

LOUISIANA BAR JOURNAL

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Louisiana 2012:

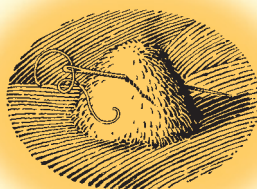
**Celebrating
the State's
Bicentennial**

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- ▶ **Jurisdiction and Choice of Law Issues
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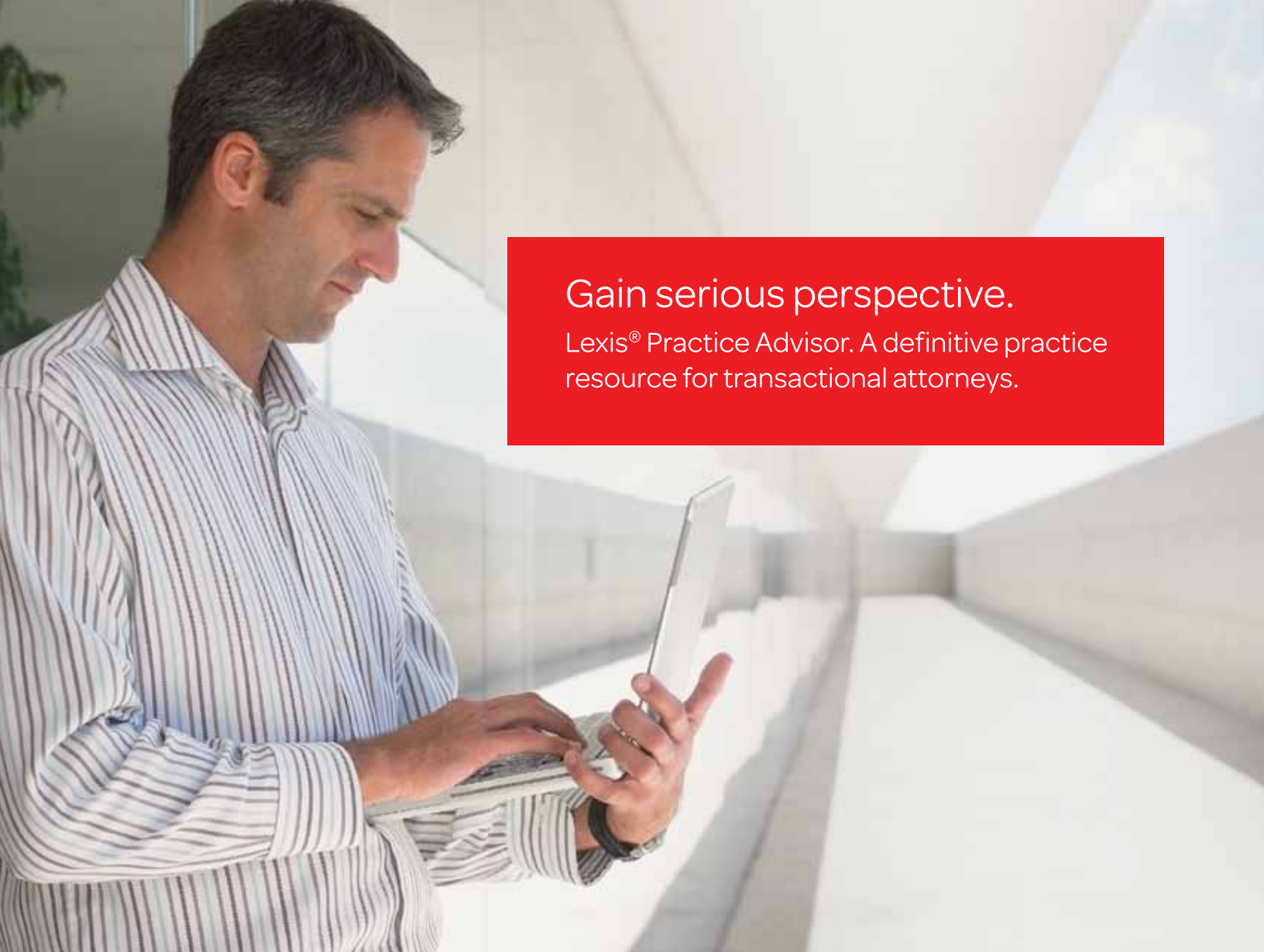


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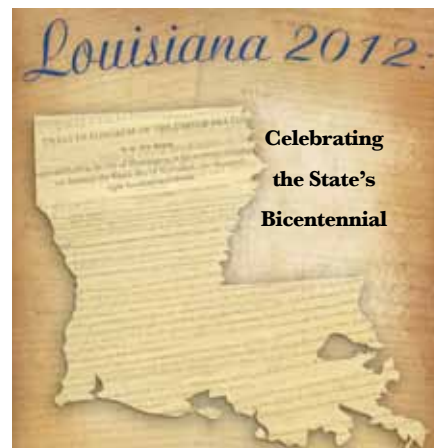
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*Discounts not guaranteed at every hotel property within a national chain. Contact specific property to inquire about availability of LSBA discounted rates.

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By Richard K. Leefe

Recognizing Louisiana's 200th Year

In this issue, the *Louisiana Bar Journal* is recognizing the great history and tradition of the state of Louisiana over the last 200 years. We hope you enjoy this tribute. It goes without saying that attorneys have played a large part in the history of this state and, as we move forward, the Louisiana State Bar Association (LSBA) intends to continue to do its part.

The LSBA also is addressing the issues of ensuring access to justice in

Louisiana and recognizes the extreme funding problems which exist in providing legal services to those who cannot afford representation in both criminal and civil matters. Our system depends on all people having real access to the court system, with representation of which we can be proud. We ask for your thoughts in addressing these needs and the funding for such representation. As attorneys who have been blessed with the knowledge, we also carry

the responsibility of ensuring that the system works for all as it is intended.

It is our hope that the *Louisiana Bar Journal* provides an outlet for your thoughts concerning the practice of law and, as always, we welcome your letters to the editor on whatever subject you feel compelled to address.

A stylized, handwritten signature in dark ink, likely belonging to Richard K. Leefe.

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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.

LETTERS

TWO VIEWS ON PRESIDENT'S MESSAGE

Response to President's Message

It was with great interest and gratitude that I read the President's Message in the December 2011/January 2012 *Louisiana Bar Journal*. As a matter of legal and civic education, it should be a matter of pride that we lawyers know this history and some other history of our country as well. I am privileged to be allowed to teach young Boy Scouts about citizenship in our nation and community. A frequent question I ask of these Boy Scouts — and other lawyers — is, "Where do your rights come from?" Most scouts, and all but a few of the lawyers I have quizzed over the years, have answered variously "the Constitution" or "the law."

I enjoy patiently explaining that the founders of our country believed that our *rights* come from God. The Declaration of Independence declares that we are endowed by "our Creator" with those "inalienable" rights, and that principle underlies the foundation of our

government. By reminding our fellow lawyers and citizens that our rights do not come from the government, but that the government may either protect or impinge upon our rights, we educate them in the reason that we may lawfully resist those who would try to take our rights away. Far from being only the basis of our national motto, God is indeed the reason we have a United States of America and a government limited to those powers granted it by the people.

Jeffrey S. Wittenbrink
Baton Rouge

Response to President's Message

The suggestion that a "reverence for God" is a necessary ingredient of integrity, defined as "a steadfast adherence to a strict moral and ethical code," ignored the fact that there are moral and ethical lawyers who are not

religious. Any implication that lawyers cannot be moral or ethical if they have no "reverence for God" is simply baseless.

Robert G. Stassi
Metairie

Editor's Response to Mr. Stassi:

I am sure President Davidson meant no disrespect to you and he, of course, was stating his opinion that a reverence to God would be a major factor in lawyers regaining the respect of the public for our profession. He notes that, "Although there may be a few who disagree...", he is grateful for the motto "In God We Trust." As he said, there are those, apparently such as yourself, who disagree. I understood him to believe that following this motto can help restore respect for the legal profession. I do not think it was meant as a slight at those who might believe they can gain respect without "reverence for God." I for one thank God that we live in a country where we can each have our own opinion and state it freely.

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*By James J.
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Family Values:

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As practicing attorneys, our days, and to some extent all of our waking hours, are consumed by wrestling with the details which we feel are necessary to properly handle the many matters we are working on for our clients. It is unequivocal that our chosen profession requires that we handle those details with due diligence and competence.

Being consumed by our work, however, in more cases than we would like to admit, causes us to neglect giving the necessary attention to our respective families.

The family unit is truly the cornerstone (the main support element) of our individual lives. We, therefore, owe a steadfast fidelity to all of our family members. Our loyalty, faithfulness, support and allegiance to our family must be primary and cannot afford to be sacrificed.

Giving to our family members the quality of life which they deserve and meeting our responsibilities as advocates in competently handling the affairs of our clients certainly present a delicate balancing act. We, therefore, must carefully plan our activities and schedule our time so that none is wasted. Then it is my belief that we can accomplish the tasks of fully, honestly and ethically representing our clients and fulfilling all of the duties relating to our family and its individual members.

It must be remembered that if we are

loyal and faithful to our family members and give to them our earnest support in both time and effort, that family unit will become, as it should be, the most cohesive and strongest support group that each of us individually could ever hope to have.

That family unit, with its support, will only enhance our abilities as practicing attorneys to give our clients the high standard of representation they deserve.

I have been told for many years and understand that the law is a "jealous mistress." It is my belief that the same quote likewise relates to our family. When we realize and accept the fact that our family should be treated as a "jealous mistress," we will certainly devote the extra time and effort necessary to create a strong family relationship which will in turn give to us the backup support which we as attorneys need.

We certainly need family support, especially when one considers today's statistics which show that incidences of depression and various forms of substance abuse are much higher in the legal profession than for the general population. My conviction is that a strong family unit (with solid family support) is necessary to help curb and reverse these statistics.

At times, however, we may come to the conclusion that other outside assistance is needed to curb and/or cure problems once they surface. We are blessed that, in Louisiana, we have a strong, active, vi-

able and successful Lawyers Assistance Program (LAP).

The services of the LAP Program are coordinated by Executive Director J.E. (Buddy) Stockwell III. During the past six months, I have had the opportunity to learn much more about the LAP Program by sharing the stage at various Louisiana State Bar Association functions around the state with Buddy Stockwell. Buddy will attest to the fact that a strong, cohesive and supportive family is crucial to his program's success. I hereby certify to you that Buddy is very passionate about LAP's dual mission of confidentially assisting impaired lawyers, judges and their family members while simultaneously helping to protect the public from harm that often results when an impaired professional represents his clients or takes the bench.

The quality of our family unit and the lives of our family members must not be diminished or sacrificed in the face of emotional stresses encountered while practicing law. LAP is an extremely valuable resource to our profession in its mission of providing confidential assistance to lawyers, judges and their families.

Since assuming his position as LAP director, Buddy has had the privilege and blessing to assist many lawyers, judges and family members suffering from various forms of burnout, depression, alcohol or drug abuse problems and other mental

disorders that cause unhealthy stress, impairment and tension — conditions, when not properly addressed, that could lead to the breakup of the family unit and would have destroyed the competency of the professional involved.

I hereby encourage all of you who are concerned individually or for others who desire or need help to take full advantage of LAP's confidential services. Contact LAP toll free at (866)354-9334, email lap@louisianalap.com, or visit the website

at www.lsba.org/memberservices/lap.asp.

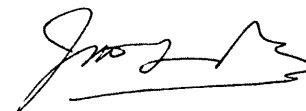
My challenge is that each of us be encouraged to work hard and play hard and that, with those activities in full swing, we will each give to our families the time, effort, support, loyalty and allegiance deserved.

In closing, I want to draw attention to the fact that this is the Bicentennial year of Louisiana's Statehood. Commencing as far back as the time of the Louisiana Purchase, lawyers led the way in the de-

velopment of that territory and our state as we know it today.

The development of our state and a description of its wonderful attributes are best portrayed in the special section of this *Journal* devoted to Louisiana's 2012 Statehood Bicentennial.

God bless each of you and your individual family members.



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:

Bar Center Services

Louisiana Bar Center
www.lsba.org/GoTo/BarCenter
mike.montamat@lsba.org

Louisiana lawyers are invited to reserve any of the three Bar Center conference rooms for depositions or other meetings. The building is equipped with wireless Internet access as well as desktop computers available at no charge to members. Contact Operations Coordinator Mike Montamat at (504)619-0140 with any questions.

Lawyers' Assistance Program (LAP)

Lawyers' Assistance Program
www.louisianalap.com • (866)354-9334
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.

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

Louisiana 2012:

Louisiana Celebrates 200 Years of History: Louisiana Statehood Bicentennial 1812-2012

By Richard K. Leefe
Secretary, Louisiana State Bar Association

The Louisiana State Bar Association (LSBA) is proud and honored to join in the celebration of the Louisiana Statehood Bicentennial and to recognize the roots from which our great state has grown.

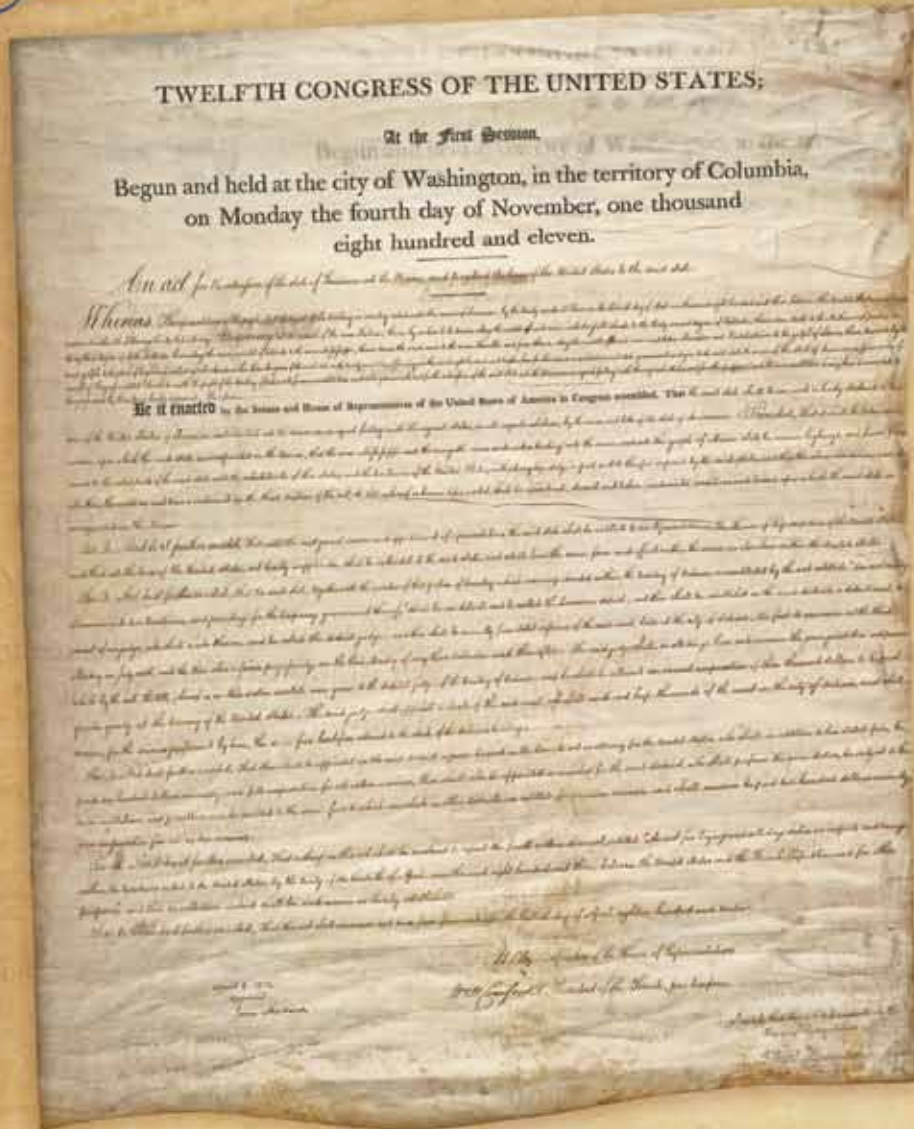
The Louisiana Office of the Secretary of State, through the Louisiana State Archives, created a wonderful compilation and presentation of that history, together with much more, in its work entitled "Louisiana 2012: A Bicentennial Celebration of History, Culture and Natural Resources." The Secretary of State and the State Archives have kindly allowed the *Louisiana Bar Journal* to publish excerpts of that work in this issue for our members. This history excerpt is only a small part of the comprehensive work created by the Louisiana State Archives. Hopefully, the full work will be published for public access and use soon. The LSBA strongly recommends it. The information provides a marvelous perspective and review of the origins of our state.

As Louisiana citizens and attorneys, we all owe a great deal of gratitude to those who founded this state and have gone before us in making this rich history.

In addition, this issue of the *Journal* includes an article addressing the 300 years of French law influence in Louisiana by Louisiana State University Paul M. Hebert Law Center Professor Olivier Moréteau, as well as a lesson by Lafayette attorney Ariel A. Campos, Sr. on the large part Hispanic history has played in making Louisiana what it is today.

Rounding out the issue are letters from various key players in the Bicentennial celebration, as well as a list of Bicentennial-related events throughout the state. These events are updated monthly on the state's main website, www.louisianabicentennial2012.com.

We hope you enjoy the articles and feel pride in Louisiana's rich history!



The official United States Twelfth Congress (1811) document approving Louisiana's entry into the Union as the 18th state, as signed by President James Madison. National Archives and Records Administration. Used with permission.



Louisiana has had eight State Seals since 1805, all including the state's official emblem of the pelican and her nest. Louisiana State Archives, Secretary of State's Office. Used with permission.

Louisiana 1812-2012:

200 Years of Statehood and 300 Years of French Law Influence

By Prof. Olivier Moréteau

The Bicentennial of Louisiana's statehood happens to coincide with the Tercentennial of the enactment of French law as the law applicable to *La Louisiane*, marking the starting point of the law of Louisiana.

A Letter Patents signed on Sept. 14, 1712, by King Louis XIV of France granted to *Sieur Crozat*, the king's Secretary, exclusive trade rights in all lands possessed by the King "under the government of Louisiana," whilst providing in article VII that all laws applicable in Paris and its province, including Edicts, Ordinances and Customs, were applicable to Louisiana. This is the first document to make reference to the law to be applied in Louisiana.

Until the cession to Spain 50 years later, French law officially applied in the immense territories that stretched from the Gulf of Mexico to the Great Lakes, from the Mississippi River to the Rocky Mountains and to the Isle of Orleans east of the Mississippi River, though there is limited evidence, if any at all, of the application of the Custom of Paris outside New Orleans and maybe in a few locations in south Louisiana.

French law would cease to apply in Louisiana after its cession to Spain in 1762. When Spain effectively took possession in 1769, Governor O'Reilly proclaimed that justice was now to be administered according to the laws of Spain, naming the *Nueva Recopilación de Castilla* and the *Recopilación de las Indias*. The complex and intricate Spanish laws, largely derived from the Roman law of Justinian and that of the Visigoths, remained in force after the retro-cession of the Louisiana territories to France in 1800 and the subsequent Louisiana Purchase by the United States in 1803. French law would never apply again as such, but it would remain influential after the Territorial period during two centuries of statehood.

French law was never reestablished in

Louisiana. The population of New Orleans successfully insisted that the civil law tradition be maintained. In 1804 and 1805, two Acts of Congress provided that, in so far as they were consistent with federal law, the civil laws in force in the Territory of Orleans "shall continue in force until altered, modified, or repealed by the legislature." In 1806, the Legislative Council resolved that a Civil Code be prepared for the territory, and that "the civil law by which this territory is now governed" (namely Spanish civil laws) be made "the ground work of said code," in the effort to make the law clearer and more accessible to the French, Spanish and American inhabitants.

The two draftsmen, James Brown and Louis Moreau-Lislet, were challenged with the daunting task of reducing thousands of pages of legal rules into a volume of 200 or 300 pages. It fully made sense to follow as models both the *Projet* of 1800 and the *Code civil des Français* of 1804, later to be known as the *Code Napoléon*. Wherever an article of the *Projet* or of the Napoleonic Code conformed to the Spanish law, it naturally made its way into the Digest of 1808. The organization of the French Civil Code, replicating the structure of the Institutes of Gaius, remains to this date the backbone of the successive Louisiana Civil Codes.

The study of the cases decided in the first two decades after the enactment of the Digest of 1808 reveals that Louisiana courts never regarded the new enactment as a shift from the Spanish to the French model. When faced with the generality of the provisions it contained, judges looked for the missing details in the pre-existing Spanish compilations. Spanish law was not abolished except where clearly contradicted by the Digest. In addition, some distinctive aspects of Spanish law, different in substance from those in the French model, made their way to the Digest—for instance, rules relating to marriage, the community of gains, successions and alimony.

In France, the law took a new departure after the 1804 codification: the effort was to unite all Frenchmen under one law, demanding that all previous laws—Roman law in Southern France and customs in the North—be repealed. After a national Revolution, it comes as no surprise that France would have a break with the past regarding its legal system.

Things were different in Louisiana, where the movement towards codification was conservative in essence. The Digest of 1808 was meant to preserve the preexisting law and there was no wish for a fresh start. Judges kept citing the *Siete Partidas* of Alfonso X of Castile and subsequent Recompilations. This defeated the purpose of the Digest as expressed in the Act of March 31, 1808: it aimed at eliminating the need of "recurring to a multiplicity of books, which, being for the most part written in foreign languages, offer in their interpretation inexhaustible sources of litigation." Clarification and simplification had been a vain hope.

In 1825, the Digest was replaced by a Civil Code, also drafted in French and translated into English, this time abrogating "the Spanish, Roman and French laws" in force at the time of the Purchase on all matters governed by the Code (art. 3521). Then an Act of 1828 proceeded to a general repeal of all the civil laws in force before the Civil Code. However, in a 1839 case (*Reynolds v. Swain*), the Louisiana Supreme Court declared that this repeal was confined to positive or written law and could not apply to the unwritten laws, citing among others the revealed law, the natural law, and the law of nations: in the opinion of the court, what had not been enacted by the Legislature could not be abolished. At least at that time, this made Louisiana law remarkably different from French law; legislative positivism was rejected, with

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judges preferring to rely on the tradition and principles of natural law.

The Louisiana Civil Code was again rewritten in 1870, this time in English, after the Civil War and the abolition of slavery. The Louisiana State Law Institute was founded in 1938 to prepare subsequent revision and keep the laws of Louisiana under constant review. The Civil Code of 1870 has been almost completely revised during the past few decades, and can fairly be described as one of the most modern civil codes in the world today, abreast of social and economic needs as well as comparative law studies. This proves that the civil law may be developed in the English language, following the French Civil Code format and style, whilst developing solutions compatible with the surrounding common law. The Center of Civil Law Studies at Louisiana State University is presently translating the Louisiana Civil Code into French, so that French jurists and French-speaking jurisdictions may also benefit from these developments, making the relationship to France a give-and-take story.

In the meantime, mostly under the auspices of the Louisiana State Law Institute, significant monuments of French legal literature were translated from French into English to provide a doctrinal background to judges and attorneys not able to read French. These include the remarkable *Treatise on the Civil Law* by Marcel Planiol (1959) and the very comprehensive *Cours de droit civil français* by Aubry and Rau (1965-72). These volumes are frequently cited in court opinions and teaching materials, projecting

the French influence into the interpretation of the Code and the understanding of the substance of the law. Regarding interpretation, a most influential book by Francois GénY was also translated into English (1965). *Méthode d'interprétation et sources en droit privé positif*, a world-famous book published in 1899 and revised in 1954, clarifies the importance of jurisprudence in civil law jurisdictions and helps understand that reliance on court decisions is not the same as common law *stare decisis*. Other major French books have been translated under the auspices of the Center of Civil Law Studies, thereby allowing Louisiana to contribute to the dissemination of French legal culture outside the francophone world.

The Louisiana Civil Code started as a blend of Spanish substance and French style, described by LSU Professor Robert A. Pascal as a "Spanish girl in a French dress." It has been re-substantiated with further elements of French doctrine and reconciled with common law solutions. What makes Louisiana unique is the combination of cultures from at least three different continents. New Orleans is an American city with a Spanish downtown called the French Quarter and something of an African and Caribbean way of life. In Louisiana, much of people's daily lives, regardless of their origins, continue to be shaped by laws combining the Roman, French, Spanish and Anglo-American heritage. The French elegance given to it some 200 years ago should not hide the pluralism of its sources. It keeps bringing a major contribution to the legal gumbo cooked by the Louisiana jurists, where ingredients of various origins remain visible but combine in a unique savor.

To this day, the fleur-de-lis remains a powerful symbol of Louisiana and its French heritage. It was planted 300 years ago in the garden of our laws, where it is still cultivated though more as a hybrid than in its original form. It was joined 100 years later by a self-sacrificing pelican, a bird native to Louisiana and a Christian symbol of love (see good faith and cooperation as founding principles of the civil law). What flows in its veins is a mix of what makes us human beings, regardless of the color of our skin and ethnic origins. Let's be mindful of this rich heritage. Let's be aware of its strength and its flaws (no system is perfect, not even the common law) when making decisions that shape our future.

Professor Olivier Moréteau in 2005 was named the first holder of the Russell B. Long Eminent Scholars Academic Chair at Louisiana State University Paul M. Hebert Law Center. A professor of law, he is director of the Center of Civil Law Studies at LSU Law Center, editor-in-chief of the Journal of Civil Law Studies and associate vice chancellor for international programs. He has authored and edited books in French and English and written many articles in various languages for international periodicals and books on the civil law, common law, comparative law, law and languages, tort law, the law of obligations and legal education. He is a member of the International Academy of Comparative Law, the European Group on Tort Law, the European Centre of Tort and Insurance Law, the American Law Institute, the Louisiana Bar Equivalency Panel and the Louisiana Bar Foundation. (Paul M. Hebert Law Center, 1 E. Campus Dr., Louisiana State University, Baton Rouge, LA 70803)



Ten flags have flown over Louisiana, including the Spanish flag of DeSoto, the French flag of LaSalle, the British Union Jack, the Spanish flag, the French flag, the American flag, the West Florida Republic flag (Bonnie Blue), the Independent Louisiana flag, the Confederate Stars and Bars, and the Louisiana flag. Louisiana State Archives, Secretary of State's Office. Used with permission.

Flags Over Louisiana

Flag	Year	Flag	Year
Spanish Flag of De Soto	1541	American	1803-1861
French Flag of La Salle	1682	West Florida Republic Flag, "Bonnie Blue"	1810
British Union Jack	1763-1779	Independent Louisiana Flag	1861
Spanish	1769-1800	Confederate Stars and Bars	1861
French	1800-1803	Louisiana Flag	1912-2010

Louisiana 1812-2012: Hispanic Perspective

By Ariel A. Campos, Sr.

Defining diversity in the legal profession in Louisiana through a Hispanic perspective must begin at the beginning.

Hispanic comes from *Hispania*, an ancient name for the Iberia Peninsula.¹ The *American Heritage Dictionary of the English Language* (Fourth Edition, 2000) defines *Hispanic* as "... of or pertaining to Spain and its language, people and culture, having cultural origins in Iberia." Within the context of *Hispanics* in Louisiana, this definition has a historical reference. Christopher Columbus (*Cristobal Colon* in Spanish) "discovered" and claimed the Americas in the name of Queen Isabella of Spain. The Spanish Empire once was huge, encompassing nearly all of North and South America.² During the 400 years that Spain ruled, it made many lasting contributions in language, religion, political administration, laws and commerce.³

Spanish explorers were the first Europeans to discover the Mississippi River. In 1542, Hernando de Soto first navigated the river, after claiming the land draining into the river and its tributaries for the Spanish Crown. However, Spain virtually ignored the land that later became known as Louisiana for nearly a century-and-a-half due to the inhospitable climate, wildlife and geography. Precious metals and fertile soils had been found by its explorers in the more hospitable lands to the south.⁴ French King Louis XIV, concerned about British and Spanish expansion in the New World, encouraged French exploration of the Mississippi River and perhaps enlarge his own empire.⁵ In 1682, Rene-Robert Cavelier, Sieur de la Salle, reached the mouth of the Mississippi and claimed it and all the lands drained by it for France. He named this vast, largely unknown territory "Louisiane" or "Louis' land."⁶

In 1699, Pierre Le Moyne, Sieur d'Iberville, sailed into the Gulf of Mexico thinking that the large French ships would

get stuck in the mouth of the Mississippi. He chose to bypass sailing up the river and instead established a permanent settlement on the Gulf Coast. Jean-Baptiste Le Moyne, Sieur de Bienville, did not share his brother Pierre's view that the river was not navigable. He continued to explore the lower Mississippi River until 1718 when he founded a permanent settlement named New Orleans in honor of the ruling regent, the Duc d'Orleans.⁷ It was not until 1731 that Louisiana became a royal French colony. The French were disappointed that their new colony did not produce the riches they had envisioned. King Louis XV of France was strapped for funds after waging war with England during the Seven Years War, known in the New World as the French and Indian War. In 1762, as negotiations to settle that war were coming to a conclusion, Louis XV secretly proposed to his cousin Charles III of Spain that France give Louisiana to Spain in the Treaty of Fontainebleau.⁸

Louisiana was the name of the administrative district of New Spain after France secretly ceded it to Spain. Spanish rule did not proceed smoothly at first. It was not until 1764 that Spain formally announced its rule over the new possession. The French settlers rebelled against their new ruler, Gov. Antonio Ulloa. It took a new governor, Alejandro O'Reilly, to suppress the French settlers' rebellion and establish order. He sent the plotters to prison in Morro Castle in Cuba. The Spanish established much of New Orleans' and Louisiana's character normally associated with the French. The Spanish control also continued Catholic influence in the region.⁹ Louisiana prospered under Spanish rule. A stable government fomented the growth of business and commerce. Louisiana's sugar industry began during this period. After the development of a method for processing sugar on a large scale by Etienne de Bore, Louisiana planters began growing sugar

cane as a major crop, much as their cousins had done in Spain's Caribbean colonies.¹⁰

The devastation caused by Hurricane Katrina is not the first time New Orleans has undergone cataclysmic destruction. The Great New Orleans Fire of 1788 nearly destroyed much of the city. The fire started at the home of the Spanish official Don Vincente Jose Nunez, spreading to within the *Plaza de Armas* and destroying the original Cabildo and virtually all major buildings, including the main church, the municipal building, the army barracks, the armory and the jail. Gov. Esteban Rodriguez Miro set up tents for the homeless. The Spanish rebuilt the city by replacing all the wooden buildings constructed by the French with structures containing courtyards, thick brick walls, arcades and wrought iron balconies. Among the new buildings were the present St. Louis Cathedral and the Presbytere.¹¹ Fire once again caused widespread devastation to the city in 1794. Although not quite as destructive as the earlier fire, it nevertheless destroyed 212 buildings. Still a colony of Spain, rebuilding after both fires was in the Spanish colonial style, thus eliminating much of the French architecture from the "French Quarter."¹²

Whether the legal system in Louisiana should be called "Napoleonic" or not, since the Civil Code was also influenced by Spanish law,¹³ should be more fully explored in a book-length discussion. Few areas in this country present diversity as vividly in all aspects of its origins as Louisiana does. Its customs, architecture, food, culture, people and laws are as diverse in origin as the faces of its citizens. Louisiana has as its roots indigenous inhabitants, Spanish, French, African and mixtures of all. The English, Irish, Germans and other European settlers arrived later. In Louisiana, the Spanish term *Somos Primos*, "we are cousins," is alive. The Civil Code is made up of two

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relatives, Spanish law and French law, which in turn derive their respect for family and property law from their common ancestor: the Roman law.

A compelling conclusion to any discussion regarding diversity in Louisiana's laws and legal profession leads to the fact that the legal profession and its practitioners in Louisiana *must* reflect the diversity of its people and its origins. The contrary would lead to a denial of the very existence of our roots.

FOOTNOTES

1. *American Heritage Dictionary of the English Language*, Fourth Edition, 2000.
2. Retrieved from www.nps.gov/jeff/.
3. *Ibid.*
4. Retrieved from <http://lsm.crt.state.la.us/cabildo/cab3.htm>.
5. *Ibid.*
6. *Ibid.*
7. *Ibid.*
8. Retrieved from <http://lcweb2.loc.gov/ammem/collections/maps/lapurchase/essay3.html>.
9. *Ibid.*
10. Frank Laughter, Concord Learning Systems, L.L.C., Concord, N.C.
11. Retrieved from <http://enlou.com/time/year1788.htm>.
12. Retrieved from <http://enlou.com/time/year1794.htm>.
13. Retrieved from <http://www.slate.com/toolbar.aspx?action=print&id=2126126>.

Ariel Campos, Sr. is employed as a contract attorney with Acadiana Legal Services Corp. in Lafayette. He was previously employed by health care providers in Louisiana and Missouri, by the U.S. Department of Justice, Civil Rights Division, in Washington, D.C., and by the Equal Employment Opportunity Commission in the New Orleans District Office. He earned his AB degree in English and philosophy from Loyola University and his JD degree from Loyola University College of Law. He is a member of the Louisiana State Bar Association's Diversity Committee and the Legal Services for Persons with Disabilities Committee. He is a member of the Lafayette Bar Association and the Hispanic Lawyers Association of Louisiana. (P.O. Box 4823, Lafayette, LA 70502-4823)



Happy 200th Birthday, Louisiana!

This year, we are celebrating a magnificent milestone, the bicentennial of Louisiana's statehood. Our rich and authentic culture is shaped by the past 200 years and the people who have called Louisiana home. For the next year, we are celebrating our past while embracing our future.

Events are scheduled throughout the year in every parish in the state. From commemorative license plates to education curricula and museum exhibits to birthday celebrations, 2012 is shaping up to be the best year yet for Louisiana.

The official bicentennial birthday event will take place on the grounds of the State

Capitol on April 30, 200 years to the day after Louisiana became a state. Also in Baton Rouge, a new exhibit, *The Treasures of the Louisiana State Museum: Celebrating 200 Years of Louisiana Statehood*, opened to the public at the Capitol Park Museum on Feb. 1.

I encourage you to take advantage of all the special events and programs that are happening this year. To learn more about official events throughout the state, visit www.LouisianaBicentennial2012.com.

—Jay Dardenne
Lieutenant Governor
State of Louisiana

State Archives Telling Louisiana's Story

Serving as Louisiana Secretary of State is challenging and rewarding. It is both an education and an experience, as well as an honor, privilege and infinite pleasure.

What better way to pay tribute to our great state of Louisiana than to tell its story from an array of perspectives. One way, set in concrete, is the 10-panel sculpture on the exterior of the State Archives' facility. Still another is the State Archives' fact-filled, researched, well-written history of Louisiana, "Louisiana 2012: A Bicentennial Celebration of History, Culture and Natural Resources," with tables, photographs and the heroes and heroines who wrote the history, page by page. It celebrates Louisiana becoming a state in 1812 and now

commemorates its Bicentennial.

Louisianians, you are already a part of the history, and you or your children may well add to its flavorful future. We invite you to read the Bicentennial saga, to share it, to soak in this colorful panorama of a state that has flown 10 different flags, more than any other state, and revels in its uniqueness of being a warm and welcoming state.

For information on obtaining a copy of the book, contact the State Archives, 3851 Essen Lane, Baton Rouge, LA 70809, (225)922-1000, email archives@sos.la.gov.

—Tom Schedler
Louisiana Secretary of State

Recording Louisiana's Colorful Heritage

Describing Louisiana to a stranger is like trying to depict in words a kaleidoscope or a tapestry. It's a "many splendored thing," as the popular song of 1955 sounded. Historically, culturally and physically, with its depth of contributions that are global, Louisiana has so many facets to its layout of people, places and things that the word "gumbo" is often used to describe it. This is because Louisianians love to eat, drink and be merry; and, yet, Louisiana is also a place of great citizenship, compassion, bravery and ingenuity.

With this in mind, the staff of the State Archives addresses its mission: "To collect, preserve, display and make available those records essential to the reconstruction of Louisiana's colorful history and heritage."

In addition, we wanted something special for the Bicentennial Year of its statehood in 1812, and took on the mighty task of writing a history that is easily read and comprehended but in no way conclusive. This would be impossible because the "gumbo" constantly evolves with tasty additions. *Vive la différence!*

For information on obtaining a copy of the book, "Louisiana 2012: A Bicentennial Celebration of History, Culture and Natural Resources," contact the State Archives, 3851 Essen Lane, Baton Rouge, LA 70809, (225)922-1000, email archives@sos.la.gov.

—Florent Hardy, Jr., Ph.D.
Louisiana State Archivist

Joyeux Anniversaire, Louisiane!

On behalf of the Louisiana State Bar Association's (LSBA) Francophone Section, founded in 1999 (of which I am the current president), I am proud to state the enormous significance of the Bicentennial of the creation of the State of Louisiana, 1812-2012. Admitted as the 18th state in the Union on April 30, 1812, we gained notoriety, I believe unprecedented, in Louisiana and the United States of America. Keep in mind that, in 1803, the United States officially bought the territory of Louisiana from France in what is known as the Louisiana Purchase.

We founded the Francophone Section in Destin, Fla., in 1999, through the great suggestion of then-LSBA President Patrick S. Ottinger. I remember receiving the letter from Patrick, through Warren Perrin, while boarding a plane to Miami, Fla., for a case I was handling in Dade County.

My thoughts for Louisiana are very fond and in what I believe is the greatest state in the Union. I believe that for many reasons. I love Louisiana. My family came from the Canary Islands in the 1800s and rested here and stayed here. My grandfather was a World War II veteran serving in France, Spain and Germany. My father served in Vietnam. My father finished law school in 1976. After completing my undergraduate studies at Louisiana State University, I had the great intention of going to law school.

On the advice of the late Judge Allen M. Babineaux, I decided to attend Loyola University Law School. I spent five years living in New Orleans. I enjoyed every minute of it. I met many great people. I was a history major so, when we get a chance to celebrate an historical event, namely, the founding of Louisiana and all its beauty, its bayous, its food, its culture, its language, its law, the Civil Code of Louisiana, we do so in great earnest.

This is not just an event which Louisiana celebrates. Rather it is an International Francophone Event with wishes from all Francophone countries, including but not limited to Canada, France, Belgium and Haiti. It is an event that is monumental, an event of joy, an event of pleasure, but also an event of remembrance of what we have experienced for many years, including the tragic Hurricanes Katrina and Rita in 2005.

Louisiana is blessed. Louisiana has great people. Louisiana has great chefs! But, more importantly, Louisiana has a great Soul. "*Le joie de vivre*" and "*laissez les bon temps rouler*" are our signature phrases that define who we are and who we want to be and are always recognized throughout the world.

Joyeux Anniversaire, Louisiane!

—**John A. Hernandez III**
President, Francophone Section
Louisiana State Bar Association



Old State Capitol. Louisiana State Archives, Old State Capitol Exhibit Collection. Used with permission.

Joyeux Anniversaire to Louisiana (1812-2012)

I first met John A. Hernandez III (also known as T-Jean), president of the Francophone Section of the Louisiana State Bar Association (LSBA), at the LSBA's Annual Meeting in Destin, Fla., in 2003. We have formed a very formidable relationship between the LSBA's Francophone Section and the Bar Association of Paris, as well as with the LSBA itself which we invite each year to attend our Annual Red Mass. Conversely, we are always invited to attend the LSBA's Annual Meeting, which I attended in 2011 in Las Vegas, Nev., on behalf of the Paris Bar Association.

Through the help of the Francophone Section, it has been my pleasure to have attended two seminars of the Judge Allen M. Babineaux International Civil Law Symposium in Lafayette, La. — once in 2005, unfortunately held two weeks after the great devastation of Hurricane Katrina, and then again in 2008 for the grand celebration of the 200th Anniversary of the Digest of 1808 of Louisiana.

Our ties between Louisiana and France are very deep and very treasured. To this end, I congratulate this great state for its 200th Anniversary and look forward to celebrating same this year with my friends in Louisiana.

—**Jean-Marie Burguburu**
Ancien Bâtonnier du Barreau de Paris

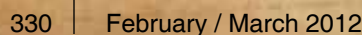
Greetings from Québec!

Québec and Louisiana were born as two brothers, once joined by the hip when the French Empire spread from the cold waters of the Labrador Sea to the warm waters of the Gulf of Mexico. This common history gave rise to common institutions, such as the French language and the Civil Code, which institutions we still share as of today. Both colonies have since taken a different path, but have continued to nourish a strong friendship, such as the one we enjoy between our two Bars, especially with the Louisiana State Bar Association's Francophone Section. As such, each year,

we have the pleasure of greeting your President to our Opening of the Courts and, reciprocally, we have the pleasure of participating in your Annual Meeting. Your next assembly, in 2012, will take place during the commemoration of the Bicentennial of the foundation of the State of Louisiana. We look forward to being there and celebrating this event with you!

—**Nicolas Plourde**
Vice-President, Québec Bar
Former Bâtonnier, Bar of Montréal

A Bicentennial
Celebration of
History, Culture
and Natural
Resources



An Excerpt

Editor's Note: The publication, "Louisiana 2012: A Bicentennial Celebration of History, Culture and Natural Resources," was produced by Louisiana State Archivist Florent Hardy, Jr. and the staff of the Archives/Louisiana Secretary of State's Office to commemorate the Bicentennial of Louisiana's Statehood on April 30, 2012. The Louisiana Bar Journal has received permission to excerpt a portion of the historical chronology. For information on obtaining a copy of the book, contact the State Archives, 3851 Essen Lane, Baton Rouge, LA 70809, (225)922-1000, email archives@sos.la.gov.

Introduction

Celebrations are nothing new to Louisiana, a state rich in tradition and cultural festivity. The year 2012 promises to be a year-long celebration to end all, as the people of Louisiana celebrate the Bicentennial of their statehood while recognizing two hundred years of challenge and opportunity. Although serious in time of need, the citizens of Louisiana appreciate the Cajun expression "*Laissez Les Bon Temps Rouler*," and accept it as their unofficial motto. Visitors also soon revel spontaneously in world-renowned Louisiana fun.

Much evolution and change occurred during two hundred years of history. Early inhabitants, European explorers, and colonial rulers all played major roles in the early history of what is now Louisiana. Upon statehood, the people of Louisiana and their actions became the focal point of historical development. Acknowledgment of a diverse ethnic heritage, wise use of its strategic geographic location, and a respect for the continued development of its many resources have helped to make Louisiana what it is today. Beyond comparison, however, the most important of all of Louisiana's many resources is its people — individuals who represent a mini-melting pot overflowing with excitement, dedication, and a healthy work ethic.¹

Louisiana Indians Today		
List of Federally and State Recognized Native American Tribes and Other Contacts		
State of Louisiana		
Federal	State	Other
Alabama Coushatta Tribe of Texas	Adai Caddo Indians of Louisiana	Apalachee Talimali Band of Louisiana
Caddo Nation	Biloxi Chitimacha Confederation of Muskogee	
Chitimacha Tribe of Louisiana	Choctaw-Apache Tribe of Ebarb	
Choctaw Nation of Oklahoma	Clifton Choctaw Tribe of Louisiana	
Coushatta Tribe of Louisiana	Four-Winds Cherokee Tribe	
Jena Band of Choctaw Indians	Point au Chien Tribe	
Mississippi Band of Choctaw Indians	United Houma Nation	
Quapaw Tribe of Oklahoma		
Tunica-Biloxi Tribe		
Federally recognized tribes – www.louisiana.gov ; Updated December 21, 2009. http://www.ert.state.la.us/...NatAmContactsNew.doc		

Native Origins²

Native Americans have been a significant contributor to Louisiana history through the centuries. Little is known of the different tribes until the 1800s; however, it is known that these early inhabitants moved from place to place, basically as a matter of survival. The first Louisianians crossed the Bering Land Bridge between Asia and North America around the year 12,000 BC. The Mississippi River Valley provided some of the best hunting grounds and agricultural land on the entire continent, and native peoples quickly made their way to the bayous and rivers of the future Pelican State. The region produced such an overabundance of food that nomadic tribes transformed into hierarchical societies, capable of building massive earthworks like those preserved at Poverty Point State Historic Site in North Louisiana.³ Today, Poverty Point is a State Historical Site and is an affiliate of the Smithsonian Institution, designated by the United Nations as one of three World Heritage Sites in North America.

Construction of the mounds at Poverty Point ended around 1350 BC, and archaeologists continue to debate the reasons for the apparent abandonment of the complex. The indigenous people, however, did not disappear. In fact, they became the immediate ancestors of the tribes that European explorers encountered

in the sixteenth and seventeenth centuries. Several of these tribes, specifically the Natchez, continued to erect earthworks like those at Poverty Point.⁴

At the time of European contact, six major native groups lived within the borders of present-day Louisiana: Coushatta, Choctaw, Chitimacha, Houma, Tunica, and Caddo. The largest, the Caddo of North Louisiana, exerted the most power and influence. The Chitimacha and Houma lived in the marshes and bayous of South Louisiana. Although they originated in modern-day Mississippi, elements of both the Tunica and the Choctaw settled in central Louisiana during the mid-eighteenth century. Around the same time, British colonial expansion forced the Coushatta migration to Louisiana from points eastward.⁵

American history has taught us that Native Americans were named Indians because Christopher Columbus thought he had reached the East Indies when he discovered America in 1492. Hernando De Soto's Spanish expedition through the modern Southeast encountered and tried to subjugate members of all six of these tribes. Following De Soto's death in 1542, his remaining soldiers built a raft and sailed to Mexico, leaving the natives to their own affairs. French colonial officials adopted a totally different policy toward Louisiana's tribes. Although the French attempted to convert the indigenous peoples

to Catholicism, the colony's leaders also viewed the tribes as a vital source of provisions and furs. In fact, New Orleans survived on the foodstuffs grown by the Choctaw.⁶

Following the American purchase of Louisiana, official policy toward the natives rapidly changed. President Andrew Jackson forced the Caddo and a majority of the Choctaw and the Coushatta onto reservations in Oklahoma and Texas. Today, the federal government recognizes four tribes in Louisiana: Chitimacha, Coushatta, Tunica-Biloxi, and the Jena Band of the Choctaw.⁷ The 2010 census based on 2009 estimates reported that approximately 26,800 American Indians and Alaska natives lived in Louisiana.⁸

The early inhabitants of Louisiana have contributed much to the uniqueness of Louisiana and have left an indelible mark on its culture. Indian names such as Calcasieu "crying eagle," Catahoula "beloved lake," and Tangipahoa "ear of corn" are indicative of the long-lasting legacy of Louisiana's early inhabitants.

Louisiana culture often revolves around its early inhabitants. Only recently Louisiana Public Broadcasting's documentary, "Through Native Waters: A Chitimacha Recollection," portrayed the present Chitimacha tribe through the eyes of a descendant who journeys down the Atchafalaya River Basin* and recounts stories, beliefs and perspectives of this important people. Although their numbers have decreased to some 1,000 and their sacred fishing and hunting grounds are diminishing, their legacy lives on. In fact, a grant from Rosetta Stone has allowed the tribe to research and teach their language and create a cultural center in St. Mary Parish.⁹

The French Connection

In the late 1600s French Governor of Canada, Louis de Baude, Comte de Frontenac was a firm believer in French territorial expansion and feared that the further growth of the British colonies might cut off France's access to the valuable fur-trading lands of North America. He encouraged a wealthy immigrant to New France, Rene Robert Cavelier or the

Sieur de La Salle, to explore the interior waterways. In 1682, an expedition led by La Salle reached the mouth of the Mississippi River. Claiming all the land drained by the river for France, La Salle named the new colonial possession Louisiana, in honor of King Louis XIV.¹⁰ Efforts by La Salle to settle the new colony ended in failure, and French colonial officials did not launch any further attempts to build an outpost in Louisiana until 1699. Settlers under the leadership of French-Canadian Pierre Le Moyne, Sieur d'Iberville managed to scrape out an existence near the present-day city of Biloxi, Mississippi. France, however, really needed a settlement directly on the Mississippi to control the river. In 1718, Iberville moved the capital of the colony to New Orleans, a town recently laid out by his brother Jean-Baptiste Le Moyne, Sieur de Bienville, and named in honor of the Duke of Orleans.¹¹

French-Louisiana Chronology	
Year	Event
1682	LaSalle Explores the Mississippi River
1699	Louisiana Colony is Established
1712-1717	Royal Charter Granted to Antoine Crozat
1713-1731	Royal Charter Granted to John Law
1718	Bienville Founds New Orleans
1762	Treaty of Fontainebleau
1763	Treaty of Paris
1764-1788	Acadians Come to Louisiana
1800	Secret Treaty of San Ildefonso
1803	Louisiana Purchase Treaty
1804	Napoleonic Code Established
1811	Enabling Act
1812	Louisiana Becomes the Eighteenth State
1861	Louisiana Secedes from the Union
1951	France-Amerique de la Louisiana-Acadienne

Deborah Clifton, Florent Hardy, Jr., and Bruce Turner. *Les Archives des Francophones de la Louisiane*. Quebec Archives: Association des Archivistes du Quebec, Volume 36, Archives 2, 2004-2005. Page 24.

The French quickly relocated their dispersed settlements to the new location. Despite the success in forging a foothold on the Gulf Coast, the colony continued to drain the French Treasury. Hoping that private management of Louisiana might lower the costs, French officials transferred control to the Company of the West, a joint-stock corporation run by an exiled Scotsman named John Law. Law never visited Louisiana, but he convinced

thousands of gullible investors that the colony contained vast amounts of gold, silver, and other valuable commodities. The unmasking of the "Mississippi Bubble" in 1720 led to a continental recession.¹²

The crown resumed direct control of the colony in 1731, but Louisiana continued to struggle for survival. During the forty years of French rule, the colony never turned a profit. Although Law succeeded in attracting German and Swiss settlers, the number of French residents remained low. Colonial officials resorted to sending convicts and prostitutes to Louisiana in a desperate attempt to increase the number of French settlers. Between 1717 and 1721, half the women sent to the colony were prostitutes. By the end of French rule, the colony's population managed to reach self-sustaining levels, but only barely.¹³

Both the Company of the West and French royal authorities allowed the importation of slaves into the new colony. The French hoped to imitate the success of Britain's Virginia colony which exploited slave labor to grow tobacco. While the crop emerged as the principal product of Louisiana during the colonial period, disease, climate, and low prices meant that Louisiana's tobacco planters never really rivaled their Virginian competitors. The resulting influx of enslaved Africans to grow the crop, however, led to massive increases in the slave population. By 1746, almost sixty percent of the colony's population lived in chains.¹⁴

The Louisiana colony was a challenge to France in many ways, especially economically. Many varied socioeconomic influences also impacted the growth of the colony through the years, but one influence remains paramount today. The French connection is the most dominant and the foremost reason for modern Louisiana's alliance and closeness to Canada, France and all French-speaking nations. It was during the regime of 14 different governors administering Louisiana under French rule through the mid-1700s that the French attitude of *laissez faire* (let things happen as they will) began to prevail, continuing today in a state known for its fairs, festivals, Mardi Gras, dancing and music. The knowledge of the French language especially in southwest Louisiana has been a contributing factor to the long-lasting relationship with

Louisiana and the French. In fact, during World War II and in Vietnam in the 1960s and 1970s, Louisiana's French-speaking military personnel were much sought-after interpreters. Four centuries of French and Francophone cultural development in the New World are documented in a thorough recording of archival repositories that preserve historic data to this day. Fortunately, history has always been important to the people of Louisiana. Today, the Louisiana State Archives houses the original statehood constitution of 1812 and the Acts of the Legislature of the Territory of Louisiana. These initial Acts were written both in English and French.

Louisianians with French ties have been both determined and influential in preserving their French language and culture. One of the earliest heritage organizations, the *Athénée Louisianaise*, founded in 1876, was a society that encouraged the study of French language and literature. *France-Amérique de la Louisiane-Acadienne* was established in 1951 with a similar goal. It was short-lived, however. In 1968, a more concerted effort was made at the state level through the original charter of the Council for the Development of French in Louisiana or CODOFIL, which brought much-needed financial support to the effort. The mission of CODOFIL continues to be the restoration of ethnic pride. This was to be achieved primarily through the teaching of French in Louisiana's schools. Another of the innovative efforts to foster ethnic pride and to maintain the France/Louisiana connection is the twinning of Louisiana and French cities. This effort began almost forty years ago and has been joined more recently by the twinning of plantation homes and French castles. Interestingly, many of these Louisiana cities and plantation homes have French names.¹⁵ In 1762 France ceded the Isle of Orleans and Louisiana west of the Mississippi River to Spain.¹⁶ The next year the Treaty of Paris ceded Louisiana east of the river to England.

Ironically, it was at this time during the Spanish regime (1764 to 1788) that some 3,000 Acadians, later known as Cajuns, were exiled from Acadia, Nova Scotia, Canada, and ended up in Louisiana. Henry Wadsworth Longfellow's poem, "Evangeline, a Tale of Acadie,"



Pierre Le Moyne, Sieur d'Iberville. Courtesy of the Louisiana State Museum. Used with permission.

immortalized the *Grand Derangement* and St. Martinville became known as "*Le Petit Paris*."¹⁷ France briefly regained Louisiana in 1800 through the secret Treaty of San Ildefonso and three years later Napoleon sold the Louisiana Colony.

Today the *Napoleonic Code*, the French civil law code established at the behest of Napoleon in 1804, remains the basis of Louisiana's legal system, with contributions from both civil and common law. In 1808, the Louisiana Territory adopted elements of the Napoleonic Code and included similar provisions in the Civil Code of 1825, the *Code civil des Français*. By 1870, the state had updated the Louisiana Civil Code thereby creating a unique legislative-based standard of civil law, the only state implementing such practices.¹⁸

Spanish Rule

The French and Indian War, known in Europe as the Seven Years' War, cost France its empire in North America. In the 1763 Treaty of Paris, French King Louis XV ceded Canada to Great Britain. To avoid giving control of Louisiana to the British, France secretly transferred possession of the territory, via the Treaty of Fontainebleau, to their Spanish allies in 1762. Spain did not actually assume control in Louisiana until 1766. The French settlers did not take kindly to the transfer of ownership, actually

expelling the first Spanish governor sent from the Old World.

In his place, the new colonial masters dispatched Alejandro O'Reilly, an Irishman in the service of the Spanish king. O'Reilly quickly put down the rebellious French settlers, reorganized the government of the colony,¹⁹ and enabled the migration of the exiled Acadians to Louisiana. O'Reilly only stayed in the colony about seven months, but his brief tenure set the tone for the Spanish administration of Louisiana.²⁰

In order to dilute the French influence in the colony, the Spanish authorities tried to encourage immigration of Spaniards to Louisiana. Spain succeeded in attracting a number of Canary Islanders²¹ to settle in the area around Lake Maurepas and Bayou Lafourche, but their efforts to Hispanicize Louisiana society brought mixed results. While Spain significantly impacted the government and administration of the colony, culturally, the territory remained firmly French.

During the almost forty years of Spanish control, Louisiana maintained the same lowly position that the colony endured under French rulership—a minor imperial backwater of limited importance. In fact, Spain took possession of Louisiana mainly to protect its more valuable Mexican holdings from British and American encroachment. Although colonial officials like Bernardo de Galvez lobbied Spanish bureaucrats for further development of Louisiana, their calls mostly went unanswered.

When French ruler Napoleon Bonaparte offered to take Louisiana back in 1800, Spanish authorities willingly obliged. Although the change in ownership quickly took place in Paris and Madrid, the new owners did not take control in Louisiana until November 1803.²²

Migration of Europeans

The migration of Europeans to Louisiana, throughout the 19th century, became a defining aspect of today's statewide varied and unique culture. This period brought in the Hungarian settlements in Livingston Parish, the German Coast in St. John the Baptist Parish, the Canary Islanders and the Acadians in south Louisiana, and the mix

of British Islanders, Italians, and Germanic ethnicities.²³ New Orleans, however, remained the focal point of Louisiana.

The strategic location of the Port of New Orleans assured that Louisiana would remain a constant interest of commerce to European imperial interests. Sold by France to help finance the Napoleonic Wars subjected to siege by Great Britain during the War of 1812, New Orleans became increasingly of pivotal importance to the shipping of goods between Europe and America. During the early half of the 19th century, Europe proved a mass consumer of American goods; for example, cotton, sugar,* and timber became primary Louisiana exports to European nations in need of such material and were greatly responsible for Louisiana's economic growth. Louisiana continued to grow under the governance of France, Spain and Great Britain, until the United States' annexation of Spanish West Florida, one of three independent countries that has ever existed in the United States, in September, 1812, completing the still existing boundary.²⁴

Louisiana Purchase

Upon achieving unrivaled power in 1799, French General Napoleon Bonaparte laid in motion not only the establishment of a French Empire in Europe, but in North America as well. Napoleon saw Louisiana then owned by Spain as a vital part in his quest for New World riches. The Treaty of San Ildefonso²⁵ transferred authority over the territory back to the French. Bonaparte also launched a renewed effort to put down the slave rebellion in the French colony of San Domingue,²⁶ which had raged without letup since 1791. The sad demise of the army that Napoleon sent to conquer the island of Hispaniola soured his imperial ambitions in North America. Owning Louisiana made little geo-political sense without also maintaining a position in the more valuable Caribbean sugar islands. Furthermore, Bonaparte needed money to fund expansion of his European empire. As a result of all these considerations, the American negotiators sent by President Thomas Jefferson to Paris found the French emperor a very willing seller.

The United States wanted Louisiana



A map of the original 12 parishes in the Territory of Orleans in 1805. Louisiana State Archives, Secretary of State's Office. Used with permission.

for two crucial reasons. During the last years of Spanish rule, colonial authorities frequently closed the port of New Orleans to American traffic. The closures infuriated western settlers, who depended on the city as both a supplier and a market for their goods. For both philosophical and monetary reasons, Jefferson only wanted to purchase New Orleans from Napoleon.²⁷ Owning the entire territory of Louisiana, however, opened up a vast area of land to the rapidly expanding American nation. Proper ownership of colonial land grants acquired prior to 1800 was addressed by the 1805 Congress.*

For essentially the same price that the Americans wanted to pay for New Orleans, Bonaparte offered to sell the entire territory of Louisiana. Robert Livingston and James Monroe, the two American representatives, quickly signed an agreement to purchase Louisiana for fifteen million dollars. Since the amount well exceeded the money in the American Treasury, the United States took out a loan with Baring Bank, a British firm, to actually pay the French. On December 20, 1803, Governor William Charles Cole

Claiborne raised the Stars and Stripes over the Cabildo in New Orleans.²⁸

Territorial Louisiana and Statehood

The present state of Louisiana was carved out of the southern section of the Louisiana Purchase. On March 26, 1804, the Eighth Congress of the United States organized the Territory of Orleans, which included all of the present state of Louisiana. The creation of a territorial government allowed residents to elect a territorial legislature, but not major office-holders. The President and Congress continued to appoint the territorial governor. The future state's borders remained undefined and the matter of some dispute with Spanish officials in Mexico. Not until the Adams-Onís Treaty in 1819, seven years after statehood, did the Sabine River become the official western border of Louisiana.

At almost the same time that America assumed jurisdiction over Louisiana, an influx of refugees from the continuing unrest in San Domingue started to arrive

in New Orleans. The new settlers greatly aided the development of Louisiana's economy, which languished during both the French and Spanish periods. French planters from San Domingue played a crucial role in starting the sugar industry, importing the technology and knowledge needed to grow, harvest, and process sugar cane. A sizable community of free black artisans also immigrated to Louisiana from San Domingue.²⁹

In order for a territory to be admitted into the union in the early 1800s, minimum requirements had to be met. The Northwest Ordinance of 1787 stated that population had to exceed 60,000 and the Enabling Act of 1802 set forth the legal mechanisms that authorized the people of a territory to begin the process towards statehood. There was precedent for a territory to become a state. On April 30, 1802, the Seventh Congress of the United States authorized the residents of the eastern portion of the Northwest Territory to form the state of Ohio and join the United States on an equal footing with the other states. Thus, Ohio set the precedent and procedures for creation of future states in the western territories.

To begin the process, twelve parishes³⁰ were established by the Territorial Legislature on April 10, 1805, starting from the southeast corner moving west and north. These were Orleans, LaFourche, German Coast, Acadia, Iberville, Attakapas, Pointe Coupee, Opelousas, Rapides, Concordia, Natchitoches and Ouachita. Not included in the Orleans Territory were the Florida Parishes on the east bank of the Mississippi; they were part of the Spanish territory of West Florida until annexed in 1810 following the West Florida Revolt.³¹ The western boundary with Spanish Texas was not fully defined until the Adams-Onis Treaty in 1819, and a strip of land known as the Sabine Free State east of the Sabine River was a neutral ground buffer area from about 1807 until 1819.

By the Census of 1810, Louisiana met the 60,000 population figure needed to qualify for statehood. The territorial legislature quickly adopted a state constitution, shaped primarily by a copy of the Napoleonic Code that Creole admirers of the French Emperor brought to New Orleans in 1808. On February 20, 1812, President James Madison signed the congressional

Louisiana's Many Constitutions

Constitution Dates

1812
1845
1852
1861
1864
1868
1879
1898
1913
1921
1974

West's Louisiana Statutes Annotated: Treaties and Organic Laws, Early Constitutions, U.S. Constitution and Index, St. Paul, MN: West Publishing Company, 1997, Volume 3, 80.

act granting statehood to Louisiana. The admission of Louisiana became official two months later.³²

Louisiana's first elected governor to the newly formed state was William Charles Cole Claiborne, 1812-1816. Claiborne had served as Territorial Governor of the Territory of Orleans (Louisiana), 1803-1812. State officers serving with him were as follows: L.B. Macarty, Secretary of State; J. Montegut, Treasurer; Allan B. Magruder, United States Senator; Thomas Posey, (replacing Jean Noel Destréhan who resigned before taking his senate seat), United States Senator; and Thomas Bolling Robertson, United States Congressman.

Other officials were Julien Poydras, President of the Senate; P.B. St. Martin, Speaker of the House of Representatives; Dominick Austine Hall, George Mathews and Pierre Derbigny, Judges of the Supreme Court; and Julien Poydras, Stephen A. Hopkins and Philemon Thomas, Presidential Electors.³³

The original constitution adopted in April of 1812 when Louisiana was admitted to statehood laid out the organization of the state's governing system and stated the terms of office for the departments of state. It was in effect for many years, but revisions became necessary as society changed. The 1845 alterations included the qualification terms, term limitations of the governor, and creation of the office of lieutenant governor. Not completely happy with the document, the public organized a constitutional convention in Baton Rouge in 1852. Over the years, there were more constitutional conventions and new versions. Louisiana adopted the Ordinance

of Secession on January 26, 1861, and in March 1861 adopted the Constitution of 1861, making those changes necessary for the state constitution to conform to the Constitution of the Confederate States of America. The words "Confederate States" were inserted in place of "United States" and some other minor changes. The 1861 Constitution amendment changes were not submitted to the voters in Louisiana.³⁴ Among the noteworthy provisions were the abolition of slavery in 1864; a formal bill of rights, 1868; request for God's guidance, 1879; restriction of voting rights to the literate and property owners only, 1898 and 1913. Throughout its history, Louisiana has altered and added provisions to its constitution. The 1921 Louisiana Constitution holds the record for the longest state constitution before it was supplanted by the shorter 1974 constitution.³⁵

All Acts of the Louisiana Legislature, dating from 1803 to present, are stored in temperature and humidity controlled vaults at the Louisiana State Archives in Baton Rouge. Earlier acts are in volumes bound by various Secretaries of State, which were notably written by hand. The Acts dated 1803-1987 were microfilmed and are available for research purposes at the State Archives. Annually, the Acts of the Legislature are published by the Secretary of State's office.³⁶

In spite of the newly formed constitution, however, the issue of Louisiana's loyalty remained an open question until the War of 1812. This war was caused by the seizure of American sailors by the Royal Navy and the British continued support for native tribes in the Midwest and South. The first two years went badly for the Americans. In 1814, a British expedition even seized the country's new national capital and burned the White House. In the fall of 1814, the British launched an attempt to seize New Orleans, and thereby gain control of the Mississippi River.

To face the invasion, General Andrew Jackson assembled a motley army of Tennessee Volunteers, Choctaws, armed free blacks, and pirates. Although leery of American intentions, the French population of Louisiana feared the British even more, and threw in with Jackson. On January 8, 1815, the Americans won a major victory in the Battle of New Orleans, inflicting

over two thousand casualties on British forces while suffering only thirteen dead. In actuality, British and American diplomats had signed a peace treaty ending the war over a month before the battle, but the successful repulse of the British army forever settled the debate over French Louisianians' allegiance to their new nation.³⁷

West Florida Republic

The Spanish territory of Florida extended into the area now called the Florida Parishes: East Baton Rouge, East Feliciana, Livingston, St. Helena, St. Tammany, Tangipahoa, Washington, and West Feliciana. In 1800, when the Spanish agreed to sell Louisiana back to the French, the Florida Parishes remained under the rule of the Spanish governor in Pensacola. Settlers in the territory came from diverse backgrounds: Spanish landholders, former American loyalists, and southern planters. The wealthy planters of the Felicianas, in particular, viewed the Spanish colonial government with derision.³⁸

Napoleon's occupation of Spain in 1808 severely weakened Spanish control over their New World Empire. Two years later, rebellions broke out in Mexico and in South America. The Florida Parishes also experienced unrest. The Feliciana planters feared that a cash-strapped Spain might sell Florida to France or another continental power. On July 25, 1810, a convention of mostly American settlers gathered near modern-day Zachary, Louisiana, to discuss the situation. Spanish loyalists informed the governor of the meeting, and urged him to march and break up the "rebellion." With their secret discovered, the convention decided to seize the Spanish Fort San Carlos in Baton Rouge. Under the cover of darkness on the night of September 22, 1810, forces loyal to the newly declared Republic of West Florida captured Baton Rouge.³⁹

After the capitulation of Baton Rouge's Spanish garrison, the rebels fanned out across the Florida Parishes. They arrested anyone suspected of Spanish sympathies. Just as rebels prepared to attack the remaining stronghold at Mobile, the United States intervened. President James



Map of the West Florida Republic. Courtesy of Claitor's Publishing. Used with permission.

Madison commanded Louisiana Territorial Governor William Charles Cole Claiborne to invade the Florida Parishes and seize them for the American nation. Seventy-four days after its birth, the West Florida Republic ceased to exist.⁴⁰

The Louisiana State Archives received the statewide Education Award from the *Louisiana Trust* for HISTORIC PRESERVATION in 2011 as a result of its West Florida Republic Exhibit celebrating the Bicentennial of the Republic. The State Archives was assisted by the West Florida Republic Bicentennial Commission which coordinated the participation and input of each of the parishes which made up the seventy-four-day-long Republic.

For the rest of the chronology and more information on Louisiana's culture and natural resources, contact the State Archives, 3851 Essen Lane, Baton Rouge, LA 70809, (225)922-1000, email archives@sos.la.gov.

FOOTNOTES

1. Florent Hardy, Jr., *Louisiana Proud*. 1990 Unpublished essay. Louisiana Proud Essay Contest sponsored by the Lt. Governor's Office of Culture, Recreation and Tourism and La Capital Federal Credit Union.

2. Image sources are included in the Bibliography.

3. Poverty Point Historic Site. The Poverty Point Mound site is located near Epps in Northeast Louisiana and is the largest earthwork in the Western Hemisphere. Archaeologist Jon L. Gibson notes that Poverty Point in about 1500 B.C. was the commercial and governmental center of its day. It is a State Historical Site, and is an affiliate of the Smithsonian Institution.

It is also designated by the United Nations as one of three World Heritage Sites in North America. Culture, Recreation and Tourism/Office of State Parks/Poverty Point State Historic Site, www.crt.la.us/archaeology/virtualbooks/poverpoi/popo.htm, (accessed March 18, 2011). Jon L. Gibson, *Poverty Point: A Terminal Archaic Culture of the Lower Mississippi Valley*, 2nd edition, (Baton Rouge: Department of Culture, Recreation and Tourism, Louisiana Archaeological Survey and Antiquities Commission, 1996). Series: Anthropological Study (Louisiana Archaeological Survey and Antiquities Commission, no. 7).

4. Ibid.

5. Dayna Bowker Lee, "Caddo Nation," *KnowLA Encyclopedia of Louisiana*. <http://www.knowla.org/entry.php?rec=607>, (accessed April 6, 2011).

6. Michael T. Pasquier, "Early Exploration," *KnowLA Encyclopedia of Louisiana*. <http://www.knowla.org/entry.php?rec=491>, (accessed April 6, 2011).

7. James Precht, "Native Americans in Twentieth- and Twenty-first Century Louisiana," *KnowLA Encyclopedia of Louisiana*. <http://www.knowla.org/entry.php?rec=752>, (accessed April 6, 2011).

8. U.S. Census Bureau, State and County Quick Facts, <http://quickfacts.census.gov/gfd/states/22000.html>, (accessed April 8, 2011).

*The project encompasses 595,000 acres of the largest contiguous tract of bottomland hardwoods in the United States. The Atchafalaya Basin is a scenic semi-wilderness area of hardwood forests, cypress stands, marshes and bayous. It is one of the last great river swamps left in the nation. The Atchafalaya River and hundreds of miles of bayous bring life to this wilderness area. *Corps Lakes Gateway: Louisiana - Atchafalaya Basin*, <http://corpslakes.usace.army.mil/visitors/projects.cfm>.

9. Joan B. Garvey and Mary Lou Widmer, *Louisiana: The First Three-Hundred Years*, (New Orleans: Garner Press, 2001), 2-6, 265; Milburn Calhoun and Bernie McGovern, *Louisiana Almanac*, 18th Edition, (Gretna, LA: Pelican Publishing Company, 2009), 91, 93-96.

10. Michael T. Pasquier, "Rene-Robert Cavalier, Sieur de La Salle," *KnowLA Encyclopedia of Louisiana*, <http://www.knowla.org/entry>.

php?rec=807, (accessed April 5, 2011).

11. Michael T. Pasquier, "Jean-Baptiste Le Moyne, Sieur de Bienville," *KnowLA Encyclopedia of Louisiana*, <http://www.knowla.org/entry.php?rec=814>, (accessed April 5, 2011). Bienville chooses a site that had been shown to him by Indians in 1699. It was an elevated natural levee, angled to confront approaching ships, that allowed passage by Bayou St. John/River Road between Lake Pontchartrain and the Mississippi River.

12. Joe Gray Taylor, *Louisiana: A Bicentennial History*, (New York: W.W. Norton, 1976), 8-9.

13. *Ibid.*, 10.

14. Michael T. Pasquier, "French Colonial Louisiana," *KnowLA Encyclopedia of Louisiana*, <http://www.knowla.org/entry.php?rec=534>, (accessed April 5, 2011).

15. *Les archives des francophones de la Louisiane*, Deborah Clifton, Florent Hardy, Jr. and Bruce Turner, published by the Quebec Archives in *Archives; Association des Archivistes du Quebec*. Volume 36, Number 2, 2004-2005, 23-34.

16. In regard to the question of why France ceded Louisiana to Spain, there were multiple theories about why France acted as it did. The most logical theory in Edwin Adams Davis's viewpoint is the "White Elephant" Theory. This is the viewpoint that France felt that Louisiana had failed as a colony and was not cost-efficient. It had attracted no more than 7,000 persons after a half-century of settlement. Edwin Adams Davis, *The Story of Louisiana*, Volume I, (New Orleans: J.F. Hyer Publishing Co., 1960), 69-70.

17. St. Martinville in the eighteenth century gained its reputation as the home of numerous French Royalists who emigrated to escape the French Revolution as they fled precipitously from the anti-Catholic mob attack. In St. Martinville, the immigrants replicated in the wilderness a social life which resembled Parisian society as closely as possible. St. Martinville has subsequently been known as "Le Petit Paris." The many displaced Royalists that settled in the region established a class of leisure and culture in the New World. *Petit Paris*, <http://www.urbandictionary.com/define>.

18. Louisiana is one of the most unique states in the Union for a variety of reasons. In particular, both civil and common law contribute to Louisiana's legal code. Beginning with Spanish rule, the Civil Code was adopted by the Louisiana Territory in 1808. Preceding the adoption of the Civil Code was the *Code civil des Français*, which the Spanish implemented in 1804 as their form of jurisprudence. By 1870, Louisiana updated the Louisiana Civil Code in use today and in the process created a unique legislative-based standard of civil law. Currently, Louisiana is the only state implementing such practices; however, Spain, Quebec, and countries in Latin America use forms of civil codes within their system of law. Bicentennial of the Civil Code, <http://www.law.lsu.edu/index.cfm?geaux=ccls.bicentennialofthelouisianacivilcode>.

19. A parish is Louisiana's equivalent to a county elsewhere in the United States. The Cajun homeland, Acadiana, comprises twenty-two south Louisiana parishes. Parishes were first created in Louisiana in the late eighteenth century when Captain General Alejandro O'Reilly, an Irish-born governor (1769-70) in the service of Spain, divided the colony into twenty-one ecclesiastical parishes under the control

of the Bishop of Santiago de Cuba. A single parish had been founded near New Orleans in 1723, but not until O'Reilly's administration were they organized on a widespread basis. After the Louisiana Purchase of 1803, these church parish borders served as the basis for the state's political subdivisions. St. Mary Parish Department of Economic Development, <http://www.stmaryparishdevelopment.com/faq.asp>.

20. Joe Gray Taylor, *Louisiana: A Bicentennial History*, (New York: W.W. Norton, 1976), 21-22.

21. Spaniards from the Canary Islands (just 60 miles off the coast of Morocco) crossed the Atlantic to settle in South Louisiana. They were part of the Spanish colonial government's plan to develop Louisiana and resist British encroachment. Several thousand families from the Spanish mainland and the Canaries were sent between 1778 and 1783. St. Bernard Parish Tourist Commission, "Who are the Isleños?," www.VisitStBernard.com.

22. Joe Gray Taylor, *Louisiana: A Bicentennial History*, (New York: W.W. Norton, 1976), 28-29.

23. Milburn Calhoun and Jeanne Frois, *Louisiana Almanac 2006-2007*, 17th Edition, (Gretna, LA: Pelican Publishing Company, 2006), 147-153.

*Etienne de Boré (1741-1820) is credited with granulating sugar in 1796, greatly increasing the value of Louisiana's sugar production. Glenn R. Conrad, Editor. *The Dictionary of Louisiana Biography*. Volume 1. Lafayette, LA: Louisiana Historical Association, 1988, 90.

24. John G. Clark, "New Orleans: Its First Century of Economic Development," *Louisiana Historical Association, Louisiana History: Winter 1969*, Volume 10, Number 1, 35-37.

25. San Ildefonso was the summer residence of the Spanish King. The standard spelling is San Ildefonso. The treaty is also called The Third Treaty of San Ildefonso of 1800 to distinguish it from The Treaty of San Ildefonso of 1777 and The Treaty of San Ildefonso of 1796. Junius Rodriguez, (Editor); *The Louisiana Purchase: A Historical and Geographical Encyclopedia*; Santa Barbara, CA: ABC-CLIO: 2002, 305-307.

26. Hispaniola. Junius Rodriguez, (Editor); *The Louisiana Purchase: A Historical and Geographical Encyclopedia*; Santa Barbara, CA: ABC-CLIO: 2002, 135-136.

27. Jon Kukla, *A Wilderness So Immense: The Louisiana Purchase and the Destiny of America*, (New York: Knopf, 2003), 58.

*The legal ownership of all French and Spanish land grants prior to 1800 were initially clarified in 1805. Eighth Congress, United States. "An act for ascertaining and adjusting the titles and claims to land, within the territory of Orleans, and the district of Louisiana." *United States Statutes at Large*. Session II, Chapter 26, March 2, 1805, 324-329. <http://memory.loc.gov>.

28. Peter J. Kastor, "Louisiana Purchase and Territorial Period," *KnowLA Encyclopedia of Louisiana*, <http://www.knowla.org/entry.php?rec=535>, (accessed April 6, 2011). Jon Kukla, *A Wilderness So Immense: The Louisiana Purchase and the Destiny of America*, (New York: Knopf, 2003), 58.

29. John C. Clark. *New Orleans, 1718-1812; An Economic History*, (Baton Rouge: Louisiana State University Press, 1970), 218-219.

30. The first act passed at the second session of the first legislature, approved March 31, 1807,

divided the territory into nineteen parishes . . . without, however, abolishing the twelve existing counties The county system was apparently retained for the purpose of electing representatives and levying taxes, and gradually these functions went out of existence. Counties remained a tenuous, shadowy feature of Louisiana government after the creation of parishes until they were abolished by the Constitution of 1845. The parish in Louisiana has served as practically the same governmental unit as the county in other states. Edwin Adams Davis, *A Narrative History of Louisiana*. (Baton Rouge: Claitor's Publishing Division, 1971), 168-169.

31. The West Florida Republic lasted 74 days and consisted of the present-day parishes of East Baton Rouge, East Feliciana, Livingston, St. Helena, St. Tammany, Tangipahoa, Washington, and West Feliciana. West Florida Revolt, <http://www.knowla.org/entry.php?rec=755>, (accessed August 16, 2011).

32. Peter J. Kastor, "Louisiana Purchase and Territorial Period," *KnowLA Encyclopedia of Louisiana*. <http://www.knowla.org/entry.php?rec=535>, (accessed April 6, 2011).

33. Leroy Willie, *A Look At Louisiana's First Century, 1804-1903*, (Baton Rouge: SAR Books, 2002), 12.

34. *West's Louisiana Statutes Annotated; Treaties and Organic Laws, Early Constitutions, U.S. Constitution and Index*, St. Paul, MN: West Publishing Company, 1997, Volume 3, 80.

35. Wayne Parent. *Inside the Carnival: Unmasking Louisiana Politics*, (Baton Rouge: Louisiana State University Press, 2005), 28-29. Edwin Adams Davis, *Louisiana; The Pelican State*. Fourth Edition. (Baton Rouge: Louisiana State University Press, 1975), 280.

36. Eighth Congress, United States. "An act further providing for the government of the district of Louisiana." *United States Statutes at Large*. Session II, Chapter 31, March 3, 1805, 331-332. <http://memory.loc.gov>. Eighth Congress, United States. "An act erecting Louisiana into two territories, and providing for the temporary government thereof." *United States Statutes at Large*. Session I, Chapter 38, March 26, 1804, 283-289, <http://memory.loc.gov>. Twelfth Congress, United States. "An act providing for the government of the territory of Missouri." *United States Statutes at Large*. Session I, Chapter 95, June 4, 1812, 742-747, <http://memory.loc.gov>.

37. Jim Bradshaw, "Battle of New Orleans," *KnowLA Encyclopedia of Louisiana*, <http://www.knowla.org/entry.php?rec=724>, (accessed April 11, 2011).

38. William C. Davis, *The Rogue Republic: How Would-be Patriots Waged the Shortest Revolution in American History*, (New York: Houghton Mifflin, 2011), 5, 35.

39. Samuel C. Hyde, "Quick Reference Guide for Understanding the West Florida Revolt and Creation of the West Florida Republic," http://www.selu.edu/acad_research/programs/csls/west_florida/documents/Reference_Guide_to_W.pdf, (accessed March 7, 2011).

40. Samuel C. Hyde, "West Florida Revolt," *KnowLA Encyclopedia of Louisiana*, <http://www.knowla.org/entry.php?rec=755>, (accessed April 20, 2011).



Resolution

House of Delegates Louisiana State Bar Association

In Commemoration of the Founding of the State of Louisiana (1812-2012)

WHEREAS the Francophone Section of the Louisiana State Bar Association was created at the Annual Meeting at Sandestin, Florida, in June of 1999;

WHEREAS the Francophone Section's mission is to promote any and all things Francophone in nature including the preservation of the French Culture, Language and Historical Events;

WHEREAS on April 30, 1812, the United States of America admitted Louisiana as the eighteenth State into the Union;

WHEREAS Louisiana was the first State to have a majority Catholic French and Spanish Speaking population reflecting its origins as a colony under France from 1669-1763 and from 1763-1803;

WHEREAS American attorney Edward Livingston along with French-born Congressman Julien Poydras lobbied and convinced Territorial Governor William C.C. Claiborne that the New Orleans Territory qualified for Statehood and that, finally in 1811, Democratic President James Madison signed the Bill allowing the people of Louisiana to form a Statehood;

WHEREAS forty-three American and Creole Leaders convened on April 14, 1812, at a Convention to consider the Statehood of Louisiana;

WHEREAS in 2012, we celebrate the 200th Anniversary of the founding of the State of Louisiana;

WHEREAS two hundred years later Louisiana remains one of the distinctive States in the Union with its rich heritage of the French Language, Creole and Cajun Cuisine, Louisiana Civil Code, Mardi Gras and its "Joie de Vivre";

WHEREAS the Francophone Section of the Louisiana State Bar Association wishes Louisiana a "Bon Anniversaire" of two hundred years;

WHEREAS the Francophone Section of the Louisiana State Bar Association will be having events in April 2012 in commemoration of the founding of Louisiana at its Annual Meeting in Lafayette, Louisiana, on April 27, 2012, at the United States Federal Courthouse, 800 Lafayette Street, at 4:00 o'clock p.m. and will participate in the actual commemoration by the State of Louisiana on April 30, 2012;

WHEREAS the creation of documents of the founding of the State of Louisiana was done by the legislature and impacted by certain lawyers who drafted and created the final document;

WHEREAS the Louisiana State Bar Association and through its mission should be proud that its members prior to creation of the Louisiana State Bar Association in 1812 so helped create this legal document;

WHEREAS this historical event should be one of significant historical presence for Louisiana as well as for the Louisiana State Bar Association; and

WHEREAS the Francophone Section of the Louisiana State Bar Association hereby submits this resolution to commemorate this great event and the founding of Louisiana.

NOW, THEREFORE BE IT RESOLVED that the Francophone Section of the Louisiana State Bar Association wishes to proclaim this day before the House of Delegates of the Louisiana State Bar Association as an official birthday celebration of Louisiana which is to be celebrated on April 30, 2012.

This resolution is made in Loving Memory of Judge Allen M. Babineaux.

APPROVED BY HOUSE OF DELEGATES AND BOARD OF GOVERNORS
*With caveat that article on Spanish history of Louisiana be included in
Special Bicentennial issue of Louisiana Bar Journal.*

**JANUARY 21, 2012
NEW ORLEANS, LA**

Events / Louisiana Statehood Bicentennial 1812-2012

Several events have been planned across the state to commemorate the Louisiana Statehood Bicentennial. The official events calendar online is listed by month. For more information on all events, go to: www.louisianabicentennial2012.com. Celebrate your history!

Among the activities are:

Now through June 14, 2012

► Natchitoches: Paths to Statehood Exhibit

March 2012

- March 13, Exhibit of Select George Rodrigue Paintings (opening)
- March 13, A Taste of History with Thomas Jefferson (A Cooking Class)
- March 20, Louisiana State Museum/Capitol Park Bicentennial Exhibit
- March 22, Festival of the Arts

April 2012

- April 20, Springfest and Civil War Re-enactment
- April 27, Bicentennial Documentary Premiere

- April 28, Bicentennial Family Homecoming Celebration
- April 30, 200th Louisiana Bicentennial Birthday Event

May 2012

- May 12, Faces and Places of Louisiana: Reading by Poet Laureate Julie Kane

June 2012

- June 27, Louisiana in 1812: A Lecture



Free CLE to Mark Bicentennial Celebration of Federal Courts in Louisiana

This year marks the 200-year anniversary of the federal courts in Louisiana. Since their inception, the Louisiana federal courts have endured a rich history, from the Civil War to Hurricane Katrina. The Eastern District of Louisiana, through a committee of court, bar, university and civic leaders and chaired by Hon. Mary Ann Vial Lemmon, has planned a free CLE seminar, "Tracking Louisiana's Legal Heritage: Celebrating 200 Years of the Federal District Courts in Louisiana," for Friday, April 13, to recognize the courts' bicentennial.

All members of the bar, judiciary and public are invited to attend this free CLE seminar from 1-5 p.m. at the Pan American Life Conference and Media Center, 11th Floor Auditorium, 601 Poydras St., New Orleans, followed by a reception across the street at the Eastern District of Louisiana courthouse. The seminar has been approved for 4 hours of CLE credit.

The seminar will highlight the colorful history of the federal courts in Louisiana, particularly that of the Eastern District of Louisiana. Presentations will focus on notable cases, judges and events from

the past 200 years, such as the distinctive cultural combination of Creoles and Americans in Louisiana's early days of statehood, the evolution of civilian aspects of Louisiana law, and Andrew Jackson's infamous fight with Judge Dominick Hall.

Panelists include historians and academics, including John Magill, curator of The Historic New Orleans Collection; Jason Wiese, assistant director of the Williams Research Center at The Historic New Orleans Collection; Professor John Randall Trahan, Louisiana State University Paul M. Hebert Law Center; Dr. Mark F. Fernandez, professor of history at Loyola University; Professor Richard Campanella, associate director of the Center for Bioenvironmental Sciences at Tulane University; and Dr. Raphael Cassimere, Jr., professor at the University of New Orleans. Dr. Warren M. Billings, professor of history at the University of New Orleans, will serve as moderator.

The seminar also will feature a skit performed by local students about Louisiana's unique admission to the union as a civil law state.

There will be a display of interesting and historic documents, photographs and

other memorabilia, as well as a slideshow presentation in the lobby of the Eastern District building.

In addition to the Eastern District of Louisiana, co-sponsors and partners include the New Orleans Chapter of the Federal Bar Association, the New Orleans Bar Association, the Louisiana Bar Foundation and the Louisiana Center for Law and Civic Education. Several university professors and The Historic New Orleans Collection also have been instrumental in the planning of this celebration.

More information about this bicentennial celebration and the CLE, including various judicial biographies, notable cases, rulings and other court documents, will be posted in early March to the court's website at www.laed.uscourts.gov/. To RSVP for the event, send your name, firm/employer, address, phone, fax and email to Camille Zeller, Attorney Conference Center, Hale Boggs Federal Building, Room 364, 500 Poydras St., New Orleans, LA 70130; call (504)589-7990; or email fbano@bellsouth.net.

AMERICA'S NEW CIVIL RIGHTS MOVEMENT

Education Reform, Public Charter Schools and No Child Left Behind

By Jonathan C. Augustine

[C]harter schools are publically financed and open to any child, but they are run by entities other than the conventional local school district. Typically, they are operated by nonprofit organizations that rely on donations to provide seed money to launch the school but then use the same amount, or less taxpayer money per pupil, as is doled out to the public schools for ongoing operations. Those who run charters are accountable for the school's performance. However, they are free to manage as they wish, which includes the freedom to hire teachers who are not union members.

— **Steven Brill**, *Class Warfare: Inside the Fight to Fix America's Schools* 8 (Simon & Schuster 2011)

January 2012 marked the 10-year anniversary of President George W. Bush signing the No Child Left Behind Act of 2001 (NCLB),¹ legislation designed to close the achievement gap in public education. Indeed, as former Secretary of Education Rod Paige expressed, closing the achievement gap between black and white students was NCLB's primary goal.² Over the last decade, in addition to "education reform" becoming a common catchphrase, the concept has become reality in Louisiana with New Orleans front and center on a national stage as America's first majority charter school city.³ Moreover, with indications the state's Recovery School District (RSD) will operate failed local schools in perpetuity, the paradigm of school governance existing prior to NCLB is clearly a thing of the past.

In *Brown v. Board of Education*,⁴ the United States Supreme Court placed access to educational opportunities at the heart of the 20th century Civil Rights Movement (the Movement).⁵ Moreover, in *Grutter v. Bollinger*,⁶ a case decided almost 50 years after *Brown*, the court affirmed this time-honored philosophical position.⁷ As a successor to several other reform-oriented enactments, NCLB placed education reform and closing the achievement gap between black and white students at the pinnacle of a 21st century civil rights movement where Louisiana is leading the way.⁸

NCLB's History and Legacy: From Sputnik to Louisiana's RSD

In the wake of World War II and the Cold War's intensification, concerns arose as to whether the United States could keep up with the Soviet Union in math and science after the 1957 launch of the Soviet Union's space satellite Sputnik.⁹ Consequently, along with the United States' socially changing dynamics — fueled largely by the then-ongoing Movement — policymakers pressured public schools to quantify educational improvement measures to ensure America would not lose the "space race."¹⁰

Accordingly, in 1965, the year following Congress' enactment of the famed Civil Rights Act of 1964, Congress passed the Elementary and Secondary Education Act (ESEA).¹¹

ESEA's signature item, with the goal of helping solve problems facing economically disadvantaged children, was its Title I, the federal government's single largest education aid program.¹² Dr. John H. Jackson, a former White House education policy advisor, member of the Louisiana Bar and president of the national Schott Foundation for Public Education, describes the statute as follows:

The ESEA outlined a clear federal role for education and doubled federal aid for public schools. The ESEA was designed as both a federal implementation and enforcement mechanism for providing equitable educational opportunities as well as desegregation incentives for Southern school districts, as *de jure* districts were barred from funds. The *Brown* decision, coupled with the impact of the 1964 Civil Rights Act and the 1965 ESEA, placed the United States on a course toward sustaining its position as a global leader of opportunity and democracy.¹³

Indeed, for 30 years after ESEA's enactment, Congress poured hundreds of millions of dollars into public education, unfortunately, however, with only lackluster results.

According to Rod Paige, the Secretary of Education under whom NCLB was enacted, the modern day educational accountability movement began with President George H.W. Bush's 1991 Education Summit, with its policy recommendations later codified in President Bill Clinton's Improving America's Schools Act of 1994 (IASA).¹⁴ With the fundamental premise that *all children* could master challenging content and complex problem-solving skills when expectations are high, the IASA served as a practical precursor to NCLB by initiating major funding reform.

IASA required that local school boards develop plans to increase achievement to

continue receiving money. As evidenced by annual assessments, however, IASA proved unsuccessful as a reform measure as American students continued to lag behind their foreign peers.¹⁵ Amid an increase in the black-white achievement gap in public education, Congress passed NCLB as a bipartisan attempt to improving public education.

Louisiana's Statutory Agent of Reform: The RSD and the Proliferation of Charter Schools

In the decade following NCLB's enactment and its arguably unique effect in Louisiana, the state has become home to the "great experiment" for at least two reasons. First, in the wake of Hurricane Katrina, the state Department of Education and the Orleans Parish School Board have received significant national attention in their rebuilding efforts.¹⁶ Second, as previously highlighted, New Orleans is the United States' first majority charter school city.¹⁷ Consequently, Louisiana's RSD is indeed the center of national attention.

After NCLB's January 2002 effective date, the Legislature responded with Act 9 of the 2003 legislative session creating the RSD.¹⁸ Consistent with the Legislature's clear intent to reform academic standards, once a local school is deemed academically unacceptable for a period of four consecutive years, "the school *shall be removed from the jurisdiction of the local school board... and transferred to the jurisdiction of the Recovery School District...*"¹⁹ Further consistent with the clear intent to reform public education following Hurricane Katrina, the Legislature provided for a "district in crisis" to be transferred to the state-run RSD.²⁰ Consequently, 107 of 116 schools in New Orleans were subject to state takeover.

As a result of the foregoing, charter schools have become commonplace in Louisiana by providing parents and caregivers the much-needed "choice" to

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educate their children. Consistent with other states' models for reform, flexibility and choice were cornerstones of NCLB.²¹ For example, in January 2009, the Board of Elementary and Secondary Education (BESE) accepted the recommendation of Paul Pastorek, a member of the Louisiana Bar then serving as Superintendent of Education, and placed operational control of eight eligible schools in Baton Rouge within the RSD, while subsequently announcing plans to issue charters to non-profit organizations authorized by the National Association of Charter School Authorizers.²²

Furthermore, in addition to the charter movement's stabilized base of operations, charter schools appear to be the wave of the future if more and more academically unacceptable schools are taken over as the requisite school performance score baseline continues to rise, presumably as an attempt to keep American students in step with their foreign counterparts. In noting this likely trend, Tulane University's Cowan Institute provides the following:

School Performance Scores range from 0.0 to either 236.4 or 266.7 (depending on the grade configuration of the school). A school's baseline SPS is calculated by averaging the previous two years of school performance data and is used to give a school a performance rating label. Schools with a Baseline SPS of 140 or above receive a rating of five stars. Schools with an SPS below 60, as of 2007, are deemed "Academically Unacceptable." After NCLB, the state set a target of having all schools reach an SPS of 120 or above by 2014.²³

As far as Louisiana is concerned, therefore, Type 5 Charter Schools will likely be operational for decades to come.²⁴

Challenges to Education Reform in Louisiana

Notwithstanding the national spirit of education reform that has soundly taken foot in Louisiana, there are still



obstacles to holistic structural change. While in recent years the state has made significant improvements in public education, including nationally recognized accountability and teacher quality reforms, and being recognized among national leaders in education technology efforts and early childhood education initiatives,²⁵ Louisiana is still challenged by ongoing desegregation litigation, poverty²⁶ and anti-reform laws like the Louisiana Teacher Tenure Act (TTA).²⁷

According to the United States Commission on Civil Rights, 42 Louisiana school districts have ongoing desegregation cases pending in the state's respective federal district courts.²⁸ In desegregation cases, matters of operational control and governance rest with the district court, which has a mandatory concern for racial parity and not necessarily academic performance.²⁹ Consequently, as school districts attempt to implement and institutionalize reform and follow the dictates of the RSD law to assume operational control of failed schools, there is arguably an inherent tension between a district court's concern for racial parity and the Department's concern for academic

achievement.

Furthermore, Louisiana is often colloquially described as "land-rich and cash-poor." The state's percentage of children living in poverty is higher than the percentage of children living in poverty in the entire United States, with more than two-thirds of the state's public school students living in low-income households.³⁰ Because there remains a higher concentration of black children attending Louisiana's public schools, poverty and *de facto* school segregation seem to go hand-in-hand.

Finally, the TTA continually proves to be an obstacle to holistic education reform. The law gives public school teachers tenure in office and arms them with a protective shield against discharge, suspension or demotion for causes other than those expressly provided by statute.³¹ Although the law was originally intended to protect teachers from political pressure after a three-year probationary period in which they earned tenure,³² its current application makes it almost impossible to make some of the much-needed changes in education reform.

Author's Anecdotes

Many African-American policymakers argue NCLB and education reform are part of a new civil rights movement.³³ In contrast to those arguments, on Sept. 23, 2011, America's first black president, Barack Obama, announced a NCLB waiver program for the respective states.³⁴ In this author's opinion, any such waiver would be a mistake and arguably push back academic gains. If anything, NCLB should be strengthened, *not* "watered down." Specifically, the author suggests two reform-oriented measures by which Congress can strengthen education reform even more. Congress should: (1) require a periodic review of school board and district superintendent effectiveness; and (2) require that states modify their teacher tenure laws to receive Title I funding.

First, teachers often anecdotally complain that incentive pay should not be tied to student achievement. Fair is fair. A uniform application would require that school board members and superintendents would be evaluated to determine their effectiveness, too. Second, with respect to modifying tenure laws, the charter school movement's national popularity clearly suggests that voters want schools to have localized autonomy and discretion in making the necessary personnel changes to improve student achievement. As an example, the standards for teacher removal under the TTA are almost impossible to meet.³⁵ At a minimum, therefore, the current standards should be modified.

Education reform cannot be isolated. It requires a synergistic relationship between parents and caregivers, the local school and/or school district, and community stakeholders like businesses and faith-based organizations. As the new civil rights movement in America, education reform also requires more, *not less*, federal intervention to ensure *Brown's* previously-referenced proclamation is realized. Indeed, education is the very foundation of good citizenship.

The opinions expressed herein are the author's alone and do not necessarily represent those of his employer.

FOOTNOTES

1. 20 U.S.C. §§ 6301-6304, Pub. L. 107-110, 115 Stat. 1425.

2. *See, generally*, Rod Paige and Elaine Witty, *The Black-White Achievement Gap: Why Closing It is the Greatest Civil Rights Issue of Our Time* (Amacom 2010).

3. Danielle Holley-Walker, "The Accountability Cycle: The Recovery School District Act and New Orleans' Charter Schools," 40 Conn. L. Rev. 125, 128 (2007).

4. 347 U.S. 483 (1954).

5. *Id.* at 493 (providing that education is the most important function of state and local governments and the very foundation of good citizenship).

6. 539 U.S. 306 (2003).

7. *Id.* at 331 (citing *Brown v. Board of Education*, 347 U.S. 483, 493 (1954)).

8. *See, generally*, Jonathan C. Augustine and Craig M. Freeman, "Grading the Graders and Reforming the Reform: An Analysis of Public Education Ten Years After No Child Left Behind," 57 Loy. L. Rev. 237 (2011).

9. Scott S. Cowen Inst. for Pub. Educ. Initiatives at Tulane Univ., Public School Performance in New Orleans: A Supplement to the 2008 State of Public Education in New Orleans Report 4 (January 2009) (internal citations omitted).

10. *See id.*

11. 20 U.S.C. § 6301, Pub. L. 89-10, 79 Stat. 27-58.

12. Nick Lewin, "The No Child Left Behind Act of 2001: The Triumph of School Choice Over Racial Desegregation," 12 Geo. J. on Poverty L. & Pol'y 95, 101 (2005).

13. John H. Jackson, "From Miracle to Movement: Mandating a National Opportunity to Learn," in *The State of Black America 2009: Message to the President 62* (Nat'l Urban League 2009).

14. Paige and Witty, *supra* note 2 at 107 (discussing Pub. L. No. 103-382, 108 Stat 3518).

15. *See, generally*, Laurence Steinberg, *Beyond the Classroom: Why School Reform Has Failed and What Parents Need to Do* (Simon & Schuster Paperbacks 1996) (providing a detailed analysis of the lowering of all academic achievement in public education with particular emphasis on the growing disparity between black and white school children).

16. *See, e.g.*, Robert A. Garda, Jr., "The Politics of Education Reform: Lessons from New Orleans," 40 J.L. & Educ. 57 (2011); *see also* Inst. on Race & Poverty at the U. of Minn. L. Sch., *The State of Public Schools in Post-Katrina New Orleans: The Challenge Creating Equal Opportunity* (May 10, 2010).

17. *See* Holley-Walker, *supra* note 3 at 128.

18. La. R.S. § 17:1990.

19. La. R.S. § 17:10.5 (A)(1) (emphasis added).

20. *Id.* §§ 10.6 & 10.7.

21. Paige and Witty, *supra* note 2 at 15.

22. *See, generally*, Will Sentell, "BESE Votes to Takeover Eight Failing EBR Schools," *The Advocate*, Jan. 15, 2009, at A1.

23. Cowen Report, *supra* note 9 at 10.

24. Under Louisiana law, there are five different types of charter schools. *See, generally*, La. R.S. § 17:3973(2)(b); *see also* Wendy Parker, "The Color Choice: Race and Charter Schools," 75 Tul. L. Rev. 563, 577-80 (2001). Specific to the Department assuming operation of preexisting schools deemed academically unacceptable for four consecutive years, however, state law is clear that such schools will operate under a Type 5 Charter. La. R.S. § 17:3973(2)(b)(v)(aa).

25. *See* Education's Next Horizon, Education Briefing Book: A Primer for Policymakers on Louisiana K-12 Education 19-27 (March 2008).

26. *See id.* at 28.

27. La. R.S. § 17:443.

28. United States Commission on Civil Rights, *Becoming Less Separate?: School Desegregation, Justice Department Enforcement and the Pursuit of Unitary Status* 141-45 (2007).

29. *See* Augustine and Freeman, *supra* note 8 at 261; *see also* Kristi L. Bowman, "A New Strategy for Pursuing Racial and Ethnic Quality in Public Schools," 1 Duke F. for L. & Soc. Change 47, 52 (2009) (internal citations omitted).

30. Briefing Book, *supra* note 25 at 28.

31. Reed v. Orleans Parish School Board, 21 So.2d 895 (La. App. Or. 1945).

32. Rousselle v. Plaquemines Parish School Board, 93-1916 (La. 2/28/94), 633 So.2d 1235, 1242.

33. *See, e.g.*, Kevin P. Chavous and Benjamin F. Chavis, Jr., "Every Child Deserves a Chance" (Feb. 11, 2011), available at: <http://blog.baeo.org/2011/02/20/chavous-chavis-every-child-deserves-a-chance/> (last visited Oct. 23, 2011) (commenting in an Internet blog published by the Black Alliance for Educational Options).

34. <http://www.npr.org/2011/09/23/140750871/obama-announces-no-child-left-behind-state-waivers> (last visited Oct. 23, 2011).

35. *See, e.g.*, Jones v. Rapides Parish School Board, 634 So.2d 1197 (La. App. 3 Cir. 1993) (chronicling teacher Donald Jones' multiple infractions, including showing junior high students an "R" rated movie, dismissal by his school board, and court-ordered reinstatement under the TTA).

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A photograph of a beach with a large oil spill. The dark, viscous oil is spread across the sand, with some areas appearing as a thick, dark layer. In the background, the ocean waves are visible under a cloudy sky.

Jurisdiction and Choice of Law Issues in OCS Oil Spill Cases

By David W. Robertson

As is widely known, the United States District Court for the Eastern District of Louisiana presently harbors a conglomeration of cases arising from the April 2010 oil spill into the Gulf of Mexico from the Macondo well and the drilling rig Deepwater Horizon. The court derives its subject matter jurisdiction from a number of federal statutes, including the Oil Pollution Act (OPA), 33 U.S.C. § 2717(b); the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1349(b); the grant of federal question jurisdiction, 28 U.S.C. § 1331; the Limitation of Liability Act, 46 U.S.C. § 30511(a); the Admiralty Extension Act, 46 U.S.C. § 30101(a); and the grant of admiralty and maritime jurisdiction, 28 U.S.C. § 1333(1). No single provision in this list covers everything that is before the court, but the broadest is the admiralty grant.

Vessel-Related Oil Spills into Navigable Water Fall Within Admiralty Jurisdiction

Lawyers familiar with maritime law will regard the above subtitle as a truism.¹ Direct confirmation is found in Supreme Court oil-spill decisions — see, *Exxon Shipping Co. v. Baker*² and *Askew v. American Waterways Operators, Inc.*³ — as well as in numerous oil-spill decisions from the courts of appeals.⁴ There is no basis in reason or legal doctrine for thinking that a vessel-related spill into the waters over the Outer Continental Shelf (OCS) is any less an admiralty matter than a spill into high seas beyond the OCS or into state waters inshore of the OCS.⁵

Deepwater Horizon Was a Vessel

The Deepwater Horizon was a MODU (mobile offshore drilling unit).⁶ OPA provides in 33 U.S.C. § 2701(18) that MODUs are vessels. The Supreme Court seems to regard the vessel status of MODUs as firmly established,⁷ and the 5th Circuit has repeatedly emphasized this.⁸

Section 3 of the Rules of Construction

Act, 1 U.S.C. § 3, defines the term *vessel* as “every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.” In 33 U.S.C. § 2701(37), OPA sets forth the same definition. *Stewart v. Dutra Const. Co.* held that 1 U.S.C. § 3 defines *vessel* “throughout the U.S. Code” and “general maritime law.”⁹ There can be no reasonable doubt that the Deepwater Horizon — drilling for oil while “afloat upon the navigable waters of the Gulf of Mexico” and attached to the wellhead only by a “5,000-foot string of drill pipe”¹⁰ — fell squarely within the section 3 definition.

An Established Choice of Law Hierarchy

The Supreme Court’s decisions establish that the potential sources of substantive law governing an admiralty case are first, federal legislation; then general maritime law (federal maritime common law); and then supplementary state law.¹¹ This hierarchy is as applicable to a vessel-related OCS oil spill case as to any other admiralty case. For oil spill cases, this puts OPA, 33 U.S.C. §§ 2701 *et seq.*, at the top of the stack. Enacted in 1990 in the aftermath of the Exxon Valdez catastrophe, OPA is “comprehensive marine oil spill legislation.”¹² OCSLA, 43 U.S.C. §§ 1331 *et. seq.*, dates from 1953 with significant amendments in 1978.¹³ Because OCSLA is older, less comprehensive, and less specific respecting oil spill liability than OPA,¹⁴ OPA will presumably control in the event of any conflict. Either statute will necessarily displace anything in maritime common law deemed inconsistent with the statute’s provisions.

OPA, OCSLA and Federal Maritime Law Are Designed for Mutual Cooperation, Not Hierarchical Struggle

A choice-of-law hierarchy becomes crucial only when potentially applicable provisions of different bodies of law are in irreconcilable conflict. Respecting OPA, OCSLA and maritime law, the potential for such conflict is minimized

by the admiralty courts’ recognition of the superior authority of Congress¹⁵ and (conversely) by OPA’s and OCSLA’s provisions acknowledging the applicability of maritime law. OPA explicitly preserves “admiralty and maritime law” and the federal courts’ admiralty jurisdiction “[e]xcept as otherwise provided in this Act.”¹⁶ OCSLA provides for “exclusive Federal” governance of matters within its coverage,¹⁷ and it fills gaps in “Federal laws” by adopting adjacent-state law as surrogate federal law.¹⁸ It goes without saying that OPA is “Federal laws” for OCSLA purposes. General maritime law is also a major part of the “Federal laws” cross-referenced by OCSLA.¹⁹

A Profound Dissenter

In the June/July 2011 *Louisiana Bar Journal* (Volume 59, Number 1), Louisiana State University Paul M. Hebert Law Center Chancellor Emeritus and professor of law John J. Costonis presented a provocative argument that it would be better policy to exclude admiralty jurisdiction and maritime law from any role in the treatment of pollution damages from OCS-originated oil spills.²⁰ The space available to Professor Costonis prevented full development of his policy-based reasoning, but it can be inferred that he fears application of maritime law will somehow impede Congress’s aims as expressed in OPA and OCSLA.²¹ We have just seen, though — in the two subsections just above — that the federal admiralty courts and Congress have striven for harmony among the three relevant bodies of law, and that there is a default hierarchy in place for dealing with direct conflicts. At this point, it is not clear why Professor Costonis is not satisfied with those safeguards. I understand that his policy arguments against maritime law will be further developed in forthcoming publications.

Professor Costonis acknowledges that his proposal to oust admiralty jurisdiction from the OCS oil-spill realm is inconsistent with current law,²² but he believes that proper regard for the 1978 amendments to OCSLA — coupled with a new-and-

Continued next page

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improved understanding of three Supreme Court decisions — could (and should) lead to changes in the law.²³ None of these arguments is persuasive.

First, the part of the 1978 amendments to OCSLA that *might* have lent support to the Costonis proposal was repealed in 1990.²⁴ Professor Costonis is left with only the 1978 expansion of the coverage of 43 U.S.C. § 1333(a)(1) from “artificial islands and fixed structures” to “artificial islands, and all installations and other devices permanently or temporarily attached to the seabed.” As Professor Costonis notes, the purpose of this change was to bring MODUs under OCSLA coverage.²⁵ Professor Costonis believes that the 1978 Congress meant also to take MODUs out of vessel status,²⁶ but he does not tie that belief to anything in the statute’s language or to anything explicit in the legislative history.²⁷ When 43 U.S.C. § 1333(a)(1) is laid alongside section 3 of the Rules of Construction Act, 1 U.S.C. § 3, the relatively obvious conclusion is that MODUs are *both* OCSLA situs and vessels, and so the 5th Circuit has consistently held.²⁸ It should also be remembered that OPA defines MODUs as vessels.²⁹

Second, while Professor Costonis correctly reads the Supreme Court’s *Grubart* decision³⁰ to predicate admiralty tort jurisdiction on a showing that the activity bringing about the injury had “a substantial relationship to traditional maritime activity,”³¹ his leap from *Grubart* to the assertion that admiralty jurisdiction over the Deepwater Horizon spill is lacking unless “OCS oil drilling is a traditional maritime activity”³² is probably wrong. *Foremost Ins. Co. v. Richardson* held that a collision between two pleasure boats had “a sufficient nexus to traditional maritime activity”³³ despite the fact that pleasure boating — largely a post-World War II phenomenon³⁴ — was certainly not itself a traditional maritime activity. Moreover, Professor Costonis’s belief that OCS oil drilling is not of itself a maritime activity collides almost head-on with a 5th Circuit tenet that “[o]il and gas drilling on navigable waters aboard a vessel is recognized to be maritime commerce.”³⁵



Third, the Costonis proposal rests in major part on a radically revised understanding of *Rodrigue v. Aetna Cas. & Sur. Co.*³⁶ and concomitantly of OCSLA’s legislative history. The legislative history shows with great clarity that the OCSLA-enacting Congress debated fiercely over whether the newly opened OCS should be relegated to adjacent-state law or swept entirely into federal maritime law before ultimately determining that the right answer was *neither*.³⁷ Instead, Congress decided to leave maritime law where it was — *i.e.*, to make no changes to admiralty jurisdiction — and to fill gaps in extant federal law by adopting adjacent-state law “as surrogate federal law.”³⁸ In deciding that injuries to workers *on fixed OCS platforms* were governed by adjacent-state surrogate law rather than maritime law, the *Rodrigue* court emphasized throughout its opinion that admiralty jurisdiction could not reach these accidents because they occurred on “artificial islands”³⁹ and were thus excluded from admiralty under “conventional [*i.e.*, pre-OCSLA] admiralty principles.”⁴⁰ Professor Costonis’s invocation of *Rodrigue* as authority for rejecting admiralty jurisdiction over vessel-related oil spills into navigable waters seems to stretch the decision past the breaking point.

Fourth, Professor Costonis ignores key passages in *Herb’s Welding, Inc. v. Gray*.⁴¹ In the course of holding that the LHWCA⁴² did not apply to an accident on a “fixed offshore oil-drilling platform in state territorial waters,”⁴³ the Supreme

Court took pains to make clear that its holding and reasoning were limited to fixed platforms and did not extend to vessels. The majority opinion states:

Offshore oil rigs are of two general sorts: fixed and floating. Floating structures have been treated as vessels by the lower courts.⁴⁴

On the vessel status of MODUs, the dissenters emphatically agreed:

“Floating” petroleum rigs are classified as vessels in admiralty jurisprudence It must be emphasized . . . that in admiralty law, the classification of a structure as “floating” turns only on its capacity to float, and not on the relevance of buoyancy to its typical use or its state at the time of an injury. Many “floating” offshore petroleum rigs are so classified because they are floated to their drilling sites; but once there, they are elevated above the water and supported by legs that rest on the ocean floor.⁴⁵

Herb’s Welding’s endorsement of the vessel status of jacked-up drilling rigs seems to ensure the vessel status of the Deepwater Horizon, which was fully afloat while drilling. The fatal flaw at the heart of Professor Costonis’s proposal is its insistence on ignoring the long-established fixed platform/vessel distinction. If for

no other reason, on that ground alone the proposal seems destined to fail.

FOOTNOTES

1. For the doctrinal basis, *see, e.g.*, Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co., 513 U.S. 527, 534 (1995); Tagliere v. Harrah's Illinois Corp., 445 F.3d 1012, 1014 (7 Cir. 2006) (Posner, J.).

2. 554 U.S. 471, 489-90 (2008).

3. 411 U.S. 325, 328 (1973). *Cf.* United States v. Locke, 529 U.S. 89, 99, 103 (2000).

4. *See, e.g.*, Gabarick v. Laurin Maritime (America), Inc., 649 F.3d 417, 421 (5 Cir. 2011); In re Ballard Shipping Co., 32 F.3d 623, 624-25 (1 Cir. 1994); Union Oil Co. v. Oppen, 501 F.2d 558, 559, 561-62 (9 Cir. 1974); Oppen v. Aetna Ins. Co., 485 F.2d 252, 253, 254-57 (9 Cir. 1973).

5. The Oppen cases, *supra* note 4, involved a spill originating on the OCS.

6. *See* Jefferson Block 24 Oil & Gas, L.L.C. v. Aspen Insurance UK Ltd., 652 F.3d 584, 591 (5 Cir. 2011).

7. *See* the discussion of Herb's Welding, Inc. v. Gray, 470 U.S. 414 (1985), *infra* text & nn. 41-45.

8. *See, e.g.*, Demette v. Falcon Drilling Co., 280 F.3d 492, 498 & n. 18 (5 Cir. 2002) (stating that it "is beyond dispute" that a jacked-up rig is a vessel); Diamond Offshore Co. v. A&B Builders, Inc., 302 F.3d 531, 543 n. 12 (5 Cir. 2002) ("a semi-submersible drilling rig . . . is undisputably a vessel."). Demette and Diamond were partially overruled on other grounds by Grand Isle Shipyard, Inc. v. Seacor Marine, LLC, 589 F.3d 778, 788 & n. 8 (5 Cir. 2009) (en banc).

9. 543 U.S. 481, 490 (2005). The Stewart court's validation of 1 U.S.C. § 3 as a general-purpose definition should trump anything in the works of Lewis Carroll. *But see* John J. Costonis, "The Macondo Well Blowout: An Admiralty Tort?," 59 La. B.J. 28, 29 & n. 21 (2011).

10. In re Oil Spill, 2010 WL 3805746 at *3 (E.D. La. Aug. 26, 2011).

11. *See* Exxon Shipping Co., 554 U.S. at 489-90; Grubart, 513 U.S. at 545-46; Miles v. Apex Marine Corp., 498 U.S. 19, 27 (1990); East River Steamship Corp. v. Transamerica Delaval, 476 U.S. 858, 864-65 (1986); Mobil Oil Corp. v. Higginbotham, 436 U.S. 618, 625 (1978); Romero v. International Terminal Operating Co., 358 U.S. 354, 373-74 (1959).

12. David W. Robertson, "The Oil Pollution Act's Provisions on Damages For Economic Loss," 30 Miss. C.L. Rev. 157, 158 (2011).

13. *See* David W. Robertson, "The Outer Continental Shelf Lands Act's Provisions on Jurisdiction, Remedies, and Choice of Law," 38 J. Mar. L. & Com. 487, 493-95, 497-98 (2007).

14. *See* Costonis, *supra* note 9, 59 La. B.J. 29 & n. 20 (noting that Title III of OCSLA, which directly addressed OCS oil spills, was repealed by Congress in 1990 in the course of enacting OPA).

15. *See, e.g.*, Miles, 498 U.S. at 27 ("Congress retains superior authority in these matters.").

16. 33 U.S.C. § 2751(e). The coverage of OPA's "otherwise provided" caveat is probably limited to OPA's displacement of the Limitation

of Liability Act and the Robins Dry Dock rule. *See* H.R. Rep. No. 101-653, at 103 (1990), *reprinted* in 1990 U.S.C.C.A.N. 779, 781 (Conf. Rep.).

17. 43 U.S.C. § 1333(a)(1).

18. 43 U.S.C. § 1333(a)(2)(A).

19. *See* Tennessee Gas Pipeline v. Houston Casualty Ins. Co., 87 F.3d 150, 154 (5 Cir. 1996): "While OCSLA was intended to apply to the full range of disputes that might occur on the OCS, it was not intended to displace general maritime law. This is clear from both the statute itself and holdings of this court. According to the statute, 'this subchapter shall be construed in such a manner that the character of the waters above the outer Continental Shelf as high seas and the right to navigation and fishing therein shall not be affected [43 U.S.C. § 1332(2)].' Furthermore, 43 U.S.C. § 1333(f) makes clear that the applicability of OCSLA law under 43 U.S.C. § 1333(a) shall not give rise to any inference that other provisions of law (such as general maritime law) do not also apply. It is not surprising, therefore, that this court has declared that where [the OCSLA provision adopting adjacent-state law as surrogate federal law] and general maritime law both could apply, the case is to be governed by maritime law [citing three Fifth Circuit cases]."

20. *See supra* note 9.

21. *See, e.g.*, 59 La. B.J. at 29 & nn. 13-15.

22. *See id.* at 29 & nn. 1-10 (describing the arguments for admiralty jurisdiction over the Macondo/Deepwater Horizon spill as "potent" and mentioning "judicial reluctance to disturb settled admiralty understandings" and "familiar general maritime law categories and reasoning" as impediments to his proposal).

23. In addition to relying on the three decisions discussed in the text below, Professor Costonis cites Offshore Logistics, Inc. v. Tallentire, 477 U.S. 207 (1986), and Chevron Oil Co. v. Huson, 404 U.S. 97 (1971). *See* 59 La. B.J. at 29 n. 11. Costonis quotes brief dicta from both cases. But neither case involved the kind of overlapping admiralty and OCSLA coverage presented by the Deepwater Horizon disaster. Tallentire held that admiralty jurisdiction — and not OCSLA — applied to a helicopter crash into the Gulf that killed fixed-platform workers "miles away from the platform." 477 U.S. 219. Huson involved an accident "on an artificial island drilling rig" (404 U.S. 98) that was not within admiralty jurisdiction (*see id.* at 101-02, 103-04 & n. 7).

24. *See supra* note 14.

25. *See* 59 La. B.J. at 29 & n. 16.

26. *See id.* at 29 & nn. 16-17.

27. Professor Costonis cites a congressional committee report describing the 1978 change to § 1333(1)(a) as "meant to restate and clarify and not change [the] law" in ostensible support of a bold inference that the 1953 version of § 1333(a) (1) included MODUs in the category of "fixed structures." *Id.* at 29 n. 16. The inference is implausible, for several reasons: (a) MODUs did not exist in 1953; (b) the 1953 statutory language was "artificial islands and fixed structures," and it seems weird to call a MODU an artificial island; and (c) the 1978 Congress did not change § 1333(a) (2)(A), which is the provision that *might* be read to label certain OCS situses as presumptively

nonmaritime. Section 1333(a)(2)(A) has always been and remains limited by its terms to "artificial islands and fixed structures," thus excluding MODUs. Congress's decision to leave § 1333(a) (2)(A) unchanged was purposive. *See* Robertson, *supra* note 13, 38 J. Mar. L. & Com. at 504-06.

28. *See, e.g.*, Demette, 280 F.3d at 498-99 (citing two cases); Houston Oil & Minerals Corp. v. American International Tool Co., 827 F.2d 1049, 1052-53 (5 Cir. 1987) (citing five post-1978 cases). *See also* In re Oil Spill, 2011 WL 3805746 at *3-4.

29. 33 U.S.C. § 2701(18).

30. *Supra* note 1.

31. Grubart, 513 U.S. at 534.

32. 59 La. B.J. at 30 (emphasis added).

33. 457 U.S. 668, 674 (1982).

34. Prebl Stolz, "Pleasure Boating and Admiralty: Erie at Sea," 51 Calif. L. Rev. 661 & n. 1 (1963).

35. Theriot v. Bay Drilling Corp., 783 F.2d 527, 538-39 & n. 11 (5 Cir. 1986) (citing two supporting 5th Circuit cases, distinguishing Herb's Welding and Rodrigue as "fixed platform" cases, and noting that Director, OWCP v. Perini North River Ass'n, 459 U.S. 297 (1983), classified virtually all work on vessels as "maritime employment" for LHWCA purposes).

36. 395 U.S. 352 (1969).

37. *See* Warren M. Christopher, "The Outer Continental Shelf Lands Act: Key To a New Frontier," 6 Stan. L. Rev. 23, 37-43 (1953); Robertson, *supra* note 13, 38 J. Mar. L. & Com. at 493-95, 506-09, 531-34.

38. Rodrigue, 395 U.S. at 357.

39. The term "artificial island" is used in the Rodrigue court's very first sentence, *id.* at 352, and the entire opinion is permeated with that term and synonyms such as "stationary platform" (*id.* at 354) and "fixed structures" (*id.* at 355).

40. *Id.* at 361.

41. 470 U.S. 414 (1985).

42. 33 U.S.C. §§ 901 *et seq.*

43. 470 U.S. at 416.

44. *Id.* at 416 n. 2 (citations omitted).

45. *Id.* at 428 n. 1 (Marshall, Brennan, Blackmun, and O'Connor, JJ., dissenting) (citations omitted).

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2011 Secret Santa Project a Success! 777 Children Assisted

The Louisiana State Bar Association/Louisiana Bar Foundation's Community Action Committee would like to thank all legal professionals who participated in the 2011 Secret Santa Project.

Because of the generous participants throughout the state — from “adopting” Santas and from monetary donations — 777 children, represented by 13 social service agencies in five Louisiana parishes, received gifts.

These children were represented by St. John the Baptist, Boys Hope Girls Hope,

Southeast Spouse Abuse Program, El Yo Yo Head Start, Jefferson Parish Head Start Program, Children's Special Health Services Region IX, Children's Special Health Services New Orleans Region, Children's Bureau, CASA of Terrebonne, CASA of Lafourche, CASA of New Orleans, North Rampart Community Center and Metropolitan Center for Women and Children.

This was the 15th year for the Secret Santa Project. Several of the children send “thank you” cards and drawings to their “Santas.” Thank you to everyone that participated!



Louisiana State Bar Association President James J. Davidson III was on hand as gifts were being delivered to the Bar Center from several legal professionals. *Photo by Danielle E. Boveland.*



Louisiana State Bar Association Secretary Richard K. Leefe, left, and Immediate Past President Michael A. Patterson, right, were on hand as gifts were being delivered to the Bar Center. *Photo by Danielle E. Boveland.*



Attorneys Qualify as Board-Certified Specialists

In accordance with the requirements of the Louisiana Board of Legal Specialization, as approved by order of the Louisiana Supreme Court, and in accordance with Rule 7.2(c)(5) of the Louisiana Rules of Professional Conduct, the following Louisiana State Bar Association members have satisfactorily met the established criteria and are qualified as board-certified specialists in the following areas for a five-year period which began Jan. 1, 2012, and will end on Dec. 31, 2016.

Estate Planning and Administration Law

Linda S. Melancon Prairieville
Laura Walker Plunkett New Orleans
Betty A. Raglin Lake Charles

Family Law

Jeffrey W. Bennett Harahan
Andrea Ducote Aymond Marksville

Tax Law

Christian N. Weiler New Orleans
Carl J. Servat III Harahan

The Louisiana Board of Legal Specialization (LBLS) was established in 1993 by the Louisiana Supreme Court to assist consumers in finding a lawyer who has demonstrated ability and experience in specialized fields of law. To become board certified in accordance with the Plan of Legal Specialization, an attorney must be an active member of the Louisiana State Bar Association, have a minimum of five years of full-time practice, demonstrate substantial experience in the specialty area and pass a written examination. Presently, the five areas of law for which the LBLS is offering certification are business bankruptcy law, consumer bankruptcy law, estate planning and administration law, family law, and tax law.

To apply for certification, contact LBLS Executive Director Megan Landry, email megan.landry@lsba.org or call (504)619-0128 or (800)421-5722, ext. 128. For more information, go to the LBLS's website at www.lascmcle.org/specialization.

LSBA Staff Member Receives Outstanding Paralegal Award

Sonjanita C. Jordan, executive secretary/officer liaison in the Louisiana State Bar Association's Member Outreach and Diversity Department, is the recipient of the Louisiana State Paralegal Association's (LSPA) 2011 Outstanding Paralegal of the Year Award.



Sonjanita C. Jordan

Jordan, serving as LSPA's district director for the New Orleans area and chair of the Professional Development Committee, was nominated by a fellow

LSPA member for exhibiting outstanding paralegal skills in her profession and in her community.

She has completed the business/computer skills program at the Opportunities Industrialization Center of Ouachita, Inc. and the paralegal certification program at the University of New Orleans, among others programs and workshops.

Jordan has volunteered to serve various programs, including the University of New Orleans' Team Teach Program and the Paralegal Studies Program. She also chairs the Employment Committee and serves on the Paralegal Advisory Board of Herzing University and is a member of the New Orleans Paralegal Association.

Lawyer Specialization Available in Five Areas

The Louisiana Board of Legal Specialization (LBLS) is accepting applications for 2013 certification in business bankruptcy law, consumer bankruptcy law, estate planning and administration law, family law and tax law.

Deadline for accepting applications for estate planning and administration, family law and tax law certification is April 16, 2012. Applications for the two areas of bankruptcy law will be accepted through September 2012.

In accordance with the Plan of Legal Specialization, any Louisiana State Bar Association member who has been engaged in the practice of law on a full-time basis for a minimum of five years may apply for certification. The five-year practice requirement must be met for the period ending Dec. 31, 2012. A further requirement is that each year a minimum of 35 percent of the attorney's practice must be devoted to the area of certification sought.

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).

To receive an application, contact LBLS Executive Director Megan Landry, email megan.landry@lsba.org or call (504)619-0128 or (800)421-5722, ext. 128. For more information, go to the LBLS's website at www.lascmcle.org/specialization.

LAWYERS Assistance

By J.E. (Buddy) Stockwell

ASKING FOR HELP

As the executive director of the Lawyers Assistance Program, Inc. (LAP), I am always trying to envision new and better methods to encourage lawyers, judges and their family members to feel comfortable about contacting LAP for confidential help with problems such as alcoholism, drug addiction, compulsive gambling, sex addiction, depression and other mental disorders. However, it is not an easy task because most of us resist asking for help with these problems until a crisis has been reached.

The reasons for resisting help are numerous. For one thing, there is the myth that asking for help is a sign of weakness. 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. It also is a myth that smart and successful people don't need help. As any great leader will tell you, it is sometimes necessary to rely on the expertise of others to successfully solve a problem.

Lawyers and judges are particularly resistant to the concept of seeking help, especially for a personal problem. As professionals, we are not accustomed to surrendering to anything. This is not surprising given our training. In law school, we developed intellectual stamina and analytical skills that afford us legitimate academic confidence. While practicing law, we gained well-earned confidence in complex problem solving. Simply put, as lawyers and judges, we are trained to *handle* problems, not *suffer* problems.

Our admirable attributes of independence and tenacity serve us well right up until we suffer a personal problem that can't be outsmarted. Alcoholism, drug addiction, depression and other physiologically-based chemical brain diseases simply can't be defeated with analytical skills and confidence. You can't "lawyer"

Lawyers Assistance Program, Inc. (LAP)

Your call is absolutely confidential as a matter of law.

Toll-free (866)354-9334
Email: lap@louisianalap.com

your way out of alcoholism or chemical brain diseases. As such, the self-reliance that previously served lawyers and judges so well can be their total undoing because it blocks the path to help.

In the end, fear is at the core of why most people are reticent to reach out for help. While an internal struggle over "seeking help" versus "maintaining secrecy and hoping for the best" rages within the individual in trouble, time is of the essence more than that person imagines. Sadly, it is common that an individual will resist seeking help until the problem becomes a full-blown crisis. By procrastinating and not seeking help early on, more serious consequences accumulate and the road to recovery becomes more arduous. In the worst scenarios, the inability to seek help costs the person his or her life. These deaths are not publicized, but they are happening nonetheless — right here, right now and within our legal profession.

It is my goal to reduce the fear of asking for help and encourage members of the Louisiana State Bar Association and their families to feel comfortable in seeking assistance from LAP before a crisis occurs. The *Louisiana Bar Journal* has graciously invited me to be a regular contributor on behalf of LAP and that will certainly be invaluable in helping work toward that goal. To that end, I plan to share ongoing information about LAP, facts about the ongoing sciences

of successfully treating diseases such as alcoholism, addiction and depression, and even share recovery stories by those who wish to contribute.

Some of the happiest and most productive people I know in the legal profession found their way to LAP and received the help they needed. Their prior path of pain and hopelessness has been transformed into a happy and healthy journey of recovery and hope. They have successfully escaped the darkness and isolation they previously suffered.

U.S. Supreme Court Justice Louis Brandeis once said, "Sunlight is the best disinfectant," and that holds true for dispelling old stigmas that impede one's ability to seek help for alcoholism, addiction, depression and other diseases. I am hopeful that future LAP articles will help shine light into the darkest corners of the subject matters at hand and, by so doing, reduce fears and foster a greater trust in the simple premise that asking LAP for help can literally make the difference between life and death.

In the meantime, if you think you have (or are concerned about someone else regarding) a problem with alcohol, drugs, depression or any other mental condition, contact LAP without delay. Your call is absolutely confidential as a matter of law and you do not even have to give your name. Whether you need immediate help or want general information on what help is available, call LAP toll free at (866)354-9334 or email your inquiry to lap@louisianalap.com.

J.E. (Buddy) Stockwell 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.



By Mackie Shilstone

BENEFITS OF OMEGA-3 FATTY ACIDS

For many in the legal profession, their lives revolve around long days at the office and eating on the run. Combine that with little or no exercise and it is a recipe for disaster. I see it every day in my clients. So much so that it is the reason I wrote my recently released book, *Stop Renting Your Health. Own It—A Three-Step Approach*. It focuses on a three-step approach to healthy living, including passion and motivation, a fitness cure and a Rx diet and supplement plan.

One of the more important sections is the discussion of Omega-3 fatty acids (fish oils). Adding this to your diet can make a big difference in your health by countering the effects of Omega-6 fatty acids in your body. Emerging research by the scientific community supports the notion that Omega-3 can benefit almost any area of the body, including the cardiovascular system, the circulatory system, metabolism and cognitive function. One example of research is a recent study in the December 2011 issue of *Diabetes Care* by the American Diabetes Association that concluded low doses of Omega-3 for diabetes patients with a high risk of heart disease reduced their risk for fatal heart attacks and arrhythmia-related events.

Let's examine what Omega-3 fatty acids are and why we need them. Omega-3 is considered an essential fatty acid. The human body can manufacture most of the fats it needs, including cholesterol, saturated fatty acids and monounsaturated fatty acids. However, Omega-3 and Omega-6 are not made by the body and must, therefore, be obtained through diet or supplements. Omega-3 includes eicosapentaenoic acid (EPA) and docosahexaenoic acid (DHA) that helps promote an anti-inflammatory response in the system. Primary sources of Omega-3 are cold-water fish such as salmon, mackerel and sardines.

Omega-6 also plays an important function in the body by assisting with blood

clotting and inflammation response. This is the opposite effect of Omega-3. As Omega-3 can help make the blood more fluid, promoting bleeding, Omega-6 works to make the blood thicker, or more "sticky" as it is often referenced. Sources of Omega-6 include oils from seeds, beans and grains. You also consume Omega-6 through fast food and pre-packaged foods because they are cooked in these types of oils. Too much Omega-6 in your body is thought to be a factor in heart disease, diabetes, autoimmune and inflammation diseases, depression, dementia and other chronic diseases.

The key is to strike a healthy ratio of Omega-6 and Omega-3 in your system. I recommend a ratio of Omega-6 to Omega-3 of 4-2 to 1. Unfortunately today, it is estimated that many Western diets have a ratio of Omega-6 to Omega-3 fatty acids from 15-30 to 1.

To achieve the recommended ratio, it is best to cut out fast food and pre-packaged foods and instead eat freshly prepared foods so you can control the ingredients. That will cut down on your Omega-6 fatty acids. I then recommend you eat two-to-four servings (about 4 ounces each) of cold-water, fatty fish per week. If you do not consume these servings per week, you may want to consider a high-quality fish oil supplement that contains EPA and DHA. The American

Heart Association recommends 500 mg of combined EPA and DHA for those without a history of heart disease, 1,000 mg if there is a history of heart disease, and 2,000-4,000 mg of combined EPA and DHA for individuals with a high triglyceride level (blood fat) under medical supervision. Remember, supplement intake should be based on your health needs and can interact with prescription drugs you are taking. Always consult your physician prior to taking a new supplement.

Knowing your ratio of Omega-6 to Omega-3 also can help you determine if you have an appropriate balance of Omega-6 and Omega-3. One test to consider is a simple finger prick home blood test that will give you the results you need. Test information can be found at www.omega3test.com; if you enter "NORDIC3" in the offer code box during checkout, you can get this test at a significantly reduced rate.

Mackie Shilstone is executive director of the Fitness Principle at East Jefferson General Hospital. He can be reached at (504)457-3100. For more information on his Executive Wellness Institute, visit www.ejgh.org/thefitnessprinciple.



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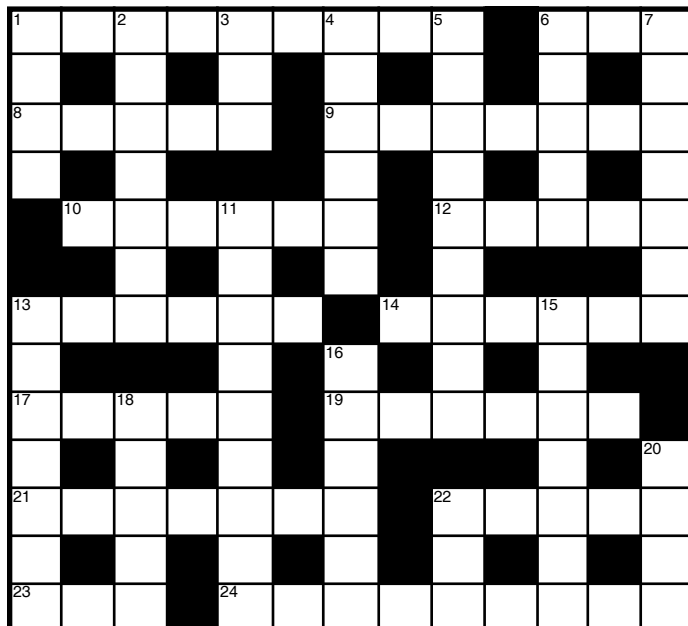
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Crossword PUZZLE

By Hal Odom, Jr.

ADMISSION TO THE UNION



ACROSS

- 1 With 24 Across, momentous event of April 30, 1812 (9)
- 6 It's certain, to a Cajun (3)
- 8 Ambiguous word meaning both "come after" and "result from" (5)
- 9 ___ C.C. Claiborne, First governor of Louisiana (7)
- 10 Chronic sickness (6)
- 12 Popular brand of mineral water (5)
- 13 Antebellum (6)
- 14 ___ Derbigny, First justice of Louisiana Supreme Court (6)
- 17 William B. ___, Virginia senator who first introduced bill (1810) for 1+24 Across (5)
- 19 Unverifiable urban tale (6)
- 21 Used to flavor amaretto (7)
- 22 Animal associated with Easter (5)
- 23 Excessively (3)
- 24 See 1 Across (9)

DOWN

- 1 Statutory privilege on immovable (or sometimes movable) property (4)
- 2 Catering to an affluent clientele (7)
- 3 Common word in legal footnotes (3)
- 4 At all times (6)
- 5 Like the eye in the Great Seal (3-6)
- 6 Former name of cable TV's Syfy channel (3-2)
- 7 Language such as Italian or French (7)
- 11 1819 treaty that finally established Louisiana's western boundary at the Sabine River (5-4)
- 13 Beauty contest (7)
- 15 Meet unexpectedly (3, 4)
- 16 Clear part of blood (6)
- 18 State of great uncertainty (5)
- 20 Like most Easter eggs (4)
- 22 Insect on Napoleon's coat of arms (3)

Answers on page 389.

Alcohol and Drug Abuse Hotline

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	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
Houma	Bill Leary.....(985)868-4826	Shreveport	Michelle AndrePont.....(318)347-8532
Lafayette	Alfred "Smitty" Landry.....(337)364-5408, (337)364-7626		Nancy Carol Snow.....(318)366-1820
	Thomas E. Guilbeau.....(337)232-7240		William Kendig, Jr.(318)222-2772 (318)572-8260 (cell)
	James Lambert.....(337)233-8695 (337)235-1825		Steve Thomas.....(318)872-6250

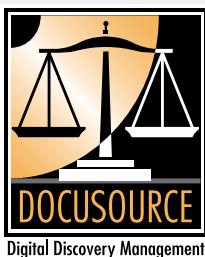
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FOCUS ON Professionalism

By Michelle Beaty-Gullage

CHESS, ANYONE?

Lawyers are expected (and required by the Rules of Professional Conduct) to conduct themselves professionally at all times. How many of us actually review the Rules of Professional Conduct? I would venture a guess it's not something most lawyers consult on a regular basis. Many of us also feel that professionalism is sort of inherent, built-in and intuitive. We look at professionalism as one of those words that defines itself. Professionalism: To behave professionally. We know we are supposed to advocate for our clients zealously, extend professional courtesies when possible, and refrain from misrepresenting to the court, among other tenets of good behavior.

In spite of the codification of rules and that little voice inside that tells us what's right and wrong, we all see various instances of conduct that are clearly unprofessional. Whether it's that wrong-headed and negatively toned email that landed in your inbox from opposing counsel, belligerent behavior during a deposition, or playing fast and loose with the facts in written or oral argument, we have all seen it. Unfortunately, this kind of behavior is perceived by some as a good way to practice law. Civility is difficult, if not impossible, to legislate, and there will be those who comply with the letter but not the spirit of the rules. Even so, it is so important to the level of satisfaction we experience as lawyers.

In 1986, the American Bar Association's Commission on Professionalism noted that "lawyer professionalism may well be in steep decline."¹ This sentiment, shared by other legal professional associations and state bar associations, led to the promulgation of Codes of Professional Conduct in the states. The Louisiana State Bar Association adopted its Code of Professionalism in 1992. It begins: "My word is my bond. I will never intentionally mislead the court or other counsel. I will not knowingly make statements of fact or law that are untrue..."



The thrust of the call to a higher standard of professionalism has largely been couched in terms of improving the image of the legal profession and to encourage public trust in the profession. I would suggest that if more lawyers behaved in accordance with our adopted creed of professionalism, we might all actually enjoy the practice a little more. That "steep decline" in professionalism has not only wreaked havoc on the public perception of lawyers but it also has decimated our perception of ourselves and the practice, making it, for some, a much less satisfying pursuit.

Dean Roscoe Pound said that a profession is "a group... pursuing a learned art as a common calling in the spirit of public service — no less a public service because it may incidentally be a means of livelihood."² In thinking about my own issues with the practice and in talking to colleagues who also complain of dissatisfaction, the common theme is not dissatisfaction with the substance of what we do. I believe most lawyers truly enjoy the intellectual challenge of the practice, the challenge of finding solutions to clients' problems, trying cases or the fun of immersing themselves

in new subjects to learn about issues they may find themselves litigating. The most common complaint (other than the hours) is the bad behavior of other lawyers. It seems we have lost sight of a couple of things. First, and foremost, Dean Pound's observation on what a "profession" is and, secondly, the description of the nature of the relationship of legal adversaries given by Shakespeare who wrote that adversaries in the law "[s]trive mightily, but eat and drink as friends."³ A strong current of civility is supposed to flow unimpeded throughout our dealings with each other. That current has been reduced to a trickling stream.

I have heard some argue that the gamesmanship, discourtesy and outright chicanery that are found within the profession today are necessary evils. Clients don't want weak lawyers. They want aggressive warriors who will fight hard on their behalf. Litigation is war and, as we have been told, all is fair in love and war, right? Wrong. It is not a given that lawyers will lose ground in handling matters by conducting themselves with some measure of grace and civility. Lawyers can conduct themselves in a civil manner without losing one iota of power,

respect or force of argument. You might find yourself benefitting from a perception of maturity and thoughtfulness. It is up to us as professionals to raise the level of expectation of our clients about this process. While our litigants' behavior may have driven them to us in the first place, we should take over the wheel once we get involved. The ultimate decisions are up to them and they may have absolutely no love for their opponent. But, that attitude does not have to spill over into how counsel deal with each other or how we conduct ourselves in advocating for them.

While it is true that not all legal disputes can be resolved through mediation or negotiation and that, for those we represent, the case may dominate their perspective as the fight of their lives, the ready acceptance of the "war" analogy is, in my humble opinion, beneath the calling of our profession. A more suitable analogy might be a chess game. No one screams at or threatens his opponent over a chess board. I have never felt the need to curse my opponent when he or she captured my queen. You cannot lie to or mislead your opponent. The pieces are *what* they are and they are *where* they

are on the board. They each have different abilities as far as where they can go and how they can get there but the game is not over until someone's king is captured. It's all about strategy, thinking ahead, focus, diligence, boldness, seeing the big picture and civility. Chess, anyone?

FOOTNOTES

1. See American Bar Association Commission on Professionalism, *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*, 7 (1986).

2. Quoted in Douglas W. Hillman, "Professionalism — A Plea for Action!," 69 Mich. B.J. 894, 895 (1990), and in Justice Sandra Day O'Connor, "Professionalism," 76 Wash. U. L.Q. 5 (1998).

3. William Shakespeare, *The Taming of the Shrew*, Act I, Scene 2.

Michelle Beaty-Gullage is an associate in the Metairie office of Blue Williams, L.L.P. She received a BA degree from Duke University in 1991 and her JD degree from Tulane Law School in 1994. In addition to her involvement in several professional associations, she is a member of the Louisiana State Bar Association's Committee on the Profession. She also serves as an assistant bar examiner in the area of constitutional law. (Ste. 900, 3421 N. Causeway Blvd., Metairie, LA 70002)

CODE OF PROFESSIONALISM

► My word is my bond. I will never intentionally mislead the court or other counsel. I will not knowingly make statements of fact or law that are untrue.

► I will clearly identify for other counsel changes I have made in documents submitted to me.

► I will conduct myself with dignity, civility, courtesy and a sense of fair play.

► 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.

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REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Dec. 4, 2011.

Decisions

Houston Michael Aaron, Baton Rouge, (2011-B-1633) **Consent six-month suspension, fully deferred, subject to one-year unsupervised probation and conditions**, ordered by the court on Oct. 7, 2011. JUDGMENT FINAL and EFFECTIVE on Oct. 7, 2011. *Gist:* Lack of diligence; and failure to keep client informed.

Mazen Younes Abdallah, Houston, TX, (2011-B-1631) **Permanent disbarment** ordered by the court on Oct. 14, 2011. JUDGMENT FINAL and EFFECTIVE on Oct. 28, 2011. *Gist:* Criminal conviction for conspiracy to commit Medicare/Medicaid fraud.

Sean Daniel Alfortish, Kenner, (2011-B-2190) **Interim suspension** ordered by the court on Oct. 19, 2011.

Michael Richard Bark, Terrytown, (2011-B-1737) **Permanent disbarment and restitution** ordered by the court on Oct. 21, 2011. JUDGMENT FINAL and EFFECTIVE on Nov. 4, 2011. *Gist:* Involved in an investment scheme wherein he induced several parties to invest a total of \$373,000; issued two checks, totaling \$1,463,200, which were returned due to insufficient funds in his trust account; and failed to cooperate in the disciplinary investigation.

Elise M. Beauchamp, Metairie, (2011-B-1144) **Permanent disbarment** ordered by the court on Sept. 23, 2011. JUDGMENT FINAL and EFFECTIVE on Oct. 7, 2011. *Gist:* Neglecting legal matters; failing to communicate with clients; failing to return unearned fees; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; and

failing to cooperate with the ODC.

Kenneth Robin Bowen, New Orleans, (2011-B-2015) **Interim suspension** ordered by the court on Oct. 12, 2011.

Ronald Patrick Camp, West Monroe, (2011-B-1853) **Suspended for six months, fully deferred, subject to a two-year period of unsupervised probation**, ordered by the court on Oct. 7, 2011. JUDGMENT FINAL and EFFECTIVE on Oct. 7, 2011. *Gist:* Improper use

of trust account by commingling personal funds with client funds.

Seth Cortigene, Baytown, TX, (2011-B-1564) **Suspension of three years, fully deferred, subject to probation as reciprocal discipline identical to that imposed by Texas**, ordered by the court on Oct. 14, 2011. JUDGMENT FINAL and EFFECTIVE on Oct. 28, 2011. *Gist:* Failed to communicate with a client; settled a legal matter without the knowl-



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edge or consent of the client; and engaged in dishonest or deceitful conduct.

Melanie Smith Daley, Lake Charles, (2011-B-2089) **Interim suspension** ordered by the court on Sept. 28, 2011.

Victor A. Dorsey, Harvey, (2011-B-2009) **Suspended for a year and a day** ordered by the court on Oct. 14, 2011. JUDGMENT FINAL and EFFECTIVE on Oct. 14, 2011. *Gist*: Engaging in the practice of law while ineligible to do so as a result of his failure to comply with the minimum requirements of continuing legal education prescribed by the Louisiana Supreme Court.

Louis A. Gerdes, Jr., New Orleans, (2011-B-0200) **Suspended for nine months, all but three months deferred, followed by one year of supervised probation with conditions**, ordered by the court on Oct. 25, 2011. JUDGMENT FINAL and EFFECTIVE on Nov. 8, 2011. *Gist*: Engaged in a conflict of interest by being substituted as the plaintiff in the lawsuit after his client's death; failed to attend the deposition of his client's treating

physician; failed to reduce a contingency fee agreement to writing; submitted a letter of withdrawal to the trial court in which he disclosed his opinion of the value of his client's case and misrepresented his client's settlement demand; withdrew from representation only a few weeks prior to the scheduled trial; and allowed a non-lawyer to attend and participate in two depositions.

Danny L. Guidry, Lafayette, (2011-B-1208) **Suspended for one year and one day** ordered by the court on Sept. 23, 2011. JUDGMENT FINAL and EFFECTIVE on Oct. 7, 2011. *Gist*: Potential for significant harm to the public.

Sidney W. Hall, Baton Rouge, (2011-B-1025) **Suspension for one year, fully deferred, conditioned upon one-year unsupervised probation with special condition**, ordered by the court on Sept. 2, 2011. JUDGMENT FINAL and EFFECTIVE on Sept. 16, 2011. *Gist*: Failed to properly communicate with a client regarding his appeal, which conduct

was prejudicial to the administration of justice.

Michelle Alt Hazlett, Hammond, (2011-B-1700) **Suspended for six months, fully deferred, subject to a one-year period of unsupervised probation**, ordered by the court on Oct. 7, 2011. JUDGMENT FINAL and EFFECTIVE on Oct. 7, 2011. *Gist*: Failure to act with reasonable diligence and promptness in representing a client; failure to properly communicate with a client regarding the status of the matter; and conduct prejudicial to the administration of justice in connection with a civil matter.

Joseph W.P. Hecker, Baton Rouge, (2008-DB-004) **Public reprimand** ordered by the Louisiana Attorney Disciplinary Board on Sept. 12, 2011. JUDGMENT FINAL and EFFECTIVE on Sept. 26, 2011. *Gist*: Engaging in conduct prejudicial to the administration of justice; and failure to cooperate with the Office of Disciplinary Counsel.

Steven Boyd Longo, New Orleans, (2011-B-1928) **Interim suspension** ordered by the court on Oct. 14, 2011.

Continued next page

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ATTORNEYS AT LAW

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

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Dec. 1, 2011.

Respondent	Disposition	Date Filed	Docket No.
Lorraine Adrienne Dupont	[Reciprocal] Suspension.	11/15/11	11-2569
Sidney W. Hall	[Reciprocal] Suspension.	10/26/11	11-2432
Raven Matthews Pillette	Reinstated.	9/26/11	11-808
Clifton John Spears, Jr.	[Reciprocal] Suspension.	10/26/11	11-2431
James A. Wood	[Reciprocal] Interim suspension.	10/26/11	11-2429

Continued from page 357

Ramsey Terry Marcello, New Orleans, (2011-OB-1539) **Conditional admission revoked** ordered by the court on Nov. 16, 2011. JUDGMENT FINAL and EFFECTIVE on Nov. 16, 2011. *Gist*: Conditional admission to the practice of law in Louisiana is revoked. He may not submit an application for readmission in no less than 30 months from the date of the court's order.

Paul C. Miniclier, New Orleans, (2011-B-1859) **Suspended for three months, fully deferred, subject to one-year unsupervised probation**, ordered by the court on Nov. 4, 2011. JUDGMENT FINAL and EFFECTIVE on Nov. 18, 2011. *Gist*: Knowingly disobeying an obligation under the rules of a tribunal; engaging in conduct prejudicial to the administration of justice; and violating or attempting to violate the Rules of Professional Conduct.

Clarification from Office of Disciplinary Counsel

In the October/November 2011 issue of the *Louisiana Bar Journal* (Volume 59, Number 3), the Office of Disciplinary Counsel reported that Walter Hunter, Jr. of New Orleans had his probation revoked and was transferred to disability inactive status by order of the Supreme Court, effective June 21, 2011. As clarification, this regulatory action did not reference or involve Walter M. Hunter, Jr. of Alexandria or Walter O. Hunter, Jr. of Shreveport.

—Charles B. Plattsmier
Chief Disciplinary Counsel

Gregory Patrick Nichols, New Orleans, (2011-B-1538) **Suspended for six months, fully deferred, subject to a six-month period of unsupervised probation**, ordered by the court on Oct. 14, 2011. JUDGMENT FINAL and EFFECTIVE on Oct. 28, 2011. *Gist*: Neglected clients' legal matters; and failed to adequately communicate with clients.

Willie J. Nunnery, Madison, WI, (2011-B-1309) **Disbarment as reciprocal discipline identical to that imposed by Wisconsin** ordered by the court on Oct. 21, 2011. JUDGMENT FINAL and EFFECTIVE on Nov. 4, 2011. *Gist*: Repeatedly failed to diligently pursue his clients' cases; failed to keep clients informed and ignored their repeated requests for information on their cases; and failed to cooperate in the disciplinary investigation.

Anselm Nnaemeka Nwokorie, Monroe, (2011-B-2047) **Suspended for six months, fully deferred, subject to a two-year period of unsupervised probation**, ordered by the court on Oct. 21, 2011. JUDGMENT FINAL and EFFECTIVE on Oct. 21, 2011. *Gist*: Improper use of trust account by commingling personal funds with client funds.

Clifton John Spears, Jr., Alexandria, (2011-B-1135) **Suspension for one year and one day, fully deferred, conditioned upon two years' supervised probation with special conditions**, ordered by the court on Sept. 2, 2011. JUDGMENT FINAL and EFFECTIVE on Sept. 16, 2011. *Gist*: Maintained incomplete records of his trust account, which resulted in a negligent commingling and conversion of funds.

Stephen R. Streete, Lake Charles, (2011-OB-0212) **Reinstated to the**

practice of law, subject to conditions, ordered by the court on Sept. 21, 2011. JUDGMENT FINAL and EFFECTIVE on Sept. 21, 2011.

Dennis J. Vidrine, Opelousas, (2011-B-1209) **Public reprimand** ordered by the court on Oct. 7, 2011. JUDGMENT FINAL and EFFECTIVE on Oct. 21, 2011. *Gist*: Conflict of interest and filing pleadings containing misrepresentations.

James A. Wood, Baton Rouge, (2011-B-1891) **Interim suspension** ordered by the court on Sept. 14, 2011.

Admonitions (private sanctions, often with notice to complainants, etc.) issued since the last report of misconduct involving:

	No. of Violations
Failing to act with reasonable diligence and promptness in representing a client.....	2
Failure to communicate.....	2
Failing to cooperate with the Office of Disciplinary Counsel in its investigation.....	1
Settling a potential malpractice claim with a client without advising the client in writing of the desirability of seeking and allowing the client a reasonable opportunity to seek the advice of independent legal counsel.....	1
Violated the scope of representation by entering stipulations contrary to the express instructions of his client.....	1
TOTAL INDIVIDUALS ADMONISHED.....	3

CLIENT ASSISTANCE FUND PAYMENTS - SEPTEMBER 2011

Attorney	Amount Paid	Gist
Ronnie K. Banks, Sr.	\$500.00	#1286 – Unearned fee in a civil matter
Michael H. Colvin	\$8,203.83	#1283 – Conversion in a personal injury matter
John D. Conry	\$9,864.10	#1307 – Conversion in an insurance matter
John D. Conry	\$25,000.00	#1292 – Conversion in an insurance matter
John D. Conry	\$20,700.00	#1295 – Conversion in an insurance matter
Victor J. Dauterive, Jr.	\$250.00	#1281 – Unearned fee in a domestic matter
Darien D. Lester	\$1,000.00	#1313 – Unearned fee in a criminal matter
Kenota L. Pulliam	\$4,000.00	#1265 – Unearned fee in a criminal matter
Kevin R. Rees	\$11,831.96	#1279 – Conversion in a personal injury matter
Kevin R. Rees	\$10,946.44	#1137 – Conversion in a personal injury matter
Kenneth F. Sarama	\$17,400.00	#1040 – Conversion in a tax matter
Byrlyne Van Dyke	\$3,000.00	#1237 – Unearned fee in a criminal matter
David C. Willard	\$1,000.00	#1274 – Unearned fee in a criminal matter



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What is the Louisiana Client Assistance Fund?

The Louisiana Client Assistance Fund was created to compensate clients who lose money due to a lawyer's dishonest conduct. The Fund can reimburse clients up to \$25,000 for thefts by a lawyer. It covers money or property lost because a lawyer was dishonest (not because the lawyer acted incompetently or failed to take certain action). The fund does not pay interest nor does it pay for any damages done as a result of losing your money.

Does the Fund cover fees?

The Fund will reimburse fees only in limited cases. If the lawyer did no work, fees may be covered by the Fund. Fees are not reimbursable simply because you are dissatisfied with the services or because work was not completed.

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How do I qualify for the Fund?

Clients must be able to show that the money or property came into the lawyer's hands.

Is there any charge for seeking Client Assistance Fund help?

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Who can, or cannot, qualify for the Fund?

Almost anyone who has lost money due to a lawyer's dishonesty can apply for reimbursement. You do not have to be a United States citizen. However, if you are the spouse or other close relative of the lawyer in question, or the lawyer's business partner, employer or employee, or in a business controlled by the lawyer, the Fund will not pay you reimbursement. Also, the Fund will not reimburse for losses suffered by government entities or agencies.



Competitive Bargaining Delays 2011-12 NBA Season

Like the National Football League (NFL), the National Basketball Association (NBA) functions through the league's owners agreeing to renewable contracts, or collective bargaining agreements (CBAs), with its players. Also like the NFL, the NBA's recent agreement with its players association, the NBA Players' Association (NBAPA), expired this past year, resulting in a bitter fight between the league's players and owners. Unlike the NFL mediation, as the parties engaged in negotiations to create a new agreement, their respective hard-lined positional bargaining tactics caused the league to suffer a delayed start to its season that led to the cancellation of games.

The NBA's most recent CBA was a six-year agreement that began in 2005 and was to expire at the end of the 2011 season. By the fall of 2010, and with the NBA season already underway, discussions to produce a new CBA had failed. Both sides were adamantly opposed to backing down from their proposed revenue-sharing schemes, and NBA Players' Association President Billy Hunter warned that a lockout was highly likely for the following season. In a lockout, league owners try to financially pressure the players in order to obtain the upper hand in labor negotiations as the players would be prevented from collecting payments under their contracts. NBA and NBAPA officials began meeting in

early 2011 in an attempt to avoid such an occurrence. As the months passed without an agreement, and with a lockout seeming imminent, the NBAPA filed suit to enjoin the league from implementing the lockout. Being unsuccessful in court, the lockout began as the CBA expired at 12:01 a.m. on July 1.

In October, the NBA and NBAPA agreed to begin mediation with George Cohen, the federal mediator who successfully assisted the NFL to negotiate its labor dispute. Though several issues were up for discussion under the new CBA,

the most important was the division of the league's revenue. Under the 2005-11 agreement, players received 57 percent of basketball-related income (BRI). Facing financial hardships during the recent economic recession, the league granted loans to keep teams in its smaller markets afloat and was adamant about increasing its share of the BRI to recover these costs and establish a stronger financial situation for the future. NBA players offered a scheme whereby the BRI would be split 53/47 between players and owners. NBA Commissioner David Stern, negotiating

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on behalf of team owners, demanded a 50/50 BRI split.

The league claimed it needed the extra 3 percent to break even on revenue. Players were concerned they would set a dangerous precedent for future CBAs if they came down from their already reduced proposed scheme of a 53/47 split. The potential money involved added up to \$1 billion over the course of a 10-year agreement.

Hunter and the NBAPA gambled that, by acquiescing to the NBA's requests on issues such as contract lengths and free agency earlier in negotiations, the players would find themselves in a better position to obtain a more favorable share of BRI in the latter stages. The gamble did not pay off for Hunter. By making these early concessions, the players had given up issues to trade with later in discussing revenue sharing. Having already reached agreement on smaller issues, Stern positioned the league to capitalize on its stronger bargaining position.

Without putting a proposal on the table by a self-imposed Oct. 28 deadline, and by cancelling games through the month of November, Stern showed the players that the owners were resolute in their position and unwilling to back down. While their

counterparts in the NFL had revealed the secret purchasing of "lockout insurance" that would pay the players in the event of a lockout, Stern's show of force was unmatched by NBA players. Mediation reached an impasse as neither side was willing to move from its proposed revenue share. On Nov. 13, Stern sent a letter to NBA players directly, asking them to approve a CBA passed by owners based on their offer of a 50/50 BRI split. The following day, the players unanimously voted down the proposal in a strong showing of solidarity. Though this vote mitigated the effects of Stern's attempt to grab power, it led to another standstill in CBA negotiations.

Just as it seemed that the entire season would be cancelled, internal and external pressures breathed new life into negotiations. Though both sides continued to pursue legal maneuvers in court, players were still not collecting payments under their contracts, league finances were being further frustrated with lost revenue from cancelled games, and the Occupy Wall Street movement contextualized fan frustrations against the wealthy owners in a public relations battle. Furthermore, the league risked losing support from its fans, who pointed to the successful NFL

mediation as a model for the NBA to amicably resolve its dispute.

In an effort to save the season, owners and players resumed negotiations and quickly reached a tentative "handshake agreement" on Nov. 26, ending the lockout and creating a shortened season to tip off on Christmas Day. On Dec. 8, 2011, players and owners signed a 10-year CBA, allowing both parties an "opt out" option after the sixth year. As is frequently the case in negotiation, the side willing to walk away from the table can wield this power to pressure the other side into an agreement. By showing that it was willing to cancel games, and potentially the entire season, the league compelled its players into giving ground on their biggest issue, resulting in the players yielding to the NBA's demand of a 50/50 BRI split.

—**Michael S. Finkelstein**

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Recovery of Attorney Fees

In re Velazquez, 660 F.3d 893 (5 Cir. 2011).

Countrywide Home Loans Servicing, L.P., sought to recover attorney fees it incurred in connection with the Chapter 13 bankruptcy case of Lawrence and Tracy Velazquez. Countrywide additionally sought a determination that recovery of those fees did not require compliance with Federal Rule of Bankruptcy Procedure 2016.

The bankruptcy court determined that Countrywide was not entitled to recover the attorney fees in question, and as Countrywide had complied with Rule 2016, there was no justiciable issue concerning whether Rule 2016 applied. The district court subsequently affirmed, but the 5th Circuit concluded that Countrywide was entitled to recover the fees applied for in its application and determined that the bankruptcy and district courts misconstrued a contract provision concerning the availability of attorney fees. The court, therefore, reversed and remanded the matter.

The Velazquezes had executed a note for the purchase of a home, which was secured

by a deed of trust on the property. They later defaulted on the note and the deed of trust. The Velazquezes filed a petition for relief under Chapter 13 of the United States Bankruptcy Code, and Countrywide filed a proof of claim in the bankruptcy including \$200 in "Post-Petition Bnk. Atty. Fees" as part of the arrearage portion of the claim. Countrywide later filed a fee application seeking approval of the same \$200 plus \$150 for fees incurred in the "preparation and prosecution of the Fee Application."

In its decision, the 5th Circuit recognized that "[a] home lender's ability to collect fees and costs from a Chapter 13 debtor's bankruptcy estate is governed, in the first instance, by the language of its loan documents." *In re Rangel*, 408 B.R. 650, 655 (Bankr. S.D. Tex. 2009). Countrywide argued that the bankruptcy and district courts misinterpreted certain sections of the deed of trust, one section of which entitled Countrywide to "do and pay for whatever is reasonable or appropriate to protect Lender's interest in the Property and rights under this Security Instrument." The 5th Circuit devoted a large part of its discussion to the interpretation of the word "and" in this section and concluded that, in this instance, the meaning of "and" should be construed as "either or both" in order to reflect the clear intent of the parties. The bankruptcy and district courts had interpreted "and" as being a conjunctive requirement, therefore limiting the recovery of fees to a narrow set of circumstances.

Consequently, the 5th Circuit determined that the conditions for the recovery of attorney fees had been fulfilled. The 5th Circuit additionally stated that in concluding that Countrywide was entitled to the fees requested in the fee application, the question of whether Countrywide was obligated to file a fee application pursuant to Rule 2016 was moot.

Equitable Mootness

In re Idearc, Inc., 662 F.3d 315 (5 Cir. 2011).

The Spencer ad hoc Equity Committee appealed an order of the district court denying its appeal of the confirmation order of the reorganization plan of the debtor Idearc, Inc. on equitable mootness grounds. The Spencer Committee additionally appealed the district court's denial of its motion for a *de novo* trial on its fraud claims. The 5th Circuit affirmed, determining that the matter was controlled by equitable mootness.

Idearc filed a voluntary petition under Chapter 11 of the United States Bankruptcy Code on March 31, 2009. The day before the hearing on confirmation of the plan, the Spencer Committee filed objections to the confirmation hearing, making allegations of fraud and seeking a jury trial. An order confirming the plan was entered on Dec. 22, 2009, and the Spencer Committee filed a notice of appeal in the district court concerning the confirmation order. The district court granted Idearc's motion to



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dismiss the appeal on the ground of equitable mootness and denied the motion of the Spencer Committee for a trial *de novo* concerning its fraud claims.

The issue before the 5th Circuit was whether the doctrine of equitable mootness was properly applied by the district court in dismissing the Spencer Committee's appeal of the bankruptcy court's confirmation order. The 5th Circuit stated that the court must look to three factors when evaluating equitable mootness:

- (i) whether a stay has been obtained,
- (ii) whether the plan has been "substantially consummated," and
- (iii) whether the relief requested would affect either the rights of parties not before the court or the success of the plan.

The "ultimate inquiry," the 5th Circuit asserted, was "whether the court can grant relief without undermining the plan." Quoting *Bank of N.Y. Trust Co. NA v. Pac. Lumber Co. (In re Scopac)*, 624 F.3d 274, 281 (5 Cir. 2010) (citing *In re SI Restructur-*

ing, Inc., 542 F.3d 131, 136 (5 Cir. 2008)). Assessing these factors, the 5th Circuit recognized that the Spencer Committee's motion for a stay had been denied. The 5th Circuit also acknowledged that the plan had been substantially consummated, and explained that the relief requested by the Spencer Committee did not "outweigh the disturbance that would occur to the success of the reorganization and to third parties...." Further, it was determined that the relief requested by the Spencer Committee would adversely affect the success of the plan or the rights of third parties who were not before the court.

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Custody

Angelette v. Callais, 10-2279 (La. App. 1 Cir. 5/6/11), 68 So.3d 1122.

Ms. Callais alleged the trial court erred in not ordering Mr. Angelette to accommodate the child's dance and cheerleading practices and activities during his custodial time and in not addressing these matters in the custody plan. The court found no error and further found he was not required to pay for dance and cheerleading because she, not he, wanted the child involved and because she made the decision to participate at the extent involved. The trial court did not err in not ordering mediation because Ms. Callais did not request a mediation order. There was no error in not ordering him to participate in future counseling ses-

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sions for the child because the counselor testified that the child's issues had been mostly resolved, and there was no error in not ordering him to pay for private school expenses because Ms. Callais presented no evidence that private school was needed.

Granger v. Granger, 11-0077 (La. App. 3 Cir. 6/15/11), 69 So.3d 666, *writ denied*, 11-1882 (La. 9/16/11), 69 So.3d 1152.

Notice of a proposed relocation by hand delivery was acceptable, even though the statute requires certified mail, because Mr. Granger got timely and proper details of the proposed move and the trial court considered the failure to give statutory notice in its judgment. The previous judgment restraining the mother from moving was not *res judicata* because custody judgments are never final and are always subject to modification. Because Mr. Granger gave no reasons why he should have been named the custodial parent, and because there were good reasons for the move to California, relocation was affirmed. The joint custody and alternating weekend arrangements were continued in place because the parties had sufficient means to fly the child back and forth every other weekend.

Griffith v. Latiolais, 11-0166 (La. App. 3 Cir. 6/1/11), 70 So.3d 71.

Although Ms. Latiolais was the domiciliary parent, the trial court did not err in setting forth an implementation order with 14 provisions that she objected to as compromising her authority. La. R.S. 9:335(B)(3) allows the trial court to place conditions on the domiciliary parent's decision-making authority.

Child Support

Hall v. Hall, 11-0060 (La. App. 5 Cir. 5/24/11), 67 So.3d 635, *writ denied*, 11-1752 (La. 10/14/11), ____ So.3d ____.

The court of appeal, relying on the trial court's credibility determination regarding Mr. Hall's claim as to his income, agreed with the trial court that he could set his salary at any amount he chose and that he failed to show that his income had decreased since the original child support judgment he sought to modify. However, because Ms. Hall was making \$1,400 per month more than at the time of the previous judgment, the trial court did not err in granting him a reduction of \$700. The opinion failed to address his arguments that the Guidelines had to be used and that the trial court had to state reasons for deviating from what the Guideline calculation would have been. It also found that his argument that because child support was decreased, his share of the uncovered medical expenses also had to be decreased to be proportionate to the parties' incomes was "incorrect," stating that "there is no statutory requirement that all uncovered medical expenses of the minor child must be allocated in proportion to the parties' share of income."

Dejoie v. Guidry, 10-1542 (La. App. 4 Cir. 7/13/11), 71 So.3d 1111.

On this rule to increase child support, because of Mr. Guidry's self-employment and the fact that the matter took three years to get to trial, the trial court did not err in averaging his last three years of income to establish that a change in circumstances had occurred since the original judgment.

While the trial court's averaging of the parties' CPAs' calculations of his income for the past three years, then averaging those two numbers, was "not usually desirable," it was "within the range of reasonable alternatives," as the trial court did not have to accept one party's version to the exclusion of the other's. Although the trial court used a "disfavored" mathematical extrapolation by multiplying the highest child support Guideline amount by the factor by which Mr. Guidry's income exceeded that amount, the trial court also considered and discussed the child's needs. Further, because the resulting number was not prejudicial to a substantial right of either party, the court of appeal would not review and determine the child support amount *de novo*. Moreover, Mr. Guidry could clearly afford the child support that was set.

Spousal Support

Horrigan v. Horrigan, 10-1377 (La. App. 1 Cir. 6/14/11), 70 So.3d 111, *writ denied*, 11-1596 (La. 10/7/11), 71 So.3d 325.

Even though the 102 divorce action was abandoned for failure to file a rule for a divorce in two years, a consent judgment reached before the abandonment requiring Mr. Horrigan to pay spousal support of \$1,500 per month for 10 years was enforceable because he knew what he was agreeing to when he signed it, and it did not terminate when the divorce action was abandoned because this ancillary issue was resolved and no longer pending.

Property

Laird v. Laird, 46,459 (La. App. 2 Cir. 6/22/11), 69 So.3d 1173.

Summary judgment finding that an interest in an LLC was not community property was reversed because there were genuine issues of fact. The husband transferred his interest to his partner shortly before the wife filed for divorce; the partner transferred the interest back to him several months later and two accountants' notes showed it was being held for the husband by his partner. A judgment denying summary judgment and denying an exception of *res judicata* is interlocutory and cannot be appealed or designated as a final appealable judgment, even as an answer to a proper appeal by the other party.

Dray v. Bendily, 46,452 (La. App. 2 Cir. 6/22/11), 69 So.3d 1200.

Ms. Dray's petition to partition the parties' community property, which was served on Mr. Bendily, included an order that both parties file detailed descriptive lists within 45 days. She subsequently filed her detailed descriptive list, and then took a preliminary default against Mr. Bendily, which she later confirmed. After he filed motions to set aside the default and for a new trial, which were denied, the court of appeal found that she had established a prima facie case supporting her descriptive list through documents and testimony and that his failure to traverse her valuations and classifications was a concurrence. The court of appeal held that while one may file a rule to show cause if the other party does not timely file a descriptive list, the entry of a default judgment is also a proper remedy. On his assignment of error that the trial court awarded her reimbursement for community funds paid on his separate mortgage, he argued that she was entitled to reimbursement only for one-half of the amount paid for the

principal, not one-half of the total amount. The court of appeal reversed, finding that it was unable to determine the amount of the principal paid and the number of months, and remanded for the trial court to make that determination.

Becnel v. Becnel, 10-1011 (La. App. 5 Cir. 5/24/11), 70 So.3d 20.

Ms. Becnel was not entitled to the value Hibernia stock would have had at the time of trial if Mr. Becnel had not sold it in 2000, despite an injunction not to dispose of community property and La. Civ.C. art. 2369.3's obligation to preserve community property in a manner consistent with its use prior to the termination of the regime. He did not "mismanage" the property, she should have sought relief for his selling the stock in violation of the injunction prior to the partition proceeding, and her damages were "too speculative." She was owed one-half of the dividends he received from the stock between the termination of the community and Mr. Becnel's sale of the stock, but not to dividends that may have been earned if

he had not sold it. She was not entitled to pre-judgment interest on the proceeds of the sale that he received and kept or on legal fees and costs he received from his law practice after the community terminated because they were not classified as community property until the judgment and because *Reinhardt v. Reinhardt*, 748 So.2d 423 (La. 1999), controlled. The trial court had ordered that Mr. Becnel's claim that he owed his brother a community property debt of \$100,000 be held open for further proof, but the court of appeal vacated the order because he failed to prove the claim at trial.

Milton v. Milton, 10-1589 (La. App. 1 Cir. 5/9/11), 71 So.3d 326, writ denied, 11-1168 (La. 9/16/11), 69 So.3d 1150.

The trial court's refusal to allow Mr. Milton to cross-examine Ms. Milton on issues beyond the scope of her direct examination was erroneous, but because he did not make a proffer regarding her testimony and because no substantial right of his was affected, the error was harmless. Although he brought 60 dairy cattle into

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the marriage as his separate property, he was not entitled to reimbursement for their use to benefit the community because the milk produced and the proceeds from the sale thereof were natural and civil fruits, which were community property. He also claimed reimbursement for the value of his separate property land and dairy barn used during the community to benefit the community, but this claim was also rejected because the "value" of the land was not used as required by La. Civ.C. art. 2367. He was also not entitled to wages for working on the dairy farm after the termination of the community because a co-owner is not entitled to payments for his management unless there is a management plan agreed to by the co-owners to provide for wages. His only relief would have been under the law of unjust enrichment, but the court of appeal found that it did not apply under these facts. The court of appeal found that the number of community cows at the time of trial should have been 43 instead of 163. Because the change in the value of the cows would significantly change the possible allocation of assets and debts, the court of appeal remanded for a reallocation and the determination of an equalizing payment.

—**David M. Prados**

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Tort: Due Process in School Disciplinary Proceedings

Christy v. McCalla, 11-0366 (La. 12/6/11), ____ So.3d ____.

Senior Justin Christy was attending a class at Captain Shreve High School when a 750 ml. bottle of whiskey fell from his backpack and broke on the floor. Referred to Marvin Hite, the school's disciplinary administrator, Christy claimed he did not know that the whiskey was in his backpack or how it got there. He was arrested by the school's Shreveport Police security officer for underage possession of alcohol. Shortly thereafter, Christy's friend, Andrew Heacock, Student Council president, came forward claiming that he had planted the whiskey in Christy's backpack. An informal hearing was held by Hite and Larry Anderson (a school district supervisor for child welfare and discipline) with Christy and his parents. Anderson concluded that Christy should be expelled from Captain Shreve and placed at Hamilton Terrace Learning Center, an alternative school, until March

12, 2004, a date five months and two days hence.

The parents contested the expulsion recommendation, and the school system conducted a preliminary hearing by a committee composed of the director of the School Board's Attendance and Census Department and six school system administrators. The committee recommended expulsion, but only until Dec. 19, 2003, because the "[parents] did not know that they could call witnesses" and, before the hearing was scheduled, Andrew Heacock, a witness, had asked to come to the hearing.

Twenty-five days later, the full School Board took up the matter. Christy testified, presenting his full defense and calling Andrew Heacock, who claimed responsibility for the whiskey being in Christy's backpack. One School Board member allegedly "expressed disbelief of Andrew's overall claim... and that Justin was unaware that the bottle was in his backpack." The full School Board voted 9-2 to expel Christy. Rather than appealing to the district court under the provisions of La. R.S. 17:416(C)(5), Christy's mother filed suit against the School Board, alleging that it violated Christy's right to due process and imposed an "excessive and irrational punishment," causing "extreme mental anguish and distress, grief, humiliation and inconvenience." She further alleged



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that the disciplinary process was tainted because the school system had prevented Heacock from explaining that he, not Christy, was responsible for the whiskey bottle. Following a bench trial, the district court, concluding that it had “no problem at all finding liability,” awarded Christy \$50,000. The court of appeal affirmed (3-2) on liability and damages. The decisions at trial and on appeal hinged largely on the failure at the two preliminary hearings to allow or disclose Andrew Heacock’s testimony and the perceived inappropriateness of the punishment.

Writing for the Supreme Court’s majority, Justice Weimer pretermitted the School Board’s procedural arguments, finding that “Justin failed to carry his burden of proving that the School Board denied him due process in rejecting his version of events and disciplining him.” Applying the duty-risk analysis ingrained in Louisiana tort law to determine whether liability exists, the court concluded: “The school system... has a duty under the Due Process Clause of the federal constitution to not arbitrarily suspend or expel a child.”

The School Board correctly pointed out that, by law, school personnel may suspend but cannot expel a student. Under La. R.S. 17:416, school personnel are empowered to take only the first step in a two- or three-step process. Under the first step, a school principal may suspend any student who commits one of the enumerated offenses, including “possess[ing] alcoholic beverages.” To expel a student requires a hearing conducted by the superintendent’s designee to determine the facts and find whether the student’s conduct warrants expulsion, after which “the superintendent, or his designate, shall determine whether such student shall be expelled” or other action taken. At trial, there were admissions of improper handling of the preliminary disciplinary proceedings. Hite testified,

“I should have called Heacock. I didn’t call him.” Anderson testified that he felt he had sufficient information to make a disciplinary recommendation and did not need to hear from Heacock.

The court found that despite these “less-than-exemplary effort(s) by school administrators,” Christy failed to show a due process deprivation by those who ultimately determined his discipline, the superintendent and the School Board. Although the school administrators might not have rendered all process due to Christy by not considering Heacock’s explanation directly from the source (an issue the court declined to decide), to recover in tort for a deprivation of due process for an expulsion, Christy had to prove injury that was caused by the School Board. The court stated that Christy’s trial evidence proved only “that he lost in his effort to persuade the School Board that he was not responsible for bringing a bottle of whiskey to school

in his backpack. However, losing on the merits of one’s claim does not equate to a denial of due process.”

Justice Knoll mounted a vigorous five-page dissent, chiding her colleagues for focusing on the procedural aspects of the case to the neglect of attention to Christy’s delictual claim. She concluded, “This Court regularly cautions appellate courts not to lightly overturn the factual findings of the trial court: ‘Because the discretion vested in the trier of fact is so great, and even vast, an appellate court should rarely disturb its findings on review.’ ... I believe in this case we would be best served in taking our own cautionary advice.”

—**John Zachary Blanchard, Jr.**
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Trans-Pacific Partnership Agreement

Negotiations have intensified between the United States and eight countries (Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore and Vietnam) to form the Trans-Pacific Partnership (TPP) agreement. The TPP agreement is the first proposed U.S.-Pa-

cific regional free-trade agreement. Japan, Canada and Mexico notified their intent to join the negotiations in November. If successful and inclusive of Japan and the North American Free Trade Agreement (NAFTA) partners, the TPP will serve as the most comprehensive and inclusive free-trade agreement to date.

The proposed TPP includes various “next-generation” issues that have not been included to a significant degree either in the World Trade Organization multilateral trade regime or in the various bilateral or regional free-trade agreements. Some of the cross-cutting issues include: (1) regulatory coherence between the customs authorities in the regional trade bloc to facilitate trade; (2)

small- and medium-sized enterprise commitments to address the specific concerns and needs of smaller businesses; and (3) market access and services coverage in the digital economy and green technology sectors.

World Trade Organization

Eighth Ministerial Conference, Geneva, Switzerland (Dec. 15-17, 2011).

The World Trade Organization (WTO) held its Eighth Ministerial Conference in Geneva, Switzerland, from Dec. 15-17, 2011. The Ministerial Conference is the highest decision-making body in the organization. The WTO has been stuck in neutral as the Doha Development Agenda, initiated in 2001, continues to lag. WTO members continue to disagree over various core Doha issues, including, *inter alia*, the scope of non-agricultural market access for developed country products, changes to agricultural-support programs around the world and the measure of special and differential treatment available for developing countries. This is a critical meeting for the organization, as many observers believe a failure to harvest even minimal agreement could foster greater protectionism and a loss of confidence in the multilateral trading system.

United States-Certain Country of Origin Labeling (COOL) Requirements, WT/DS384/R & WT/DS386/R (Nov. 18, 2011).

A WTO dispute-settlement panel recently issued an opinion on a long-standing complaint by Mexico and Canada regarding certain aspects of U.S. Country of Origin Labeling (COOL) requirements. Canada and Mexico sought consultations, and ultimately requested a panel, in 2008 regarding portions of the mandatory COOL requirements contained in the Agriculture Marketing Act of 1994, as amended by the 2008 Farm Bill. U.S. COOL laws require retail outlets to inform consumers of the country of origin of certain commodities, including beef and pork. The U.S. originating mark is reserved for animals exclusively born, raised and slaughtered in the United States. Beef or pork derived from livestock exported to the United States for feed and

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immediate slaughter is excluded.

Canada and Mexico alleged that certain COOL requirements discriminate against their livestock in breach of numerous WTO obligations, including violations of the Technical Barriers to Trade (TBT) and Sanitary and Phyto-sanitary Agreements. The panel concluded that COOL constitutes a measure under the TBT agreement and that, while the United States does have the right under WTO rules to adopt COOL requirements, the manner in which the regulations are implemented provide less favorable treatment to Canadian and Mexican livestock. Despite the fact that the United States was found in violation of its WTO obligations, the panel decision has been applauded by many consumer and industry groups here because it recognizes the basic WTO-consistency of labeling laws and requirements.

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Are Government Employee Speech Rights Stronger Under Louisiana Constitution?

Generally, courts interpret citizen rights under the Louisiana Constitution similarly to that of the U.S. Constitution. At least one recent publicized decision regarding speech rights, albeit a federal court decision, makes one wonder if the protection is even more robust under the state rather than the federal constitution.

The differences in speech protection between the two constitutions revolve around whether a *Garcetti* analysis is required under the Louisiana Constitution. In *Garcetti v. Ceballos*, 126 S.Ct. 1951 (2006), the U.S. Supreme Court determined that the government can restrict the speech of public employees when employees comment on issues required in their "official duties" (*Nixon v. City of Houston*, 511 F.3d

494, 498 (5 Cir. 2007), *cert. denied*, 128 S.Ct. 2508 (2008)). Pre-*Garcetti* employment speech was subject to the *Pickering* test, where the government balanced a public employee's interests in speaking as a citizen on matters of public concern with the government's interests as an employer in promoting efficiency in the public services it performs. *Garcetti* adds another layer to this analysis.

In two summary judgment motions filed months apart in the same case addressing employee speech rights under the Louisiana and U.S. constitutions, a federal judge determined speech protections under the Louisiana Constitution without mention of *Garcetti* or job duties, while the decision regarding the First Amendment was decided based on *Garcetti*. The motions were filed in *van Heerden v. Board of Supervisors* in the Louisiana Middle District, case 10-155. *van Heerden* was an LSU hurricane researcher who criticized the U.S. Army Corps of Engineers for levee failures following Hurricane Katrina. LSU administrators asked him to refrain from speaking on that issue, but *van Heerden* continued to do so. When LSU refused to extend his employment contract, he alleged retaliation under the Louisiana Whistleblower Act (La. R.S. 23:967) and 42 U.S.C. § 1983, a federal claim.



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For more information, view the agenda, or register online, visit: www.lsba.org/CLE

This program has been approved for a maximum of 7 hours of CLE credit, including 1 hour of ethics.

In the first summary judgment decision, the court addressed whether van Heerden's employer violated the state whistleblower statute and speech rights under the Louisiana Constitution. Judge Brady found that there were issues of fact whether LSU had violated van Heerden's speech rights in violation of Louisiana Constitution article I, § 7, which prohibits state actors from "curtail[ing] or restrain[ing] freedom of speech or of the press" and states that "[e]very person may speak, write and publish his sentiments on any subject."

Judge Brady examined van Heerden's statements prior to and after LSU ordered him not to make any further comments or provide testimony regarding whether the Corps had failed to adequately construct and maintain the New Orleans levees. He examined LSU administrators' actions against van Heerden. He concluded that a reasonable factfinder could find LSU retaliated against van Heerden because of his speech. The court did not analyze whether the statements were made as part of his job duties or solely as a citizen.

Three months later, Judge Brady ruled

on another summary judgment motion addressing van Heerden's § 1983 claim predicated on LSU violating van Heerden's First Amendment speech rights. *van Heerden v. Board of Supervisors*, 10-155 (10/20/11), 2011 WL5008410. Judge Brady expressed concern that applying *Garcetti* to an academic under these facts could lead to "a whittling-away of academics' ability to delve into issues or express opinions that are unpopular, uncomfortable or unorthodox." He held, however, that van Heerden's speech "outside the chain of command" to legislative bodies and to the public through his book was not part of his official job duties. Thus, even applying *Garcetti*, summary judgment was precluded.

The Louisiana 1st Circuit Court of Appeal took a different approach than the federal court in *van Heerden* as to a state whistleblower claim in *Matthews v. Military Dep't ex rel. La.*, 07-1337 (La. App. 1 Cir. 9/24/07), 970 So.2d 1089; writ denied, 07-2316 (La. 2/15/08), 976 So.2d 177; cert. denied, 129 S.Ct. 82 (2008). The court decided on summary judgment in what

appears to be a *Garcetti* analysis that there was no Louisiana whistleblower claim for an employee who disclosed wrongdoing because the "reports were required as part of his normal duties." *Id.* at 1090.

In Matthews' writ application (2008 WL 2149843) to the Louisiana Supreme Court, Matthews argued the following: 1) applying *Garcetti* to the whistleblower statute eviscerates it; 2) the U.S. Supreme Court in *Garcetti* envisioned whistleblower statutes to make up for a lack of constitutional speech protection; and 3) the Louisiana whistleblower statute lacks language that would except from its protection speech that is part of an employee's job duties. He also presented a scholarly argument that Louisiana constitutional speech protections need not track U.S. constitutional speech protections. The writ was denied.

—Paul F. Bell

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Top Leasing

Pilkinton v. Ashley Ann Energy, L.L.C., 46,650 (La. App. 2 Cir. 11/22/11), ____ So.3d ____.

A “top lease” is a mineral lease that a lessor grants during the existence of another mineral lease that covers the same area. A top lease is valid, but is not enforceable unless and until the previously-existing lease terminates.

KCS Energy held a mineral lease that covered 86.20 acres owned by the Pilkintons in Bossier Parish. The lease provided that it would remain in effect until Dec. 2, 2008, and for as long thereafter as KCS was engaged in drilling or the production of minerals from the leased premises or land unitized therewith.

As of August 2008, KCS was not engaged in drilling or production. That month, the Pilkintons granted a top lease to Ashley Ann Energy for the 86.20 acres that was covered by the KCS lease. In return, Ashley Ann, which was acting as agent for Chesapeake, agreed to pay an initial lease bonus of \$5,000 per acre, plus an additional \$15,000 per acre if the KCS lease terminated.

In payment of the initial bonus, Ashley Ann gave the Pilkintons a \$431,000 draft, which conditioned payment on approval

of title within 20 days. Several days later, the Office of Conservation issued a drilling permit to KCS for land unitized with the Pilkintons’ property. Ashley Ann instructed its bank not to honor the \$431,000 draft.

The Pilkintons sued for payment of the \$431,000. Ashley Ann argued that the drilling permit was a title defect that excused its obligation to pay, but the district court granted summary judgment in favor of the Pilkintons. The 2nd Circuit affirmed, stating that neither the drilling permit nor the KCS lease itself was a title defect in the context of a top lease that expressly recognized the existence of the KCS lease.

Expropriation for Pipeline

Acadian Gas Pipeline Sys. v. Nunley, 46,648 (La. App. 2 Cir. 11/02/11), ____ So.3d ____.

Acadian Gas obtained a certificate of transportation from the Department of Natural Resources for purposes of building a natural gas pipeline. Under Louisiana’s expropriation statutes, that certificate empowered Acadian to expropriate private property as needed for construction of the pipeline.

Acadian chose a pipeline route that would run across the Nunleys’ property. Acadian wrote Dr. Nunley on Jan. 20, 2010, asking for permission to enter his property for purposes of performing a survey and threatening legal action if he did not respond within three days. Dr. Nunley denied the request. On Feb. 2, Acadian wrote Nunley again,

stating that it had selected a route that crossed his property. Acadian offered him compensation for a pipeline right of way and expressed a desire to reach “an amicable agreement.” Dr. Nunley rebuffed the offer.

Acadian filed an expropriation action on Feb. 19. In opposition to the action, the Nunleys argued that Acadian had exercised its expropriation authority in bad faith because it had only considered two routes, rather than several possible routes. The Nunleys also argued that testimony was not sufficient to show that Acadian had considered the various factors that jurisprudence has established should be considered (costs, environmental impact, long-range planning for the area and safety considerations) in choosing a route. The Nunleys asserted that, because Acadian had only offered testimony regarding its analysis of alternative routes, rather than documents demonstrating such analysis, a court could not properly conclude that Acadian exercised its appropriation authority in good faith. The district court disagreed and granted judgment for Acadian, ordering the expropriation it had requested, and noting that an expropriating authority has considerable latitude in choosing a route. The 2nd Circuit affirmed.

—**Keith B. Hall**

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Property Owner Still Not Entitled to Damages Based on Actions Occurring Prior to Ownership

The Louisiana Supreme Court has finally laid to rest the question of whether the subsequent purchaser rule applies to non-apparent property damages inflicted prior to the sale. Over the past few years, this issue has plagued plaintiffs and defendants alike in oil and gas legacy litigation.

In *Eagle Pipe & Supply, Inc. v. Amerada Hess Corp.*, 10-2267 (La. 10/25/2011), ____ So.3d ____, the Supreme Court held that the “fundamentals of Louisiana property law compel the conclusion” that:

an owner of property has no right or actual interest in recovering from a third party for damage which was inflicted on the property before his purchase, in the absence of an assignment or subrogation of the rights belonging to the owner of the property when the damage was inflicted.

Id. p. 1, 4.

The issue before the Supreme Court arose from a 1998 sale of land to plaintiff, Eagle Pipe and Supply, Inc., who later discovered the land was allegedly

contaminated with radioactive material. From 1981 to 1988, the property was allegedly leased and operated as an industrial pipeyard that bought, stored and sold used oilfield tubing. After Eagle Pipe purchased the property, the LDEQ issued violations of state exposure regulations to Eagle Pipe as a result of the presence of radioactive materials and ordered that the property be remediated. Eagle Pipe sued the former landowners and the oil and trucking companies allegedly responsible for the contamination. The oil and trucking companies filed exceptions of no right of action arguing “Eagle Pipe had no right to assert a claim for damage to the property which occurred before Eagle Pipe was its owner.” *Id.* p. 2.

As first reported in this Section in the June/July 2010 (Volume 58, Number 1) *Louisiana Bar Journal*, the appellate court initially affirmed the dismissal, but reversed on rehearing, limiting the subsequent purchaser rule to situations where the damage was apparent at the time of the sale. The Supreme Court granted certiorari to determine whether a subsequent purchaser of property has the right to sue a third party for non-apparent property damage inflicted before the sale of the property absent an assignment or subrogation to that right.

The court’s opinion spans numerous legal issues from continuous torts to real versus personal rights to the proper method of assigning or subrogating such rights in an act of sale. The court first found that when property is damaged, the owner of the property obtains a personal right to demand repair from the tortfeasor. “In the absence of an assignment

or subrogation of this personal right,” held the court, “a subsequent purchaser of the property cannot recover from a third party for property damage inflicted prior to the sale.” *Id.* p. 22.

Applying these principles to the exception of no right of action against Eagle Pipe’s claims, the court held that “[i]nsofar as Eagle Pipe claims a right to sue based on the damage to the property which occurred before its ownership, we hold the plaintiff has no right of action to assert as a matter of law.” *Id.* The court explained that “the law has provided to Eagle Pipe a cause of action in redhibition and the right to sue for rescission of the sale or the reduction of the purchase price,” but “the law is not required to provide Eagle Pipe with *every possible remedy*.” *Id.* p.26.

The court also rejected Eagle Pipe’s assertion that the right to assert a claim for damages was properly transferred by the subrogation clause in the act of sale, which provided that the sellers “sell, transfer and deliver, with full guarantee of title and free from all encumbrances, and with full subrogation to all their rights

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and action of warranty against previous owners” *Id.* p. 24. The court held that this language was not an “express assignment or subrogation of the former property owner’s personal rights to sue for damage” because the subrogation clause did not explicitly mention the assignment or subrogation of the former property owners’ right to sue for property damage. *Id.* p. 25.

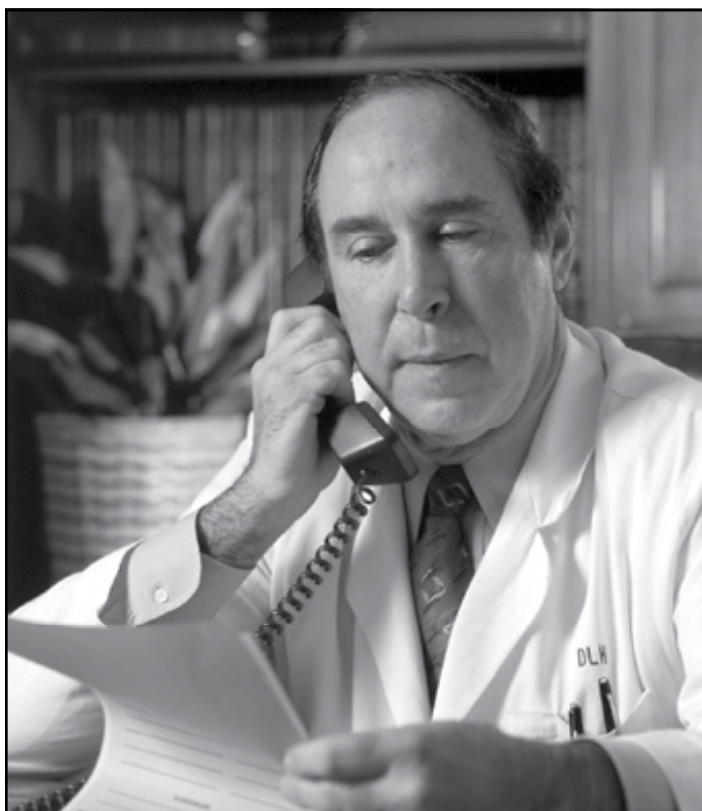
In an attempt to sidestep the subsequent purchaser rule, *Eagle Pipe* argued that the damage to the property was continuing such that *Eagle Pipe* was asserting its own right of action that did not accrue until the LDEQ first notified *Eagle Pipe* of the contamination. The Supreme Court rejected this argument, finding that “the continued presence of the alleged contamination,” the injury claimed by *Eagle Pipe*, “is simply the continuing ill effect from the original tortious acts,” which the court explained were the tender of

contaminated oilfield equipment from the oil and trucking companies to the former property owner. *Id.* p. 23.

The core legal issues underpinning the court’s analysis and ultimate opinion in *Eagle Pipe* extend beyond the toxic tort context. The *Eagle Pipe* decision impacts the viability of oil and gas legacy cases, the nature and extent to which any plaintiff can successfully assert property damage claims, the proper method of transferring certain personal rights and the proper language to include in an act of sale to transfer such rights in a real estate transaction.

— **Raymond C. Lewis**

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CHAIR'S MESSAGE

The Benefits to You of Doing Pro Bono Work

By Shayna L. Sonnier

A motivating factor for my becoming an attorney was the opportunity to help others. Therefore, it seems appropriate that I devote a message to the benefits of pro bono work (especially after chatting with my friend, Louisiana State Bar Association's Access to Justice Director Monte Mollere, and learning all about Louisiana pro bono programs). If you are unaware of the Access to Justice Committee's great work for individuals around our wonderful state, I am here to tell you that



Shayna L. Sonnier

the committee is diligent about helping to give the less fortunate access to legal services. One of the many ways this goal is accomplished is by working with the pro bono programs across the state.

We all recognize the benefits individuals receive from pro bono services, but what about the attorney? Some of you may be thinking to yourself, "I just started practicing" or "I haven't been able to find a job," and may think you are not in the position to provide pro bono services. While I understand everyone must earn a living (you aren't the only person with student loans, trust me!), there are many reasons to provide pro bono work even if you are just starting out.

Here is a short list detailing why doing pro bono work may be beneficial to you in addition to the wonderful feeling you get from helping others:

► **Experience** — Many new attorneys leave law school without much, if any, courtroom experience. By taking a pro bono case, you can get into the courtroom within days of accepting a case.

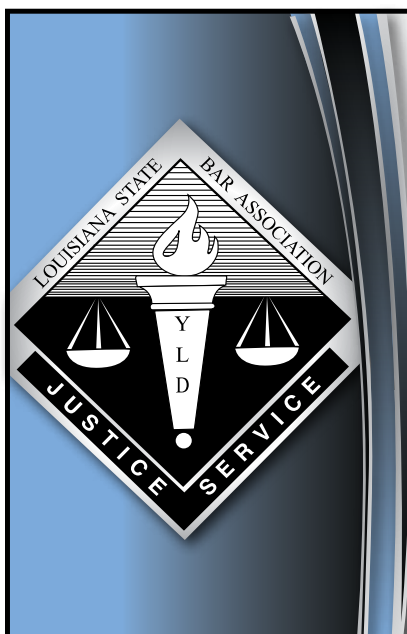
► **Support** — Accepting cases through pro bono programs provides support for new attorneys or attorneys looking to change the focus of their practices.

► **Mentoring** — Pro bono programs can provide someone on their pro bono panel with experience in a field to provide guidance to a new attorney or someone not as familiar with a particular area of the law.

► **Future Clients** — Pro bono attorneys are sometimes the only attorney that clients know and often may later come to the attorney for work or refer friends or relatives with a financially beneficial case to that attorney.

► **Continuity** — Volunteer pro bono legal work can be a useful item on a résumé for a recently admitted attorney as well as an attorney without a job. It can

Continued next page



YOUNG LAWYERS DIVISION NEWS

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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.

Continued from page 375

sometimes eliminate that “lapsed time” or “gap” on your résumé.

► **Networking** — Volunteer work can lead to interaction with other attorneys, judges and the court. This interaction can be a valuable networking experience that can lead to referrals or job opportunities.

I understand it is a difficult time for young attorneys now and it may be a challenge to motivate yourself to “volunteer” when there are bills to pay. However, I truly believe that Louisiana pro bono programs not only can help us give back but also can help us move forward. To find your local pro bono program, go to: www.lsba.org/probono.

Upcoming Events!

We have some exciting events happening this spring.

The state **High School Mock Trial Competition** will be held Saturday,

March 17, in Lake Charles. Volunteers are always needed. If you are interested in participating, email Laura Bryan at lbryan@ldi.la.gov.

In April, we will host our **third annual Local Affiliates Symposium** in Lafayette. This event is an opportunity for all local affiliates to get together with the Louisiana State Bar Association (LSBA) Young Lawyers Division (YLD) and exchange ideas/concerns and see how we can all work together to better serve our communities.

The **LSBA YLD Closet** will take place March 10-April 14 at Dee’s Shoes and Accessories in Lafayette. This project helps provide prom dresses to high school junior and senior girls who would not otherwise be able to afford to attend. Donations are needed. If you are interested in donating, email Tamara Rahim at tamara.rahim@la.gov.

Also, there are several **Wills for Heroes** events this spring. The next event is tentatively scheduled for March 10 in Alexandria. Be on the lookout for

other WFH events in Lake Charles, Baton Rouge and Shreveport. If you are interested in volunteering or want to have an event in your city, email Kyle Ferachi at kferachi@mcglinchey.com or Derrick Earles at digger@caubarreaux.com.

Also, the **2011-12 Leadership LSBA Class** is sponsoring a 5K run/1 mile walk/kids’ run on Saturday, April 14, at Sam Houston Jones State Park in the Lake Charles area. The purpose of the “Laps for LAP” event is to promote mental health in the legal community and raise awareness of this very real issue that affects many members of our bar. Proceeds will go to the Lawyers Assistance Program (LAP), which offers confidential assistance to lawyers and judges whose personal and professional lives are threatened by the impact of problems caused by depression/anxiety, alcoholism, and/or drug abuse. This is a family-friendly event and the run will be followed by a family picnic. More information will be available soon online at: www.lsba.org.

YOUNG LAWYERS SPOTLIGHT

John C. Nickelson Shreveport

The Louisiana State Bar Association’s Young Lawyers Division is spotlighting Shreveport attorney John C. Nickelson.

Nickelson graduated, *magna cum laude* and Phi Beta Kappa, from Texas Christian University with a BA degree in history. He earned his law degree from the University of Virginia in 2004. He began his practice with Baker Botts in Dallas, Texas. He clerked for Hon. Jennifer Walker Elrod, United States Circuit judge for the United States 5th Circuit Court of Appeals. He returned home to Shreveport in 2009 to practice with the firm of Cook, Yancey, King & Galloway, A.P.L.C. He is a commercial litigator and represents clients in



John C. Nickelson

a wide range of matters, including legal malpractice defense, oil and gas litigation, and products and premises liability disputes.

In addition to maintaining an active practice, Nickelson is involved in both the state and local bar associations. He is a member-at-large of the Shreveport Bar Association’s Executive Council, treasurer of the Shreveport Bar Foundation and a member of its board of directors, and a member of the Harry V. Booth and Judge Henry A. Politz American Inn of Court. He also was selected and served as a member of the 2010-11 Leadership LSBA Class.

When asked why he pursued a law degree and a career as a lawyer, Nickelson answered that he went to law school because he thought he would enjoy the profession and wanted to contribute to the lives of others. His involvement in the bar and his commitment to pro bono work make it apparent he is achieving his aspirations. Since graduating from law school, he has handled pro bono cases

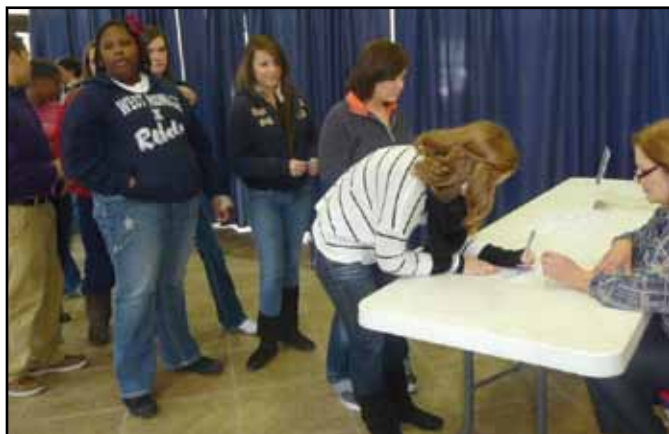
ranging from adoptions and protective orders for abused women and children to custody disputes and consumer rights cases.

As the treasurer and a member of the Shreveport Bar Foundation’s board of directors, he is closely involved with the organization’s coordination of pro bono activities in the Shreveport-Bossier area. He represents indigent criminal defendants as a member of the United States District Court for the Western District of Louisiana’s Criminal Justice Act Panel. He also was an active participant in the 2010-11 Leadership LSBA Class CLE presentations encouraging the pro bono efforts of firms and individual attorneys throughout Louisiana. He credits his commitment to pro bono work to the mentoring and support he has received from others, including Herschel E. Richard, Jr., Cook Yancey’s president and the immediate past president of the Louisiana Bar Foundation.

Nickelson and his wife, Emily, are the proud parents of three children.



CITIZENS, NOT SPECTATORS



West Monroe High School students prepared to register to vote as part of the "Citizens, Not Spectators" program.



Fourth graders at A.C. Alexander Elementary School voted during a simulated election, the culminating activity of the "Citizens, Not Spectators" program. Voting machines were provided by the Louisiana Secretary of State's Office.

LCLCE Launches "Citizens, Not Spectators" Program

The Louisiana Center for Law and Civic Education last fall launched a new student program, "Citizens, Not Spectators." The goal of the program is to increase the voting rate among young Americans by providing engaging voter education to elementary, middle and high school students.

To accomplish this goal, this program offers a curriculum that demystifies the voting process by teaching elementary, middle and high school students how to cast a vote, how the voting process works, how to become an informed voter, and why it is important to cast an informed vote. The curriculum focuses on hands-on, active learning. Using actual voter registration forms and ballots, students receive instruction in how to register and cast a vote in a simulated election. The Louisiana Secretary of State's Office provided real voting booths to schools conducting simulated elections. This program is made possible through a cooperative effort made by the Center for Civic Education, the Arsalyn Program of Ludwick Family Foundation and the Louisiana Center for

Law and Civic Education.

Ten Louisiana schools participated in the program last fall, including teacher Michael Denning, Coteau-Bayou Blue Elementary School; teacher Michelle Molina, Marrero Academy for Advanced Studies; teacher Dwayne Alexander, Jeanerette Middle School; teacher Jimmy Benton, Caddo Parish Magnet High School; teacher Danielle Mahan, John Paul the Great Academy; teacher Ann Majeste, A.C. Alexander Elementary School; teacher Mary Barnes, Folsom

Junior High School; teacher Mitzi Murray, West Monroe High School; teacher Jamie Staub, Haynes Academy for Advanced Studies; and teacher Mark Hernandez, Dutchtown High School.

"The students were engaged and empowered," said Folsom Junior High School teacher Mary Barnes, adding that the program was presented to both seventh and eighth graders. "We allowed the students to design their own voter registration card and their own 'I Voted' stickers," she said.



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By Robert Gunn, Louisiana Supreme Court

NEW JUDGES... APPOINTMENTS

New Judges

Sheva M. Sims

was elected to Division D, Shreveport City Court. She earned her BS degree in mathematics from Dillard University in 1984 and her JD degree from Southern University Law Center in 1994. She was in the practice of law for 17 years before her election to the bench. She was the 2009 recipient of the Louisiana State Bar Association's (LSBA) Leah Hipple McKay Memorial Award for Outstanding Volunteerism. She served as president of the board of directors for the YWCA of Northwest Louisiana. She also served as a mathematics tutor, a subject she taught at the high school level prior to becoming an attorney. She is a member of the Louisiana, National and Shreveport bar associations and the Black Lawyers Association of Shreveport-Bossier. She is a member of several LSBA committees and a Fellow of the Louisiana Bar Foundation. She is the mother of two daughters.



Sheva M. Sims

Robert P. Blackburn

was appointed as magistrate commissioner at Orleans Parish Criminal District Court. He earned his BA degree from the University of Nebraska in 1993 and his JD degree from Louisiana State University Paul M. Hebert Law Center in 1997. He is married to Emily DeSalvo Blackburn and they are the parents of two children.



Robert P. Blackburn

Judges

► Judge Robert A. Chaisson was recently elected as judge of the 5th Circuit Court of Appeal, 3rd District, Division A. He previously served as judge of Division E, 29th Judicial District Court.

► Judge Herbert A. Cade was recently elected to Orleans Parish Traffic Court. He previously served as judge of Division K, Orleans Parish Civil District Court.

Appointments

► Retired Judge Robert J. Klees has been assigned, by order of the Louisiana Supreme Court, as judge *pro tempore* to the 29th Judicial District Court, Division E. He will serve through May 27, due to the vacancy created by the election of Judge Robert A. Chaisson to the 5th Circuit Court of Appeal. He will serve until the vacancy is filled or until further orders of the Louisiana Supreme Court.

► Attorney Chauntis T. Jenkins has been appointed, by order of the Louisiana Supreme Court, as judge *pro tempore* of Division K-5 of Orleans Parish Civil District Court. She fills the vacancy created due to the election of Judge Herbert A. Cade to Orleans Parish Traffic Court. She will serve through May 1 or until further order from the court.

► Marta-Ann Schnabel and Bonita Preuett-Armour were reappointed, by order of the Louisiana Supreme Court, to the Louisiana Judicial Campaign Oversight Committee for terms of office which conclude on April 21, 2015.

► Frank A. Fertitta was appointed, by order of the Louisiana Supreme Court, to the Attorney Disciplinary Board for a term of office which will conclude on Dec. 31, 2012.

► Tara L. Mason was appointed, by order of the Louisiana Supreme Court, to the Attorney Disciplinary Board for a term of office which will conclude on Dec. 31, 2014.



Need some help managing your law office?

The Louisiana State Bar Association (LSBA) has established the Law Office Management Assistance Program (LOMAP, for short). This program is designed to assist lawyers in increasing the quality of the legal services they provide.

Questions or comments about LOMAP may be sent to Shawn L. Holahan, shawn.holahan@lsba.org or call (504)619-0153 or (800)421-5722, ext. 153.

And don't forget about the LSBA's other programs assisting lawyers...

► Fastcase for free online legal research, accessible from the LSBA's home page, www.lsba.org.

► Lawyer Fee Dispute Resolution Program for quick, inexpensive, informal and final resolution of attorney/client and attorney/attorney fee disputes. Contact Bill N. King at bking@lsba.org or call (504)619-0109 or (800)421-5722, ext. 109.

For more information on all LSBA programs, go to www.lsba.org.



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PEOPLE

LAWYERS ON THE MOVE . . . NEWSMAKERS

LAWYERS ON THE MOVE

Adams and Reese, L.L.P., announces that L. Cole Callihan and Diana C. Surprenant have joined the firm as litigation associates in the New Orleans office.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that Jan M. Hayden has joined the firm as a shareholder in the New Orleans office.

Blanchard, Walker, O'Quin & Roberts, P.L.C., in Shreveport announces that **Andres H. Aguilar** has joined the firm as an associate.



Elizabeth L. Adams

Carver, Darden, Koretzky, Tessier, Finn, Blossman & Areaux, L.L.C., in New Or-

leans announces that **Emily Lippold Gordy**, **Jacqueline M. Brettner** and **Seth E. Bagwell** have joined the firm as associates.

Chehardy, Sherman, Ellis, Murray, Recile, Griffith, Stakelum & Hayes, L.L.P., in Metairie announces that **Joshua O. Hess** has joined the firm as an associate.

Cook, Yancey, King & Galloway, A.P.L.C., in Shreveport announces that **Michael D. Simon** has joined the firm as an associate.

Couch, Conville & Blitt, L.L.C., announces that Galen M. Hair has joined the firm as an associate in the New Orleans office. Also, Benjamin G. Lambert, an associate in the New Orleans office, has been admitted to practice law in Mississippi and Tennessee.

Curry & Friend, P.L.C., announces that **Frances I. McGinnis**, **Barbara L. Bossetta** and **Meghan E. Smith** are associated with

the firm in the Covington and New Orleans offices. Also, **Lucie E. Thornton** has joined the firm's health care section as a partner.

Kathleen L. DeBruhl & Associates, L.L.C., in New Orleans announces that **Lindsey E. Surratt**, a health care associate, is now licensed in both Louisiana and Mississippi.

The Faircloth Law Group, L.L.C., announces that **Jonathan S. Ringo** has joined the firm's Baton Rouge office.

Flanagan Partners, L.L.P., in New Orleans announces that **Stephen M. Pesce** was elected partner in the firm and **Kelsey Meeks Duncan** joined the firm as an associate.

Forrester & Dick in Baton Rouge announces that **Amanda G. Clark** has become a principal of the firm and the firm has been renamed Forrester, Dick & Clark. Also, **Chris D. Broadwater** has joined the firm.



Andres H. Aguilar



Seth E. Bagwell



Barbara L. Bossetta



Peter A. Bourgeois



Elena P. Branzaru



Jacqueline M. Brettner



Chris D. Broadwater



Hunter A. Chauvin



Ryan T. Christiansen



Amanda G. Clark



J. Gregg Collins



Allison M. Colomb

Galloway, Johnson, Tompkins, Burr & Smith, P.L.C., announces that **Peter A. Bourgeois** and **David M. Moragas**, both in the New Orleans office, were elected to the board of directors. Also, **Allison M. Colomb** and **Meagan E. Messina** have joined the firm as associates in the New Orleans office.

Gibson, Gruenert & Zaunbrecher, P.L.L.C., in Lafayette announces that Francine A. Eliot has joined the firm as an associate.

Hayes, Harkey, Smith & Cascio, L.L.P., in Monroe announces that **Brandon W. Creekbaum** has joined the firm as an associate.

The Hayter Law Firm, L.L.C., in Shreveport announces that **Stacey A. Smith** has joined the firm as an associate.

IrwinFritchieUrquhart & Moore, L.L.C., announces that **Ali A. Spindler** has joined the firm's New Orleans office as an associate.

Derren S. Johnson & Associates, A.P.L.C., in Baton Rouge announces that **Sharen K. Dhillon** has joined the firm.

Lewis Brisbois Bisgaard & Smith, L.L.P., announces that Tracy P. Curtis has joined the firm's Lafayette office.

Liskow & Lewis, P.L.C., announces that five new associates have joined the New Orleans office: **Hunter A. Chauvin**, **Ryan T. Christiansen**, **Jerome W. Matthews, Jr.**, **Reed A. Morgan** and **Kathryn M. Zainey**.

McGlinchey Stafford, P.L.L.C., announces that Erin M. Minor has joined the firm as an associate in the New Orleans office.

Pendley, Baudin & Coffin, L.L.P., in Plaquemine announces that **Elena P. Branzaru** has joined the firm as an associate.

Perrier & Lacoste, L.L.C., in New Orleans announces that **Nathan M. Gaudet** has joined the firm as an associate.

Phelps Dunbar, L.L.P., announces that Roy L. Bergeron, Jr., Bradley S. Bourgeois and Alejandro J. Velazquez have joined the firm as associates in the Baton Rouge office, and Christopher M. Douse and Mary Katherine Jones have joined the firm as associates in the New Orleans office.

Preis & Roy, P.L.C., announces that Jean Ann Billeaud, Elizabeth P. Everett and Madison E. Toepfer have joined the firm's Lafayette office.

Provosty & Gankendorff, L.L.C., in New Orleans announces that Jason P. Franco has joined the firm as an associate.

Saunders & Chabert in Baton Rouge announces that **Erica D. Edwards** has joined the firm as an associate.

Seale & Ross, A.P.L.C., announces that Ambrose K. Ramsey III, Georgia K. Thomas, Celeste H. Shields and Joshua P. Melder have joined the firm's Hammond office.

Stegg Law Firm, L.L.C., in New Orleans announces that **Margaret V. Glass** has joined the firm as an associate.

Taylor, Porter, Brooks & Phillips, L.L.P., in Baton Rouge announces that **Elizabeth L. Adams** and **Erin B. Sayes** have joined the firm as associates.

NEWSMAKERS

Chris D. Broadwater, with the Baton Rouge firm of Forrester, Dick & Clark, was elected state representative for House District 86 (south central Tangipahoa Parish).

R. Keith Colvin, special counsel in the New Orleans office of Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P., was elected president-elect of the American College of Mortgage Attorneys.

Continued next page



R. Keith Colvin



Brandon W. Creekbaum



Sharen K. Dhillon



Kelsey Meeks Duncan



Erica D. Edwards



Lillian E. Eyrich



James M. Fantaci



Thomas Keasler Foutz



Nathan M. Gaudet



Margaret V. Glass



Emily Lippold Gordy



Ben R. Hanchey

Christopher J. Couch, managing member of the New Orleans office of Couch, Conville & Blitt, L.L.C., was selected as a member of the 2012 class of the New Orleans Leadership Institute.

Gilbert F. Ganucheau, Jr., an attorney in the New Orleans firm of Kathleen L. DeBruhl & Associates, L.L.C., was named president of the Louisiana State Bar Association's Health Law Section.

Thomas E. Ganucheau, a partner in the Houston, Texas, office of Beck, Redden & Secrest, L.L.P., was elected 2011-12 president and Executive Committee member of the Texas Association of Defense Counsel.

Carmen T. Hebert, an associate in the firm of Carleton Loras, L.L.C., in Baton Rouge, was appointed as a junior member of the Louisiana State Law Institute. Chancellor Jack M. Weiss of Louisiana State University Paul M. Hebert Law Center made the appointment.

Christopher J. Kane, a partner in the New Orleans office of Adams and Reese, L.L.P., was re-elected president of the Algiers Economic Development Foundation.

Frank E. Lamothe III, with the firm Lamothe Lea Aertker, L.L.C., in Covington, was invited to join the National Trial Lawyers.

Allen C. Miller, a partner in the New Orleans office of Phelps Dunbar, L.L.P., was recognized by the Children's Defense Fund-Louisiana as a 2011 Beat the Odds Champion for Children. He also serves as president and executive committee board chair of the New Orleans Chapter of Court-Appointed Special Advocates.

Michael S. Mitchell, a partner in the New Orleans office of Fisher & Phillips, L.L.P., was elected president of the International Executives Association for 2011-12.

Mark C. Surprenant, a partner in the New Orleans office of Adams and Reese, L.L.P., was elected for a three-year term on the board of the New Orleans Bar Association.

R. Patrick Vance, a partner in the New Orleans office of Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P., has become a Fellow of the American College of Trial Lawyers.

IN MEMORIAM

Rodney Charles Cashe, a senior partner of the Cashe Coudrain & Sandage law firm in Hammond and a prominent civic leader, died on Dec. 2, 2011. He was 63. He moved to Hammond in 1972 after his graduation from Louisiana State University Law School. In his early career, he practiced law

with Henry Mentz and Leon Ford. He earned his own prominent status in the bar as president of the 21st Judicial District Bar Association, founding member of the 21st Judicial District Inn of Court, 21st Judicial District member of the Louisiana State

Bar Association's House of Delegates and a member of the board of directors of the 21st Judicial District Indigent Defender Board. Later in his career as a mediator, Mr. Cashe helped many individuals and companies settle their legal conflicts. He served his community as president of the Hammond Exchange Club and as a board member of the Hammond Chamber of Commerce, the Southeastern Louisiana University Development Foundation, the Hammond Downtown Development District and the Hammond Tangipahoa Home Mortgage Authority. Mr. Cashe's colleagues, Andre G. Coudrain and Ashley E. Sandage, said he was "a great mentor to our law firm and members of the local bar. He always encouraged our firm to support our community through active participation and support of many local charities and civic groups."



Rodney Charles Cashe



Carmen T. Hebert



Stephen D. Hébert



Joshua O. Hess



Jerome W. Matthews, Jr.



Frances I. McGinnis



Meagan E. Messina



David M. Moragas



Reed A. Morgan



C. Joseph Murray



Stephen M. Pesce



Jonathan S. Ringo



Erin B. Sayes

PUBLICATIONS

The Best Lawyers in America 2012

Adams and Reese, L.L.P. (New Orleans): O. Ray Cornelius, New Orleans Securitization and Structured Finance Law Lawyer of the Year.

ADR inc. (Metairie and Monroe): **J. Gregg Collins, Thomas Keasler Foutz, Ben R. Hanchey, C. Joseph Murray and David R.M. Williams.**

Baldwin Haspel Burke & Mayer, L.L.C. (New Orleans): Jerome J. Reso, Jr., Leon H. Rittenberg III, John A. Rouchell, William B. Schwartz and Karl J. Zimmermann.

Chehardy, Sherman, Ellis, Murray, Recile, Griffith, Stakelum & Hayes, L.L.P. (Metairie): **James M. Fantaci,** New Orleans Corporate Law Lawyer of the Year.

Deutsch, Kerrigan & Stiles, L.L.P. (New Orleans): Robert E. Kerrigan, Jr., New Orleans Personal Injury Litigation/Defendants Lawyer of the Year.

Du , Price, Guidry, Piedrahita & Andrews, P.A. (Baton Rouge): Paul H. Du ; and Donald W. Price, Baton Rouge Medical Malpractice Lawyer of the Year.

Fisher & Phillips, L.L.P. (New Orleans): Keith M. Pyburn, Jr., New Orleans Labor and Employment Law Lawyer of the Year; and Sandra Mills Feingerts, New Orleans Employee Benefits Law Lawyer

of the Year.

Herman, Herman, Katz & Cotlar, L.L.P. (New Orleans): Russ M. Herman, Steven J. Lane, James C. Klick, Leonard A. Davis and Brian D. Katz.

Jones, Walker, Waechter, Poitevent, Carr re & Den gre, L.L.P. (Baton Rouge and New Orleans): Robert B. Bieck, Jr., New Orleans Litigation/Securities Lawyer of the Year; Robert R. Casey, Baton Rouge Tax Law Lawyer of the Year; Curtis R. Hearn, New Orleans Securities/Capital Markets Law Lawyer of the Year; Robert C. Tucker, Baton Rouge Trademark Law Lawyer of the Year; and Richard P. Wolfe, New Orleans International Trade and Finance Law Lawyer of the Year.

McGlinchey Stafford, P.L.L.C. (Baton Rouge and New Orleans): Deborah Duplechin Harkins, Baton Rouge Government Relations Practice Lawyer of the Year; Colvin G. Norwood, Jr., New Orleans Product Liability Litigation/Defendants Lawyer of the Year; R. Andrew Patty II, Baton Rouge Patent Law Lawyer of the Year; Kenneth A. Weiss, New Orleans Litigation/Trusts and Estates Lawyer of the Year; and Richard A. Aguilar, Rudy J. Aguilar, Brad J. Axelrod, Samuel A. Bacot, Stephen P. Beiser, Mark N. Bodin, Jaye A. Calhoun, Rudy J. Cerone, Katherine Conklin, Richard A. Curry, Larry Feldman, Jr., Michael D. Ferachi, R. Marshall Grodner, Mary Terrell Joseph, Bennet Koren, Kathleen A. Man-

ning, Kai D. Midboe, Jay M. O'Brien, Erin Fury Parkinson, Anthony J. Rollo, Michael H. Rubin, Stephen P. Strohschein, Dan E. West, Constance Charles Willems and Henri Wolbrette III.

Steege Law Firm, L.L.C. (New Orleans): **Lillian E. Eyrich,** New Orleans Real Estate Law Lawyer of the Year.

Tritico Law Office (Lake Charles): Russell T. Tritico, Sr.

Louisiana Super Lawyers 2012

Stephen D. H bert, L.L.C. (New Orleans): **Stephen D. H bert,** Louisiana Rising Stars.

Herman, Herman, Katz & Cotlar, L.L.P. (New Orleans): Leonard A. Davis, Maury A. Herman, Russ M. Herman, Stephen J. Herman, James C. Klick, Morton H. Katz and Steven J. Lane.

New Orleans Magazine Top Lawyers

Steege Law Firm, L.L.C. (New Orleans): Robert M. Steege, Randy Opatowsky, Charles L. Stern, Jr. and Lillian E. Eyrich.



Michael D. Simon



Meghan E. Smith



Stacey A. Smith



Ali A. Spindler



Lindsey E. Surratt



Lucie E. Thornton



David R.M. Williams



Kathryn M. Zainey

People Deadlines & Notes

Deadlines for submitting People announcements (and photos):

Publication	Deadline
June/July 2012	April 4, 2012
Aug./Sept. 2012	June 4, 2012
Oct./Nov. 2012	Aug. 3, 2012
Dec. 2012/Jan. 2013	Oct. 4, 2012
Feb./March 2013	Dec. 4, 2012

Announcements are published free of charge for members of the Louisiana State Bar Association. Members may publish photos with their announcements at a cost of **\$50 per photo**. Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to:

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or e-mail dlabranche@lsba.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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\$1 per each additional word
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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 June issue of the Journal, all classified notices must be received with payment by April 18, 2012. Check and ad copy should be sent to:

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RESPONSES

To respond to a box number, please address your envelope to:

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POSITIONS OFFERED

AV-rated maritime and insurance defense firm with offices in Texas and Louisiana seeks attorneys for its Lafayette and New Orleans offices. Great opportunity for motivated and ambitious self-starter who is seeking considerable hands-on experience, a progression to partnership commensurate with experience, excellent compensation and fringe benefits package. Prior admiralty and trial experience preferred. Mail confidential résumé to: C-Box 262.

Sessions, Fishman, Nathan & Israel, L.L.C., is seeking an assistant litigation manager to work with its consumer defense group in the Metairie, La., office. Needed is an organized applicant who can assist manager with a national integrated litigation practice with nine offices. Responsibilities will include coordinating cases and day-to-day management of very active national docket. Knowledge of ProLaw is a plus. Excel and Word skills are required. Email résumé to Mayas Erickson at merickson@sessions-law.biz.

The Baton Rouge office of Phelps Dunbar, L.L.P., is seeking a lateral attorney with two-plus years of experience for the firm's business practice area. The

ideal candidate would have experience in the areas of business law, particularly banking, mergers and acquisitions, real estate, commercial transactions, corporate governance and securities. Excellent academic credentials required (top 25 percent) and Moot Court/Law Review preferred. The position offers competitive salary and benefits. Interested candidates should send a cover letter, résumé and transcript to Ms. Rachel Woolridge, Ste. 2000, 365 Canal St., New Orleans, LA 70130, or email rachel.woolridge@phelps.com.

The Baton Rouge office of Phelps Dunbar, L.L.P., is seeking a lateral attorney with two-plus years of experience for the firm's insurance and reinsurance practice area. The ideal candidate would have experience with insurance coverage litigation including both first-party and third-party coverage disputes. Excellent academic credentials required (top 25 percent) and Moot Court/Law Review preferred. The position offers competitive salary and benefits. Interested candidates should send a cover letter, résumé and transcript to Ms. Rachel Woolridge, Ste. 2000, 365 Canal St., New Orleans, LA 70130 or email rachel.woolridge@phelps.com.

Continued next page

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Staff attorney. The Housing Authority of New Orleans (HANO) is a progressive organization, committed to providing quality, affordable housing options. HANO is dedicated to recruiting and retaining exceptional talent. HANO is currently seeking an experienced candidate for the position of staff attorney (contracts and construction). The staff attorney performs a wide variety of legal services for the agency with a focus on contracts and construction law. The staff attorney is responsible for the drafting, negotiation, review and oversight of private and public contracts, the public bid process and transactions on behalf of HANO. This position provides advice to HANO leadership on construction issues, risks and liabilities, and solutions to problems that arise during all phases of construction projects, including the planning, design, procurement, construction, management and closeout of projects. The ideal candidate must possess a Juris Doctorate (JD) from an accredited law school, be licensed to practice law in the state of Louisiana, and have at least three years of relevant experience in construction law, public bid law, procurement and/or contract law. Prefer government contract experience. For more information, visit the website at www.hano.org. Submit an application and résumé to hanojobs@hano.org. HANO offers a highly competitive salary and benefit package. The Housing Authority of New Orleans is an equal opportunity and drug-free employer.

Busy defense practice seeks full-time attorney, up to five years' experience, with interest in litigation; primary focus in professional liability defense and medical malpractice. Salary commensurate with

experience. Email résumés to mrj@judiceadley.com or mail to Office Manager, P.O. Box 51769, Lafayette, LA 70505.

Toxic tort associate with two-four years of experience needed to join Spears & Gary, L.L.C. Spears & Gary has provided client service for more than 30 years and is a Lake Charles-based law firm. Excellent writing and litigation experience a plus but not required. The firm offers competitive salaries and comprehensive benefits. Interested candidates should send résumés to lstrahan@law-sg.com.

SERVICES

Texas attorney, LSU Law 1985. Admitted in Louisiana and Texas. I am available to attend hearings, conduct depositions, act as local counsel and accept referrals for general civil litigation in the Houston area. Contact Manfred Sternberg, Jr. at (713)622-4300.

Brief writing/legal research. Columbia Law School graduate; former U.S. 5th Circuit staff attorney; former U.S. District Court, Western District of Louisiana, law clerk; more than nine years of legal experience; available for brief writing and legal research; references and résumé available on request. Douglas Lee Harville, lee.harville@theharvillelawfirm.com, (318)222-1700 (Shreveport).

Legal research/briefs, drafts of pleadings carried out efficiently and promptly. Thirty years' litigation and appellate experience; AV-rated. Résumé available on request. For more information, contact Bonnie Zakotnik, (504)296-6011 and (504)486-6011, zakotniklaw@cox.net (New Orleans).

Florida health law attorneys available to consult, affiliate as co-counsel or accept referrals representing physicians and other health care providers throughout Florida. George F. Indest III, admitted in Louisiana and Florida, is board certified by the Florida Bar in health law. Available to cover hearings and depositions. Also available, Joanne Kenna, RN, JD. We represent exclusively health care providers. Our practice includes business, regulatory and transactional matters and commercial, administrative and professional litigation. Experienced in defending investigations, licensing cases, Medicare/Medicaid audits/investigations, credentialing/privileges cases, covenants-not-to-compete, and other health-related areas. George F. Indest III, The Health Law Firm, 1101 Douglas Ave., Altamonte Springs, FL 32714, (407)331-6620. www.TheHealthLawFirm.com.

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NOTICE

Notice is hereby given that Martha E. Minniweather intends to make application to the Louisiana Supreme Court for reinstatement to the practice of law in Louisiana. Any person(s) concurring

with or opposing this petition must file notice of same within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

Robert A. Liptak has filed a petition and application for reinstatement to the practice of law in Louisiana. Individuals may file notice of concurrence or opposition within 30 days with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002.

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UPDATE

U.S. Marshals Service Conducts Court Security Training Sessions

The United States Marshals Service, at the request of the Louisiana Supreme Court, conducted regional training sessions in 2011 for Louisiana sheriffs and their court security personnel, in conjunction with the court's efforts to improve court security statewide. The sessions were conducted in New Orleans, Shreveport and Lafayette and addressed issues such as improving facility security for all levels of budget, high-threat trials, and security for judges both at the courthouse and at home.

The Marshal Service training was recommended following a study commissioned by the Louisiana Supreme Court's Court Security Task Force, chaired by 17th Judicial District Judge Jerome J. Barbera III.

About 31 parishes were represented at the training sessions hosted by U.S. Marshal Ginny May, Eastern District of Louisiana; U.S. Marshal Henry L. Whitehorn, Sr., Western District of Louisiana; and U.S. Marshal Kevin Harrison, Middle District of Louisiana. Chief Deputy U.S. Marshal Steve Hartman (Eastern District) designed the training program, and Chief Inspector John Muffler, administrator for the National Center for Judicial Security, was a featured speaker.

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Charles Ave., New Orleans, LA 70130-3404 or
email dlabranche@lsba.org.

Louisiana Center for Law and Civic Education Receives Sandra Day O'Connor Award

The Louisiana Center for Law and Civic Education (LCLCE) was named the 2011 recipient of the Sandra Day O'Connor Award for the Advancement of Civics Education by the National Center for State Courts (NCSC). The award honors an organization, court or individual who has promoted, inspired, improved or led an innovation or accomplishment in the field of civics education related to the justice system.

"The Louisiana program stands out for its impressive array of innovative programs, its exemplary efforts at collaboration, and the fact that it reaches students throughout the state," said NCSC President Mary McQueen. The award will be presented at a future date.

The LCLCE is a nonprofit organization that coordinates, implements and develops law and civics education programs; trains educators how to teach civics education programs; and assists with the delivery of law and civic education programs throughout Louisiana. The organization was established in 1992 and contains several components and programs, including Lawyers in the Classroom/Judges in the Classroom; We the People: The Citizen and the Constitution; Annual Summer Institute for Social Studies Educators; and Law Signature Schools.

On reviewing the programs implemented by the LCLCE, U.S. Supreme Court Justice (Ret.) Sandra Day O'Connor wrote via letter that she was impressed. "With the development of the programs and its training of educators, LCLCE, along with its volunteer professionals, have benefited numerous students throughout the state of Louisiana. This is exactly what I envisioned would happen throughout the country," she wrote.

Louisiana Supreme Court Chief Justice Catherine D. Kimball and State Court Administrator Timothy F. Averill nominated the LCLCE for the award.

"There is no better way to educate our youth than with organizations such as the Louisiana Center for Law and Civic Education (LCLCE). For nearly 20 years, its activities have promoted understanding and a sense of pride in our justice system and government," Chief Justice Kimball said. "This honor is well-deserved and I applaud LCLCE for being recognized as the recipient of the 2011 Sandra Day O'Connor Award for the Advancement of Civics Education," she added.

Mark A. Cunningham, currently serving as LCLCE president, said this award represents a true collaboration of several legal professionals. "This award has been earned over the course of more than a decade and reflects the work of countless Louisiana judges, attorneys and educators working in partnership to make certain that younger generations understand and appreciate the importance of the rule of law in our society," he said.

A former LCLCE president, Louisiana 4th Judicial District Court Judge C. Wendell Manning summed up the organization's impact on Louisiana students. "The lesson plans and programs are interactive, transforming instruction in civics and law-related education into a fun experience for both students and teachers. In a nut shell, the LCLCE makes law and civics education come alive in the classroom," he said.

The award is named in honor of retired U.S. Supreme Court Justice Sandra Day O'Connor because of her commitment to improving civics education. Since retiring from the bench in 2006, Justice O'Connor has become a tireless advocate working to increase awareness and understanding of how our government works. She established iCivics, a program that uses web-based educational tools to teach civics education and to inspire students to be active participants in society.

Court Finalizes Rule for Reporting Tort Case Statistical Information

The Louisiana Supreme Court finalized the rule and Civil Case Reporting Form regarding reporting of certain tort case statistical information. This new reporting system became effective on Jan. 1. The Civil Case Reporting Form is essentially unchanged from the version previously placed on the website during the comment period. The form is to be completed by the filing attorney, his/her representative, or the self-represented litigant at the time the petition is filed. To review the final court rule and the approved Civil Case Reporting Form, go to: www.lasc.org.

LOCAL/SPECIALTY BARS

Vance Installed as 87th President of New Orleans Bar Association

New Orleans attorney R. Patrick Vance was installed as the 87th president of the New Orleans Bar Association (NOBA) at the Annual Meeting in November 2011. A partner in Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P., and leader of the firm's Business and



R. Patrick Vance

Commercial Litigation Practice Group, Vance's practice focuses primarily on business litigation, creditors' rights litigation and bankruptcy.

He earned a BA degree, with highest honors, in 1970 from Louisiana State University and his JD degree in 1975 from Louisiana State University Paul M. Hebert Law Center.

Vance has served on the NOBA board of directors. He is a Fellow of the American College of Trial Lawyers, the American Law Institute and the American College of Bankruptcy, and an officer and conferee of the National Bankruptcy Conference.

He also is a member of the American Bar Association, the American College of Bankruptcy Foundation, Kid Sm Art, Louisiana State University Honors College Advisory Council and Southeast Louisiana Legal Services.



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Registration Fees

Advance Registration (by April 20, 2012).....	\$375
On-Site (Printed Seminar Manual automatically included; Jazz Fest Tickets NOT included).....	\$325

The Advance Registration fee includes: electronic course materials • seminar attendance • coffee/refreshment breaks • two (2) tickets to Jazz Festival (if registration form and payment are received by April 20)



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Goodier Receives NOBA Distinguished Maritime Lawyer Award

New Orleans attorney Glenn G. Goodier received the 2011 Distinguished Maritime Lawyer Award from the New Orleans Bar Association at a luncheon in October 2011. The award honors maritime attorneys for their dedication in practicing admiralty law and contributions to the local admiralty bar.



Glenn G. Goodier

Goodier leads the Admiralty and Maritime Practice Group of Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P. He has more than 35 years of experience handling all aspects of domestic and international maritime law. He earned his BBA degree from Loyola University and his JD degree from Loyola University College of Law.

Testimonial speakers included Hon. Edith Brown Clement, Andre J. Mouldoux and Grady S. Hurley.

New Orleans Martinet Legal Society Hosts Holiday Luncheon

The Greater New Orleans Louis A. Martinet Legal Society, Inc. hosted its first holiday luncheon at Dooky Chase's Restaurant in December 2011, with more than 60 judges and attorneys in attendance. Martinet officers shared their goals and proposed a calendar for 2011-12.

Luncheon speakers included Hon. Edwin A. Lombard, Hon. Hebert A. Cade and attorney James Gray, Sr. who shared their memories of Martinet during its early years, including efforts to get the first African-American judges and politicians elected in the New Orleans area.

The chapter also collected toys for Covenant House. Covenant House serves children of all ages (infants-teens).

Lee Receives NOBA Arceneaux Professionalism Award

New Orleans attorney Wayne J. Lee received the New Orleans Bar Association's (NOBA) Arceneaux Professionalism Award at the Annual Meeting in November 2011.



Wayne J. Lee

The award is presented to a lawyer whose practice has exemplified the highest levels of integrity, honor and civility.

Lee is a member of the firm Stone Pigman Walther Wittmann, L.L.C., and chairs the firm's Commercial Litigation Practice Group. He received his law degree in 1974 from Tulane Law School, where he was chosen to the Order of the Coif and was a member of the *Tulane Law Review* Board of Editors.

He is a former president of the Louisiana State Bar Association. He received two LSBA President's Awards — in 1993 for his work as chair of the Continuing Legal Education Program Committee and in 1998 for work as co-chair of the Practice Assistance and Improvement Committee.

ANSWERS for puzzle on page 352.

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The Southwest Louisiana Bar Association conducted a food and donation drive in November 2011 to benefit the Oak Park Food Pantry in Lake Charles. The agency serves about 170 families and was in danger of closing due to low donations. The legal community was asked to collect canned goods and other non-perishable items. Staff from the Richard Law Firm picked up and delivered all donated food items. As a result of the efforts, the pantry went from \$800 worth of groceries to more than \$8,000 worth of goods.

President's Message

Interview of 2011-12 Outgoing President Mathile W. Abramson

Interviewed by 2011-12 Secretary C. Wendell Manning

Manning: Did you learn anything new this year about the Louisiana Bar Foundation's (LBF) work?

Abramson: I became more aware of the extensive work performed by our grantees on behalf of the poor. This led to a greater appreciation on my part of the significant numbers of very diverse organizations that the LBF funds. I had the opportunity to work with many public service attorneys who are devoted to providing access to the legal system. Likewise, there are a large number of LBF Fellows who devote countless hours helping with the grants process and other projects that enable the LBF to carry out its mission. (As an aside, I am almost fluent in the "LBF lingo" of acronyms. I may not have mastered them all but I know now what most of them represent.)

Manning: What was the biggest challenge facing the LBF this year?

Abramson: The continuing challenge is to meet the increasing need for legal services as the financial landscape declines. The impact the LBF has on providing funds for legal services to the poor has become even more clear. The LBF was able to maintain grants during the 2011-2012 fiscal year (only by dipping into reserves). Unfortunately because of the stagnant interest rate, we will not be able to do so for the 2012-2013 fiscal year. By safeguarding the financial health of the LBF, the Board ensures future financial support of the many agencies relying on it.

Manning: What do you believe was the biggest impact the LBF made this year?

Abramson: As discussed above, the LBF was able to maintain funding levels for the 2011-2012 fiscal year and provide stability to our grantees. On an individual program basis, the LBF's role in administering funds for the Child in Need of Care

Program has provided a much needed service to the children in the state who heretofore may not have had separate, if at all, legal representation from their parents/guardians. This program began in 2009 as a collaboration with the Office of the Judicial Administrator, the Legal Service Corporations, and Department of Children and Family Services. During the 2010-2011 fiscal year, the LSCs represented 1,732 foster care children and 303 non-custodial children through the CINC program.

Manning: How has your service as president affected your beliefs about the justice system?

Abramson: I have seen firsthand that the justice system can and does work. Likewise, I know that inadequate funding for legal aid results in the inability for some poor to gain access to the justice system. The need for direct legal services to the poor is so great. LBF work covers so many areas and the LBF is always ready and poised to step up as much as fiscally possible.

Manning: Do you have any advice for future leadership?

Abramson: Leadership is developed by rolling up your sleeves and getting involved. This is a working Board. The LBF provides many opportunities for Fellows to get involved through committee and Community Partnership Panels. The LBF's continued success relies upon the future leadership's willingness to give their time, talent and efforts. Good luck in the LBF's future endeavors and know that you have my support.

Manning: What is your fondest memory from this year?

Abramson: As I reflect on my presidential year and my time as a board member, it is filled with many wonderful

memories. I cherish the old friends I have worked with and have delighted in the new friends I made throughout the state. We have worked to achieve common goals. Most rewarding has been to see firsthand the individuals and organizations helped by the LBF.

Manning: Is there anything else you would like to add?

Abramson: We are celebrating our 26th Annual Fellows Gala on April 20 where my LBF presidency will end. I hope to see you there.

Working with the LBF members and staff, hopefully we have made the world a little better place and have helped sow seeds for those who come after to harvest. This last year has gone by so quickly.

There are many to whom I am grateful (my apologies if I have left anyone out). I thank my law firm Kean Miller and my secretary Brenda Clark for your support and help. Thank you Louisiana State Bar Association President Jimmy Davidson for the assistance I received from you, the staff and leadership.

I am most grateful to Executive Director Donna Cuneo and the entire LBF staff who are so competent and always ready and willing to help in any way. They truly share the vision of what the LBF is all about. I appreciate the entire LBF membership, the Board, Vice President Patricia Krebs, Treasurer Leo Hamilton, Secretary Wendell Manning and Past President Herschel Richard. Thanks to our past leadership, current leaders, and all of you for your help and the wonderful opportunity. It is an honor to serve on the Board and be your president.

To my husband Steven and my family, thank you for your love, patience and support.

Louisiana Bar Foundation's Second Annual Assembly April 19-20 in New Orleans

The Louisiana Bar Foundation (LBF) is conducting its second Annual Assembly on Thursday and Friday, April 19-20. All events are being conducted at the Ritz Carlton New Orleans, 921 Canal St., New Orleans.

The Annual Assembly celebrates the LBF's mission to preserve, honor and improve the system of justice by funding, developing and promoting efforts which enhance the legal profession, increase public understanding of the legal system and advance the reality of equal justice under the law.

On Thursday, April 19, the Grants Committee will meet at 9 a.m. to discuss

recommendations on 2012-13 grant funding. Also at 9 a.m., the Kids' Chance Committee will meet to discuss recommendations on 2012-13 scholarships.

On Friday, April 20, the Annual Fellows Membership meeting begins at 8 a.m. Fellows will be updated on LBF activities and will elect new board members. The President's Award and the Horn Blower Award will be presented, and the LBF Community Partnership Panels and committee chairs will be recognized. At 9 a.m., the board of directors will meet.

The Distinguished Honoree Luncheon begins at noon on April 20 and the 2011 Calogero Justice Award will be presented

to Gregory A. Pechukas, director of Central Staff for the Louisiana Supreme Court.

The black-tie 26th Annual Fellows Gala, beginning at 7 p.m., will close out the Assembly. The gala features presentation of the 2011 Distinguished Jurist, Attorney and Professor Awards, and installation of the 2012-13 officers.

For a full events schedule, go to: www.raisingthebar.org/AbouttheFoundation/AnnualAssembly.asp. For more information, contact Laura C. Sewell at (504)561-1046 or email laura@raisingthebar.org.

LBF Annual Fellows Gala to Recognize Distinguished Honorees

The 2011 Distinguished Jurist, Attorney and Professor will be recognized during the Louisiana Bar Foundation's 26th Annual Fellows Gala, set for Friday, April 20, at the Ritz-Carlton New Orleans, 921 Canal St., said Lexi T. Holinga and Christopher K. Ralston, co-chairs of the 2012 Gala. The gala begins at 7 p.m. and will feature a live auction. A patron party will be held prior to the gala.

This year, the LBF is honoring Distinguished Jurist, Benjamin Jones, 4th Judicial District; Distinguished Attorney, William Shelby McKenzie, with Taylor, Porter, Brooks & Phillips, L.L.P.; and Distinguished Professor, Robert A. Pascal, Louisiana State University Paul M. Hebert Law Center.

Gala proceeds will help strengthen the programs supported and provided by the Louisiana Bar Foundation. Several sponsorship levels are offered. For more information, go to: www.raisingthebar.org/gala2012.

Individual tickets to the gala are available for \$150. Young lawyer individual gala tickets are \$100. Gala ticket reservations can be made by credit card at www.raisingthebar.org.

raisingthebar.org. For more information, contact Laura Sewell at (504)561-1046 or email laura@raisingthebar.org.

Also serving on the 2012 Annual Fellows Gala Committee are Darrel Papillion (Board liaison), H. Minor Pipes III (Board liaison), Kevin O. Ainsworth, Celeste Coco-Ewing, Bernadette D'Souza, Kelsey Meeks Duncan, Nakisha Ervin-Knott, Kyle A. Ferachi, Kelsey Kornick Funes, Pamela Gibbs, Steven F. Griffith, Jr., Franchesca Hamilton-Acker, John H. Musser IV, Adrian G. Nadeau, Denise Redmann, David Shea, Michelle M. Sorrells, Laranda Moffett Walker and Sharonda R. Williams.

Review the LBF's 2011 Annual Report Online!

The Louisiana Bar Foundation's 2011 Annual Report is posted online. Go to:

www.raisingthebar.org/AboutTheFoundation/AnnualReports.asp

Louisiana Bar Foundation Announces New Fellows

The Louisiana Bar Foundation announces the following new Fellows:

Hon. Dawn Amacker.....	Covington
Sebastian C. Ashton	Baton Rouge
Patrick J. Babin	New Orleans
Mark L. Barbre.....	Baton Rouge
Shelton Dennis Blunt	Baton Rouge
Joy G. Braun	New Orleans
Hon. Tracey Fleming-Davillier.....	New Orleans
Laila L. Hlass	New Orleans
Hon. Veronica E. Henry ..	New Orleans
Hon. Paulette R. Irons	New Orleans
Craig R. Isenberg	New Orleans
Brian D. Lenard	Hammond
Laurie W. Lyons	Shreveport
Warren P. McKenna III ...	New Orleans
Fred A. Menner	Baton Rouge
Julie U. Quinn	Metairie
Hon. Penelope Q. Richard	Cameron
Tom D. Snyder, Jr.....	Metairie
David A. Strauss.....	New Orleans
Dylan M. Tuggle	New Orleans

Lucid INTERVALS

By Vincent P. Fornias

MAKING A (FEDERAL) POINT

Blame this on the history major in me. The year 1450 is a self-explanatory date to all our readers, isn't it? No, that is not the date of origin of MCLE rules. Almost as importantly, in that fateful year, one Johannes Gutenberg invented the printing press. Not only did this invention forever empower anal-retentive appeal court briefing clerks, it also crystallized the growing 15th-century movement for proper punctuation. Originating from "pointing," this began as a rough system of marks used in the Middle Ages to indicate to a speaker when he should pause or catch his breath during a recitation. Now, isn't that scintillating material for your next cocktail party?

If for no other reason, we should be forever grateful to Herr Gutenberg's creation for spawning acridly sarcastic footnotes in judicial decisions castigating the misuse of our mother tongue. It is no coincidence that the vast majority of these originate from the federal judiciary, who have *carte blanche* to rap ungrammatical wrists without fear of electoral consequences.

Among my personal favorites is footnote 13 in *Sanches v. Carrollton-Farmer's Branch Independent School District*, No. 10-10325, U.S. 5th Circuit, 2011:

Usually we do not comment on technical and grammatical errors, because anyone can make such an occasional mistake, but here the miscues are so egregious and obvious that an average fourth grader would have avoided most of them. For example, the word "principals" should have been "principles." The word "vacatur" is misspelled. The subject and verb are not in agreement in one of the sentences, which has a singular subject ("incompetence") and a plural verb ("are"). Magistrate Judge Stickney is referred to as "it" instead of "he" and is called a "magistrate" instead of "magistrate judge". And finally, the sentence containing the word "incompetence" makes no sense as a matter of standard English prose, so it is not reasonably possible to understand the thought, if any, that is being conveyed. It is ironic that the term "incompetence" is used here, because the only thing that is incompetent is the passage itself.



Though laudable for "the old college try," the *Sanches* decision pales in comparison to footnote 1 found in *Factac, Inc. v. King*, Bankruptcy Case No. 05-56485-C, WD, Texas, 2006, in which, denying defendants' motion "For Incomprehensibility," the court decreed:

Or, in the words of the competition judge to Adam Sandler's title character in the movie, "Billy Madison," after Billy Madison had responded to a question with an answer that sounded superficially reasonable but lacked any substance,

Mr. Madison, what you've just said is one of the most insanely idiotic things I've ever heard. At no point in your rambling, incoherent response was there anything that could even be considered a rational thought. Everyone in this room is now dumber for having listened to it. I award you no points, and may God have mercy on your soul.

Deciphering motions like the one presented here wastes valuable chamber staff time, and invites this sort of footnote.

...

In closing, we would probably paraphrase the ancient dictum, "Power corrupts. Absolute power corrupts... grammatically."

If you have experienced, seen or heard something humorous in your day-to-day legal practice, or if you just have an idea for a Lucid Intervals column, by all means, let the Louisiana Bar Journal know. Mail, fax or e-mail your stories, anecdotes, quotes or ideas c/o Publications Coordinator Darlene M. LaBranche, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130-3404; fax (504)566-0930; e-mail dlabranche@lsba.org. She'll make sure your "gems" get into the right hands. Keep smiling!

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