. Any of these are incompatible with a safe practice of a profession.

Professional licensing organizations in the 1950s would typically suspend or permanently revoke the professional license of a professional identified with a drug or alcohol problem. These problems were considered moral, ethical and legal problems at the time. This punitive policy had the unintended consequence of sweeping a huge problem under the rug and out of sight. Professionals were understandably reluctant to self-report, and fellow professionals were reluctant to report a colleague despite clear knowledge of a problem. Professional health programs were developed over the subsequent 20 years to provide an alternative pathway involving identification, evaluation, treatment and aftercare, with monitoring and random drug screens. The American Medical Association approved this policy for physicians in 1974; almost every state now has a Physicians' Health Program in place, very similar to the Louisiana LAP in organization and mission. Licensing organizations such as Supreme Courts, Medical Boards, Nursing Boards and Pharmacy Boards now offer evaluation,

treatment and monitoring as an alternative to licensing action and expulsion from the profession.

A key to this change is the identification of addiction as a chronic disease rather than moral or ethical problem. The chronic disease model of addiction holds that addiction must be managed over a lifetime, not cured in a short period of time. Like asthma, hypertension or diabetes, addiction tends to recur without proper treatment and long-term management. Proper treatment for this long-term problem involves identification, intervention, detoxification, treatment, and a strong post-treatment monitoring program to include accountability and supervision. LAP endorses all of these well-established and research-validated criteria for an effective treatment program. An attorney who volunteers for LAP and complies with LAP instruction has a very good chance of obtaining successful treatment for his/her addiction, and that in turn may help facilitate a return to the safe practice of law with the full blessing of the Supreme Court, provided that the attorney has not caused substantial harm to the public or the profession.

Two generations of experience with similar professional health programs support a high probability of success in a professional population. LAP, in particular, works closely with the affected attorney to identify and evaluate the problem, intervene early, detoxify if necessary, treat with appropriate inpatient or outpatient programs, and engage in aftercare including close monitoring and accountability to ensure sobriety and prevent relapse. A similar program for physicians in Washington State, with 90 days of inpatient treatment at a good facility followed by professional health program monitoring, resulted in 80-95 percent sobriety at one year, 85 percent continuous sobriety with five years of monitoring, and 85 percent continuous sobriety with 10 years of monitoring. By contrast, a 30-day inpatient treatment with no follow-up yielded an 80 percent relapse rate at one year in this population.

The effectiveness of a 90-day inpatient program should sound familiar to all with professional or military training because we learn best in 90-day increments. It takes about 90 days to internalize a new body of knowledge and a new set of behaviors. Military basic training across cultures and

across time takes about 90 days to turn a young civilian into a soldier. A standard semester in high school, college or professional training takes a minimum of about three months. One does not master constitutional law or gross anatomy by reading a textbook in one evening and taking a test the next day. Virtually all studies of rehabilitation have shown that the patient who stays in treatment longer and attends the most treatment sessions obtains the best post-treatment outcomes. Length of stay is a robust positive predictor of treatment outcome, as are intensity of treatment, supervision, length of monitoring and accountability after treatment.

The Federal Aviation Administration (FAA), another licensing organization with stringent policies regarding drug and alcohol impairment in professional pilots, has a program remarkably similar to LAP designed to treat impaired pilots and return them to flying. The FAA program also involves identification, evaluation, treatment and after-treatment monitoring. The program involves testing, monitoring, accountability and consequences if a pilot identified with a prior substance problem returns to the use of substances. The program also involves return to flying duties with the blessing of the FAA if the pilot complies with a monitoring program, obtains treatment and remains sober.

In conclusion, the overwhelming body of evidence we have today indicates that a professional population benefits from programs like LAP to identify and treat addicted professionals and return them to practice as quickly and safely as possible.

Dr. Jay A. Weiss is currently medical director of the Palmetto Addiction Recovery Center, a 100-bed, inpatient addiction treatment center in Rayville, La. He retired from the U.S. Air Force in 1997 after 30 years of military service as a navigator and psychiatrist. He began working at Palmetto in 2000. He is board-certified

in psychiatry, addiction psychiatry, geriatric psychiatry, addiction medicine and psychosomatic medicine. He serves as a consultant to the Federal Aviation Administration and holds Airline Transport Pilot, Flight Navigator and Flight Instructor certificates. He also serves as a consultant to the Louisiana Lawyers Assistance Program, Inc. (jayweiss1@aol.com; 86 Palmetto Road, Rayville, LA 71269)





The Right Way to Help

By Jeff Jay

Delay, deny, defer” is a common strategy in difficult legal situations, especially when one’s position is weak. It’s also a common strategy when the opposing party doesn’t have the resources or determination to carry on a protracted battle.

Many attorneys have found this same strategy effective in their personal lives as well. When brute force argument won’t win the day, dragging out the process often does. As professionals skilled in the adversarial process, the “delay, deny, defer” strategy comes naturally to them.

But does “delay, deny, defer” work with medical issues? If a person is diagnosed with cancer, is it helpful to employ delaying tactics with the physician? What if the delaying tactics work and treatment

is postponed? Is this truly a win?

How about when dealing with thorny family issues or executing business plans? Effective strategies in life, business or health can’t be one-size-fits-all. When it comes to addiction and mental health issues, it’s especially important to take the right approach and to do so in a way that preserves both dignity and confidentiality.

People are often at a loss when faced with a partner’s, friend’s or co-worker’s mental health or chemical dependency issue. Private conversations with the impaired person typically go nowhere and any positive changes that do come about are almost always short-lived. The impaired person soon defaults to the same disconcerting behavior patterns and concerns about the person continue.

A better strategy is to seek help from a professional interventionist.

The Louisiana Lawyers Assistance Program, Inc. (LAP) has developed special expertise and received advanced clinical training in modern techniques for mental health and addiction intervention. Unlike television dramatizations and old-style methods of coercion, current best-practice techniques utilize a dignified and effective method for breaking through “delay, deny, defer,” and opening the door to treatment and recovery.

Addiction and mental health issues worsen over time. They grow larger when left in the shadows and kept as secrets. The first step in helping a colleague is to reach out to the properly trained professionals at LAP. Many wrongly believe that

confidentiality simply can't be guaranteed and they focus on this issue as a reason not to move forward. But these services are held to the highest standards and confidentiality is, in fact, safeguarded.

As addiction and mental health issues are left unattended, it becomes impossible to keep a lid on problems, and the false hope of maintaining privacy evaporates. Like most problems, these issues are best addressed at the earliest possible stage. Rebuilding a professional and personal life is easier before the worst consequences occur. We also help protect the reputation of the profession at large by taking action.

Modern clinical techniques help the person suffering from addiction or mental health problems to accept the reality of their situation and begin a rational approach to treatment and recovery. Often the biggest obstacle to getting well is getting started, and a well-planned professional intervention is almost always the key.

LAP Executive Director J.E. (Buddy) Stockwell and LAP Clinical Director Leah Rosa both recently completed a week-long training seminar at the Betty Ford Center that has certified them in the *Love First* method of clinical intervention, based on the best-selling book of the same title. Of special interest to legal professionals is the "Executive Style" intervention method (included in the curriculum along with various other intervention methods). This small-team approach helps safeguard confidentiality and helps preserve a sense of privacy, both of which are crucial for ongoing participation in the program. The Executive Style intervention method is especially successful with public figures and licensed professionals, such as lawyers and doctors.

Harnessing the care and concern of others in a specific and organized way is the best way to turn an intractable situation into a new beginning. Through LAP's professional facilitation, an Executive Style intervention can be organized quickly, possibly saving careers, families

and professional practices. Other styles of intervention also can be organized by LAP, and LAP is now better trained to organize professional interventions for any scenario.

When someone is suffering from addiction and/or mental health problems, those around them may try various informal methods to intervene (if they do anything at all). Almost without exception, they will fail and then falsely conclude they've done all they can, assuming there is nothing more that can be done to help the impaired person. They justify not asking others for help in their efforts in the name of confidentiality, but, in truth, they often just want to avoid anything that might stigmatize themselves or the practice at large in the process.

The *Love First* training has provided Stockwell and Rosa with several different approaches to intervention. The first step is assembling an intervention team, which may be as small as one or two people, in addition to LAP professionals. Education and preparation of the intervention team is essential to the process. A seven-point letter-writing method, careful preparation for objections and discussion of specific means for overcoming anticipated resistance highlight the program.

After the team's training and education process has been completed, a full rehearsal takes place. Letters are read aloud and edited, objections to treatment are resolved in detail, and last-minute issues are addressed.

Interventions often begin with a difficult moment once the subject of the intervention realizes that the time has come to face his/her issues. The person may dig in and prepare to "delay, deny, defer." But intervention is a human process, not an adversarial one, and the subject will realize very quickly that concerns come genuinely from the heart, and that a logical way forward has been prepared. When approaching such a person with respect and knowledge, along with professional facilitation, success is highly probable. In fact, years of clinical practice show

that 85 percent of such interventions lead directly to treatment.

After treatment begins, the most advanced intervention methods capitalize on the new expertise of the intervention team. The clinical interventionist transforms the intervention team into a recovery team, providing critical support to the patient throughout the treatment and recovery process.

Regular consultations with LAP's professionals keep the process moving forward and address any issues that may surface along the way. By turning the intervention team into a recovery team, the patient is no longer alone in the process and appropriate ongoing support is provided.

In the event of relapse or other immediate problems, the recovery team is already prepared for the crisis in advance. The ongoing support and guidance of LAP's professionals give every intervention recovery team the confidence needed to be successful.

How is "delay, deny, defer" working for the person or situation you're concerned about? Would you benefit from a confidential consultation to discuss the problem? If so, call Louisiana's LAP and ask to speak to Buddy Stockwell and Leah Rosa, your Bar's *Love First*-certified intervention professionals.

Jeff Jay, a clinical interventionist and educator, is the co-author of the best-selling book, Love First: A Family's Guide to Intervention (2nd Ed., Hazelden, 2008). A graduate of the University of Minnesota, he is a certified addictions professional and heads a national private practice that provides intervention and recovery mentoring services. He served as president of the Terry McGovern Foundation in Washington, D.C. He is also the author of At Wits End: What You Need to Know When a Loved One Is Diagnosed with Addiction and Mental Illness (Hazelden, 2007). For more information, go to: www.lovefirst.net.



One Lawyer's Journey Through Depression

By Dan T. Lukasik

I am a 53-year-old lawyer and have suffered from clinical depression for the past 13 years. It is my hope that in writing about my experiences, I will reach those who need to get help and those who should not give up.

Depression is not just a problem in our profession — it's a five-alarm fire. Lawyers suffer from depression at a rate estimated to be double that of the average American. Some postulate that the types of people who go into law are prone to depression. Others cite stress, burnout and addiction. I believe that the problem stems from a combination of all these factors and, accordingly, recovery involves a mix of healthy strategies.

My Descent

My own journey with depression began when I turned 40. At that point, I had been a litigator in a high-stress job for 15 years. I had always felt the heat of stress, but I just assumed it came with the territory of the job and helped motivate me to do better. Over time, my fear turned into anxiety. I just couldn't shut off the fear-provoking thoughts and feelings I had as I ground out my daily workload. Eventually, the anxiety turned into something else. I began feeling tired all the time. I felt like cement was running through my veins.

I had sleep disturbances and would overeat, numbing myself in front of the television. I felt sad all the time, with little apparent reason to feel that way: I had a wonderful wife and family and a great job at a good law firm.

I started seeing a psychologist. When I explained my thoughts, he said, "Dan, that's the depression speaking." He suggested I see a psychiatrist, and I did. When I arrived at the doctor's office, I quickly went to the waiting room, hoping no one would recognize me. The room was huge. There was one elderly man sitting in the corner. I took off my overcoat, slumped into my chair and sighed. I felt like the loneliest person in the world. The psychiatrist saw me and told me that my fatigue and sadness were owing to the fact that I had depression and would need medication. "It's no different than suffering from diabetes and needing insulin," he assured me. There was a biochemical imbalance in my brain. I left content that at least I knew what was wrong with me. I had an illness — an illness that could be treated.

I decided that I had to tell my three law partners that I would need some time off to allow the medication to kick in. I felt guilty about this; after all, I was the managing partner at the firm. I was supposedly a superhero, a problem solver who fixed other people's

lives. I wasn't supposed to be the one with a problem, the one who felt vulnerable and broken. In a quaking voice, I told my partners about my depression and how serious a problem it was. One partner turned to me and said, "What in the world do you have to be depressed about? You have a beautiful wife, family, and a great job here. Just go on vacation!" His angry and incredulous voice made me feel six inches tall. One of the other partners, smiling, confidently said, "Dan, at 95 percent, you are better than any lawyer I know."

Both of these reactions, I would later learn, are typical. The first partner's exhortation to remember the good things in my life didn't help. Instead it shamed me and fell on depression's deaf ears. The second partner's attempt to minimize the problem was not helpful either. I told him that I wasn't at 95 percent — I was at 10 percent.

After a month, I returned to work. The drug made me feel somewhat zoned out, but I slogged through my days for another year. My doctor changed my medications in search of a better result. The new medication quickly produced great states of anxiety. I remember driving home from work on a beautiful summer's day and feeling as though my body was on fire. That led to a third medication.

This prescription did the trick, and I am still on it. It has been supplemented with another medication, but I feel that this cocktail has largely squashed the worst parts of depression. I know the depression is still there, but my medication keeps it at a safe distance and protects me.

Medication didn't fix my depression, but it did calm my mind and bodily symptoms so that I could examine other things in my life that contributed to the depression. In therapy, it became clear that my thinking was garbled. My psychologist calls it "twisted thinking" that emanates from depressive thoughts — thoughts that go unchallenged in the isolation of depression.

I needed a therapist to help me confront negative self-talk and replace it with more healthy, positive and self-caring thoughts. For example, I used to think — perhaps 50 times a day — "nobody cares about me." Yet, if I actually looked at my life, this really wasn't true — not even close. I had to learn to embrace the people in my life that really cared about me. I also had to open up and let them know the depth of my pain and *allow* them to care about me. Men, in particular, have a hard time with this for fear of being deemed "losers" or "whiners."

Turning It Around

What can lawyers do about their depression?

► Call the Louisiana Lawyers Assistance Program, Inc. (LAP) and get immediate, confidential support and dependable referrals to resources for treating licensed professionals.

► Don't try to manage depression by yourself. The problem is bigger than any individual. You may have a chemical imbalance that needs regulation by medication, and that's okay. In fact, for many, psychotherapy won't help until they quiet down their somatic complaints so that they can have the energy and insight to work on their problems.

► Whether you need medication or not, you will need professional help to effectively confront your negative thinking. Cognitive Behavioral Therapy is particularly effective in treating depression. Call Louisiana's LAP for a referral to a LAP-approved therapist.

► Exercise. Of course, exercise is a healthy habit for everyone. But it becomes a critical choice for a person with depression. In his book, *Spark: The Revolutionary New Science of Exercise and the Brain*

(New York: Little Brown, 2008), Harvard psychiatrist John Ratey devotes a whole chapter to the importance of exercise in treating depression.

► Access the spiritual. This can include formal meditation sessions and religious services or a casual walk in the woods. A lot of research suggests that people with established spiritual outlets are better able to handle depression. If you believe in God or a higher power (I am Catholic), avail yourself of help and support from that source. Or tap into another form of spirituality. Spiritual growth and development, in my opinion, are important pillars of recovery.

► Join a support group. I started a lawyer support group in my community, and it has been going strong for two years. It can be invaluable in helping you to see that you are not alone and that others share in the very same struggle.

► Get educated. Read some good books on the topic. As part of your education, learn about the powerful connection between stress, anxiety and depression. On this subject, I recommend Dr. Richard O'Connor's *Undoing Perpetual Stress: The Missing Connection between Depression, Anxiety and 21st Century Illness* (New York: Berkley Books, 2005). O'Connor proposes that depression is really about stress that has gone on too long. The constant hammering away of stress hormones on the brain changes its neurochemistry. This can and often does result in anxiety disorders and clinical depression. I list a number of other great books on my website, www.lawyer-with-depression.com. The site also offers guest articles, news, podcasts and helpful links for lawyers.

► Add some pleasure to your schedule. As busy lawyers, we have the "I will get to it later" mentality, especially when it comes to healthy things. Jettison that approach and make time *now* to enjoy pleasurable things. A hallmark of depression is the failure to feel happiness or joy. Create the space to experience and savor these feelings.

► Restructure your legal practice. Recovery requires change but presents challenges: Are you willing to do whatever it takes? Would you change jobs or even your career if need be? I have spoken to many lawyers who haven't been happy with lawyering, but the practice pays the bills and it's what they know how to do. They also fear being labeled a "quitter" and feeling

as if they have somehow failed. These are all very genuine concerns. However, your good health (as I learned the hard way) has to be a top priority. I changed the nature of my practice and am healthier for it. I do less litigation and have less stress, which has long been identified as a powerful trigger for depression. Restructure and change can be done and, with professional help, you can achieve a healthy balance.

► Practice mindfulness. In mindfulness meditation, we sit quietly, pay attention to our breath, and let our thoughts flow by. Normally, we would immediately react to these thoughts (e.g., "I will never get this brief done"), but, through mindfulness meditation, we learn, slowly, to allow the thoughts and feelings to stream by without reacting to them. If such an approach to depression seems far-fetched, read J. Mark G. Williams' compelling book, *The Mindful Way Through Depression: Freeing Yourself from Chronic Unhappiness* (New York: Guilford, 2007), for an excellent primer on how you can incorporate mindfulness into your day. The technique has proven to be yet another effective tool in managing depression.

► Remember to be kind to yourself. Sounds simple? But I tell this to depressed lawyers and they look puzzled. They have rarely thought about it and are often unsure of how to accomplish this goal. Just begin with a conscious intention — "I am not going to treat myself poorly anymore." Depression is often built on poor mental/emotional and physical habits. Acknowledging that we are worthy of love from ourselves and others includes taking care of ourselves.

Dan T. Lukasik is a 1988 graduate of the University at Buffalo Law School in Buffalo, N.Y., and a founding partner of the law firm Bernhardt Lukasik, P.L.L.C. in Buffalo. He has litigated personal injury cases in state and federal courts throughout New York State. He is the creator of the website, www.lawyerswithdepression.com, and is a frequent speaker on the topic of lawyer depression. He is on the board of directors for the Erie County Bar Association and is a Fellow of the American Bar Association. He has been recognized by The Best Lawyers in America and Super Lawyers and is the recipient of the Distinguished Alumni Award for Community Service from the University at Buffalo Law School, among other awards. (danieltlukasik@gmail.com; 50 Fountain Plaza, Buffalo, NY 14202)



Portraits & Perspectives: Louisiana Supreme Court Associate Justices



One on One with Louisiana Supreme Court Associate Justice Jeffrey P. Victory

Interviewed by Joseph L. (Larry) Shea, Jr.

Louisiana Supreme Court Associate Justice Jeffrey P. Victory will retire at the end of 2014 after 20 years of service representing the Second District.

He graduated from Byrd High School in 1963 as a member of the National Honor Society. He attended Centenary College on an athletic scholarship, graduating in 1967 with a BA degree in history and government. He entered Tulane University Law School on a regional scholarship in 1967, serving on the Law Review. While in law school, he joined the Louisiana National Guard's Special Forces/Airborne. After receiving his JD degree in 1971 from Tulane, he practiced with the Shreveport law firm of Tucker, Holder, Jeter & Jackson.

In 1981, he was elected to the 1st Judicial District Court. In 1990, he was elected to the Louisiana 2nd Circuit Court of Appeal, beginning his term in 1991. He served there until his election as associate justice of the Louisiana Supreme Court, beginning his term in 1995.

Justice Victory was a charter member of the Louisiana Sentencing Commission and has served as a director and board chair of the Louisiana Judicial College. He is a member of the National Lawyers Association and the American, Louisiana and Shreveport bar associations.

On Oct. 21, 2014, Justice Victory received the 2014 U.S. Chamber of Commerce Institute for Legal Reform's Judicial Leadership Achievement Award. The award recognizes individuals and organizations for outstanding work contributing to reform of the United States civil justice system.

Justice Victory is married to Dr. Nancy Clark Victory and has four children.

Journal: Justice Victory, tell us a little bit about yourself.

Victory: I was born in Shreveport, La., in 1946, one of seven children. My father was a lawyer, and my only brother, Steve, six years older than I was, worked for many years for Liskow & Lewis in New Orleans, although he was killed in an automobile accident in New Orleans in the mid-1980s. There are lots of lawyers in the family: my son Chris, my daughter Mary Kate, my wife's father, two brothers-in-law, a niece and a nephew. In fact, Steve's daughter, Leigh, clerked for me in New Orleans for a year early in my first term. I grew up in Shreveport, attended



Louisiana Supreme Court Associate Justice Jeffrey P. Victory and family members. Seated, from left, Justice Victory and his wife, Dr. Nancy Clark Victory, and Nancy's mother, Frances Clark. Standing from left, his daughter-in-law Michelle Victory, his son Brad Victory, his son Peter Victory, his son Christopher T. Victory, his daughter Mary Kate Victory Walters and far right, his son-in-law Ryan Walters. Photo provided by the Victory Family.

Byrd High School, played baseball in high school and went to Centenary College on a baseball scholarship. Then I went to Tulane Law School — actually got a scholarship to Tulane Law School. Tulane graciously awarded a tuition waiver to one Centenary student every year back then. They may still do that. While I was in Tulane, of course, Vietnam was raging, and they cancelled all the graduate school deferments. I was able to join a Louisiana National Guard Green Beret unit in New Orleans and went to jump school at Fort Benning, Ga. While I fulfilled my commitment to the Guard over the next six years, I finished law school and, in 1971, joined the law firm of Tucker, Holder, Jeter & Jackson, where I later became a partner. In 1981, I was elected to the 1st Judicial District Court. Then, in 1990, I was elected to the Louisiana 2nd Circuit Court of Appeal. In 1994, I was elected to the Louisiana Supreme Court and then re-elected 10 years later.

After I was elected to the Supreme Court, my wife, Nancy, and I chose to keep our family in Shreveport, which means that I have been making weekly trips to New Orleans for most of my time on the Court. We have four children — Brad, Peter, Chris and Mary Kate — and we wanted them to finish growing up in our home town. Now, all three of the boys live here, as does our granddaughter, Madilynn Grace. Mary Kate practices law in Oklahoma City and is expecting our second grandchild in the spring. We are also proud of our two goddaughters, Guoya and Pearl Long, and we

visit them every year in Colorado.

Journal: You had a lot of lawyers in your background. When was it that you decided you wanted to be a lawyer?

Victory: I think it was early because my brother was already a lawyer, and my father also was a lawyer. Dad attended law classes at night at Centenary College and passed the bar exam on his first try, although he never went to law school or even graduated from college. Instead, during the Depression, my father sent my mother to Centenary College, where she graduated *summa cum laude*. Even though my father was not in private practice, he worked for Ark-La-Tex Oil and Gas here in Shreveport for many years.

Journal: So, in the early 1990s, you decided to run for the Louisiana Supreme Court. What made you decide to seek the position?

Victory: (Chuckles) Looking back, I'm not quite sure, to tell you the truth, because I really enjoyed being a district judge, which I always described as like going to a play every day. Everybody else has to prepare and they play it out for you, and half the time the jury makes the tough decision. I enjoyed my four years on the 2nd Circuit, but then I thought it was really important that you get quality people on the Supreme Court. Pike Hall was serving on that Court. I talked to Pike — of course, he had been the chief judge of the 2nd Circuit — and he encouraged me to run.

Journal: Pursuant to an order of the Supreme Court, the Louisiana State Bar Association will be starting a voluntary mentoring program in January 2015 for the new lawyers. Did you have any mentors in your career?

Victory: Oh, gosh, yes. When I was practicing law, Bob and Kay Jeter, T. Haller Jackson, Jr. and Horace Holder. All of my partners were in the Order of the Coif and on the *Law Review*.

Journal: I know that your family had a role in you wanting to be a judge and a justice. Have there been any decisions you would deem to be your most significant cases during your tenure on the Supreme Court?

Victory: You know, I don't really think about things like being most significant. We get so many things that are very difficult and are very important because we're going to make the ultimate ruling of how a statute is to be interpreted and what the law is. I don't really think of our work in terms of most significant. Everything we do is really important to the citizens of the state of Louisiana.

Journal: You mentioned your service on the 2nd Circuit Court of Appeal. Are there judges from your time in the district court and on the Court of Appeal that you've maintained relationships with over the years?

Victory: Absolutely. I served with Gene Bryson, John Ballard, Charles Lindsay and Fred Sexton. All are close friends. When I got to the Supreme Court, Associate Justice Walter Marcus, who was already on the Court and had been there for many years, became a good friend. Walter was a great influence and extremely bright. He and I thought a lot alike.

One story about Walter: I remember walking into his office one day. We were talking about a case the Louisiana Supreme Court had decided 17 or 18 years earlier. Without looking at anything, Walter just walked over and picked up a book out of the shelf and opened it up. Within five seconds, he's reading that case. These were his books. They were not published books. He kept separate books of opinions by the Louisiana Supreme Court, and his mind was so good that he didn't even have to check an index. He knew where it was from memory.

Journal: Well, you said that you and



Louisiana Supreme Court Associate Justice Jeffrey P. Victory will retire at the end of 2014 after 20 years of service representing the Second District. Photo provided by the Victory Family.

he thought a lot alike. What is your judicial philosophy?

Victory: I guess like every other judge should be — to follow the law. The Legislature is the one that makes the law. Sometimes we have to interpret it — and these things are frequently very difficult — but basically we have to determine what the law is and follow it.

Journal: Several months ago, I had the privilege of speaking at law school professionalism orientations. That is something that the State Bar has taken a great interest in. From your perspective, have you seen an improvement in or a decline in professionalism over your years?

Victory: You know, we don't see a whole lot of that at our Court because we just hear lawyers who come in and argue things. So, we don't see the problems firsthand like you would see in a trial court, but we get reports on the issue and try to promote professionalism. I think things are improving. We're certainly working hard to try to improve professionalism, making it part of the Court's work and emphasizing the courses that you're required to take.

Journal: What are the most significant changes in the practice of law that you have observed since you started?

Victory: Gosh, I don't know. More

and more lawyers. It seems like the state of Louisiana, of course, has always had a large number of lawyers, and it seems like we are growing at an even faster rate now. I understand in the last couple of years the law schools are cutting back on the number of students they are admitting, so perhaps that will have some effect on the legal community.

Journal: There's certainly been a lot of change in technology.

Victory: For goodness sakes, yes. I have a cell phone that will probably do anything. It's one of those Galaxy S4s, and I use it as a phone. Everybody else uses it to do everything else, except wash clothes.

Journal: Do you have any advice to share for practitioners to do a better job before the Louisiana Supreme Court and other courts?

Victory: When you're before the Supreme Court, you need to be thoroughly prepared because the people on that Court are going to be thoroughly prepared. They're going to have read your brief. They're going to have read your opponent's brief. They're going to have memos of their own that have been prepared by their staff. So they're going to know that case inside and out, and you need to be prepared to answer any questions that they have. And, most of the time, the lawyers are. I'm very impressed with the preparation of most of the lawyers.

Journal: You have had 20 years of exceptional service on the Court. You served in district court and the Court of Appeal. Looking back, what is your greatest accomplishment?

Victory: I don't really think of things in terms like that. I would like to think that I have contributed to the legal community, especially the Supreme Court. I've written a lot of opinions at the Court of Appeal and at the Supreme Court, and I think that is the most important contribution I've made.

Journal: What was the most enjoyable part of being a justice in the Louisiana Supreme Court?

Victory: I think it was being in the courtroom and listening to the lawyers arguing the cases. (Laugh) I've always enjoyed that. I liked being in the courtroom. When I was a practicing lawyer, I didn't do a whole lot of courtroom work. We mostly were doing office work. But, when I became a district

judge, it was, like I said, like going to a play every day, very interesting. The Court of Appeal was somewhat like that because people come and argue cases, but you weren't seeing things firsthand. But, actually, when you get to the Supreme Court, all of the cases are really important, and you usually have very good lawyers that are there arguing the cases.

Journal: Now that you are nearing completion of your tenure on the Court, what are your plans for the future?

Victory: I don't have any current plans. I've had a lot of suggestions as to what I should do professionally, that I should do this and that and so forth. I'm open to that. But we do want to build a house. We will be tackling that probably early next year. And we are looking forward to spending time with our children and grandchildren. But, overall, after over 30 years of living by a strict schedule, it will be nice to have some flexibility.

Journal: What do you think will be your legacy from your service?

Victory: I hope it's good. I hope people

will read the opinions that we've written and know that we always tried our best to do what the law provides and to explain it as best we could.

Journal: Have there been other lawyers or judges you looked up to and admired?

Victory: Oh, goodness, as I said before, T. Haller Jackson and Bob Jeter with my firm were certainly a great influence on my getting into the details of it. Horace Holder was with our firm and one of the brightest people that I've ever met. I remember a business client asked Horace to tell them about chattel mortgages, and Horace wrote a 25-page, single-lined letter explaining it all. When I read his memo, I realized how many things Horace had covered that would never have even crossed my mind. They were all a great influence on me. Charles Lindsay and Fred Sexton were not only good friends, but they were good lawyers, and they were good judges, as were Gene Bryson and John Ballard. I've always looked up to them. They were a little older than I. I still appoint Fred a lot of times in cases when they need a judge around here because somebody is recused or

otherwise. So Fred has been doing work for the Supreme Court for many, many years.

Journal: Would you like to pass on some advice that you have gleaned from your legal career?

Victory: Work hard and study hard. Usually there are a whole lot of little curves in the law and exceptions to be considered, and so it's something that makes studying really, really hard, but extremely important, especially at the Supreme Court level. The people around you are bright, and they're going to be doing that too, and, hopefully when we all get together, we'll straighten out all of those things.

Journal: What would you have been if you had not been a lawyer or a judge?

Victory: I've always been interested in architecture. Still today, whenever we go to a big city, I go to look at all the cathedrals. I've always been impressed by the size of things like the Empire State Building. I actually went to NYU tax school for about a week after my brother, Steve, encouraged me by saying, "If you'll go, I'll pay for it."

Justice Victory Receives Judicial Leadership Achievement Award

Louisiana Supreme Court Associate Justice Jeffrey P. Victory received the 2014 U.S. Chamber of Commerce Institute for Legal Reform's (ILR) Judicial Leadership Achievement Award at the 15th annual Legal Reform Summit in Washington, D.C., on Oct. 21, 2014.

The Judicial Leadership Achievement Award recognizes individuals and organizations for outstanding contributions to the reform of the United States civil justice system.

The ILR recognized Justice Victory's strong leadership on the Louisiana Supreme Court during his years on the bench. He was praised for using a strict constructionist approach in deciding cases and for his superior legal reasoning. A number of opinions authored by Justice Victory helped to curb lawsuit abuse in Louisiana.

Justice Victory will retire at the end of 2014, after serving 20 years on the Louisiana Supreme Court, representing the Second District.



Louisiana Supreme Court Associate Justice Jeffrey P. Victory, right, received the 2014 U.S. Chamber of Commerce Institute for Legal Reform's (ILR) Judicial Leadership Achievement Award in October 2014. The award, recognizing individuals and organizations for outstanding work contributing to reform of the United States civil justice system, was presented by ILR President Lisa A. Rickard. Photo by Ian Wagreich/U.S. Chamber of Commerce.



Several of Louisiana Supreme Court Associate Justice Jeffrey P. Victory's law clerks attended his retirement party in October. Photo provided by the Victory Family.

I had taken a couple of tax courses at Tulane. I spent a few days up there, and I called Steve and said, "I'm not spending my life poring over tax books." So he got his money back, and I got to see New York City.

Journal: Is there anything fun or interesting about you that we don't know that you can share with us?

Victory: Well, I ride motorcycles. I have a number of motorcycles, probably too many. A couple of dirt bikes, and I have three or four street bikes that I ride from time to time. I've always liked that. I also have a weakness for classic cars. My boys and I have worked on a number of them. Our favorite was a red '55 Chevy.

Journal: Do you ride motorcycles around New Orleans?

Victory: No. I don't even ride them around Shreveport very much. I usually take them up in the hills in Arkansas and down the little back roads. Riding a motorcycle in the middle of a big traffic jam is really not all that much fun.

Journal: During your career, you've indicated that you were in private practice and served as a district court judge, a Court of Appeal judge and a Supreme Court justice. How do those differing aspects of a legal career compare?

Victory: As I say, district court was a lot of fun, very interesting. You're right there. People are presenting witnesses, you're watching that, and you're having to decide a lot of cases and preside over jury trials. The

Court of Appeal is much calmer than that. As you know, everybody has a right to an appeal. But actually that was a quieter job. The Supreme Court is — I don't want to use the word "chaos" — but it can take up all of your time if you let it because there is so much administrative work to be done. With the volume of work that we had in the Supreme Court, it was hard to get away from it. I remember about three months after I started on the Supreme Court, I was sitting alone in my apartment in New Orleans, and I had boxes of things around me that had to be read that night, and I remember thinking, "Victory, what on earth have you gotten yourself into?" There is a tremendous amount of reading, and it never stops. In fact, when I started at the Supreme Court, we had about 75 new writ applications that we looked at every week. We're down to about 50 now, so it's not as bad as it used to be. The volume is just tremendous.

Journal: Do you have any advice to those thinking about a career in the law?

Victory: We always need good, solid lawyers and it's a great profession to be in. There are many facets of it, whether you want to do trial work or office work, or succession work, whatever. Yes, I would encourage anybody with a good brain. It's a great profession to be in.

Journal: As a personal privilege, you and I actually handled some matters together years ago dealing with First Amendment rights. You represented the morning paper and I represented the evening paper. Do you miss that?

Victory: Well, you know Bob Jeter and his wife, Kay Jeter, did a lot of First Amendment work and I've always been interested in the First Amendment, so that's always been something that has been very satisfying to me.

Journal: Did you get a chance during your tenure on the Supreme Court to address First Amendment issues from time to time?

Victory: Yes, but when you speak of the First Amendment, we talk about the Federal Constitution. Even though there are a lot of similar provisions in the Louisiana Constitution, it's usually the Federal Constitution we're talking about. But, we see it in many civil and criminal cases, such as the right to remain silent, and freedom of religion and the press. As you know, all the other protections that are provided in the Federal Constitution also apply to all the states, and so we see First Amendment issues pretty often.

Journal: Is there anything else you would like to tell the lawyers of the state of Louisiana upon this event of your retiring from the Supreme Court?

Victory: You should always be straightforward, ethical and honest before the Supreme Court and any other court. If you try to slip something by the justices and are discovered, the Court might well disregard all of your argument as untrustworthy. After all, we instruct jurors that if you believe a witness has lied to you about something, you are entitled to disregard all of the witness's testimony. It is extremely important that all members of the judicial system, including justices and judges, search for the truth of the matter and follow the law. After all, we are a system of laws, not men.

Louisiana State Bar Association President Joseph L. (Larry) Shea, Jr. is a member in the Shreveport office of Bradley Murchison Kelly & Shea LLC. He received a BA degree in 1974 from Tulane University and his JD degree in 1978 from Louisiana State University Paul M. Hebert Law Center (Order of the Coif and Louisiana Law Review executive editor). He chaired the LSBA's Ethics Advisory Service Subcommittee and the Multijurisdictional Practice Committee and served on the Ethics 2000 Committee. He received the LSBA President's Award in 2002. (jshea@bradleyfirm.com; Ste. 1000, 401 Edwards St., Shreveport, LA 71101-5529)



Pilot Mentoring Program Begins Jan. 1: Registration Open for Mentors

The Louisiana Supreme Court has approved a pilot mentoring program for newly admitted Louisiana lawyers. The program, sponsored by CNA/Gilsbar, begins Jan. 1, 2015. The Louisiana State Bar Association (LSBA) is now seeking mentors from all practice areas and all

parts of the state to guide this next generation of lawyers. Mentors must be in good standing, have no disciplinary history and must have at least 10 years of experience. Mentors can receive up to 6 hours of free CLE credit by volunteering. For more information, to register as a mentor and

to view video messages from Louisiana Supreme Court Chief Justice Bernette Joshua Johnson and LSBA Committee on the Profession Chair Barry H. Grodsky, go to: www.lsba.org/mentoring/.



Mentor Registration Transition Into Practice (TIP) Voluntary Mentoring Program

Attorney Name _____

Bar Roll Number _____

Law Firm (if applicable) _____

Mailing Address _____

City/State/Zip _____

Office Phone _____

Cell Phone _____

Fax _____

Email _____

Judicial District _____

Areas of Practice _____

Complete the form and return to:

Connie P. Sabio / Professional Programs
Louisiana State Bar Association
601 St. Charles Ave.
New Orleans, LA 70130-3404

Fax (504)598-6753

160+ Attorneys, Judges Participate in Law School Professionalism Orientations

For the 15th consecutive year, the Louisiana State Bar Association's (LSBA) Committee on the Profession hosted law school orientations on professionalism at Louisiana's four law schools. More than 160 attorneys and judges from across the state participated in the programs in August.

LSBA President Joseph L. (Larry) Shea, Jr. led an impressive list of speakers addressing first-year law students at the outset of the programs. Other speakers included Louisiana Supreme Court Justice Jeff D. Hughes III and Justice John L. Weimer III; Chief Judge Susan M. Chehardy and Judge Fredericka H. Wicker, both representing the 5th Circuit Court of Appeal; LSBA Committee on the Profession Chair Barry H. Grodsky; and American Bar Association representative J. Dalton Courson.

Also addressing students were Louisiana State University Paul M. Hebert Law Center Vice Chancellor Gregory Smith, Loyola University College of Law Dean Maria Pabon Lopez, Southern University Law Center Chancellor Freddie Pitcher, Jr. and Tulane Law School Dean David D. Meyer.



Louisiana Supreme Court Justice Jeff D. Hughes III addressed the first-year students participating in the professionalism orientation at Louisiana State University Paul M. Hebert Law Center. Also addressing the students were, from left, Louisiana State Bar Association (LSBA) Committee on the Profession Chair Barry H. Grodsky, LSU Law Center Vice Chancellor Gregory Smith, Justice Hughes and LSBA President Joseph L. (Larry) Shea, Jr. Photo by LSBA Staff.

Following the opening remarks, the law students were divided into smaller groups, where they discussed various ethics and professionalism scenarios with attorney and lawyer volunteers.

This orientation program, inaugurated in August 2000, has been institutionalized as

a yearly project for the LSBA and the law schools. The deans and admissions staffs of the law schools have been accommodating in assisting with the logistical challenges of putting this program together.

Attorneys and judges volunteering their services this year were:

Louisiana State University Paul M. Hebert Law Center

Lisa M. Africk
Bradley J. Aldrich
Leah A. Barron
David L. Bateman
Hon. Frances M. Bouillion
Hon. James J. Brady
Jessica G. Braun
Andrew M. Casanave
Jeffrey K. Coreil
Henry T. Dart

Jonathan R. Davis
S. Guy deLaup
Bobby J. Delise
Carrie E. Ellis
L. Paul Foreman
Stephen W. Glusman
Ryan M. Goudelocke
Tyler P. Gray
Barry H. Grodsky
Grant J. Guillot
John Clay Hamilton
Holly G. Hansen
Jack P. Harrison
Philip J. House

Katherine L. Hurst
Johnny T. Joubert
Hon. Sheral C. Kellar
Gary P. Kraus
Paulette Porter LaBostrie
Hillar C. Moore III
J. Danielle Munro
Jennifer F. Nicaud
Tammy P. Northrup
David H. Ogwyn
Michael H. Piper III
Hon. Laura A. Prosser
Hon. Patrick F. Robinson
Michael H. Rubin

Sera H. Russell III
Rene I. Salomon
Anthony J. Staines
Kristen Stanley-Wallace
Bradley J. Tate
Hon. Pamela Taylor-Johnson
Kimberly E. Tracey
Hon. John D. Trahan
Amanda A. Trosclair
Lykisha R. Vaughan
Marsha M. Wade
John David Ziober



Tulane Law School Dean David D. Meyer addressed first-year students at the opening of the professionalism orientation at Tulane Law School. Also addressing the students were, from left, American Bar Association representative J. Dalton Courson, 5th Circuit Court of Appeal Judge Fredericka H. Wicker, Louisiana State Bar Association (LSBA) Committee on the Profession Chair Barry H. Grodsky, Dean Meyer (at podium) and LSBA President Joseph L. (Larry) Shea, Jr. *Photo by LSBA Staff.*



Participating in the professionalism orientation for first-year students at Southern University Law Center were, from left, Vice Chancellor Russell L. Jones, Louisiana State Bar Association (LSBA) Committee on the Profession Chair Barry H. Grodsky, LSBA President Joseph L. (Larry) Shea, Jr., Student Bar Association President Diangleo Frazer, Louisiana Supreme Court Justice John L. Weimer III, Chancellor Freddie Pitcher, Jr. and Vice Chancellor Roederick White. *Photo by LSBA Staff.*

Loyola University College of Law

Adrianne L. Baumgartner
Kay B. Baxter
Rebecca J. Beck
Shayna Lynn Beevers
Caitlin R. Byars
Hon. Susan M. Chehardy
Sandra K. Cosby
Pamela T. Crawford
Bobby J. Delise
Barbara L. Edin
Sally D. Fleming
Darryl J. Foster
Lauren E. Godshall
Barry H. Grodsky
Hon. John C. Grout, Jr. (Ret.)
Jessica W. Hayes
Michael E. Holoway
Roger A. Javier
Hon. Carolyn W.
Jefferson (Ret.)
Hon. Jeanne N. Juneau
Teresa D. King
Robert A. Kutcher
Hon. Rosemary Ledet
James H. Looney
Erin M. Lorio
John E. McAuliffe, Jr.
Lorraine P. McInnis
Carl D. Michel
Emily S. Morrison
Francis B. Mulhall
Mark A. Myers
Jennifer F. Nicaud
Cassie E. Preston

Claudia P. Santoyo
Hon. Scott U. Schlegel
Hon. Raymond S. Steib, Jr.
Tina L. Suggs
Christine D. Thomas
Jerome M. Volk, Jr.
Nia C. Weeks
Sheila M. Wilkinson
Sharonda R. Williams

Southern University Law Center

Virginia Gerace Benoist
Hon. Paul A. Bonin
Hon. Curtis A. Calloway (Ret.)
Wade D. Duty
Monique M. Edwards
Lisa A. Freeman
Eugene G. Gouaux III
Hon. Roxie F. Goynes
Barry H. Grodsky
Burton P. Guidry
Raveen A. Hills
Malinda Hills Holmes
Lila Tritico Hogan
Michael E. Holoway
Hon. Quintillis K. Lawrence
Wendell Jay Luneau
Caroline Russ Minor
Jennifer Ashley Mitchell
Dwayne M. Murray
Jennifer F. Nicaud
Allison N. Pham
Marta A. Richards
Hon. Parris A. Taylor
Jason M. Verdigets
Marsha M. Wade
Tavares A. Walker

Nia C. Weeks
Hon. Jewel E. Welch, Jr.
Hon. Trudy M. White
Hon. Kirk A. Williams

Tulane Law School

Mark E. Andrews
Adrianne L. Baumgartner
Hon. Roland L. Belsome, Jr.
Jack C. Benjamin, Jr.
Christine C. Bruneau
Allison P. Burbank
Christopher E. Carey
Lauren E. Checki
Kevin J. Christensen
S. Guy deLaup
Bobby J. Delise
Richard M. Exnicios
Larry Feldman, Jr.
Judith A. Gainsburgh
Lauren E. Godshall
David Greenberg
Hon. Piper D. Griffin

Barry H. Grodsky
Hon. John C. Grout, Jr. (Ret.)
Michael E. Holoway
Barksdale Hortenstine, Jr.
Grady S. Hurley
Hon. Ivan L.R. Lemelle
Andrea S. Lestelle
Cynthia K. Meyer
Mark A. Myers
James R. Nieset
James R. Nieset, Jr.
Hon. Rebecca M. Olivier
H. Philip Radecker, Jr.
John C. Saunders, Jr.
Meghan E. Smith
Roger A. Stetter
Hugh R. Straub
Christopher R. Teske
Ann E. Thompson
Hon. Max N. Tobias, Jr.
Paul N. Vance
Hon. Fredericka H. Wicker
John G. Williams



Loyola University College of Law first-year students participated in the professionalism orientation's breakout sessions facilitated by attorneys and judges. *Photo by LSBA Staff.*

Attorneys Volunteer in All Louisiana Parishes for “Lawyers in Libraries” Day of Service

Louisiana pro bono attorneys in all of Louisiana’s 64 parishes provided much-needed legal assistance to the public via local libraries during the Oct. 23 “Lawyers in Libraries” Day of Service program.

“Lawyers in Libraries” is part of an ongoing collaboration between the Louisiana State Bar Association’s (LSBA) Access to Justice Department and the Louisiana Library Association (LLA) which aims to directly connect the public with counsel for limited assistance.

“Lawyers in Libraries” also is a component of the Legal Education and Assistance Program (LEAP) which aims to inform the public of the legal resources and options available to them.

The LSBA’s Access to Justice Department will coordinate events with libraries for Bar members wanting to provide pro bono services at their local facilities. These services can include general “Ask-a-Lawyer” brief consultations or presentations on specific topics such as wills, family law, expungement or other matters.

“While many litigants are represented by a hired or free attorney, a large number of Louisianians represent themselves in court each year,” said LSBA President Joseph L. (Larry) Shea, Jr. “LEAP responds to our current civil legal aid crisis, which renders Louisiana’s Legal Service Corporations able to represent at best only half of applicants who are eligible for services. In many parishes, those without access to representation have nowhere to turn for direction,” he added.

“An underlying theme of my LSBA presidency is an emphasis on promoting the great contributions attorneys provide to their communities, as well building a framework to better connect the public with legal representation,” Shea said.

Also through LEAP, librarians will be provided with specialized online resources and training with which they can direct library patrons to legal information on a variety of issues, or referral information for local attorneys, legal aid programs and non-legal community resources.



Attorney John Sirois presented a legal workshop at the Lafourche Parish Library.

Collaborating with local libraries is a natural partnership. Libraries are starting points for those seeking information about a specific issue, and there are branches in every parish in the state — more than 95 percent of which facilitate free Internet access to the public.

In addition, the Law Library of Louisiana will coordinate training for public librarians to help them direct patrons to the appropriate resource online or within their collections.

“The Louisiana Library Association is thrilled to be collaborating with the Louisiana State Bar Association and the legal community to provide much needed services to public library patrons,” said Vivian McCain, past president of LLA. “We believe this partnership will enable librarians to answer many legal questions that were previously not possible. We appreciate the dedicated attorneys who have given of their time and experience to make this collaboration a reality,” she added.

LEAP and “Lawyers in Libraries” are quickly gaining support from the public, legal aid providers, Bar members and the Louisiana Supreme Court.

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson, in a letter to the Bar, said, “A foundation of our state and nation’s



Attorneys Greg Vidrine, right, and Jacob Fusilier presented an Ask-a-Lawyer event at Evangeline Parish Library.

justice system is the belief that all people should have the ability to exercise their legal rights, regardless of financial circumstance. Actualizing this ideal at a time when legal aid resources are so limited is an extremely challenging, yet necessary task facing our legal community. To effectively serve the public, new and innovative approaches are a necessity. I applaud the Louisiana State Bar Association for its efforts and, in particular, its work with public libraries in the state.”

The LSBA would like to acknowledge the many LSBA members who volunteered on Oct. 23 at libraries in their communities.



Louisiana State Bar Association President Joseph L. (Larry) Shea, Jr., far right, attended several “Lawyers in Libraries” events in south Louisiana on the Oct. 23 Day of Service, including the program at the St. Charles Parish Library’s East Regional Branch in Destrehan. From left, Day of Service lawyer volunteers Bryant S. York and Jeremy T. Grabill, library branch manager Tara Lombardi, Public Relations and Adult Programming Librarian Lauren Pitz and Shea.

“Lawyers in Libraries” Volunteers

Acadia Parish: Tori Theriot
 Allen Parish: Adam Johnson
 Ascension Parish: Sara Clarke
 Assumption Parish: Hanna Thomas
 Avoyelles Parish: Kerry Spruill
 Beauregard Parish: John Welborn
 Bienville Parish: Jim Hatch
 Bossier Parish: Kevin Molloy
 Caddo Parish: John Frazier
 Calcasieu Parish: Oliver Schrumpf and Shayna Sonnier
 Caldwell Parish: Ricky Smith and James Patton
 Cameron Parish: Jennifer Jones
 Catahoula Parish: Christie Wood and Joey Boothe
 Claiborne Parish: Jerry Edwards and Charlie Tabor
 Concordia Parish: Amy Duncan and Robert Pearson
 DeSoto Parish: Ron Stamps and Britney Green
 East Baton Rouge Parish: Luke Morris
 East Carroll Parish: Molly McEacharn
 East Feliciana Parish: Laura Tamblyn
 Evangeline Parish: Jacob Fusilier and Greg Vidrine

Franklin Parish: Emily Shields
 Grant Parish: Gwenda Lamb
 Iberia Parish: Greg Landry
 Iberville Parish: Wendy Ramnarine and Thomas McCormick
 Jackson Parish: Angela Smith and Keith Whiddon
 Jefferson Parish: Jeremy Epstein, Jacqueline Epstein, Robert Kutcher and Martha Maher
 Jefferson Davis Parish: David Marcantel
 Lafayette Parish: Blake David, Roya Boustany, Dwazendra Smith, Robert Felder and Stuart Breaux
 Lafourche Parish: John Sirois
 LaSalle Parish: Walter Dorroh
 Lincoln Parish: Paul Lensing
 Livingston Parish: Erik Burns
 Madison Parish: Edwin Moberley
 Morehouse Parish: Jay Mitchell
 Natchitoches Parish: Lewis Gladney
 Orleans Parish: Amanda Golob, Elizabeth Evens, Sally Gaden, Allison Nestor, Micah Fincher, Rory Bellina, Stu Weg, James Maguire, Charlene Larche-Mason and Jim Nieset, Jr.
 Ouachita Parish: Clint Hanchey and Brandon Creekbaum
 Pointe Coupee Parish: Don Cazayoux, Lane Ewing, Talya Bergeron and Chad Aguillard

Plaquemines Parish: Elizabeth Meneray
 Rapides Parish: Laurel White, Bob Bussey, Robert Levy, Andree Leddy, Ted Roberts, Trey Gist, Walter McClatchey, Kay Michiels, Paul Tellarico, Alainna Mire, Maria Losavio and Mike Koch
 Red River Parish: Nina Coleman and Anu Kakonen.
 Richland Parish: LaKeisha Johnson and Courtney Franklin.
 Sabine Parish: Jacob Ruppert
 St. Bernard Parish: Lisa Borne
 St. Charles Parish: Kelly Blackwell, Pat Talley, Mary Jones, Bryant York and Jeremy Grabill
 St. Helena Parish: Sean Brady
 St. James Parish: Jamie Campbell
 St. John the Baptist Parish: Nghana Gauff, Sammy Accardo, Hon. Thomas F. Daley, Rosalyn Ruffin-Duley and Robert Levenstein
 St. Landry Parish: Steven (Buzz) Durio
 St. Martin Parish: Travis Broussard
 St. Mary Parish: Adolph Curet and Russel Cremaldi
 St. Tammany Parish: Tim Garlick
 Tangipahoa Parish: Thomas Hogan, Christopher Edwards and Greg Webb
 Tensas Parish: Leah Cotten
 Terrebonne Parish: John Sirois
 Union Parish: Brian Dollar
 Vermilion Parish: Burton Guidry
 Vernon Parish: Wes Bailey
 Washington Parish: Amythist Kearney
 Webster Parish: Marcus Patillo
 West Baton Rouge Parish: Zachary Wool
 West Carroll Parish: Clay Hamilton
 West Feliciana Parish: Kevin Hayes
 Winn Parish: Leon Emanuel and David Handelman

For more information on LEAP, or if you are interested in participating in a “Lawyers in Libraries” event, email LSBA Access to Justice Administrative Assistant Nicole Louque at nicole.louque@lsba.org.

To see more Day of Service photos, go to: www.lsba.org/NewsandPublications/PressPhotos.aspx?PRPA=42.

LSBA Honors Deceased Members of the Bench and Bar

The Louisiana State Bar Association (LSBA) conducted its annual Memorial Exercises before the Louisiana Supreme Court on Oct. 6, 2014, honoring members of the Bench and Bar who died in the past year. The exercises followed the 62nd annual Red Mass held earlier that morning at St. Louis Cathedral in New Orleans. The Red Mass was sponsored by the Catholic Bishops of Louisiana and the St. Thomas More Catholic Lawyers Association.

LSBA president Joseph L. (Larry) Shea, Jr. of Shreveport opened the memorial exercises, requesting that the court dedicate this day to the honor and memory of those members of the bench and bar who have passed away during the last 12 months.

LSBA President-Elect Mark A. Cunningham of New Orleans read the names of all deceased members being recognized.

John H. Musser IV of New Orleans, with the Law Office of John H. Musser and a former LSBA president, gave the general eulogy.

Hon. Bernette Joshua Johnson, chief justice of the Louisiana Supreme Court, gave the closing remarks.

The invocation was given by Rabbi Ethan Linden with the Shir Chadash Conservative Congregation. The benediction was given by Most Rev. Gregory M. Aymond, Archbishop of New Orleans, Archdiocese of New Orleans.

Following the exercises, the Supreme Court was adjourned in memory of the deceased members of the Bench and Bar.

The members recognized included:

In Memoriam Members of the Judiciary 2013-14

Hon. Manuel A. Fernandez St. Bernard
Hon. Donald W. Hebert Opelousas
Hon. Frederick J.R. Heebe .. New Orleans
Hon. Edwin R. Hughes..... Longview, TX
Hon. James N. Lee..... Bunkie
Hon. Emile E. Martin III Belle Chasse
Hon. Eugene W. McGehee..... Baton Rouge
Hon. John V. Parker Baton Rouge
Hon. John S. Pickett, Jr. Many
Hon. Edmund M. Reggie..... Crowley City
Hon. C. Hearn Taylor..... New Orleans
Hon. Monty M. Wyche..... Bossier City

In Memoriam Members of the Bar 2013-14

Frances O. Allen..... Shreveport
Trudy Black Allen..... Ridgeland, MS
Salvador Anzelmo..... Metairie
Karen Godail Arena..... Metairie
Richard J. Arnold New Orleans
Mike J. Balen Mandeville
Edgar F. Barnett Houston, TX
Harry V. Barton Baton Rouge
John Charles Blake Eros
Robert L. Body..... Cocoa Beach, FL
Albert J. Boudreaux Opelousas
Oliver F. Bradford, Jr. Covington
Fred Bronfin New Orleans
Richard E. Chaffin Baton Rouge
Martha Jo B. Chandler..... Lafayette
Herbert W. Christenberry, Jr. Metairie
Alvin Richard Christovich, Jr. New Orleans
John C. Ciolino Metairie
Joseph M. Clark, Sr. Shreveport
Stephen P. Coco Jennings
Thomas O. Collins, Jr. Metairie
Elaine Simon Conley New Orleans
Russell M. Cornelius Metairie
William Joseph Coughlin Metairie
Harold E. Dearie II..... Metairie
Warren C. deBrueys..... Covington
Barry Louis Domingue..... Carencro
Richard M. Donahue..... Covington
Gilbert L. Dozier..... St. Francisville
Vince Dunn, Jr. Baton Rouge
Frank M. Edwards, Jr. Amite
Van F. Ellender..... Houma
Edward V. Fetzner..... Baton Rouge
Gary L. Florreich Abita Springs
Kenneth Wayne Fonte..... New Orleans
Allen R. Fontenot..... New Orleans
Daniel Glenn Fournierat Lafayette
Jack R. Gamble, Jr. Shreveport
Thomas V. Gardner, Jr. Monroe
William A. Glennon, Jr. New Orleans
George Cinclair Gibson Ponchatoula
Michael J. Goodrick..... Wilmington, DE
Mary McCrory Hamilton Lafayette
Orlando N. Hamilton, Jr. Oak Grove
Haynes Louis Harkey, Jr. Monroe
Jerome J. Harris..... Baton Rouge
Shira K. Hartley, Jr. Lafayette
Philip E. Henderson..... Covington
Erika Thomas Hyde..... Shreveport
Philip E. James, Jr. Metairie
James M. Johnson..... Minden
Leroy G. Johnson..... Thibodaux
S. Frank Jones Tulsa, OK
Andrew J.S. Jumonville..... Mandeville

Raphael Juneau, Jr. Donaldsonville
Norman Redmond Kerth New Orleans
Kim Michael Kidd..... Breaux Bridge
Roland C. Kizer, Jr. Baton Rouge
Ferdinand John Kleppner New Orleans
Helen Slipman Kohlman New Orleans
James Peter Kovata..... New Orleans
Maxime G. LaBranche Baton Rouge
Marvin R. LeGrande..... Parkersburg, WV
Floyd W. Lewis..... New Orleans
John A. Lieux Gonzales
Gerald F. Lofaso..... Baton Rouge
Anthony Lucas Long II St. Francisville
E. Ralph Lupin, MD Gretna
Bernard L. Malone, Jr. Baton Rouge
Constant G. Marquer, Jr. New Orleans
Michael H. Martin..... Galliano
Melvin L. Maxwell Lafayette
Jacob J. Meyer..... Covington
John M. McCollam New Orleans
Stanley McDermott, Jr. New Orleans
Cecil M. McKenzie..... Shreveport
Edward A. Michel..... Baton Rouge
Donald J. Mills Baton Rouge
Michael O. Miranne..... Covington
Mark A. Moreau..... New Orleans
Claude Salvador Mumphy II..... Slidell
Lee F. Murphy Covington
Anthony R. Occhipinti..... New Orleans
Andrew C. Partee, Jr. Newnan, GA
Lennie F. Perez..... Baton Rouge
Pamela M. Perkins Baton Rouge
Charles B. Ramsey..... Alexandria, VA
Joseph M. Rault, Jr. Metairie
Dwight D. Reed Lafayette
Iona A. Renfroe..... New Orleans
Bruce H. Richardson..... Baton Rouge
Julian J. Rodrigue..... Covington
Robert E. Rust Spring, TX
Daniel C. Scarborough IV Shreveport
Louis H. Schultz..... Covington
Warren M. Simon, Jr. Lafayette
Frank Sloan Mandeville
Graham N. Smith Lafayette
Susan R. Stockstill Santa Fe, NM
Alexander R. Tamke Newport, RI
Donald E. Theriot..... Mandeville
Oscar J. Tolmas Metairie
Bernard J. Tortomasi, Jr. Frisco, TX
Emery N. Voorhies..... Covington
Henry C. Vosbein, Jr. Marrero
Thomas A. Warner III Baton Rouge
Charles Roland Weeks Jena
Edward J. Welsch..... Metairie
Karl Wiedemann Metairie
Charles T. Williams, Jr. Mandeville
Charles N. Yarbrough Chesapeake, VA

Pro Bono, Children's Law Awards Nomination Process Open Online

The Louisiana State Bar Association's (LSBA) Access to Justice Committee's online nomination process is active for several 2015 pro bono awards, including the Friend of Pro Bono Award, the Pro Bono Publico Award, the Career Public Interest Award, the David A. Hamilton Lifetime Achievement Award, the Law Student Award and the Century Club Award.

Also, the LSBA's Children's Law Committee is accepting nominations for the Children's Law Award.

Nominations must be received by 4:30 p.m. Friday, Feb. 20, 2015. For more information on the award categories and submission information, go to: <https://apps.lsba.org/nominations>. Once there, log in as an LSBA member or guest.

La. Board of Legal Specialization Accepting Requests for Applications in 5 Areas

The Louisiana Board of Legal Specialization (LBLS) is accepting requests for applications for Jan. 1, 2016, certification in five areas — bankruptcy law (business and consumer), estate planning and administration, family law and tax law. The deadline to submit applications for consideration for estate planning and administration, family law and tax law certification is March 31, 2015. Applications for business bankruptcy law and consumer bankruptcy law certification will be accepted through Sept. 30, 2015.

With the expanding complexity of the law, specialization has become a means of improving competence in the legal profession and thereby protecting the public. An increasing number of attorneys are choosing to be recognized as having special knowledge and experience by becoming certified specialists. As a matter of practical necessity, most lawyers specialize to some degree by limiting the range of matters they handle. Legal specialization helps the general public locate a lawyer who has demonstrated ability and experience in a certain field of law.

In accordance with the Plan of Legal Specialization, a Louisiana State Bar Association member in good standing who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. Further requirements are that each year a minimum of 35 percent of the attorney's practice must be devoted to the area of certification sought, passing a written examination applied uniformly to all applicants to demonstrate sufficient knowledge, skills and proficiency in the area for which certification is sought, and five favorable references. Peer review shall be used to determine that an applicant has achieved recognition as having a level of competence indicating proficient performance handling the usual matters in the specialty field.

In addition to the above, applicants must meet a minimum CLE requirement for the year in which application is made and the examination is administered:

- ▶ Estate Planning and Administration Law — 18 hours of estate planning law.
- ▶ Family Law — 18 hours of family

law.

- ▶ Tax Law — 20 hours of tax law.
- ▶ Bankruptcy Law — CLE is regulated by the American Board of Certification, the testing agency.

Regarding applications for business bankruptcy law and consumer bankruptcy law certification, although the written test(s) is administered by the American Board of Certification, attorneys should apply for approval of the Louisiana Board of Legal Specialization simultaneously with the testing agency in order to avoid delay of board certification by the LBLS. Information concerning the American Board of Certification will be provided with the application form(s).

Applications are mailed. Anyone interested in applying for certification should contact LBLS Executive Director Barbara M. Shafranski, email barbara.shafranski@lsba.org or call (504)619-0128. For more information, go to the LBLS website at: www.lascmcle.org/specialization.

Special thanks to the Past LSBA Presidents who personally promote professionalism by supporting Law School Professionalism Orientations

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QUALITY of Life

By Randy P. Roussel

ON CAPTURING A SENSE OF PLACE

Like a good adventure — the hike down the path rarely taken. Photographs are how I capture and share those adventures. Studying the photographs of Ansel Adams creates a desire to go places. I have tried to do the same, but closer to home. My genre is landscapes and light. I try to avoid strict architectural photographs, but I do incorporate Louisiana's rich architectural traditions, just in a non-traditional manner. It is the light on the building, the golden Spanish moss created by the sun in the foreground or background, that attracts me to an architectural feature — not the building itself.

Photographs catch one moment in time that tells so many stories — whether through the decay of an old building, the expression of the subjects, or the lighting created by the sun. Although it is true that a moment in time can never be recreated — the feeling of that day exists only then — a great photograph can transport you to another place, whether in your memory or through emotion. The potential to preserve that special moment attracted me to photography.

My practice involves land use and the development of commercial real estate. I have always been interested in the logic and analysis of the law and have always had a strong interest in history. So, natu-



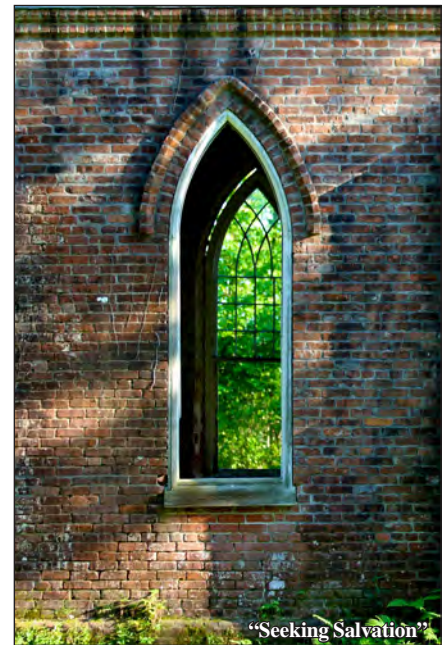
"Lake Martin Sunset"



"Bridge Silhouette"

rally, the story and reasons behind the division of real estate is of great interest to me. Real estate law combines both the application of logical rules and the history of a property. You review the old maps and surveys, learn the reasons behind the naming of places, and try to understand something about the people who developed their land. I find this area of the practice very enjoyable.

But the real estate practice is more than a history lesson. It is very demanding, both in terms of mental concentration and time. A creative outlet, such as through photography, presents a complete opposite to the rigors of law. It is a different kind of concentration and focus. A successful lawyer doesn't just apply rules. Rather, a successful lawyer looks at the purpose behind the rule and his client's goal and finds a way to meld the two. An argument in court is not about reciting a Civil Code article, but rather it is why that article allows you to prevail. I believe creative expression in one area — art, music or another medium — helps broaden one's mind and allows one to look creatively at how to approach the law. In many ways, photography has not only helped me achieve a better work-life balance — something that was sorely lacking in the early years of my practice



"Seeking Salvation"

— but also has enhanced my ability to practice law.

I have been fortunate in experiencing a number of successes with my photography. I recently published a two-volume set of photographic books at the encouragement of my friends who enjoyed the daily photographs I have been taking over the past few years of everyday life in Baton Rouge. I was initially reluctant. I do an almost-daily



post called “Another Day in Baton Rouge” that tells the story of the day in town. My friends thought that this “post” should get a larger audience. Executing on their encouragement, I started looking at existing books on Baton Rouge, as well as New Orleans. I found a lot of books about living in New Orleans, including books on Carnival day — particularly, Johnny Donnels’ works that capture well-known venues and people and events that make living in New Orleans such an experience. There also were many good books about Baton Rouge, but they tended to be more historical than temporal. Actual day-to-day life in Baton Rouge was just a postscript.

I also realized that, except for some great short stories in *The Southern Review*, there’s not a lot of Baton Rouge-based literature outside of football lore. There are a lot of songs, poems and stories about life in New Orleans (New Orleans itself almost could be a character in the book), but, for whatever reason, the character and charm of Baton Rouge have remained beneath the surface. Baton Rouge is really very emblematic of the South (*i.e.*, through its writers, artists and photographers). I wanted people to know that Baton Rouge is, in and of itself, a character in a book and the town is more than the best football game venue in the country. Baton Rouge provides football and more.

That’s why I used locales in Old South Baton Rouge (Lincoln Theater, Magnolia Mound Plantation, Beauregard Town, etc.) in my books. These neighborhoods show the fabric and character of Baton Rouge. That’s also why I take so many pictures of the Louisiana State University (LSU) lakes. It’s a cultural center — almost everyone in the city has at one time or another walked, jogged or biked the LSU lakes. It’s



more a sense of place than a landmark.

With encouragement from friends, I put together the books to capture what it means to live in Baton Rouge and the surrounding areas. Color, created by early mornings and late evenings, is a key component. I also paired some quotes to the images to help create that sense of place that is Baton Rouge. Many of them are universal quotes about living in the South but some are unique to Baton Rouge and LSU. It was a fun project, but took about a year to complete and involved a number of unexpected legal issues. For instance, because I sometimes used LSU images, I had to get a license to use them from the university. I also had to figure out how to get a bar code on the books and how to copyright the books. I even registered the books with the U.S. Library of Congress. Now the books are available at Cottonwood Books in Baton Rouge, Barnes & Noble in Baton Rouge and Lafayette and at Octavia Books in New Orleans.

As far as my future artistic goals go, the Corp of Engineers published a map showing all of the areas impacted by the Flood of 1927. All of those areas are still impacted today — whether by the levee system or the psychological effects of the flood. I would like to start in the Felicianas and discover the sense of place for all of the areas impacted by the Great Flood.

I look forward to continuing to de-



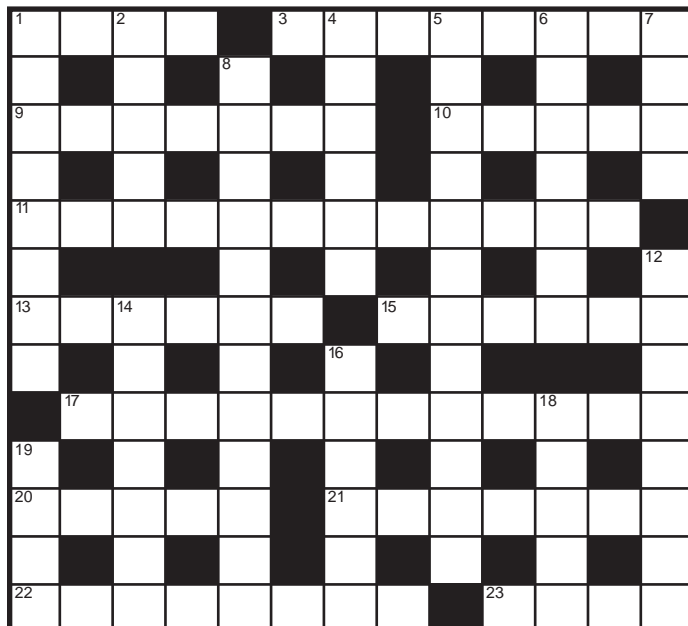
velop my creative outlet. Photography has brought me a great deal of joy and personal growth, and I encourage other lawyers to find that outlet and see all the wonderful places it can take you.

Randy P. Roussel, a partner in the Baton Rouge office of Phelps Dunbar, L.L.P., is a real estate and commercial law attorney whose practice is focused on mixed-use real estate development, including HUD and other housing and development financing programs. Prior to joining Phelps Dunbar, he was a certified public accountant for Arthur Andersen & Company in New Orleans. After graduating from Louisiana State University Paul M. Hebert Law Center (Law Review, Order of the Coif) in 1984, he clerked for Judge E. Grady Jolly (U.S. 5th Circuit Court of Appeals). His work can be viewed online at <http://randy-roussel.smugmug.com>. Or contact him by phone, (225)376-0234, or email rousselr@phelps.com. (Ste. 1100, 400 Convention St., Baton Rouge, LA 70802)

Crossword PUZZLE

By Hal Odom, Jr.

A FEW TEAMS



ACROSS

- 1 43,560 square feet, or slightly less than one football field (4)
- 3 *ULM squad (8)
- 9 *Southern University squad (7)
- 10 "Boy ___ World," 1990s-era sitcom (5)
- 11 Amenities; labor-saving devices (12)
- 13 River rat (6)
- 15 Prairie wolf (6)
- 17 *LSU squad (6, 6)
- 20 Cholula chum (5)
- 21 Withdraw, as a statement (7)
- 22 *Nicholls State squad (8)
- 23 *La. Tech squad, for short (*4)

DOWN

- 1 Only kind of property against which you may have a boundary action (8)
- 2 *Kind of Cajuns at ULL (5')
- 4 Capital of Texas (6)
- 5 Companionship that people crave (5, 7)
- 6 Legalese for "to which place" (7)
- 7 Mediocre (2-2)
- 8 Diluting (8, 4)
- 12 Places to surf (8)
- 14 Popular birth control method (3, 4)
- 16 Not singular (6)
- 18 Muse of lyric poetry; Street between Thalia and Clio (5)
- 19 En ___ means with all judges convened (4)

Answers on page 343.

Alcohol and Drug Abuse Hotline

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Baton Rouge	Steven Adams.....(225)921-6690 (225)926-4333	Monroe	Robert A. Lee(318)387-3872, (318)388-4472
	David E. Cooley(225)753-3407	New Orleans	Deborah Faust(504)304-1500
	John A. Gutierrez(225)715-5438 (225)744-3555		Donald Massey.....(504)585-0290
			Dian Tooley(504)861-5682 (504)831-1838
Lafayette	Alfred "Smitty" Landry(337)364-5408 (337)364-7626	Shreveport	Michelle AndrePont(318)347-8532
	Thomas E. Guilbeau(337)232-7240		Nancy Carol Snow.....(318)272-7547
	James Lambert(337)233-8695 (337)235-1825		William Kendig, Jr.(318)222-2772 (318)572-8260 (cell)
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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.



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FOCUS ON Professionalism

By Christy M. Howley Connois

THRILL OF VICTORY & AGONY OF DEPRESSION

Oh, the highs and lows of our profession! We go to court, win big for a client and are on a high for days. We go to court, lose our case and wonder if we will ever win again. We are taught in school and in our first jobs as attorneys to “win big or go home.” There is no margin for error. There also is no mention of a personal life, down time or vacations.

There is a perception in our profession that attorneys who attempt to decompress and relax, who are more laid back than others, who spend time with their families (even play hooky on Fridays) are occasionally not good attorneys.

There is the perception that attorneys who seek stress management solutions (vacations, therapy, support groups, assistance from the Lawyers Assistance Program) are showing weakness — when, in reality, the opposite is true.

There is the perception that those who say they are stressed out, tired, overwhelmed by client demands and unable to cope with the profession's deadlines and demands are whiners.

All these perceptions are not only wrong but show that there are some attorneys who still think of our profession as solely a money-making business, who focus solely on winning and who are missing out on a huge slice of life and possibly becoming depressed, tired, angry and even suicidal after years of this rat race.

We're taught that money and the billable hour are king, and we must sacrifice a personal life for the job. While there's nothing wrong with working hard, for some attorneys, it leads to becoming a workaholic, to spending less time with family and friends, and possibly to depression and substance abuse.

The movement afoot in our profession to assist with depression, suicide, substance abuse and other issues needs to be seriously supported — by all of us.



When you watch attorneys — once amazing litigators — implode from depression, substance abuse and even suicide, maybe you too will realize it's time to jump on the stress management bandwagon.

A Sept. 9, 2014, article in *Time/Money* magazine, “5 High-Paying Jobs That Will Make You Miserable,” stated: “Lawyers, known for high suicide rates themselves, were found to have the highest rate of depression among 100 professions included in a much-cited Johns Hopkins study. In fact, attorneys are 3.6 times more likely than average to be depressed. In 2013, associate attorneys topped Forbes’ ‘Unhappiest Jobs’ list, just ahead of (or below?) much lower-paying gigs like customer service associate and store clerk . . . Associate attorneys say they are most frustrated by long hours, the pressure to constantly be billing clients during those long hours, and pay that’s paltry compared to partners in their law firms.”

So, how do you get off the hamster wheel or help others manage their stress?

► Those attorneys you know, the ones complaining of, or showing signs of, stress, whether by substance abuse, visible depression, complaining of overwork and exhaustion . . . Take a minute and talk to them. It may mean all the difference that someone stopped and tried to help. Or give them the contact information for the Lawyers Assistance Program. The services are free and completely confidential.

► Work as hard as you have to but leave the work at the office. Once you leave the office, don't check voice mail or email and try to forget about it all for a while. It will all be there in the morning.

► You must take a vacation! The work isn't going anywhere. If you're a good attorney with a good work ethic and a trained and trusted assistant, your office can run for a few days without you, and the clients will keep coming.

- Advise clients of your office hours, office policies, and your own schedule and client load in writing so they can understand to be realistic about expectations. If clients cannot abide by this information, then you may need to suggest they find other counsel.

► Daily, extend a hand to a colleague in need, whether it be a kind word, a short extension of time, a nice email, saying thank you, whatever works for you.

► When you do that nice deed for someone, do one for yourself, too — take a vacation, take off on a Friday, go to a movie, have a massage, find a good therapist if you need to.

Remind yourself that this job — while a wonderful profession — isn't everything.

Christy M. Howley Connois, a member of the firm Bowman & Howley, is a member of the Louisiana State Bar Association's (LSBA) House of Delegates and the Committee on the Profession. She regularly participates in the LSBA's first-year and third-year law school professionalism programs at Loyola and



Tulane law schools. She received her undergraduate degree in 1990 from Loyola University and her law degree in 1994 from Loyola Law School. She was recognized by Jefferson Life magazine (tied for Best Attorney in Jefferson Parish in 2010) and by Louisiana Super Lawyers in 2011. (christyhowley@bowmanandhowley.com; 629 Lafayette St., Gretna, LA 70053)

Nomination Deadlines Set for 2015 Diversity-Related Awards

Nomination deadlines are set for three 2015 Louisiana State Bar Association (LSBA) diversity-related awards. The nomination deadline is Jan. 30, 2015, for the Guardian of Diversity Award, the Human Rights Award and the Trailblazer Award.

To review award guidelines and to access nomination forms, go to: www.lsba.org/diversity/. For more information, email LSBA Member Outreach and Diversity Director Tricia R. Pierre at tricia.pierre@lsba.org.

Save the Date for 2015 Conclave on Diversity!

The eighth annual Conclave on Diversity in the Legal Profession is scheduled for Friday, March 6, 2015, at the New Orleans Marriott, 555 Canal St. Highlighting this year's conclave, "Celebrating 50 Years of Civil Rights: Moving the Pendulum Forward," will be keynote speaker Kim M. Keenan, president and CEO of Minority Media & Telecom Council (MMTC), and the "Freedom Riders," a traveling exhibition developed by the Gilder Lehrman Institute of American History. The exhibit is in partnership with American Experi-

ence and is funded through the National Endowment for the Humanities.

CLE highlights include:

► Breakout sessions on substantive legal issues in the areas of LGBT and immigration.

► A diversity interactive facilitated workshop.

► Plenary sessions with moderated panel discussions in the areas of Criminal Law and Civil Rights/Voting Rights.

Panel members in the Civil Rights/Voting Rights session include A.P. Tureaud, Jr., the first African-American to enroll as an undergraduate student at Louisiana State University, Henry (Hank) James Thomas, one of the original 13 Freedom Riders, and Judge Bernice B. Donald of the United States Court of Appeals for the Sixth Circuit.

Online registration will begin soon. For more information, go to www.lsba.org/diversity.

Free Diversity-Related CLEs to Be Offered at Midyear Meeting

Two free diversity-related CLE programs will be part of the offerings at the Louisiana State Bar Association's (LSBA) Midyear Meeting, scheduled for Thursday

through Saturday, Jan. 15-17, 2015, at the InterContinental New Orleans Hotel, 444 St. Charles Ave., New Orleans.

The diversity-related CLE programs are scheduled for Thursday, Jan. 15, and include "Diversity Matters in the Legal Profession: Practicing Professionally in a Globalized World" and "Reflections on Bias, Partiality and Assumptions in Hiring and Firing."

To review and register for these and other CLEs, go to: www.lsba.org/midyearmeeting/.

LSBA Committees Schedule Second of 3-Part Disabilities-Related CLE Series

The Louisiana State Bar Association (LSBA) Diversity Committee's Pipeline Subcommittee and the LSBA Legal Services for Persons with Disabilities Committee have scheduled the second of a three-part CLE series focusing on disabilities-related legal issues. The next CLE, titled "Fit to Practice," is 11:30 a.m.-1:30 p.m. Thursday, Jan. 29, 2015, at the Baton Rouge Bar Center, 544 Main St., Baton Rouge, and will focus on liability and ethics issues in the event an attorney experiences short- or long-term disability. For more information and to register, go to: www.lsba.org/goto/2014DisabilityCLE.

8TH ANNUAL CONCLAVE ON DIVERSITY IN THE LEGAL PROFESSION

Celebrating 50 Years of Civil Rights

MOVING THE PENDULUM FORWARD

CIVIL RIGHTS

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REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Oct. 4, 2014.

Decisions

James Ward Davis, Shreveport, (2014-B-1650) **Interim suspension** from the practice of law ordered by the court on Aug. 22, 2014.

Jeremy Dean, Opelousas, (2014-OB-1360) **Permanent resignation in lieu of discipline** from the practice of law ordered by the court on Aug. 25, 2014. JUDGMENT FINAL and EFFECTIVE on Aug. 25, 2014. *Gist:* Engaged in multiple instances of serious attorney misconduct, including commingling and conversion of client funds.

Trent Anthony Garrett, Sr., Breaux Bridge, (2014-B-1022) **Suspended for one year and one day, retroactive to prior suspension in *In re: Garrett*, 13-0791 (La. 10/15/13), 124 So.3d. 1080, and adjudged guilty of additional violations warranting discipline to be considered if reinstatement is sought** ordered by the court on Aug.

25, 2014. JUDGMENT FINAL and EFFECTIVE on Sept. 8, 2014. *Gist:* Neglecting a client matter, permitting cause of action to prescribe and failure to cooperate with the Office of Disciplinary Counsel.

Elizabeth A. Spurgeon, Pineville, (2014-OB-1840) **Transferred to disability/**

inactive status ordered by the court on Sept. 2, 2014. JUDGMENT FINAL and EFFECTIVE on Sept. 2, 2014.

Daniel James Stanford, Lafayette, (2014-B-1896) **Interim suspension** ordered

Continued next page



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julie@sswethicslaw.com

Discipline continued from page 306
by the court on Sept. 17, 2014.

Randal Alandre Toaston, Baton Rouge, (2014-B-1734) **Interim suspension for threat of harm** ordered by the court on Aug. 15, 2014.

Frank Zaccaria, Jr., Bossier City, (2014-OB-1704) **Reinstated to active status** ordered by the court on Aug. 22, 2014. JUDGMENT FINAL and EFFECTIVE on Aug. 22, 2014.

Admonitions (private sanctions, often with notice to complainants, etc.) issued since the last report of misconduct involving:
No. of Violations

Allowing a non-lawyer to sign checks drawn on the client trust account1

Issued multiple trust account checks payable to "Cash"1

**TOTAL INDIVIDUALS
ADMONISHED.....2**

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- ▶ I will not abuse or misuse the law, its procedures or the participants in the judicial process.
- ▶ I will consult with other counsel whenever scheduling procedures are required and will be cooperative in scheduling discovery, hearings, the testimony of witnesses and in the handling of the entire course of any legal matter.
- ▶ I will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party. I will allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.
- ▶ I will not engage in personal attacks on other counsel or the court. I will support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.
- ▶ I will not use the threat of sanctions as a litigation tactic.
- ▶ I will cooperate with counsel and the court to reduce the cost of litigation and will readily stipulate to all matters not in dispute.
- ▶ I will be punctual in my communication with clients, other counsel and the court, and in honoring scheduled appearances.

Following approval by the Louisiana State Bar Association House of Delegates and the Board of Governors at the Midyear Meeting, and approval by the Supreme Court of Louisiana on Jan. 10, 1992, the Code of Professionalism was adopted for the membership. The Code originated from the Professionalism and Quality of Life Committee.



Google Agrees to Mediate Privacy Dispute

In October 2014, U.S. District Court Magistrate Judge Paul Grewal issued an order at the request of the parties requiring mediation in a dispute against Google based on 2012 changes to Google's privacy policy. The changes made to Google's privacy policy were intended to consolidate the more than 70 privacy policies that Google had in place at the time into a single unified policy that would govern all of Google's services. "Updating Our Privacy Policies and Terms of Service," GoogleBlog (Jan. 24, 2012), <http://googleblog.blogspot.com/2012/01/updating-our-privacy-policies-and-terms.html>.

Pursuant to these changes, users experienced a single sign-in experience, whereby signing into one Google application allowed a user to be seamlessly logged in to all other Google services, such as YouTube, Gmail, Blogger and Google Drive. This seamless integration, however, also allowed Google to compile user information from across its individual services to create a marketing profile and, additionally, to customize users' Google experiences, all without individual user consent.

In February 2013, the press began to report that individual application developers had access to identifying information about those who purchased their apps through Google Play, the company's marketplace for Android apps. The information provided to developers included user names, physical addresses and email addresses. Google

defended its practice, citing an exception to the Google Wallet privacy policy that allows the company to share user information with third parties "as necessary to process your transaction and maintain your account." "Formal Complaint Regarding Google's Second Violation of Buzz Order," Consumer Watchdog (Feb. 25, 2013), www.consumer-watchdog.org/resources/ltrftc022513.pdf.

Although this information is often necessary to allow third-party merchants to fulfill Google Wallet orders — which are often tangible items that require shipment to a buyer's mailing address and delivery of a receipt — Google Play is an electronic-only app store, and "user transactions are routinely processed without developers even being

aware of their access to user information, much less needing it." *Id.*

This unnecessary access to user information sparked concerns about how that information could be used and what it could reveal about users. According to a Consumer Watchdog complaint to the Federal Trade Commission, "Google Play apps deal with sensitive personal subjects, including health conditions and sexual activity. By disclosing personal user information to app developers, Google enables the identification of people who downloaded [these sensitive] apps." *Id.* Furthermore, the complaint expressed concern that developers — who are often younger people — may be motivated to profit from the information by selling it to others.

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A resulting lawsuit brought by users challenged this aggregation of user data as a violation of their privacy rights. Elizabeth Warmerdam, "Google Must Mediate Privacy Claims," Courthouse News Service (Oct. 3, 2014), www.courthousenews.com/2014/10/03/72093.htm.

In April, Google responded to user concerns by updating its commerce site to display less user information to developers; the website now displays an anonymous list of app purchases without disclosing the name of each individual purchaser.

In July, Judge Grewal issued a ruling dismissing all the complaints in the original suit, but allowing the suit to proceed under a breach-of-contract claim for the disclosure of user information to third-party-app developers and a claim for fraud under the California Unfair Competition Law. *In re Google, Inc. Privacy Policy Litigation*, ____ F.Supp. 2d ____ (N.D. Cal. 2014). In his written decision, Judge Grewal determined that the plaintiffs had sufficiently alleged that Google had "left a privacy policy in place which led consumers to believe that access to their data

would be limited to certain groups, even though it knew that it planned to distribute the data outside of those groups." *Id.* Additionally, Judge Grewal determined that the plaintiffs had sufficiently pled that they relied on Google's policies in their decisions to use Google Play and to download applications.

Although the July decision allowed the claims to go forward, in September, the parties filed with the court a Stipulation and Proposed Order Selecting Mediation, www.courthousenews.com/2014/10/03/Google%20Mediation.pdf.

Judge Grewal signed the order giving the parties to the lawsuit until early February to submit to mediation. On Oct. 9, the parties filed notice with the court of their scheduled mediation, set for Jan. 22, 2015, at Durie Tangri Offices in San Francisco, Calif.

In their class action, the users sought damages and costs, as well as any other relief the court deemed necessary. Although it is unclear what the result of the impending mediation might be, users feel that their privacy has been violated. This, in turn, can lead to distrust in Google's respect for its users'

data and threaten the company's reputation. Thus, both sides of the dispute have an interest in restoring user confidence, and issues such as these — where both parties seek a similar outcome — are particularly well suited for mediation. Through the mediation process, Google will be able to engage in a constructive dialogue with its users, in which both parties can venture outside the strict courtroom environment and explore new and unique possibilities for resolution.

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Lack of Subject Matter Jurisdiction over Litigation of Non-Estate Property

TMT Procurement Corp. v. Vantage Drilling Co., 764 F.2d 512 (5 Cir. 2014).

Prior to any bankruptcy proceedings, Vantage Drilling Co. filed suit in Texas state court against Hsin-Chi Su alleging, among other things, that Su induced Vantage to contract with companies owned by Su to acquire offshore drilling rigs in exchange for 100 million shares of Vantage stock (the Vantage shares). The Vantage shares were issued to F3 Capital, a company solely owned and controlled by Su. After Vantage filed the lawsuit

(the Vantage litigation), Su removed the Vantage litigation to the District Court for the Southern District of Texas, alleging diversity jurisdiction. After the district court denied Vantage's motion to remand, the 5th Circuit reversed and remanded the decision with instructions to remand the Vantage litigation to state court.

Meanwhile, 23 companies (not including F3) owned directly or indirectly by Su filed for Chapter 11 bankruptcy in the Bankruptcy Court for the Southern District of Texas. After multiple motions to dismiss were filed, the bankruptcy court denied all of the dismissals and issued an order requiring the debtors to provide "non-estate property" to the estates of the debtors, including "at least 25,000,000" of the Vantage shares, to ensure compliance with the court order and to provide collateral for working capital loans. The debtors sought bankruptcy court approval on a proposed escrow agreement whereby F3 would deposit the Vantage shares to be held *in custodia legis* for the benefit of the debtors, and Vantage objected. The bankruptcy court entered an order

approving the escrow agreement, and Vantage appealed. The district court denied leave to appeal, but on emergency motions, entered multiple orders regarding debtor-in-possession (DIP) financing, which Vantage also appealed. Thereafter, the bankruptcy court entered a final DIP order and a cash collateral order. Vantage appealed the two bankruptcy court orders, and the 5th Circuit accepted the direct appeals, consolidating them with the pending appeal of the district court orders.

On appeal, the debtors asserted that Vantage's appeal of all of the orders was moot under 11 U.S.C. §§ 363(m) and 364(e). Under these provisions, a "failure to obtain a stay of an authorization . . . moots an appeal of that authorization where the purchaser or lender acted in good faith." While Vantage did not seek a stay of the orders appealed, it argued that those sections only authorize actions in connection with "property of the estate" and the Vantage shares were not "property of the estate." Vantage also asserted that the appeal was not moot as the DIP lender did not act in good faith.

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The 5th Circuit reviewed its definitions of a good faith purchaser, namely as “one who purchases the assets for value, in good faith, and without notice of adverse claims,” and noting that “misconduct that would destroy a purchaser’s good faith status . . . involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” The 5th Circuit reasoned that knowledge of objections to a transaction is not enough to constitute bad faith, because having knowledge of an adverse claim requires something more and extends beyond objections by the debtors’ creditors. As the DIP lender had knowledge of the Vantage litigation whereby Vantage sought to recover the Vantage shares, the DIP lender was not a good faith lender.

Vantage also argued that the bankruptcy court lacked subject matter jurisdiction over both the Vantage shares and the Vantage litigation as the Vantage shares were not property of the estate or property of the debtors. The 5th Circuit reasoned that

as the debtors had no legal or equitable interest in the Vantage shares, they could not be considered property of the estate under Section 541. The debtors argued that because they acquired the interest in the Vantage shares after they were deposited *in custodia legis*, the Vantage shares were “interests of the estate acquired after the commencement of the case,” as defined by Section 547(a)(7). However, because F3 retained the title and voting rights to the Vantage shares, the debtors did not acquire the right to control or retain the Vantage shares. Furthermore, the Vantage shares were not property of the estate under Section 547(a)(7) because “they were not created with or by property of the estate, they were not acquired in the estate’s normal course of business, and they are not traceable to or arise out of any prepetition interest included in the bankruptcy estate.” The 5th Circuit further determined that the debtors could not use the orders as “jurisdictional bootstraps” to allow the courts to exercise jurisdiction that would “not otherwise exist.”

Therefore, the 5th Circuit concluded that the district court and the bankruptcy court lacked jurisdiction on that basis.

Lastly, Vantage argued that the bankruptcy court and district court lacked jurisdiction because the Vantage litigation was not “related to” the bankruptcy proceedings. The 5th Circuit found that a resolution of the Vantage litigation could not conceivably affect the debtor’s estate, and because bankruptcy jurisdiction does not extend to state law actions between non-debtors over non-estate property, the Vantage litigation was not “related to” the bankruptcy. Finding that the appeals were not moot, the Vantage shares were not “property of the estate” and the Vantage litigation was not “related to” the bankruptcy proceedings, the 5th Circuit held that the district court and the bankruptcy court lacked subject matter jurisdiction to enter the orders. The 5th Circuit vacated the orders of both lower courts and remanded the proceedings.

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Tolling of Prescription Class Action Cases

Smith v. Transport Servs. Co. of Ill., 13-2788 (La. 7/1/14), ____ So.3d ____, 2014 WL 2949293.

The question at hand is whether Louisiana Code of Civil Procedure article 596(A)(3) suspends prescription for putative class members when a class action is filed in state court and subsequently removed to federal court. The case has a long complex background involving three separate cases. A brief summary of the timeline follows.

Two separate class action lawsuits were filed against Transport Services Co. in Louisiana state court — *Fulford v. Transport Services Co.* and *Abram v.*

Transport Services Co. The suits stemmed from an Aug. 7, 2002, incident, wherein a truck owned by the defendant emitted “spent caustic” vapors throughout a neighborhood. The suits were removed to federal court and consolidated; class certification was ultimately denied on June 1, 2004. Following the denial, the defendants took no action to notify the putative class members.

On June 8, 2004, three putative class members filed an action in state court, making the same allegations as were contained in the prior two suits. The defendants filed an exception of *lis pendens* and sought a stay of the proceedings pending the resolution of the federal court actions.

On Sept. 7, 2004, while defendants’ exception was pending, the plaintiffs in the *Fulford* and *Abram* class actions attempted to provide notice to their putative class members of the denial of class certification through U.S. mail, and from Sept. 19-29, 2004, through publishing in the *Times Picayune*.

On Sept. 20, 2004, while notice was still running in the *Times Picayune*, the district

court granted defendants’ exception of *lis pendens* inasmuch as it was related to the class action claim, but granted the plaintiffs 30 days from the date of signing the judgment in which to amend the pleadings to add additional plaintiffs to the lawsuit. Notably, the judgment specifically stated “which additions will not affect or extend any prescriptive periods that have already run as to any new plaintiffs”

On Oct. 4, 2004, plaintiffs filed an amended petition that added approximately 500 plaintiffs. Leave to amend was granted on Oct. 7, 2004. As to the 500 plaintiffs added on Oct. 4, 2004, defendant raised the exception of prescription. Defendants’ exception of prescription is the basis for this case and the holding that removal of a class action case from state court to federal court does not change the requirement that one of the three events in article 596 must take place to trigger the running of prescription, which, in this case, was the mailing of notice to the putative plaintiffs.



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Private Right of Action Exists in the “Balance Billing Act”

Anderson v. Ochsner Health Syst., 13-2970 (7/1/14).

This case began as a personal injury case after the plaintiff was injured in an automobile accident. At the time of the accident, plaintiff was treated at an Ochsner facility and, at all relevant times, was insured by UnitedHealthcare. As an insured of UnitedHealthcare, plaintiff was entitled to discounted health care rates through a separate contract between Ochsner and UnitedHealthcare. Plaintiff provided Ochsner proof of insurance for her claims to be submitted to her insurer. Rather than file claims with her insurer, Ochsner asserted a medical lien for the full amount of undiscounted charges on any tort recovery plaintiff was entitled to as a result of the automobile accident.

As a result of Ochsner’s refusal to provide the claims to UnitedHealthcare for the discount to be applied, plaintiff filed the instant suit under La. R.S. 22:1871, *et seq.*, the “Balance Billing Act.” Ochsner filed a motion for summary judgment claiming the Balance Billing Act did not allow for a private right of action and, therefore, plaintiff’s claims should be dismissed. The statute is notably silent on whether a private right of action exists; however, an administrative remedy exists. The Louisiana Supreme Court first turned to statutory interpretation to determine if there was a private right of action. Because the statute was silent, the legislative intent was examined. Through the title, “Health Care Consumer Billing and

Disclosure Protection Act,” the court was able to reason the consumer was in mind when this matter was enacted.

Based on the implied right of action, the Louisiana Supreme Court held that a private cause of action does exist under the Balance Billing Act.

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New Remedy for Oppressed Shareholders of Closely-Held Corporations

The recently adopted revisions to the Louisiana Business Corporation Law, La. R.S. 12:1 *et seq.*, scheduled to take effect on Jan. 1, 2015 (thereafter known as the Louisiana Business Corporation Act,

LBCA), provide shareholders of a Louisiana corporation whose shares are not publicly traded or listed on a national exchange with a new remedy in cases of “oppression.” This remedy is entirely new to Louisiana corporate law and may represent the most significant change in the adoption of the new LBCA.

A shareholder’s remedy for oppression is to withdraw and require the corporation to buy all of the shareholder’s shares at their fair value. Under Section 1435 of the LBCA, a shareholder is oppressed if “the corporation’s distribution, compensation, governance, and other practices considered as a whole over an appropriate period of time are plainly incompatible with a genuine effort on the part of the corporation to deal fairly and in good faith with the shareholder.” The LBCA names factors to consider in whether a shareholder is being oppressed by the corporation as the conduct of the shareholder alleging the oppression and the treatment a reasonable shareholder would consider fair under the circumstances. The comments to Section 1435 indicate that the LBCA’s definition of oppression and the relevant factors to consider are intended to combine the two leading tests of oppression developed by case law in other states that provide a similar remedy: the “reasonable expectations” and “departure from standards of fair dealing” tests.

“Fair value” is defined by Section 1435 as the value of the shares determined as of the effective date of the shareholder’s written notice of withdrawal, using customary and current valuation concepts and techniques, but with no discounts for lack of marketability or minority status.

The shareholder must give written notice

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Chet Traylor
Justice, Ret.

to the corporation of his, her or its intention to withdraw from the corporation on grounds of oppression. This written notice constitutes an offer by the shareholder to sell the shares back to the corporation at their fair value. However, the written notice does not need to specify a price for the shares. The corporation has 60 days from the effective date of the written notice to either accept or reject the shareholder's notice of withdrawal, and the corporation may accept either both the withdrawal and the stipulated price (if any in the written notice) or only the withdrawal. If the corporation accepts both the shareholder's withdrawal and the price for the shares stipulated in the written notice, then a contract of sale is formed between the shareholder and corporation. The purchase of the shares is governed by the restrictions on distributions set forth in the LBCA. If the corporation rejects or otherwise fails to respond to the the shareholder's notice of withdrawal, the shareholder may bring an ordinary action against the corporation to enforce the right to withdraw. A court ruling on the issue of the shareholder's right to withdraw is only a partial judgment and does not determine

the fair value of the shares.

Upon either acceptance of the shareholder's right to withdraw by the corporation or a judicial determination that grounds for withdrawal exist, the shareholder and corporation have 60 days to negotiate the fair value and other purchase terms for the shareholder's shares. The court shall stay its proceedings on the shareholder's withdrawal demand for such 60-day period pending these negotiations. If no agreement is reached mutually by the parties, then the corporation or the withdrawing shareholder may bring an action for valuation of the shares within one year from the expiration of the 60-day negotiation period. The court shall render judgment either in favor of the shareholder for the fair value of the shareholder's shares, or against the shareholder terminating the shareholder's ownership of the shares and ordering the shareholder to deliver within 30 days of the date of the judgment any certificate for the shares issued by the corporation or a lost share affidavit.

The corporation also may elect to convert the ordinary action for withdrawal and/or valuation of the shares into a dissolution proceeding, if the corporation's dissolution

was approved as required by the LBCA's provisions on dissolution. Venue for any proceeding related to the shareholder's withdrawal for oppression is the district court of the parish where the corporation's principal office is located, or the location of a registered office if there is no principal office in Louisiana.

Finally, the shareholders of a corporation may elect by unanimous written consent to waive the right to withdraw from the corporation. Unless the unanimous written consent stipulates a shorter duration, the shareholders' waiver of the withdrawal right is valid for only 15 years from the date of its adoption. Share certificates must bear written notice of the waiver of the right of a shareholder to withdraw.

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Constrained Resources and Management of Juvenile Prosecution Dockets

State ex rel. L.D., 14-1080 (La. 10/15/14), ____ So.3d ____, 2014 WL 5394100.

The Louisiana Supreme Court issued a *per curiam* opinion addressing the importance of complying with the strict time delays set forth in the Children's Code, even in light of the overcrowded dockets and limited resources of the court system.

L.D. was charged with a felony-grade delinquent act and was placed in state custody. As he was not released to his parents at the continued-custody hearing, the State was required by Louisiana Children's Code art. 843 to file a delinquency petition within 48 hours, which was done timely. Unless the child is subsequently released, an answer hearing must then be held within five days. La. Ch. C. art. 854(A). However, the district court set the answer hearing for the next available court date dedicated to juvenile matters — 27 days later.

Due to the need for closed courtrooms, specialized personnel and coordination with juvenile-detention centers that are often run by private companies, some courts create specialized "tracks" for juveniles. In Lafayette Parish (part of the 15th Judicial District Court along with Acadia and Vermilion parishes), Local Rule 14.0 restricts juvenile matters to two judges who hear juvenile matters in addition to their civil dockets. Each track meets approximately one week each month, which means that some delays inevitably fall within weeks when no juvenile docket is being heard.

The "unwritten policy, known to the attorneys who regularly appear in juvenile matters in that district," was that the

court's schedule would be considered good cause for an extension under art. 854(C). Likewise, the court observed that "another unwritten rule" of the district was that duty judges "are not consulted in juvenile matters."

The adjudication of L.D.'s delinquency was upheld because the objection was made at the belated answer hearing, and the juvenile did not seek immediate review via supervisory writs. Nevertheless, the Louisiana Supreme Court, citing *State v. Driever*, 347 So.2d 1132, 1134 (La. 1977), issued the *per curiam* opinion to reiterate that, as in context of adult criminal proceedings, "the court system cannot excuse itself from affording an accused a trial within the delays required by law, simply by relying upon internal operating procedures which result in noncompliance with the statutory mandate."

The court adopted much of the dissent by Chief Judge Ulysses Gene Thibodeaux of the 3rd Circuit, which

emphasized the statements of legislative purpose in Children's Code articles 801 and 102, specifically that the purpose of the delinquency articles is "to accord due process to each child who is accused of committing a delinquent act," and that each Code provision "shall be construed to promote . . . the elimination of unjustifiable delay." Allowing the State simply to fail to adhere to mandatory time standards of the Children's Code was deemed "especially egregious where there is . . . an erroneous refusal to release an incarcerated juvenile, as here." *State ex rel. L.D.*, 14-1080 (La. App. 3 Cir. 5/7/14), 139 So.3d 679, 687.

The court clarified that Children's Code articles that set forth time delays but do not provide a remedy should be read *in pari materia* with other articles mandating release of juveniles in continued custody and directed the 15th JDC to reevaluate its practices to ensure compliance.



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Failure to Dismiss “Obnoxious Juror” Vacates Capital Sentence

State v. Mickelson, 12-2539 (La. 9/3/14),
____ So.3d ____, 2014 WL 4356305.

Eric Mickelson was convicted of first-degree murder by a 1st Judicial District Court jury and sentenced to death. On direct appeal, Justice Hughes described it as a “tremendously difficult case with which all the justices have invested much effort,” evident in the opinion which stretches to 50 pages, including dissents and additional concurrences from *all seven* justices. The court found that there was sufficient evidence to convict Mickelson, but pretermitted discussion of numerous other assignments of error because it was “constrained by [the] statutory requirements” of Louisiana Code of Criminal Procedure art. 800 and thus was required to reverse and remand.

The court has repeatedly held that prejudice is presumed when a defendant is forced to use a peremptory challenge to correct an erroneous denial of a challenge for cause and thereafter exhausts all nine peremptory challenges on others in the venire. Forcing the defendant to “burn a perempt” weakens a substantial right of the defendant, guaranteed by the Louisiana Constitution, and will automatically be reversed. (*See, State v. Jacobs*, 99-1659 (La. 6/29/01), 789 So.2d 1280, 1283-84, for a discussion of the automatic reversal rule and the Legislature’s elimination of the “obnoxious juror rule.”)

The defense challenged juror Roy Johnson for cause because he expressly refused to consider relevant statutory mitigating circumstances during the penalty phase if Mickelson was convicted. In Louisiana criminal trials, two requirements are necessary to challenge a juror for cause: (1) that “the juror is not impartial, whatever the cause of his partiality;” and (2) that “the juror

will not accept the law as given to him by the court.” La. C.Cr.P. art. 797(2) and (4). Johnson refused to accept the direction of La. C.Cr.P. art. 905.5, which mandates intoxication “shall be considered” as a mitigating circumstance. Because the trial court refused to grant the challenge for cause, and the defendant subsequently exhausted his peremptory challenges, art. 800 mandates a finding of reversible error.

Accordingly, the court reversed and vacated the conviction and death sentence and remanded for a new trial.

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Army Corps, EPA Actions not Final within Meaning of Administrative Procedure Act

The U.S. Supreme Court's decision in *Sackett v. EPA*, 132 S.Ct. 1367 (2012), seemed to open the door to Administrative Procedure Act (APA) challenges of agency actions when the court found that a U.S. Environmental Protection Agency (EPA) compliance order could be appealed in court. But, the 5th Circuit closed that door to U.S. Army Corps of Engineers (Corps) Clean Water Act jurisdictional determinations, *Belle Co., L.L.C. v. U.S. Army Corps of Engineers*, 761 F.3d 383 (5 Cir. 2014); and EPA's pre-suit notice of violation under the Clean Air Act, *Luminant Generation Co. v. EPA*, 757 F.3d 439 (5 Cir. 2014).

Belle Co., L.L.C., asked the Corps to determine whether a proposed landfill site contained wetlands, subject to Clean Water Act jurisdiction. Section 404 of the Clean Water Act, 33 U.S.C. § 1344, requires a permit from the Corps before filling jurisdictional wetlands. As the court pointed out, the Corps may "issue formal determinations concerning the applicability of the Clean Water Act . . . to activities or tracts of land and the applicability of general permits or statutory exemptions to proposed activities." *Belle Co.*, 761 F.3d at 386 (quoting 33 C.F.R. §§ 320.1(a)(6); 325.9). This is known as a "jurisdictional determination." The Corps determined that part of the Belle site was wetlands, subject to Clean Water Act jurisdiction.

Belle sued the Corps under the APA, claiming the jurisdictional determination was arbitrary, capricious and invalid. The district court dismissed for lack of subject-matter jurisdiction because the

jurisdictional determination was not a final agency action under the APA. Belle appealed, claiming that the *Sackett* decision compels a reversal. The 5th Circuit affirmed the district court's decision.

As in *Sackett*, the 5th Circuit analyzed two prongs for a final agency action: 1) whether the action "marks the consummation of the agency's decisionmaking process" and is not "merely tentative or interlocutory;" and 2) whether the action determines "rights or obligations" or is one "from which legal consequences will follow." *Belle Co.*, 761 F.3d at 388 (quoting *Bennett v. Spear*, 111 S.Ct. 1154 (1997)). The 5th Circuit found that the jurisdictional determination met the first prong because once the Corps makes a determination and it goes through the administrative appeals process, it is final "and not subject to further formal review by the agency." *Id.* at 389-90 (citing 33 C.F.R. §§ 331.2; 331.9). The 5th Circuit rejected the Corps' argument that its determination is the *beginning* of an administrative process with the possibility of a future proceeding and changes. *Id.* The court explained that "[t]he mere possibility that an agency might reconsider . . . does not suffice to make an otherwise final agency action nonfinal." *Id.* (quoting *Sackett*, 132 S.Ct. at 1372).

With regard to prong two, the 5th Circuit affirmed pre-*Sackett* holdings that a jurisdictional determination does not determine rights or obligations or have legal consequences. *Id.* at 391 (citing 5th, 6th and 9th Circuit decisions). The court drew distinctions between the *Sackett* compliance order and jurisdictional determinations — namely, that "the compliance order independently imposed legal obligations because it ordered the Sacketts promptly to restore their property," whereas the jurisdictional determination "is a notification of the property's classification as wetlands but does not oblige Belle to do or refrain from doing anything" even though section 404 permits "can be costly." *Id.* Even if Belle had not requested the jurisdictional determination, "it would not have been immune to enforcement by the Corps or EPA." *Id.*

Belle argued that the jurisdictional determination has consequences under Louisiana law because it would now have

to modify its state solid-waste-permit application. *Id.* at 392. But the court found that "state-agency action does not transform nonfinal federal-agency action into final action for APA purposes." *Id.* The court also found that, unlike an EPA compliance order, the jurisdictional determination does not state that Belle is in violation of the Clean Water Act or invoke any penalty scheme. *Id.* 392-93. The court concluded, therefore, that the jurisdictional determination "is not reviewable final agency action under the APA." *Id.* at 394.

In *Luminant Generation*, power plant operators challenged notices for violations of the Clean Air Act's Prevention of Significant Deterioration provisions and other requirements. The EPA filed a motion to dismiss on the ground that a notice of violation is not "final action" as required by 42 U.S.C. § 7607(b)(1). In examining whether it had jurisdiction, the 5th Circuit noted that final action "under section 7607(b)(1) has the same meaning as 'final agency action' under the" APA and applied the two-prong test. *Luminant Generation*, 757 F.3d at 441. The court distinguished *Sackett*, finding that a notice of violations "does not create any legal obligation, alter any rights, or result in any legal consequences" because, among other things, "adverse legal consequences will flow only if the district court determines that Luminant violated the Act or" state laws implementing the Act and "if the EPA issued notice and then took no further action, Luminant would have no new legal obligation imposed on it and would have lost no right it otherwise employed." *Id.* at 443. The court further explained that the "Clean Air Act and the Texas [laws implementing the Act], not the notices, set forth Luminant's rights and obligations." *Id.*

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Family Law

Custody

Koussanta v. Dozier, 14-0059 (La. App. 5 Cir. 5/21/14), 142 So.3d 202.

Mr. Koussanta's motion to modify custody, brought four months after the previous trial and judgment, failed to state a cause of action under *Bergeron* because many of the allegations had previously been made and addressed in that prior trial, and insufficient time had passed for the court-ordered counseling to have had an impact on the child's continuing behavioral problems, which were the root of the problem.

Owens v. Owens, 14-0165 (La. App. 3 Cir. 6/4/14), 140 So.3d 865.

The court of appeal affirmed the trial

court's granting of the mother's request to relocate the parties' child with her new husband to Tennessee. His hours worked at his job in Louisiana had been cut due to federal government budget cuts, and he would make more money at a new job in Tennessee, plus the mother could be a stay-at-home mother and not have to work. She and her husband were willing to foster the child's relationship with the father, and the father could be given additional extended time in the summer. Improvements to the child's quality of life and other benefits supported the relocation.

Pelias v. Pelias, 13-0853 (La. App. 5 Cir. 5/14/14), 142 So.3d 153.

The parties' consent judgment provided that Mr. Pelias could have additional physical custody of the children one night per week "to be mutually agreed upon by the parties." The trial court granted her contempt rule for his failure to exercise this time, but the court of appeal reversed, finding that there was no agreement on any specific night. It also reversed the trial court's award of attorney's fees, costs and

child-care costs and its modification of their physical custody schedule (*see* La. R.S. 9:346).

Community Property

Tanana v. Tanana, 12-1013 (La. App. 1 Cir. 5/31/13), 140 So.3d 738.

Although the parties' judgment provided that the former community property matrimonial domicile would be listed for sale, it did not sell after being on the market on and off for five years. Mr. Tanana then filed in the St. Tammany Parish district court a petition to sell the property by licitation, and the district court denied her various exceptions and ordered the property sold by licitation. The court of appeal reversed and remanded for the matter to be transferred to the St. Tammany Parish family court division and for that division to address the matter in accordance with La. R.S. 9:2801.

Shaheen v. Khan, 13-0998 (La. App. 5 Cir. 5/21/14), 142 So.3d 257.

The parties' marriage contract in India



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did not establish a separate property regime, so after she joined him in Louisiana, a community property regime was established. Further, they did not opt out of the community regime during the first year they were both here. His donations to his family in India after the community regime was established were not usual and customary gifts, so there was no trial court error in awarding her reimbursement for one-half. She did not willingly consent, even though she filled out the checks, because the court believed her claim that she was forced by him to do so. His claim for payments for her education were properly denied because he compelled her to go to school, she got no benefit from the degree, he had no expectation of a shared benefit and he suffered no detriment in making the contributions. The trial court did not err in ordering him to return her separate property wedding jewelry, which he claimed he did not have.

Eschete v. Eschete, 12-2059 (La. App. 1 Cir. 2/27/14), 142 So.3d 985.

The court of appeal affirmed the trial court's finding that a donation by Mr. Eschete to Ms. Eschete of his one-half interest in the former matrimonial domicile was null and void for form because it was not signed before a notary and two witnesses. The notary testified that she was in an office 12 feet away from the reception room and saw Mr. Eschete sign a document, which she "assumed" was the donation. One witness was making copies at the copy machine but testified that she could see him in the waiting room. The other witness acknowledged that only she and Mr. Eschete were in the waiting room when he signed the document, that the notary and the other witness could have seen his hand moving to sign the document, even though they could not have seen the actual signature. The dissent argued that their visual observance was sufficient, especially given the high standard of proof required to negate a presumptively valid authentic act, his acknowledgment that he did sign the act, and because his was the only testimony offered to dispute that of the notary and two witnesses.

Adoption

In re Adoption of N.B., 14-0314 (La. App. 3 Cir. 6/11/14), 140 So.3d 1263.

The trial court granted this petition for intrafamily adoption between two women who had been married in California. Although the attorney general was aware of the suit, it did not appear at the hearing when the adoption was granted. Nevertheless, the attorney general was allowed to appeal because it was entitled to service of the hearing date and to an opportunity to be heard. The court of appeal reversed the judgment and remanded for the trial court to hear all constitutional arguments.

Child Support

Rigaud v. DeRuisse, 13-0376 (La. App. 4 Cir. 5/21/14), 141 So.3d 917.

Almost 10 years after reaching a consent judgment to modify an earlier judgment for child-support arrearages, Ms. Rigaud filed a motion to amend or set aside the second judgment or to reinstate the original

judgment, claiming that interest and attorney's fees were inadvertently left out of the amended judgment. Mr. DeRuisse's exception of no cause of action was maintained, but the trial court remanded to allow her the opportunity to amend.

Paternity

Succ. of Byrd, 48,996 (La. App. 2 Cir. 6/11/14), 142 So.3d 1058.

Children of Mr. Byrd's deceased illegitimate son proved by sufficient evidence that they were entitled to be recognized as his heirs over the objections of the legitimate son's children. The court of appeal addressed the history of Louisiana's filiation statutes, the sufficiency of proof and preemption issues.

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Jones Act and General Maritime Law: Punitive Damages

McBride v. Estis Well Serv., L.L.C., ____ F.3d ____ (5 Cir. 2014).

Estis owned and operated Rig 23, a barge supporting a truck-mounted drilling rig operating in Bayou Sorrell, a navigable Louisiana waterway. The truck toppled over, killing one crew member and injuring three others. Suits were filed by, or on behalf of, all four crew members, stating causes of action for unseaworthiness under general maritime law and negligence under the Jones Act and seeking compensatory as well as punitive damages under both claims. The cases were consolidated, and Estis moved to dismiss the claims for punitive damages as not being an available remedy as a matter of law where liability is based on unseaworthiness or Jones Act negligence. The district court granted the motion and dismissed all claims for punitive damages. On rehearing, a panel reasoned that, because the unseaworthiness cause of action and the punitive damages remedy pre-existed the Jones Act and the Jones Act did not address either, then both

the cause of action and remedy of punitive damages are available to injured seamen and survivors of deceased seamen. The 5th Circuit granted rehearing *en banc* "to determine whether the Supreme Court's decision in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990), holding that the Jones Act limits a seaman's recovery for unseaworthiness under that Act or the general maritime law to 'pecuniary losses,' is still good law and whether that holding precludes plaintiff's claims for punitive damages."

The Jones Act, 46 U.S.C. § 30104, enacted by Congress in 1920, extended to seamen the same negligence remedy for damages afforded to railroad workers under the Federal Employers' Liability Act, 45 U.S.C. § 51-59 (FELA). Damages available under FELA were defined by the Supreme Court in *Michigan Central Railroad Co. v. Vreeland*, 227 U.S. 59 (1913), as "... liability for the loss and damage sustained by relatives dependent upon the decedent. It is therefore a liability for the pecuniary damage resulting to them and for that only."

In deciding the case of *Miles*, a wrongful death action under the Jones Act and general maritime law, the Supreme Court harkened back to its reasoning in *Vreeland*.

When Congress passed the Jones Act, the *Vreeland* gloss on FELA, and the hoary tradition behind it, were well established. Incorporating FELA unaltered into the Jones Act, Congress must have intended to incorporate the pecuniary limitation on damages

as well. We assume that Congress is aware of existing law when it passes legislation. There is no recovery for loss of society in a Jones Act wrongful death action. The Jones Act ... limits recovery to pecuniary loss.

Further, the court's place in the constitutional scheme does not permit it:

to sanction more expansive remedies in a judicially create(d) cause of action in which liability is without fault than Congress has allowed in cases of death resulting from negligence. We must conclude that there is no recovery for loss of society in a general maritime action for the wrongful death of a Jones Act seaman.

The 5th Circuit concluded that:

In the words of the Supreme Court, "Congress has struck the balance for us." On the subject of recoverable damages in a wrongful death case under the Jones Act and the general maritime law, it has limited the survivor's recovery to pecuniary losses. Appellants have suggested no reason this holding and analysis would not apply equally to the plaintiffs asserting claims for personal injury.

Based on *Miles* and other Supreme Court and circuit authority, pecuniary losses are designed to compensate an injured person or his survivors.



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Punitive damages, which are designed to punish the wrongdoer rather than compensate the victim, by definition, are not pecuniary losses.

That summarizes the majority's six-page opinion, a brief exegesis on the subject. The full, 40-page opinion — a scholarly dissertation including two concurring opinions by five judges (19 pages) and a dissent by Judges Graves and Dennis (five pages), plus 10 pages of footnotes — is commended to the interested practitioner.

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U.S. Treasury Department: Office of Foreign Assets Control

Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property are Blocked (Aug. 13, 2014).

Companies and their counsel engaged in international business should carefully consider their current due-diligence, sanction-screening processes to ensure compliance with the Office of Foreign Assets Control's (OFAC) Revised Guidance issued to replace the 2008 guidance. The 2008 guidance is widely known as the "50 Percent Rule" regarding treatment of entities owned or controlled by persons blocked by Executive Orders and regulations administered by OFAC. The ever-increasing number and complexity of U.S. sanctions, including the recent Sectoral Sanctions Identification List as part of the Ukraine-Russia sanctions program, generated the need for revised guidance.

The 50 Percent Rule created in the 2008 guidance held that if a blocked person owns 50 percent or more interest

of an entity, either directly or indirectly, then that entity would automatically also be blocked by operation of U.S. law. The Revised Guidance maintains the 50 Percent Rule, but now requires aggregation of ownership interests. Aggregation means that an entity is automatically blocked if one or more blocked persons together own 50 percent or more of the entity in the aggregate, even if the entity itself is not blocked by OFAC. This will likely increase the number of entities subject to OFAC-blocking sanctions, including U.S. entities acting in the sectors identified in the Sectoral Sanctions List issued as part of the Ukraine-Russia program.

World Trade Organization

WTO General Council Meeting (July 24-25, 2014).

The World Trade Organization (WTO) entered full crisis mode after its Members failed to adopt the Protocol of Amendment to add the Trade Facilitation Agreement (TFA) to the WTO Agreements. The TFA was agreed to by the Members at the 9th Ministerial Conference in Bali, Indonesia, in December 2013. However, between the December Ministerial Conference and the July WTO General Council meeting where the Protocol of Amendment was introduced, India's government changed its mind and decided to block consensus of the TFA to which India had already agreed. India is blocking consensus on the package until Members provide agreement on "food security" measures for agricultural-producing countries.

The failure to adopt the TFA is widely seen as fatal to the long-suffering Doha Development Agenda, which was launched in 2001. Since that time, the Members have completely failed to achieve any progress on the Doha issues. The TFA represents a non-controversial agreement to streamline customs and border rules to facilitate cross-border trade. The TFA was especially important for least-developed and developing countries, which have the most to gain from more efficient trade procedures. The Organization for Economic Cooperation and Development estimates a 14.5 percent reduction in total trade costs

for low-income countries that implement trade-facilitation improvements. The damage is now done and the WTO's role as a negotiating forum could be over as WTO Members will continue to move away from multilateral trade negotiation to competitive liberalization through bilateral and regional Free Trade Agreements.

China: Measures Related to the Exportation of Rare Earths, Tungsten and Molybdenum, WT/DS431/AB/R (Aug. 7, 2014).

The WTO Appellate Body issued its decision in August on an important case that will benefit producers of downstream products that incorporate rare earth minerals. The WTO Appellate Body upheld the Dispute Settlement Panel's decision finding Chinese export duties and quotas on rare earth minerals a violation of China's Protocol of Accession to the WTO. Specifically, the panel and Appellate Body found that China's export restrictions were not allowed as an Article XX exception to either protect human, plant and animal life and health or to conserve natural resources. The case was initiated by the United States, the European Union and Japan as its domestic producers of high-

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technology and defense goods, including wind turbines, electric car batteries and guided missiles, were facing significant market distortions creating unsustainable price increases in raw materials. The decision should help restore market conditions in these important areas.

International Criminal Court and MERCOSUR

Framework Cooperation Agreement (Aug. 4, 2014).

An exchange of letters between the International Criminal Court (ICC) and the office of the President of the Parliament of MERCOSUR (a free trade and customs union between Argentina, Brazil, Paraguay, Uruguay and Venezuela) formally established a Framework Cooperation Agreement between the ICC and all MERCOSUR Member nations. The Framework Agreement seeks to foster understanding and compliance by MERCOSUR Members with the ICC. Each MERCOSUR Member has adopted the Rome Statute that establishes the ICC. Through the Framework Agreement, the ICC hopes to, *inter alia*, promote and disseminate information on international criminal law, promote the principles and values of the Rome Statute, improve public and political support for the mandate and activities of the ICC, and improve enforcement of sentences, witness relocation, provisional release and release agreements in the context of the ICC.

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Prudent Operator Claim

Hayes Fund for First United Methodist Church of Welsh, L.L.C. v. Kerr-McGee Rocky Mountain, L.L.C., 13-1374 (La. App. 3 Cir. 10/1/14), ____ So.3d ____, 2014 WL 4851729.

The plaintiffs were mineral lessors who brought suit against multiple defendants who held rights under a mineral lease. The plaintiffs alleged that the defendants had constructed two oil and gas wells in an imprudent manner, thereby causing the wells to produce less oil and gas than the wells should have produced. The plaintiffs argued that the defendants' alleged imprudence constituted a violation of Mineral Code art. 122 and had caused the plaintiffs to earn less in royalties than they otherwise would have earned.

The case was tried before a judge, who heard approximately 25 days of testimony, including testimony from several expert witnesses. After post-trial briefing, the district court entered a judgment in favor of the defendants, rejecting the plaintiffs' claims. The court explained in written reasons that the plaintiffs had not proven that the defendants had acted imprudently and that the plaintiffs had not shown that they had incurred damages. The plaintiffs appealed.

The Louisiana 3rd Circuit reversed,

holding that the trial court's judgment was manifestly erroneous. The 3rd Circuit concluded that the plaintiffs proved that the defendants acted imprudently, even though the plaintiffs did not actually have to prove imprudence. The court noted that the parties had used a printed lease form, with the original language stating, "Lessees shall be responsible for all damages to timber and growing crops of Lessor caused by Lessee's operations." The court stated that this clause would have made the lessee liable for any damages it caused to timber or crops, even if the lessee had not acted negligently or unreasonably. But the parties had stricken the reference to "timber and growing crops" so that the revised clause stated, "Lessee shall be responsible for all damages caused by Lessee's operations." The 3rd Circuit stated that the effect of the revised clause was to make the lessees strictly liable for any type of damages caused by their operations.

Next, the 3rd Circuit rejected the trial court's conclusion that the plaintiffs failed to prove any damages. The plaintiffs' damages calculations were based on an assumption that boundaries of the hydrocarbon reservoirs at issue corresponded to the boundaries of units created by the Commissioner of Conservation. In contrast, the defendant offered expert testimony regarding the actual size of the reservoirs at issue.

The plaintiffs argued that the defendants' evidence constituted a collateral attack on the Commissioner's unitization orders. The defendants disputed that, noting that the units at issue were not geologic units and instead were geographic units. The defendants acknowledged that the Commissioner establishes the boundaries of *geologic* units based on his conclusions about *geologic* features, such as the location of reservoirs. But the Commissioner establishes the boundaries of *geographic* units based on *geographic* features, such as the boundaries of government survey sections and subsections. Therefore, expert testimony regarding reservoir boundaries is not a collateral attack on an order setting the boundaries of geographic units. The 3rd Circuit rejected that argument, holding that the Commissioner's orders establishing the boundaries of geographic

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units conclusively established reservoir boundaries.

Based on the plaintiffs' expert's calculation of damages, the 3rd Circuit rendered judgment in favor of the plaintiffs for approximately \$13.4 million.

Challenges to Orders of Commissioner

Gatti v. State, 14-0863 (La. 8/25/14), 146 So.3d 196.

Several plaintiffs who own mineral rights in north Louisiana brought suit against the Commissioner of Conservation and other defendants, challenging the Commissioner's creation of 640-acre units for the Haynesville Shale. The plaintiffs asserted that a single well cannot drain 640 acres in the Haynesville Shale and that 640-acre units, therefore, are inconsistent with La. R.S. 30:9(B), which states in part: "A drilling unit, as contemplated herein, means the maximum area which may be efficiently and economically drained by one well." The plaintiffs requested a declaratory judgment that the unit orders were absolutely null and never had any effect.

The defendants sought dismissal, asserting that the plaintiffs' challenge to the Commissioner's unitization orders was not timely. La. R.S. 30:12(A) allows a party who is aggrieved by an order of the Commissioner to seek judicial review of the order, but 30:12(A)(2) requires that any action for judicial review "must be brought within sixty days." It was undisputed that the plaintiffs had not brought their action within 60 days. The trial court dismissed the plaintiffs' action on that basis, but noted that Louisiana law would allow the plaintiffs to ask that the Commissioner hold a hearing to consider a prospective revision to the challenged units.

As previously reported in the Mineral Law Section's April/May 2014 Recent Developments article, the Louisiana 1st Circuit reversed the dismissal. The 1st Circuit did not rule on the merits of the plaintiffs' claim, but reversed the judgment of dismissal and remanded, holding that the plaintiffs' action was not time-barred. The Louisiana Supreme Court recently granted supervisory writs and issued a

short order that reinstated the trial court's judgment. The Supreme Court did not issue written reasons.

Disclosure: Keith B. Hall authored an amicus brief arguing to the Louisiana Supreme Court that the plaintiffs' action was time-barred.

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Patient's Refusal to Cooperate in Appointment of Chair

Keating v. Van Deventer, 14-0157 (1 Cir. 9/19/14), ____ So.3d ____, 2014 WL 4656482.

The plaintiffs filed a medical-review-panel request on Feb. 29, 2012, against three healthcare providers.

No agreement was reached between the plaintiffs and defendants about which attorney would serve as chair of the panel, following which the defendants initiated the "strike procedure," as provided by La. R.S. 40:1299.47(C)(1)(a). Part (C)(1)(a) calls for the plaintiffs and defendants to alternately strike attorneys' names from a list of five attorneys selected at random by the clerk of the Louisiana Supreme Court and for the unstricken attorney to serve as chair. The plaintiffs did not strike any potential nominee from the list, causing defendants to request the Louisiana Supreme Court to make the strikes on plaintiffs' behalf, as provided

in the "strike" statute.

La. R.S. 40:1299.47(C)(1)(a) suspends the time for filing suit after a request for review is filed and allows the parties one year from the date of filing to select a chair, after which the time limits for filing suit resume. With the one-year deadline fast approaching, the defendants agreed to the plaintiffs' earlier — and only — proposed candidate, and they notified the PCF of their consent on Feb. 21, 2013. The plaintiffs notified the PCF the next day that they would not consent to their earlier nominee.

On Feb. 25, the PCF advised the parties that the nominee would not be appointed, absent consent of all, and asked the plaintiffs to advise of their choice to allow the appointment to be made prior to the one-year deadline. The plaintiffs did not respond.

Two days before the deadline, the defendants obtained a writ of mandamus from the district court, ordering the plaintiffs immediately to provide the names of the three attorneys they would accept. The plaintiffs did not respond.

On the date of the one-year deadline (Feb. 28), the defendants advised the PCF

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that they had no intention of waiving their statutory right to proceed before a panel; nevertheless, the PCF dismissed the claim on March 4, citing as its reason the failure to have a chair timely appointed.

The plaintiffs then filed a lawsuit; the defendants responded with exceptions of prematurity. The district court sustained the exceptions, dismissed the suit without prejudice, and remanded the case to the PCF. The plaintiffs appealed, arguing that § 1299.47(A)(2)(c) is clear and unambiguous in its instruction that a panel is waived if no chair is appointed within one year of the date of filing of the request for review and that the court engaged in its own “statutory construction” to justify its finding of prematurity. They relied on Louisiana jurisprudence to support their position, including the Supreme Court’s opinion in *Turner v. Willis-Knighton Med. Ctr.*, 12-0703 (La. 12/4/12), 108 So.3d 60, 67.

The defendants responded that their continued and persistent efforts to select a chair, supported by extensive evidence of the plaintiffs’ failure and refusal to cooperate, satisfied their burden to appoint a chair. They also argued that they had exhausted all other procedural remedies,

including their writ of mandamus, followed by notifying the PCF that they had no intention of waiving their panel rights. The appeals court agreed that the defendants had taken these actions and commended them for their efforts, but observed:

It is also apparent, and even rational, that the defendants wish to cloak themselves with the legal limitations and procedures set forth by the Medical Malpractice Act, including potentially receiving a favorable opinion from the MRP. Just as understandably, it is the plaintiff’s desire to avoid the legal limitations of the Act, as well as a potentially adverse opinion by the MRP.

The appellate court noted agreement with the district court’s ruling insofar as it said that the legislative intent of the MMA was not to allow the plaintiffs to sidestep the medical-review panel by failing to cooperate; nevertheless, a plaintiff’s refusal to participate in the process of the appointment of a chair provides no basis for circumventing the express language of § 1299.47(A)(2)(c): “Failure to appoint a

chair within one year from the date the Request for Review is filed results in a waiver of the panel procedure by both parties.”

Although clearly reluctant to issue any confirmation that the “simplest way to remove the claim from the purview of the Medical Malpractice Act is to refuse to cooperate with the formation of a Medical Review Panel,” the court explained that the defendants’ failure to comply strictly with the Act left it with no choice but to strictly construe the MMA, because it constitutes special legislation in derogation of the general rights available to a tort victim. *McGlothlin v. Christus St. Patrick Hosp.*, 10-2775 (La. 7/1/11), 65 So.3d 1218, 1215. The absence of confusion and ambiguity in the statutory language led the court to reverse the ruling on the defendants’ exceptions of prematurity and dismissal of the plaintiffs’ suit and to remand the case to the district court.

—Robert J. David

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Houma/ Thibodaux Area	Danna Schwab (985)868-1342 • dschwab@theschwablawfirm.com	Opelousas/Ville Platte/ Sunset area	John L. Olivier (337)662-5242 • (337)942-9836 • (337)232-0874 johnolivier@centurytel.net
Jefferson Parish Area	Pat M. Franz (504)455-1986 • patfranz@bellsouth.net	River Parishes Area	Judge Jude G. Gravois (225)265-3923 • (225)265-9828 Cell (225)270-7705 • judegravois@bellsouth.net
Lafayette Area	Josette Abshire (337)237-4700 • director@lafayettebar.org	Shreveport Area	M’Lissa Peters (318)222-3643 • mpeters@shreveportbar.com

For more information, go to: www.lsba.org/goto/solace.



Waste Removal Services Held to Be Part of the Taxable Gross Proceeds of Leases

Pot-O-Gold Rentals, L.L.C. v. City of Baton Rouge, 13-1323 (La. App. 1 Cir. 9/17/14), ____ So.3d ____, 2014 WL 4651127.

The 1st Circuit Court of Appeal reversed a trial court's decision granting Pot-O-Gold Rentals, L.L.C.'s motion for summary judgment, which held that waste-removal services were not taxable as gross proceeds derived from the lease or rental of portable toilets and ordered the City of Baton Rouge to refund taxes that had been paid under protest. The 1st Circuit held that Pot-O-Gold's charges for cleaning and sanitation services were subject to the city's sales-and-use tax because they were provided in connection with, and incidental to, the lease or rental of tangible personal property.

Pot-O-Gold owns portable toilets and holding tanks that it leases to customers and offers cleaning and sanitation services for these rented toilets and tanks. Pot-O-Gold also offers cleaning and a sanitation service for portable toilets and tanks owned by others and does not require rental customers to purchase its sanitation or cleaning service. If a rental customer chooses to reject sanitation or cleaning services, the customer is charged a higher rental fee. A compliance audit revealed that, although Pot-O-Gold collected taxes on its rentals, it had not collected taxes for the cleaning or sanitization services it provided in connection with these rentals. The city issued an assessment for additional sales taxes, which Pot-O-Gold paid under protest and filed the present suit to recover.

The city's ordinance imposed a tax on the lease or rental of tangible personal property. Such taxes are levied on the

gross proceeds derived from the lease or rental of tangible personal property, where the lease or rental of such property is an established business, or part of the same is incidental or germane to the business.

The 1st Circuit looked to its prior jurisprudence that held when assessing the taxability of an agreement involving the lease of tangible personal property, there is ordinarily no breakdown into taxable or nontaxable elements. Instead, an examination of the "essence of" or the "true object of" the transaction must be done. The 1st Circuit found the "true object" of the transactions at issue was the furnishing of toilets and tanks and held that the cleaning and sanitation services were provided in connection with, and incidental to, the rental of such tangible personal property. Finding

that the taxability of the services should have been determined by the taxability of the entire transaction, the 1st Circuit found that the district court's holding was not in accord with established jurisprudence. The 1st Circuit also held it is of no import whether the services were optional for leases, whether the services could be purchased from another party, whether services could be rejected or whether the services could be purchased independently from Pot-O-Gold by others.

—**Antonio Charles Ferachi**

Member, LSBA Taxation Section
Litigation Division
Louisiana Department of Revenue
617 North Third St.
Baton Rouge, LA 70821

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CHAIR'S MESSAGE

Advocacy in Mental Health Law: The Challenge of Our Generation's Future

By J. Lee Hoffoss, Jr.



J. Lee Hoffoss, Jr.

Mental health.

The term is broad, unwieldy and poorly defined. In fact, its definition changes depending on the profession. In the legal field, mental health has, in the past, primarily dealt with interdiction, curatorship, etc. — all means of restricting and controlling people with mental health issues. Due to increasing awareness, mental health has evolved from an area of control toward gaining and maintaining independence for people with mental illnesses or disabilities, as well as ensuring that those people have the appropriate avenues of treatment. This is where the younger generation of lawyers will have to step up and further advocate for the rights of all individuals.

In the past 10 years, our country has taken

bold steps in recognition of the rights of people with mental illnesses or disabilities. The Affordable Care Act now requires that all health insurance policies cover mental health and substance use disorder services. Additionally, our state was a pioneer in requiring employer-sponsored health plans issued by Louisiana insurers to cover treatment for autism spectrum disorders. Such steps have increased the public's awareness of mental health issues and have increased the independence and coping mechanisms of people with mental illness or disabilities.

With the advancement in our society from control to encouraging independence comes advocacy groups championing the causes of those people suffering from mental illness. Most notable is the National Alliance on Mental Illness with local chapters throughout our country. These advocacy groups are developing more each day, and their power to promote the causes of those with mental illness is growing. However,

advocacy outside the legal system can only take these groups and the individuals they represent so far. It is our job, as the legal community, to help them take the steps to ensure they are treated fairly in society.

Having a child with autism has brought this cause close to home and taught me a great deal about the need for mental health law advocacy. The ever-increasing rate of diagnosis serves as a motivator that drives the focus on awareness and early intervention in order to maximize the chance of success for all. I have appeared before Senate committees advocating for the rights of Board-Certified Behavior Analysts (BCBAs) to assist children with autism without extreme and burdensome oversight from additional governing boards. This advocacy helped, for the most part, free BCBAs to do what they are trained to do: help children with autism and other developmental disorders.

To the young lawyer community, this type of advocacy will fall upon us: to ensure that the rights of all individuals are protected and that treatment needed to gain independence is available without impediment. We must strive to ensure that evolution of mental health advocacy continues on the path of independence and does not fall back to control. We must be the voice of those who cannot speak for themselves.



YOUNG LAWYERS DIVISION NEWS

Get the latest Young Lawyers Division
news online

Go to: www.lsba.org/YLD

The Young Lawyers Division Web site is a public service of the LSBA-YLD Council, providing YLD information to the public and communicating with YLD members.

YOUNG LAWYERS SPOTLIGHT

Tom S. Easterly Baton Rouge

The Louisiana State Bar Association (LSBA) Young Lawyers Division is spotlighting Baton Rouge attorney Tom S. Easterly.

Easterly is a partner in the Baton Rouge firm of Taylor, Porter, Brooks & Phillips, L.L.P., which recently celebrated its 100th year of service to the local community. He joined the firm in 2006 and was named a partner in 2011. He practices in Taylor Porter's only office in Baton Rouge.

He graduated from Catholic High School in Baton Rouge, then attended the University of Georgia in Athens, majoring in finance. He received his bachelor of busi-



Tom S. Easterly

ness administration degree, with honors, in 2002 from the Terry College of Business. He enrolled in Louisiana State University and began dual courses of study as part of a four-year JD/MBA program. He received a master's degree in business administration in 2005. A few months later, he received his JD degree and bachelor of civil law degree from LSU Paul M. Hebert Law Center. During the JD/MBA program, he focused in business law and was a member of the *Louisiana Law Review*. He was admitted to practice in Louisiana in October 2006.

In his practice, Easterly advises local and national clients involved in litigation matters as both plaintiff and defense counsel, and he represents clients in a wide range of business transactions and contract matters. His practice is well-rounded with a heavy emphasis on commercial disputes and transactions. His work typically involves construction, real estate, redhibition, insurance, toxic tort, workers' compensation, breach of contract and bankruptcy cases, all of which frequently have overlapping subject matter concerns. He has significant experience with complex

personal injury matters. As part of his transaction practice, he drafts and negotiates various types of contracts. He is admitted to practice before all Louisiana state and federal courts and the United States 5th Circuit Court of Appeals.

He was named a 2014 Rising Star by *Louisiana Super Lawyers*. He is a frequent lecturer on legal issues. His seminars have focused on insurance coverage litigation, including bad faith and extra-contractual liability claims, and effective collection strategies.

Active in the Baton Rouge community, Easterly is a founding member of the Muscular Dystrophy Association's Legal Leaders Program and is a former member of the Baton Rouge City Club's Board of Governors. He is an avid sportsman and contributes his time to Delta Waterfowl and the Coastal Conservation Association. In the little spare time he has, he enjoys hunting and fishing in Louisiana and Mississippi and cooking on his "Big Green Egg."

He and his wife, Lindsey, live in Baton Rouge and are the parents of 3-year-old twins.

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Nomination Deadline is Feb. 13, 2015: Young Lawyers Division Awards Nomination Form

The Young Lawyers Division is accepting nominations for the following awards:

- ▶ **Hon. Michaelle Pitard Wynne Professionalism Award.** This award is given to a young lawyer for commitment and dedication to upholding the quality and integrity of the legal profession and consideration towards peers and the general public.
- ▶ **Outstanding Young Lawyer Award.** This award is given to a young lawyer who has made outstanding contributions to the legal profession and his/her community.
- ▶ **Service to the Public Award.** This award is given to a young lawyer local affiliate organization that has implemented a program or provided a service to that local community by which the non-attorney public has been helped. The program or service must be sponsored by the young lawyer local affiliate organization.
- ▶ **Service to the Bar Award.** This award is given to a young lawyer local affiliate organization that has implemented a program or provided a service that has benefited and/or enhanced the attorney community in that area. The program or service must be sponsored by the young lawyer local affiliate organization.
- ▶ **YLD Pro Bono Award.** This award is given to a young lawyer for commitment and dedication to providing pro bono services in his/her community.

All entries must include a nomination form, which may not exceed 10 pages. In addition, entries should include a current photo and résumé of the nominee, newspaper clippings, letters of support and other materials pertinent to the nomination. Nomination packets must be submitted to **Jennifer Z. Rosenbach, Chair, LSBA Young Lawyers Division Awards Committee, Jefferson Parish District Attorney's Office, 200 Derbigny St., Gretna, LA 70053**. Any nomination packet that is incomplete or is not received or postmarked on or before **Feb. 13, 2015**, will not be considered. Please submit detailed and thorough entries, as nominees are evaluated based on the information provided in the nomination packets. All winners will be announced at the combined LSBA Annual Meeting and LSBA/LJC Summer School in Destin, Fla., in June 2015.

1. Award nominee is being nominated for: (Individuals/local affiliate organizations may be nominated for more than one award. Please check all that apply. Candidates will only be considered for the award(s) for which they have been nominated.)

- | | |
|--|---|
| <input type="checkbox"/> Hon. Michaelle Pitard Wynne Professionalism | <input type="checkbox"/> Outstanding Young Lawyer |
| <input type="checkbox"/> Service to the Public | <input type="checkbox"/> Service to the Bar |
| <input type="checkbox"/> YLD Pro Bono | |

2. Nominator Information:

Name _____
Address/State/Zip _____
Telephone/Fax _____
E-mail _____

3. Nominee Information:

Name _____
Address/State/Zip _____
Telephone/Fax _____
E-mail _____
Birth Date _____
Marital Status/Family Information _____

4. Describe the nominee's service to the public for the past five years (or longer, if applicable). Include details as to the nature of the service, value to the public, amount of time required, whether nominee's activities are a part of his/her job duties, and other pertinent information.

5. Describe the nominee's service to the Louisiana State Bar Association Young Lawyers Division for the past five years.

6. Describe the nominee's service to the legal profession for the past five years.

7. Describe the nominee's particular awards and achievements during his/her career.

8. Provide a general description of the nominee's law practice.

9. Describe what has made the nominee outstanding (answer for Outstanding Young Lawyer Award only).

10. Has the nominee overcome challenges (handicaps, limited resources, etc.)?

11. Why do you believe your nominee deserves this award?

12. Provide other significant information concerning the nominee.

For more information, contact Jennifer Z. Rosenbach at (504)368-1020 or email jrosenbach@jpda.us.



Lawyers, Judges Participate in Constitution Day at Schools Statewide

Several Louisiana lawyers and judges participated in Constitution Day events at schools statewide on Sept. 17. Many of these activities, reaching more than 2,700 students, were organized through the “Lawyers/Judges in the Classroom” program, a partnership of the Louisiana State Bar Association, the Louisiana District Judges Association and the Louisiana Center for Law and Civic Education (LCLCE).

To encourage Americans to learn more about the Constitution, Congress established Constitution Day for Sept. 17, commemorating the formation and signing of the U.S. Constitution in 1787.

Lawyers and judges participating in Constitution Day activities included Denise A. Allemand, Barry W. Ashe, Benjamin J. Bleich, Alison C. Bondurant, Kristy Z. Boxberger, Jessica G. Braun, Danielle N. Brown, Trina T. Chu, Judge John E. Conery, Judge Rachelle D. Dick, John F. Dillon, Mary L. Dumestre, Megan M. Dupuy, Angela M. Elly, Judge W. Ross Foote, Sandra E. Gutierrez, A. Spencer Gulden, Roger P. Hamilton Jr., Robert H. Harrison Jr., Becky Jo Hollen, Sarah Hood, Teresa D. King, Judge Mary Ann Vial Lemmon, Carol L. Michel, Dean Maria Pabon Lopez, Mark A. Myers, Corey P. Parenton, Judge Michael A. Pitman, Kenneth A. Polite, Jr., Judge Karen Wells Roby, Judge Robert L. Segura, Celeste H. Shields, Kimberly Silas, Judge Sheva M. Sims, Judge Raymond S. Steib Jr. and Jason M. Verdigets.

Participating schools included Academy of the Sacred Heart High, Alice Birney Elementary, Baton Rouge Charter Academy at MidCity, Bowling Green School, Boyet Junior High, Caddo Magnet High, Claiborne Fundamental Magnet Elementary, Cohen College Prep High, Dutchtown High, Eden



Attorneys Alison C. Bondurant and Celeste H. Shields visited with students at Holy Ghost School in Hammond on Constitution Day.

Gardens Magnet, Folsom Junior High, Haynes Academy for Advanced Studies, Holy Ghost School, Holy Rosary High, Iberia Middle, International High School of New Orleans, Jesuit High, John Curtis Christian School, John Ehret High, Lakeshore Middle, Live Oak Middle, Lockport Middle, Lusher Charter School, Mount Carmel Academy, Mulberry Elementary, New Iberia Senior High, Ponchatoula Junior High, Ridgewood Middle, Riverside Academy, Springville Educational Center, St. Augustine High, St. James High, St. James Parish Science & Math Academy, St. Katharine Drexel Preparatory, St. Thomas Aquinas High, St. Paul’s School, Warren Easton Charter High, West Jefferson High and Westgate High.

Participating teachers and school administrators included Mary Barnes, Jimmy Benton, Ellis Bonaventure, Jared Boscaren, Julie Boyd, Claudia Bourgeois, Bro. Ray Bulliard, Ariane Brumfield, Crystal Chase, Charlotte Collins, Valerie Comeaux, Tonya Costa, Jennifer Crain, Jeff DeRouen, Nicole Estis, Jan Garner, Sean Goodwin, Charles Greiner, Sergio Guzman, Patty Hamilton, Colette Handy, Julie Hartley, Mark Hernandez, Wayne Hill, Charlotte Hinson, Tim

Huete, Sr., Sherice Hurst, Stacy Jefferson, Bradley Kiff, Randell Legette, Rebecca Lofton, Andy Marchal, Netosha MacDonald, Evelyn McCulla, Asia Muhaimin, Jamie Staub, Erin Scott-Stewart, Tyson Stanley, Katrina Struloeff, Christi Sumich, Tamra Tramonte, Emily Wagner and Cathy Yaeger.

For more information, visit the LCLCE website, www.lalce.org.



Forge Mathes, left, a student at St. Paul’s Catholic School in Covington, read his winning Constitution Day essay during a Sept. 17 ceremony coordinated by a U.S. District Court, Eastern District of Louisiana, Committee led by Judge Mary Ann Vial Lemmon. Mathes is with his teacher, Bro. Ray Bulliard. To mark the 225th anniversary of the federal courts, several courts conducted special local naturalization ceremonies. The New Orleans ceremony included a multi-lingual skit, written by New Orleans attorney Barry W. Ashe and performed by students of the International High School of New Orleans.

By David Rigamer, Louisiana Supreme Court

NEW JUDGE... IN MEMORIAM

New Judge

Sharon Darville

Wilson was elected judge of Division F, 14th Judicial District Court, becoming the first African-American woman elected to a district judgeship in Calcasieu Parish. She earned her BA degree in criminal justice in 1988 from Louisiana State University and her JD degree in 1991 from LSU Paul M. Hebert Law Center. She served as an assistant district attorney in Calcasieu Parish from 1992-99 and 2002-09. From 1999-2002, she served as chief felony prosecutor with the Allen Parish District Attorney's Office. From 2009 until her recent election, she was in private practice. Judge Wilson is a member of the Southwest Louisiana Bar Association. She is a member and past president of the Hamilton Christian Academy School Board and a member of the Lake Charles branches of the National Association of University Women and TOP Ladies of Distinction, Inc. She is married to Kerrel Wilson and they are the parents of two children.



Sharon Darville
Wilson

Resignation

34th Judicial District Court Judge Perry M. Nicosia resigned his position as judge of Division C, effective Aug. 18, 2014.

Deaths

► Retired 5th Circuit Court of Appeal Chief Judge Charles Grisbaum Jr., 77, died Sept. 6, 2014. He earned his bachelor's and LLB degrees in 1959 and 1961, respectively, from Loyola University, where he was a member of the National Moot Court Team. From 1965-82, he was a partner in the firm of Grisbaum & Klepper. He became a member

of the state House of Representatives in 1972 where he served as chair of the Administration of Criminal Justice Committee. He was the floor leader for the Governor from 1980-82. In 1982, Judge Grisbaum was elected to the 5th Circuit Court of Appeal, becoming chief judge in 1999. He served on the 5th Circuit until his retirement in 2001.

► Retired 28th Judicial District Court Judge Edwin R. Hughes, 78, died April 23, 2014. He served in the U.S. Army during World War II. He earned his BA degree in government in 1960 from Indiana University and his JD degree in 1963 from Tulane Law School. Judge Hughes was elected to the 28th JDC bench in 1972 and served there until 1984. In 1984, he was appointed as a federal immigration judge for Oakdale, La., and Dallas, Texas, serving until 2006. He was a member of the American Bar Association, the American Judicature Society and the National Council of Juvenile Court Judges. He also served as commander of VFW Post #5002 in Jena and president of the Jena Kiwanis.

► Retired 12th Judicial District Court Judge James N. Lee, 90, died Aug. 3, 2014. He graduated from Louisiana College in 1943 and then served in the U.S. Army during World War II. He attended Louisiana State University Law School, earning his LLB degree in 1948 and starting his law practice in Bunkie shortly thereafter. In 1961, after having worked with the Legislature to establish Bunkie City Court, Judge Lee was elected that court's first judge. In 1979, he was elected to the 12th JDC, where he served until his retirement in 1985. In 2011, the Bunkie City Council and mayor honored him for his efforts in founding and serving on the city court by renaming Pecan Street as "Judge Lee Oaks." He was a member of the Bunkie Masonic Lodge and was a Shriner. He also served on the board of the Avoyelles Trust and Savings Bank.

► Retired Orleans Parish Juvenile Court Judge C. Hearn Taylor, 65, died Aug. 21,

2014. He earned his BA degree in 1975 from Howard University in Washington, D.C. He received the Earl Warren Legal Scholarship from the NAACP to attend Southern University Law Center, earning his JD degree in 1978. During law school, he served as chair of the House of Delegates of the American Bar Association's Law Student Division. Early in his career, he worked for the U.S. Justice Department and was honored on the Senate floor for his involvement in defusing a hostage situation in a federal courthouse. He was elected as Orleans Parish Juvenile Court judge in 1991 and served in that capacity until his retirement in 2008. Judge Taylor was a board member of the City Park Improvement Association, Each One Save One, the Boys and Girls Club of Greater New Orleans and the NO/AIDS Task Force. He was a member of the Louis A. Martinet Legal Society, Inc., Jack and Jill of America, 100 Black Men and the National and American bar associations. He was recognized as an outstanding alumnus by Southern University Law Center. He received the American Bar Association's Silver Key Award, the Lawman of the Year Award from Kiwanis International's Big Easy Chapter and the Alliance for Good Government's Eddington Award. He twice received the Outstanding Jurist Award from Victims and Citizens Against Crime of Greater New Orleans.

► Retired 26th Judicial District Court Judge Monty M. Wyche, 87, died July 28, 2014. He was admitted to the Bar in 1950 after receiving his law degree from Louisiana State University Law School. He engaged in general practice in Bossier Parish until his appointment as second assistant district attorney for the 26th JDC in 1959. He was appointed as judge of the 26th JDC in 1969 and served in that capacity until his retirement in 1988. Judge Wyche served in the U.S. Navy during World War II and the Korean Conflict. He was a member and past president of the Benton Louisiana Lions Club and the American Legion.

PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Blue Williams, L.L.P., in Metairie announces that Jacob K. Best and Christopher K. LeMieux have joined the firm as of counsel and Alexis K. Caughey and Bert J. Miller have joined the firm as associates.

Breaud & Meyers in Lafayette announces that **Jade A. Forouzanfar** has joined the firm as an associate.

Thomas M. Calogero and Tanya Picou Faia announce the formation of their firm, Calogero & Faia, L.L.C., located at Ste. 114, 2955 Ridgelake Dr., Metairie, LA, 70002, phone (504)272-2969.

D'Aquila, Contreras & Vega, A.P.L.C., in Kenner announces that Jeffrey A. Jones has rejoined the firm as of counsel.

Deutsch, Kerrigan & Stiles, L.L.P., in New Orleans announces that **Brian S. Schaps**,

Sharrolyn Jackson Miles, **Joseph B. Landry** and **Evan J. Bergeron** have joined the firm as associates.

Lamothe Law Firm, L.L.C., in New Orleans announces that **Richard M. Martin, Jr.** has joined the firm as senior counsel.

Leake & Andersson, L.L.P., in New Orleans announces that **Vallie Schwartz Dugas** and **Tiffany Thomas Smith** have joined the firm as associates.

Lewis & Caplan, A.P.L.C., in New Orleans announces that Barrett R. Stephens has joined the firm.

Perrier & Lacoste, L.L.C., in New Orleans announces that **Curt L. Rome** has joined the firm as special counsel and **Laura M. Mayes** has joined the firm as an associate.

Seale, Smith, Zuber & Barnette, L.L.P., in Baton Rouge announces that Mark C. Garison has been named a partner in the firm.

Also, Andrew J. Reynolds and Jessica W. Chapman have joined the firm as associates.

Andrew G. Legrand and **Chadwick A. Tobler** announce the formation of the Spera Law Group, L.L.C., located at Ste. A, 1500 Sugar Bowl Dr., New Orleans, LA 70112, phone (504)300-9938, website www.speralaw.com.

NEWSMAKERS

Richard J. Arsenault, a partner in the Alexandria firm of Neblett, Beard & Arsenault, received the "America's Most Honored Professionals" 2014 Award from the American Registry. He also was appointed to the Louisiana State Bar Association's Continuing Legal Education Committee for 2014-15.

Louisiana 1st Circuit Court of Appeal Chief Judge (Ret.) Burrell J. Carter was appointed to the American Bar Association's Judicial Ethics and Professionalism Committee.



Richard J. Arsenault



Evan J. Bergeron



Richard A. Chopin



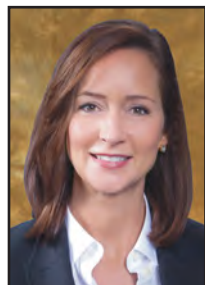
Lawrence N. (Larry) Curtis



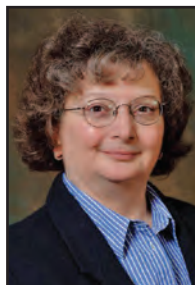
Robert J. David



Stevan C. Dittman



Vallie Schwartz Dugas



Lillian E. Eyrich



Jade A. Forouzanfar



Stephen J. Herman



Frank E. Lamothe III



Joseph B. Landry

Stephen J. Herman, a partner with Herman, Herman & Katz, L.L.C., in New Orleans, is serving as president of the Louisiana Association for Justice.

Frank E. Lamothe III, with the Lamothe Law Firm, L.L.C., in New Orleans, participated as part of a 15-person United States trial team at the International Masters in Trial Program in Berlin, Germany. The program was sponsored by the American Board of Trial Advocates. Also, Lamothe was included in the National Trial Lawyers Top 100 for "civil plaintiff."

Ryan M. McCabe, an associate with Steeg Law Firm, L.L.C., in New Orleans, was named a council member of the Louisiana State Law Institute.

John E. McElligott, Jr., a partner in the Lafayette firm of Davidson, Meaux, Sonnier, McElligott, Fontenot, Gideon & Edwards, L.L.P., was elected as a Fellow of the International Society of Barristers.

Adrienne A. Stroble, court administrator for the 22nd Judicial District Court (St. Tammany and Washington parishes), received the 2014 "Professional of the Year" honor from the Southern Criminal Justice Association. She is currently president of the Louisiana Court Administrators Association.

PUBLICATIONS

The Best Lawyers in America 2015

Adams and Reese, L.L.P. (Baton Rouge, New Orleans): Henry B. Alsobrook, Jr., E. Gregg Barrios, Mark R. Beebe, Philip O. Bergeron, Charles A. Cerise, Jr., Robin B. Cheatham, V. Thomas Clark, Jr., O. Ray Cornelius, Scott E. Delacroix, Kathleen F. Drew, John M. Duck, Brooke Duncan III, Richard B. Eason II, Mark S. Embree, Philip A. Franco, A. Kirk Gasperez, William B. Gaudet, Charles F. Gay, Jr., C. Kevin Hayes, E.L. Henry, Edwin C. Laizer, Leslie A. Lanusse, Francis V. Liantonio, Jr., Joseph W. Looney, Donald C. Massey, Don S. McKinney, Patricia B. McMurray, Robert B. Nolan, Thomas G. O'Brien, Glen M. Pilié, Jane C. Raiford, Daniel K. Rester, Edward J. Rice, Jr., Jeffrey E. Richardson, James T. Rogers III, Deborah B. Rouen, Robert C. Schmidt, E. Paige Sensenbrenner, Ronald J. Sholes, Mark J. Spansel, Martin A. Stern, Mark C. Surprenant, Janis van Meerveld, Roland Vandenweghe, Robert A. Vosbein and David M. Wolf.

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Law Office of Larry Curtis, A.P.L.C. (Lafayette): **Lawrence N. (Larry) Curtis.**

Fowler Rodriguez (New Orleans, Gulfport, Miss.): Alanson T. Chenault IV, Delos E. Flint, Jr., George J. Fowler III, Edward F. LeBreton III, Antonio J. Rodriguez, John A. Scialdone and Norman C. Sullivan, Jr.

Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C. (New Orleans): **Robert J. David, Stevan C. Dittman, Gerald E. Meunier, Walter C. Morrison IV and Irving J. Warshauer.**

Jackson Lewis, P.C. (New Orleans): Magdalen Blessey Bickford, Susan F. Desmond, Charles F. Seemann III and René E. Thorne.



Andrew G. Legrand



Richard M. Martin, Jr.



David A. Martinez



Laura M. Mayes



Ryan M. McCabe



Gerald E. Meunier



Sharrolyn Jackson Miles



Walter C. Morrison IV



Randy Opotowsky



John W. Redmann



Curt L. Rome



Brian S. Schaps

Jones, Swanson, Huddell & Garrison, L.L.C. (New Orleans): Lynn E. Swanson.

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rill, J. Michael Parker, Jr., Harry J. Philips, Jr., Patrick D. Seiter, Fredrick R. Tulley and Gerald L. Walter, Jr.

Louisiana Super Lawyers 2014

Law Office of John W. Redmann, L.L.C. (Gretna): **John W. Redmann.**

Mid-South Super Lawyers 2014

Gainsburgh, Benjamin, David, Meuni-er & Warshauer, L.L.C. (New Orleans): **Walter C. Morrison IV.**

New Orleans City Business

Steeg Law Firm, L.L.C. (New Orleans): **Robert M. Steeg.** 2014 Money Maker.

New Orleans Magazine 2014 Top Lawyers

Chaffe McCall, L.L.P. (New Orleans): Walter F. Becker, Jr., Keith M. Benit, G. Wogan Bernard, Charles P. Blanchard, Shawn M. Bridgewater-Normand, Jonathan E. Brouk, H. Michael Bush, Katharine R. Colletta, E. Howell Crosby, Adelaida J. Ferchmin, Thomas D. Forbes, Mandy M. Gagliardi, Edward N. George III, William F. Grace, Jr., Douglas L. Grundmeyer, D'Juan M. Hernandez, Harry R. Holladay, Douglas R. Holmes, Loretta O. Hoskins, William H. Langenstein III, J. Dwight LeBlanc, Jr., Julie D. Livaudais, Joseph B. Marino III, Charles D. Marshall III, R. Christopher Martin, Jonathan C. McCall, Corinne A. Morrison, Sarah V. Myers, John F. Olinde, Paul L. Peyronnin, Kathleen S. Plemer, Robert S. Rooth, Peter J. Rotolo III, John C. Saunders, Jr., Philip B. Sherman, G. Phillip Shuler III, Philip R. Sims, Daniel A. Tadros, Brent A. Talbot, Ryan C. Toups, Derek A. Walker and James C. Young.

Chopin Wagar Richard & Kutcher, L.L.P. (Metairie): **Richard A. Chopin** and **Nelson W. (Chip) Wagar III.**

People Deadlines and Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
April/May 2015	Feb. 4, 2015
June/July 2015	April. 4, 2015
Aug./Sept. 2015	June 4, 2015
Oct./Nov. 2015	Aug. 4, 2015
Dec. 2015/Jan. 2016	Oct. 4, 2015

Announcements are published free of charge for members of the Louisiana State Bar Association. Members may publish photos with their announce-ments at a cost of **\$50 per photo**. Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to:

Publications Coordinator
Darlene M. LaBranche
Louisiana Bar Journal
601 St. Charles Ave.
New Orleans, LA 70130-3404

or email
dlabranche@lsba.org



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Robert M. Steeg



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Chadwick A. Tobler



Nelson W. (Chip)
Wagar III



Irving J. Warshauer

UPDATE



Several Louisiana State University Paul M. Hebert Law Center alumni were recognized for their career achievements. From left, Law Center Chancellor Jack M. Weiss III; Hon. James J. Brady and Maryam Sabbaghian Brown, both Distinguished Achievement Award recipients; Cordell H. Haymon, 2014 Distinguished Alumnus; and Craig W. Murray and Patrick S. Ottinger, both Distinguished Achievement Award recipients. Photo provided by LSU Law Center.

LSU Law Center Alumni Recognized for Career Achievements

Several Louisiana State University Paul M. Hebert Law Center alumni were recognized for their career achievements during a September 2014 luncheon.

Cordell H. Haymon (class of 1968) was honored as the 2014 Distinguished Alumnus. Receiving Distinguished Achievement Awards were Hon. James J. Brady (class of 1969), Maryam Sabbaghian Brown (class of 2000), Craig W. Murray (class of 1976) and Patrick S. Ottinger (class of 1973).

The Distinguished Alumnus Award is given annually to a graduate for rare distinction in professional achievement and loyalty to the LSU Law Center. The Distinguished Achievement Awards recognize graduates for professional achievement and career distinction, service to and support of LSU Law, and service to the community.

Haymon is senior vice president of SGS Petroleum Service Corp., based in Baton Rouge. He received the Louisiana State Bar Association's (LSBA) inaugural Pro Bono Award in 1986 and served on the Board of Governors and on the special committee reviewing changes to the Louisiana Bar Exam.

Judge Brady serves on the bench of the U.S. District Court, Middle District of Louisiana. He was nominated by President William J. Clinton in 1999 and was confirmed by the U.S. Senate in 2000. He serves on the board of directors of the Federal Judges Association.

Brown is assistant to the Speaker of the U.S. House of Representatives for policy, providing advice and counsel on domestic and international energy and environmental policy issues.

Murray is the senior finance partner at the Houston office of Vinson & Elkins. He is a member of the Houston Energy Finance Group and the Houston Commercial Finance Lawyers Group and is a frequent speaker for Louisiana Mineral Law Institute CLE programs.

Ottinger is a partner in the Lafayette firm of Ottinger Hebert, L.L.C. He served as LSBA president from 1998-99. He served on the LSBA's Board of Governors and received the LSBA's Friend of Pro Bono Award in 2011.



Warren A. Perrin, left, chair of the Louisiana State Bar Association's Francophone Section and author of the book, *Acadie Then and Now: A People's History*, donated a copy of the book to the library of the Loyola University College of Law. From left, Perrin; Loyola College of Law professor Dr. Claire Lebas; and Ron Miguez, museum director of operations.

Francophone Section Presents International Law Symposium in Canada

Louisiana State Bar Association Francophone Section Chair Warren A. Perrin, along with David E. Marcantel and Edwin Fleishman, represented the association at the Judge Allen M. Babineaux International Civil Law Symposium, "A Gumbo of French and Common Law," during the World Acadian Congress in New Brunswick, Canada, in August 2014.

Symposium presenters included: Michel Bastarache, former justice of the Supreme Court of Canada, and U.S. District Court Judge Richard T. Haik, Western District of Louisiana, "Judicial Observations: Professionalism with the Court;" Basile Chiasson, New Brunswick, "The Rule of Law;" Perrin, Lafayette, "Revisiting the Royal Proclamation After 10 Years;" and Nicolas Lambert, professor, University of Moncton School of Law, "Administrative Law."

Lawyers attended from Montreal, Quebec City, Ottawa, Maine, California, Louisiana, Nova Scotia and New Brunswick.

Former Justice Bastarache said the Ontario Bar Association is having its convention in Lafayette on June 16, 2015. The event will be hosted by the Lafayette Bar Association, the Louisiana State Bar Association's Francophone Section and Judge Haik.



Among those attending the Supreme Court of Louisiana Historical Society meeting were, from left, Judge Marc T. Amy, first vice president; Mathile W. Abramson, second vice president; Benjamin West Janke, treasurer; Louis D. Curet and E. Phelps Gay, Membership Committee co-chairs; Donna D. Fraiche, president; Joseph L. (Larry) Shea, Jr., Louisiana State Bar Association (LSBA) president; Edward Diefenthal; and Richard K. Leefe, immediate past LSBA president.

Supreme Court Historical Society Discusses Upcoming Plans

The board of the Supreme Court of Louisiana Historical Society discussed upcoming programming, plans to launch its new website and ways to increase its current membership during its meeting in August 2014.

Board President Donna D. Fraiche welcomed incoming board members, Judge C. Wendell Manning, Louisiana Bar Founda-

tion (LBF) president, and Joseph L. (Larry) Shea, Jr., Louisiana State Bar Association (LSBA) president. She thanked outgoing board members, Leo C. Hamilton, immediate past LBF president, and Richard K. Leefe, immediate past LSBA president, for their service on the board. She also announced that Judge Marc T. Amy was retiring from the board.

Also attending the meeting were Mathile W. Abramson, second vice president; Benjamin West Janke, treasurer; Judge (Ret.) James H. Boddie, Jr.; Louis D. Curet; Allen J. Danos, Jr.; Judge James L. Dennis; Edward (Ned) Diefenthal; Cynthia G. Dupree; Dr. Rachel L. Emanuel; E. Phelps Gay; Dean María Pabón López; and Executive Director Georgia Chadwick.

Legal Services of North Louisiana Celebrates 40th Anniversary

The Legal Services of North Louisiana, Inc.'s (LSNL) Private Attorney Involvement Program hosted the Legal Services Corp.'s (LSC) 40th Anniversary Access to Civil Justice "Legacy" Recognition reception at the Shreveport Bar Center in September 2014.

LSBA President Joseph L. (Larry) Shea, Jr. and Shreveport Bar Association President Lawrence W. (Larry) Pettiette, Jr. welcomed more than 60 guests.

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson congratulated and encouraged LSNL board and staff by letter. LSC President James J. Sandman sent greetings via video, and special greetings were extended by Louisiana Bar Foundation President Judge C. Wendell Manning. Judge Roy S. Payne, U.S. Magistrate Judge, U.S. District Court, Eastern District of Texas, and current Shreveport Bar Foundation president, gave congratulatory remarks.

LSNL Board Chair Bennett L. Politz presented the firm of Wilkinson, Carmody & Gilliam in Shreveport with a resolution recognizing the generous contributions made to LSNL, as well as its legacy of professional commitment to the concept of



Louisiana State Bar Association President Joseph L. (Larry) Shea, Jr., far right, attended the September "Celebration of the 40th Anniversary of the Legal Services Corporation" at the Shreveport Bar Center. Also attending, from left, were Judge Leon L. Emanuel III, director of Legal Services of North Louisiana; Judge C. Wendell Manning, president of the Louisiana Bar Foundation; Bennett L. Politz, chair of the board of Legal Services of North Louisiana; Judge Roy S. Payne, president of the Shreveport Bar Foundation; Larry W. Pettiette, Jr., president of the Shreveport Bar Association; and Shea.

access to civil justice for indigent citizens throughout north Louisiana. Attorneys Arthur R. Carmody and Bobby S. Gilliam relayed the history of Legal Services dating back to the early 1900s.

LBF Seeking Nominations for 2015 Boisfontaine Award

The Louisiana Bar Foundation (LBF) is seeking nominations for the 2015 Curtis R. Boisfontaine Trial Advocacy Award. Nominations must be received in the LBF office by Friday, Feb. 6, 2015.

Nominations should include the nominee's name, contact information, a brief written statement on the background of the nominee, as well as reasons why the nominee is proposed as the award recipient. Nominations should be mailed to Dennette Young, Communications Director, Louisiana Bar Foundation, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112, or emailed to dennette@raisingthebar.org by the deadline.

The award will be presented at the Louisiana State Bar Association's Annual Meeting in Destin, Fla., in June. The recipient will receive a plaque and \$1,000 will be donated to the recipient's choice of a non-profit, law-related program or association providing services in Louisiana.

This trial advocacy award was established through an endowment to the Louisiana Bar Foundation in memory of Curtis R. Boisfontaine, who served as president of the Louisiana State Bar Association and the Louisiana Association of Defense Counsel. Generous donations from Sessions, Fishman, Nathan & Israel, LLP, the Boisfontaine Family and friends established the fund.



To celebrate National Pro Bono Week, the Northshore Pro Bono Project of Southeast Louisiana Legal Services recognized pro bono lawyers at the Slidell Bar Association's meeting in October 2014. Since October 2013, local lawyers have handled more than 100 pro bono cases, including divorce, custody, wills and successions for indigent clients. James E. Blazek, William J. Faustermann, Jr. and Amythist L. Kearney won door prizes. Among the pro bono lawyers attending were, from left, Michele Blanchard-Airey, Tracey T. Powell, Joseph P. Anderson, Jr., Ernest S. Anderson, Patricia L. Dearing, Robert T. Binney, Jesmin Basanti-Finley, William J. Faustermann, Jr., Robert C. Brandt and Ann E. Duvic.

SEND YOUR NEWS!

The *Louisiana Bar Journal* would like to publish news and photos of your activities and accomplishments.

Email your news items and photos to:
LSBA Publications Coordinator
Darlene LaBranche at
dlabranche@lsba.org.

Or mail press releases to:
Darlene LaBranche
601 St. Charles Ave.
New Orleans, LA
70130-3404

LSBA Member Services

The mission of the Louisiana State Bar Association (LSBA) is to assist and serve its members in the practice of law. To this end, the LSBA offers many worthwhile programs and services designed to complement your career, the legal profession and the community.

In the past several years, the legal profession has experienced many changes. The LSBA has kept up with those changes by maturing in structure and stature and becoming more diverse and competitive. As the premier organization serving Louisiana's legal profession, the LSBA is working to advance its members' goals and interests through unparalleled programming and a comprehensive benefits package. Listed below are a few benefits of membership:

Lawyers' Assistance Program

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LAP provides confidential assistance to members of the Bar and their families who experience problems with alcohol, drugs, gambling and other addictions, as well as mental health issues. Call 1(866)354-9334 for assistance.

LSBA Professional Programs Department Services

Client Assistance Fund

cgrotsky@lsba.org

This program helps consumers by providing compensation to clients who have been defrauded by their lawyers. For more information, contact Associate Executive Director Cheri Cotogno Grodsky at cgrotsky@lsba.org or (504)619-0107.



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Fastcase

www.lsba.org/fastcase

In 2005, the LSBA launched Fastcase, a free web-based legal research product that provides unlimited access to all state and federal court cases. To access the program, go to www.lsba.org and click on the Fastcase icon. For more information, contact Practice Management Counsel Shawn L. Holahan at shawn.holahan@lsba.org or (504)619-0153.

Lawyer Advertising Filing and Evaluation • rlemmler@lsba.org

This program provides screening of proposed lawyer advertising to confirm compliance with the Supreme Court's advertising rules. For information/inquiries, contact LSBA Ethics Counsel Richard P. Lemmler, Jr. at rlemmler@lsba.org or (504)619-0144.

Practice Assistance and Improvement • bking@lsba.org

As mandated by the Louisiana Supreme Court, the Bar's Practice Assistance and Improvement Program offers alternatives to discipline via its Attorney-Client Assistance Program and the Diversion Program. The Office of Disciplinary Counsel diverts eligible matters enabling these members to avoid disciplinary proceedings. For more information, contact Professional Programs Counsel for Practice Assistance William N. King at bking@lsba.org or (504)619-0109.

For more information,
visit www.lsba.org

President's Message

Statewide Support of the Louisiana Campaign to Preserve Civil Legal Aid

By President Hon. C. Wendell Manning

Civil legal aid helps people solve critical, life-changing problems. It provides free legal assistance to those who would otherwise go unrepresented. Because of challenging economic times and Louisiana's high poverty rates, our civil legal aid programs are struggling to provide essential services—barely meeting a third of the poverty populations' needs. The "Louisiana Campaign to Preserve Civil Legal Aid" is a statewide effort to spread awareness and increase funding to address the critical need for civil legal aid.

On behalf of the Louisiana Bar Foundation (LBF), I would like to extend a grateful thank you to the following individuals and organizations who have declared their support of the Campaign: Louisiana State Bar Association House of Delegates;

Louisiana Supreme Court Chief Justice Bernette Joshua Johnson; Alexandria Bar Association; American Inn of Court of Acadiana; Association for Women Attorneys, New Orleans; Baton Rouge Bar Association; Federal Bar Association, New Orleans Chapter; Inn on the Teche; Lafayette Bar Association; Lafayette Parish Bar Foundation; Lincoln Parish Bar Association; Louisiana Appleseed; Louisiana Council of Juvenile and Family Court Judges; Louisiana District Judges Association; LSBA Young Lawyers Division Council; New Orleans Bar Association; Shreveport Bar Association;



Hon. C. Wendell Manning

Shreveport Bar Foundation; and Southwest Louisiana Bar Foundation.

Assistance from the legal community is critical to maintaining and developing resources that will provide low-income Louisiana citizens with meaningful access to the justice system. The Campaign needs your support to heighten awareness of the need for civil legal aid.

Contact LBF Development Director Laura Sewell for more information on how you can help at (504)561-1046 or email laura@raisingthebar.org.

We look forward to working with you to spread awareness and increase funding for civil legal aid in Louisiana. To access information and useful tools for the Campaign, visit our website at www.raisingthebar.org/campaign. Thank you!

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces the following new Fellows:

C. Thomas
Bienvenu, Jr. St. Martinville
Teresa Culpepper Carroll Jonesboro
Francisca M.M.
Comeaux Baton Rouge
Suzanne M. deMahy New Iberia
Genevieve M.
Dessommes ... Saskatoon, SK Canada
Hon. Benjamin Jones Monroe
Sylvia S. Lowe Lafayette
Hon. Robert H. Morrison III Amite
Hon. Brady D.
O'Callaghan Shreveport
Edward T. Oglesby Little Rock, AR
Elizabeth W. Randall Alexandria
Pamela A. Stewart Ruston
Michael Sean Walsh Baton Rouge

The Giving Season: Consider a Donation to LBF

In remembering the spirit of the season, consider a year-end donation to the Louisiana Bar Foundation (LBF). Donations strengthen the LBF's programs and services and help to meet the legal needs of the state's most vulnerable people.

Donations can help victims in domestic violence shelters; protect children who need a stable home; aid the elderly through financial crises; assist families in retaining their homes; give children a voice in court; bring

families back together; provide education to youth about the legal process; and bring communities together to identify legal needs in their areas.

Donations may be made online at www.raisingthebar.org/gift or mailed directly to the LBF, Ste. 1000, 1615 Poydras St., New Orleans, LA 70112. For more information, contact Development Director Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.

LBF Seeks Sponsors for 29th Annual Fellows Gala

The Louisiana Bar Foundation will celebrate the 29th Annual Fellows Gala on Friday, May 1, 2015. The gala and live auction will be held at the Hyatt Regency New Orleans, 601 Loyola Ave., New Orleans.

Sponsorships are available at several levels: Pinnacle, Benefactor, Cornerstone, Capital, Pillar and Foundation. Individual tickets to the gala are \$150. Young lawyer individual gala tickets are \$100.

To review the sponsorship levels, become a sponsor or purchase individual tickets, go to: www.raisingthebar.org.

Discounted rooms at the Hyatt Regency are available for \$289 a night for Thursday, April 30, and Friday, May 1. Reservations must be made with the Hyatt before Monday, April 6, 2015, to get the discounted rate. Call the hotel directly at 1(888)421-1442 and reference "Louisiana Bar Foundation" to make a reservation, or go to: <http://resweb.passkey.com/go/LABFannualgala2015>.

For more information, contact Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.

CLASSIFIED NOTICES

Standard classified advertising in our regular typeface and format may now be placed in the *Louisiana Bar Journal* and on the LSBA Web site, LSBA.org/classifieds. All requests for classified notices must be submitted in writing and are subject to approval. Copy must be typewritten and payment must accompany request. Our low rates for placement in both are as follows:

RATES

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\$85 per insertion of 50 words or less
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\$20 for Classy-Box number

Members of the LSBA

\$60 per insertion for 50 words or less
\$1 per each additional word
No additional charge for Classy-Box number

Screens: \$25

Headings: \$15 initial headings/large type

BOXED ADS

Boxed ads must be submitted camera ready by the advertiser. The ads should be boxed and 2¼" by 2" high. The boxed ads are \$70 per insertion and must be paid at the time of placement. No discounts apply.

DEADLINE

For the April issue of the Journal, all classified notices must be received with payment by Feb. 18, 2015. Check and ad copy should be sent to:

LOUISIANA BAR JOURNAL
Classified Notices
601 St. Charles Avenue
New Orleans, LA 70130

RESPONSES

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POSITIONS OFFERED

Associate attorney. Five to seven years, commercial litigation. Kingsmill Riess, L.L.C., in New Orleans is seeking an attorney with experience in commercial litigation, with emphasis in construction litigation. Strong writing skills, including writing motions and memoranda, are of utmost importance. Email résumés to lestrada@kingsmillriess.com for consideration.

Metairie law firm (AV-rated) seeks an experienced attorney to join the firm with an established family law practice. The qualified candidate should possess excellent academic and professional credentials. Attorney compensation formula rewards productivity based on fees collected for work originated and work performed and includes attractive fringe benefits. The qualified candidate will have access to an experienced and well-trained legal support staff. Candidates wishing to bring their own support staff will be considered. Reply in strict confidence to Office Administrator, P.O. Box 931, Metairie, LA 70004-0931.

Shuart & Associates Legal Search & Staffing. In today's market, many law firms are growing by lateral acquisition of partners/practice groups. Some partners are choosing to relocate to firms where their unique strengths are valued and com-

pensation competitive. This requires broad knowledge of the existing marketplace and insight into the culture of local law firms. Shuart & Associates has a proven track record in providing this service. All inquiries confidential. (504)836-7595. www.shuart.com.

Minimum qualifications of defense attorneys for the Patient's Compensation Fund. In accordance with La. R.S. 40:1299.41(J), attorneys appointed to defend PCF cases must meet the following minimum qualifications as established by the Patient's Compensation Fund Oversight Board: (1) Must be a defense-oriented firm with at least 75 percent of practice dedicated to defense; (2) Defense firm appointed to PCF cases shall have **NO** plaintiff medical malpractice cases; (3) Defense firm must provide proof of Professional Liability coverage with a minimum limit of \$1 million; (4) Defense attorney must have a minimum of five years' experience in the defense of medical malpractice cases; (5) Defense attorney must have completed three trials within the past three years. Presentation of five submissions to a medical review panel may be substituted for each of two trials. However, the defense attorney must have tried at least one case in the past three years. Interested persons may submit written comments to Ken Schnauder, Executive Director, Patient's Compensation Fund, P.O. Box 3718, Baton Rouge, LA 70821.

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NOTICE

Notice is hereby given that David H. Bernstein has filed a petition and application for readmission to the bar of the State of Louisiana. Individuals may file notices of concurrence or objection with the Louisiana Attorney Disciplinary Board, Ste. 301, 2800 Veterans Memorial Blvd., Metairie, LA 70002, within 30 days.

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ANSWERS for puzzle on page 302.

1	A	C	R	E	W	A	R	H	A	W	K	S
2	D	A	W	U	U	H	O					
3	J	A	G	U	A	R	S	M	E	E	T	S
4	A	I	T	T	A	R	O					
5	C	O	N	V	E	N	I	E	N	C	E	S
6	E	R	N	S	T	W						
7	N	U	T	R	I	A	C	O	Y	O	T	E
8	T	H	N	P	C	B						
9	B	E	N	G	A	L	T	I	G	E	R	S
10	B	P	D	U	E	R	I					
11	A	M	I	G	O	R	E	T	R	A	C	T
12	N	L	W	A	Y	T	E					
13	C	O	L	O	N	E	L	S	D	O	G	S

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The Last **WORD**

By Joseph I. Giarrusso III

LOL AND OMG AT WDW

To set the stage for this year's family vacation to Walt Disney World (WDW), there are some things you need to know. First, this trip included me, Mrs. Humorist and Daughters 1 and 2; my mother (Mom); brother-in-law (BIL), sister-in-law (SIL), their baby (Niece) and his mother (MBIL); and my father-in-law (FIL) and mother-in-law (MIL). Second, there are lies, damn lies, and the lie that WDW buses run every 20 minutes.

Sept. 14: Miraculously, we leave for WDW on time with everything packed. Daughter 1 fails to appreciate the finer points of TSA at MSY. In the process of clearing security, she bursts out, "It's not like I have a GUN." Have visions of a special plane for the Giarrussos to an island nation south of Florida with not as luxurious accommodations. Excited, Daughter 2 can't sit still and is rolling on the ground so much the bacteria are visible to the naked eye. Make it to WDW and hook up with BIL, SIL, Niece and MBIL. On the first day, we go to Hollywood Studios. Daughter 1 refuses "scary" rides. Daughter 2 loves the Tower of Terror and is seriously miffed that she is four inches too short for the Aerosmith roller-coaster. Surprised when Daughter 2 asks if she has an actionable ADA claim for discrimination against 5-year-olds who are vertically challenged.

Sept. 15: Before the trip, FIL begs family to impose a Facebook black-out. *Don't worry, Vinny, no one is going to break into your house and steal your hidden stash of candy.* BIL posts family photos on FB, claiming he was unaware of incommunicado manifesto. All is well after a poolside margarita. Mom

complains about bus delay. Decide that WDW stands for "Will Drain Wallet."

Sept. 16: There are five lawyers on this vacation, so planning which park to visit is harder than drafting UN charter. Tell BIL, SIL, MBIL, FIL and MIL at 4:15 p.m. to meet us at Animal Kingdom because, surely, all the parks are open until 7. They take long bus ride toting Niece only to discover the park closes at 5. Frustrated, tired SIL yells, "Why would the park stay open late when you can't even see the animals?" SIL:1; JIG:0. On ride home, Mom complains about bus delay.

Sept. 17: Is that the Hallelujah chorus ringing in my ears? Yes! Why? We finally made it to EPCOT. Some higher-brow Bar members may be excited about visiting different countries and cultures. I'm a Philistine. EPCOT has one major premium over the Magic Kingdom — beer! OK, it's \$7.50, but it is so good on the lips. FIL decides Mary Poppins has a thing for him. I tell Mrs. Humorist while passing France, "They'd be speaking German if it weren't for us." Mom complains about bus delay. Tell her that she should be right at home because buses seem to be on same schedule as CDC elevators. Mom is not amused.

Sept. 18-19: Daughters 1 and 2 discover meal plan entitles parents to dessert at every meal. After lunch entrees are consumed on Sept. 18, Daughter 2 tells waiter, "Another round of chocolate mousse, my good man." Children have sampled chocolate mousse in Magic Kingdom, EPCOT and Hollywood Studios. FIL and I hit the Aerosmith ride. He looks queasy but I decide not to bust his chops.

On the morning of Sept. 19, Daughter 2 begs me to wake up at the crack

of dawn for the early-morning "magic hours" at the Magic Kingdom. Ride Space Mountain, Peter Pan and Seven Dwarves Mine Train. Surprisingly, she's ready for a change of scenery and wants to eat in EPCOT. Meet family at French bistro. Our French waiter, Leo, is A-W-E-S-O-M-E and decidedly un-PC.

MIL orders wrong wine with her meal. Leo redirects her to Chardonnays on menu and advises her to select wine option 2. She picks door number 1. Leo brings the wine which MIL starts to drink. As she is halfway done, Leo brings her a small tasting of option 2. MIL reluctantly agrees Leo's choice was better. Leo says, "There was like no choize. Zis is the better wine." I'm warming up to this guy. I order — wait for it — chocolate mousse. Leo brings five spoons. "Lez, be honest. There are four wehmen at ze table. They cannot say no to choco-oh-late." Misogyny is alive and well in France! Daughter 2 decides it's time to ride Everest in Animal Kingdom with Mrs. Humorist and FIL. After the ride, I ask Daughter 2 if she had fun. "It was great. Vinny screamed like a girl!"

Yes, WDW is the most magical (and comedic) place on earth.

Joseph I. Giarrusso III is a shareholder in the New Orleans office of Liskow & Lewis, P.L.C. He received his JD degree in 2001 from Louisiana State University Paul M. Hebert Law Center (Louisiana Law Review and Order of the Coif). He is admitted to practice in Louisiana and Texas.

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