

# LOUISIANA BAR JOURNAL

December 2005/January 2006

Volume 53, Number 4

## *After the Storm*

Professionalism and Other Stories

Local and Specialty Bars Step Up

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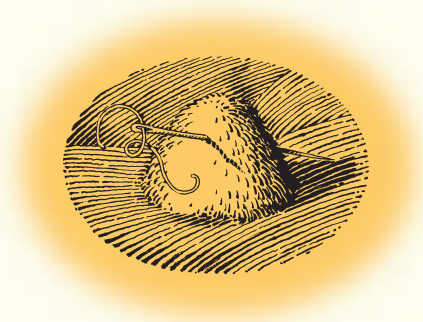
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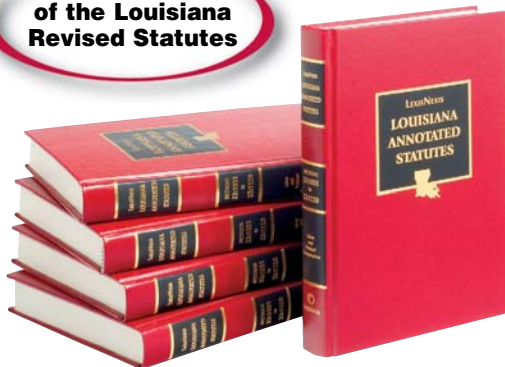


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## Election Ballots, Candidates' Profiles Available Online on Jan. 23

Online voting in the 2005-06 elections will begin Monday, Jan. 23. First-round voting will close on Monday, Feb. 6. Candidates' profiles will be available online Jan. 23.

Elections are being conducted "online only" because of hurricane-related postal service disruptions and displacement of LSBA members.

More election information can be found at <http://www.lsba.org/elections>. Positions to be filled include seats on the Board of Governors, Nominating Committee, House of Delegates, Young Lawyers Section Council and American Bar Association House of Delegates.

In uncontested races, S. Guy deLaup of Metairie has been certified elected for the position of 2006-07 Louisiana State Bar Association president-elect. He will automatically assume the presidency in 2007-08. James R. Nieset of Lake Charles has been certified elected for 2006-08 treasurer. Karleen J. Green has been certified elected for 2006-07 Young Lawyers Section chair-elect.

For a list of all contested and uncontested races, go to: <http://www.lsba.org/elections/onlinevoting.asp>.

## Save the Dates: 2006 LSBA Summer School, Annual Meeting

The Louisiana State Bar Association is headed back to Sandestin this summer!

The 65th Annual Meeting and 22nd Summer School for Lawyers will be held at the Sandestin Golf and Beach Resort in Sandestin,

Fla. The Summer School is Sunday through Wednesday, June 4-7. The Annual Meeting is Wednesday through Friday, June 7-9. Information and registration materials are now being compiled. Check here for future announcements!



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# 2006 Judicial Interest Rate is 8.0%

Pursuant to authority granted by La. R.S. 13:4202(B)(1), as amended by Acts 2001, No. 841, the Louisiana Commissioner of Financial Institutions has determined that the judicial rate of interest for the calendar year 2006 will be Eight (8.00%) percent per annum.

La. R.S. 13:4202(B), as amended by Acts 2001, No. 841, requires the Louisiana Commissioner of Financial Institutions to determine the rate of judicial interest. The commissioner has determined the judicial interest rate for the calendar year 2006 in accordance with § 4202(B)(1).

The commissioner ascertained that on Sept. 20, 2005, the Federal Reserve Board of Governors approved the discount rate of Four and 75/100 (4.75%) percent, which rate was the “approved discount rate” on Oct. 1, 2005.

La. R.S. 13:4202(B)(1) mandates that:

on and after January 1, 2002, the rate shall be equal to the rate as published annually . . . by the commissioner of financial institutions. The commissioner of financial institutions shall ascertain, on the first business day of October of each year, the Federal Reserve Board of Governors’ approved discount rate published daily in the *Wall Street Journal*. The effective judicial interest rate for the calendar year following the calculation date shall be three and one-quarter percentage points above the discount rate as ascertained by the commissioner.

Thus, the effective judicial interest rate for the calendar year 2006 shall be Eight (8.00%) percent per annum.

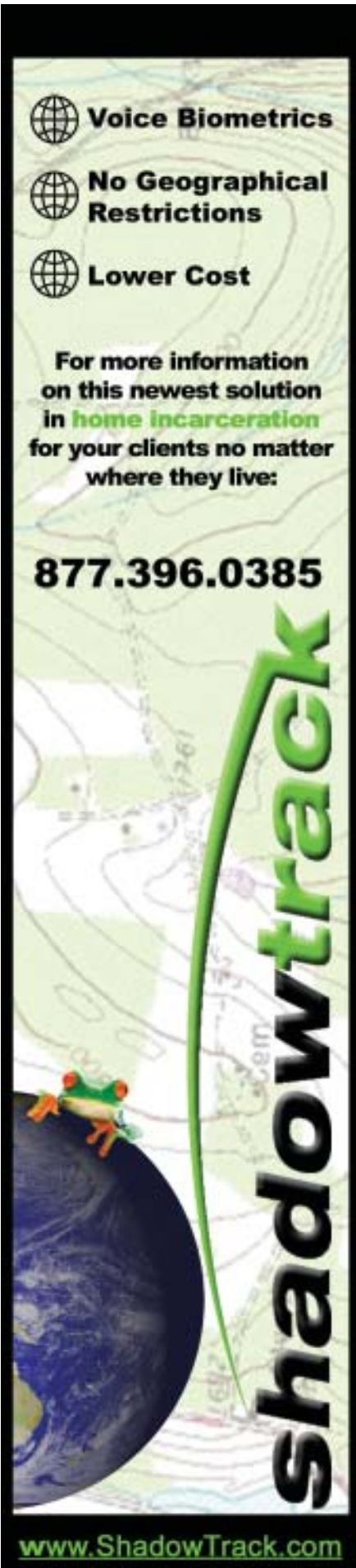
As provided by La. R.S. 13:4202(B)(2), this determination and its publication in the Louisiana Register shall not be considered rule-making, within the intendment of La. R.S. 49:950 *et seq.*, the Administrative Procedure Act (APA), particularly La. R.S. 49:953. Therefore, neither a fiscal impact statement nor a notice of intent is required by the APA.

— John Ducrest, CPA, Commissioner of Financial Institutions

Date: October 6, 2005

## Judicial Interest Rates Through 2006

Date	Rate
Prior to Sept. 12, 1980 .....	7.00 percent
Sept. 12, 1980 to Sept. 10, 1981 .....	10.00 percent
Sept. 11, 1981 to Dec. 31, 1987 .....	12.00 percent
Jan. 1, 1988 to Dec. 31, 1988 .....	9.75 percent
Jan. 1, 1989 to Dec. 31, 1989 .....	11.50 percent
Jan. 1, 1990 to Dec. 31, 1990 .....	11.50 percent
Jan. 1, 1991 to Dec. 31, 1991 .....	11.00 percent
Jan. 1, 1992 to Dec. 31, 1992 .....	9.00 percent
Jan. 1, 1993 to Dec. 31, 1993 .....	7.00 percent
Jan. 1, 1994 to Dec. 31, 1994 .....	7.00 percent
Jan. 1, 1995 to Dec. 31, 1995 .....	8.75 percent
Jan. 1, 1996 to Dec. 31, 1996 .....	9.75 percent
Jan. 1, 1997 to July 31, 1997 .....	9.25 percent
Aug. 1, 1997 to Dec. 31, 1997 .....	7.90 percent
Jan. 1, 1998 to Dec. 31, 1998 .....	7.60 percent
Jan. 1, 1999 to Dec. 31, 1999 .....	6.73 percent
Jan. 1, 2000 to Dec. 31, 2000 .....	7.285 percent
Jan. 1, 2001 to Dec. 31, 2001 .....	8.241 percent
Jan. 1, 2002 to Dec. 31, 2002 .....	5.75 percent
Jan. 1, 2003 to Dec. 31, 2003 .....	4.5 percent
Jan. 1, 2004 to Dec. 31, 2004 .....	5.25 percent
Jan. 1, 2005 to Dec. 31, 2005 .....	6.00 percent
Jan. 1, 2006 to Dec. 31, 2006 .....	8.00 percent



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# President's MESSAGE

REACHING OUT VIA PRO BONO SERVICE



By Frank X. Neuner, Jr.

During this holiday season, as we all take time to reflect on the many things we have to be thankful for, we should not forget our fellow disadvantaged citizens who have unmet civil and criminal legal needs. As I write this article, I have just returned from the Acadiana Outreach Center where I have provided free notary services as part of the Lafayette Volunteer Lawyers' HELP program. (See more information below.) For those of you who have performed similar services, I am sure you will agree that it leaves an impression on you long after you have left the shelter and it causes you to appreciate all of the many things that we lawyers have to be thankful for during this special time of the year.

*Pro bono* is defined by *Black's Law Dictionary* (6th Edition) as "for the good; used to describe work or services (e.g., legal services) done or performed free of charge." Now more than ever before, there is a great need for all of us to perform pro bono work, both in the areas of criminal and civil law. Louisiana Rule of Professional Conduct 6.1 provides "a lawyer should aspire to render at least fifty hours of pro bono publico legal services per year." While the rule does not make pro bono or "for the good" mandatory, we should all strive to perform this minimum level of pro bono publico, not only for the good of the public but also for our own satisfaction as well as for the welfare of the justice system.

Although hundreds of Louisiana attorneys have volunteered since the hurricanes to work at the FEMA Disaster Recovery Centers, return calls generated through the Legal Assistance Call Center Hotline and provide legal services at the homeless shelters, the need for these services dictates that volunteers must number in the thousands not the hundreds. For this reason, I urge all Louisiana attorneys to engage in some form of pro bono



**Attorney General Charles C. Foti, Jr., left, and Frank X. Neuner, Jr. Neuner thanked Foti for his invaluable assistance to the LSBA over the past several months, including authorizing a state police escort to New Orleans so LSBA staff could retrieve documents and equipment.**

activity to assist our disadvantaged fellow citizens who do not have adequate access or representation in our justice system.

One of the greatest challenges facing the Louisiana legal system as we start to rebuild and repopulate the areas devastated by the hurricanes is protecting the constitutional rights of indigent defendants and providing them access to adequate legal representation. This is one of our basic constitutional rights, and one that all lawyers should seek to protect and defend.

Ironically, just two weeks before Hurricane Katrina devastated the Gulf Coast, Act 343 of the Louisiana Legislature's 2005 regular session became law. The Act increases the size of the Indigent Defense Assistance Board and requires regular annual reports from each district board. The size of the board was increased from nine to 15 members, with four of the new members appointed by the Governor and two members appointed by Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr. The six new mem-

bers have been appointed and the Board held its first meeting on Dec. 14, 2005.

Act 343, which creates a uniform funding mechanism across the state of \$35 per criminal case for all criminal matters filed (except parking tickets), also creates reporting requirements for the local indigent defense boards. It is just the first step in solving the problem of indigent defense representation in Louisiana. One of the intrinsic problems with the current method of funding indigent defense representation in Louisiana is that the majority of the funds are generated locally through fines "from the ground up;" thus, with few criminal cases filed or traffic tickets issued in hurricane-devastated parishes, there will be little or no funding for indigent defense.

One of the first actions taken by the newly constituted Louisiana Indigent Defense Assistance Board was to continue funding the Indigent Defense Task Force, chaired by Senator Lydia Jackson, so that it can continue to study the

problem and hopefully develop recommendations for additional funding sources for indigent defense representation.

In the area of civil pro bono publico, one of the bright spots in Louisiana is the HELP program. The program provides legal services for the homeless and was founded and administered in New Orleans by former Louisiana State Bar Association President, Judge Jay C. Zainey. Prior to the hurricanes, Judge Zainey worked with the Lafayette Volunteer Lawyers program to set up a HELP program in Lafayette.

Since the hurricanes, the definition of homeless has expanded and the ranks of the homeless have increased dramatically, thus greatly increasing the need for legal assistance for the “hurricane homeless” in Louisiana. If you are looking for a way to perform meaningful pro bono work, the HELP program and the Legal Assistance Call Center are two worthwhile endeavors that can use your assistance.

Funding for Access to Justice initiatives and civil pro bono needs has always been and continues to be a serious issue in our state. In 2004 for the first time ever, the Legislature appropriated \$300,000 for Civil Access Justice to be distributed among the Legal Service Corporation providers in the state. In 2005, the appropriation was increased to \$460,000 during the regular session, but was subject to elimination during the recent special session were it not for the intervention of Attorney General Charles C. Foti, Jr. and Louisiana Supreme Court Justice Catherine D. Kimball who both worked with the Governor’s office to maintain funding at \$350,000. Without the support of Attorney General Foti and Justice Kimball, this Access to Justice funding would have been eliminated from the budget at a time when those services are most needed by the new “hurricane homeless” population in Louisiana.

Finally, I would like to go on record and publicly thank Attorney General Foti for his invaluable assistance to the LSBA over the past several months. His office, along with Justices Chet D. Traylor and



Frank X. Neuner, Jr. at the Attorney General’s office.



Frank X. Neuner, Jr. with LSBA staff members Billy King and Richard Lemmler, and a few “escorts” for the equipment retrieval trip to the LSBA’s New Orleans office.

Kimball, arranged for me and LSBA staff members Billy King, Richard Lemmler and Denise Tingstrom to be escorted by State Trooper Reuben Berry, Jr. to retrieve the file and e-mail servers at the Bar Center one week after Hurricane Katrina devastated New Orleans. This allowed the LSBA staff and operations to return to some semblance of normalcy, during what was a very chaotic period for the LSBA. Attorney General Foti also met with Jean-Marie Burguburu, the Batonnier of the Paris Bar, and arranged for his escort into Orleans and St. Bernard parishes during his visit to Louisiana on Sept. 17 so he could view firsthand the havoc wreaked by Hurricane

Katrina. It was during that meeting, and later that day during the tour of New Orleans, that two of the photographs on these pages were taken.

So for the good of the profession, the public and yourself, I encourage each of you to increase your pro bono activities and work with the LSBA in rebuilding the civil and criminal justice systems in south Louisiana.

A large, stylized red handwritten signature, likely belonging to the author of the letter.

### Speedy, Proper and Just Legislation Expected in Light of Disasters

The mayors and governing bodies of affected cities and parishes and the Governor and Legislature of Louisiana should promptly and unanimously make a clear statement through our entire congressional delegation that their cities, parishes and state as integral parts of this great nation expect speedy, proper and just legislation for one of the greatest national disasters. The presentation should be a matter of simple fairness and justice.

Appropriate legislation could be drafted in one comprehensive sentence to avoid any misunderstanding or ambiguity. Thus:

"The United States of America does hereby waive any and all immunities and preemptive and prescriptive rights of any kind whatsoever for itself or any person or entity acting in its behalf as to any acts of incompetency, negligence, malfeasance or fraud in design, construction, repair or maintenance which resulted in the loss of life or personal injury or

uninsured or underinsured loss of real or personal property as caused by or resulting from flood waters due to failure of any levee systems under the jurisdiction of the United States Army Corps of Engineers in Orleans, St. Bernard, Plaquemines and Jefferson parishes, Louisiana, during Hurricane Katrina and its aftermath, with any recovery to provide reimbursement of court costs and reasonable expenses of litigation, and to be conditioned upon attorney's fees being a maximum of Ten (10%) Percent of any amount recovered."

Other approaches can be considered if the people of the other states allow their congressional representatives to ignore our plight.

**Vincent T. LoCoco**  
New Orleans

### What About the Lawyers of Acadian Descent?

Though delayed by the two wicked stepsisters Katrina and Rita, I was finally able to read your August/September 2005

issue of the *Louisiana Bar Journal* dedicated to diversity in the legal profession. I wish to congratulate all of the contributing authors for their excellent and enjoyable articles, namely, Rachel L. Emanuel, Darrel J. Papillion, Marta-Ann Schnabel, Monique R. Gougisha, Joy Lyu Monahan, Kim M. Boyle, Winston G. DeCuir, Jr., Robert D. Sloan, Donald R. Cravins, Jr. and Gail S. Stephenson.

I underlined two sayings that struck a chord and are worth pondering on. The first is attributed to Albert Einstein in Ms. Boyle's article: "The definition of insanity is doing the same thing over and over again and expecting a different result." The second is a sentence written by Ms. Monahan: "In the end, the work product transcends the ethnic background of the worker."

The only disappointment that I had was probably editorial in nature in that no article was written to give the historical perspective of the lawyers of Acadian descent. Again, I thank all of the authors for their hard work in writing this bit of history.

**Kenneth Pitre**  
Eunice

### Do You Have a Post-Hurricane Professionalism Story?

Members of the LSBA's Professionalism & Quality of Life Committee are aware that there have been remarkable acts of kindness and selflessness shown to Bar colleagues following the two hurricanes, including assistance with their practices and with basic needs ... in other words, true "professionalism." The committee is now soliciting "professionalism" stories from members, with the idea of publishing them online, in print publications, or both. Send your story or comments to:

**dlabranche@lsba.org**

### Need Free Legal Research? Access Fastcase

Do you need access to free legal research? Use Fastcase, the online legal research tool provided free to all members by the Louisiana State Bar Association. Click on "Fastcase" at the top of the LSBA's home page, <http://www.lsba.org>.



TOTAL LSBA MEMBERS: 19,765

## Louisiana State Bar Association

601 St. Charles Ave. • New Orleans, La. 70130

(504)566-1600 • (800)421-LSBA Nationwide WATS line/members only

Fax (504)566-0930 • LSBA.org • E-mail: lsbainfo@lsba.org

### Programs

For information about these LSBA programs, contact the Bar Office by calling (504)566-1600 or (800)421-LSBA.

- ▶ Alternative Dispute Resolution Program
- ▶ Client Assistance Fund
- ▶ Continuing Legal Education Program
- ▶ Ethics Advisory Service
- ▶ Lawyers' Substance Abuse Hotline • (800)354-9334 • (504)868-4826
- ▶ Legal Specialization Program
- ▶ Loss Prevention Counsel Judy Cannella Schott, Cynthia Oteri Butera, Johanna G. Averill, Lindsey M. Ladouceur or Linda A. Liljedahl (800)GILSBAR

### Publications

- ▶ *Louisiana Bar Journal*
- ▶ "Bar Briefs"
- ▶ Louisiana Bar Today (online newsletter)

### Online Services

- ▶ MCLE Transcripts
- ▶ Louisiana Bar Today Opinion Service
- ▶ Membership Directory

### Young Lawyers Section

- ▶ Bridging the Gap
- ▶ Mentor Program
- ▶ Young Lawyers' Directory

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### Louisiana Hotels

The following hotels have agreed to corporate discount rates for LSBA members. Call the hotel for the current discounted rates. When making reservations, you must identify yourself as an LSBA member.

#### New Orleans

- ▶ Hotel InterContinental (504)525-5566
- ▶ Wyndham Canal Place (504)566-7006
- ▶ Pontchartrain (800)777-6193
- ▶ Fairmont Hotel (800)527-4727 (504)529-4704
- ▶ Royal Sonesta Hotel (504)553-2345
- ▶ "W" Hotel (800)777-7372  
French Quarter (504)581-1200  
333 Poydras St. (504)525-9444
- ▶ Whitney Wyndham (504)581-4222
- ▶ Iberville Suites (504)523-2400  
(A Ritz Carlton Property)
- ▶ Hotel Monaco (504)566-0010

#### Baton Rouge

- ▶ Radisson Hotel (225)925-2244  
Ask for the "Executive Advantage Rate" when making your reservations.
- ▶ Sheraton Hotel & Convention Center (225)242-2600
- ▶ Marriott (225)924-5000
- ▶ Richmond Suites Hotel (225)924-6500

#### Lafayette

- ▶ Hilton Lafayette and Towers (800)33CAJUN
- ▶ Hotel Acadiana (800)826-8386 (337)233-8120  
Use VIP No. 71 when making your reservations.

### Lake Charles

- ▶ Best Western Richmond Suites (337)433-5213

### Shreveport

- ▶ Sheraton Shreveport Hotel • (318)797-9900

### Chain Hotels

The following national hotel chains have agreed to corporate discount rates for LSBA members. Call for the current discounted rates.

- ▶ Fairmont Hotel (800)527-4727 (415)772-5300
- ▶ Holiday Inn (800)HOLIDAY  
Use ID No. 100381739 for reservations.
- ▶ La Quinta (866)725-1661  
[www.lq.com](http://www.lq.com)  
Rate Code: LABAR

### Car Rental Programs

The following car agencies have agreed to discount rates for LSBA members.

- ▶ Avis  
Discount No. A536100 (800)331-1212
- ▶ Hertz  
Discount No. 277795 (800)654-3131

### Other Vendors

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

- ▶ ABA Members Retirement Program (800)826-8901
- ▶ Airborne Express (800)443-5228
- ▶ Lexis/Mead Data Central (800)356-6548
- ▶ MBNA America® Bank • MBNA Platinum Plus<sup>SM</sup> Credit Card  
• GoldSavers Money Market Account  
• GoldCertificate CD Account  
• GoldOption Loan  
• GoldReserve Line of Credit (800)441-7048
- ▶ United Parcel Service (800)325-7000

# AFTER THE STORM

## Professionalism . . . and Other Stories

*Hurricanes Katrina and Rita, in a one-two punch within a month's time, affected most of Louisiana's legal community, either directly or indirectly. Whether you were a victim or a victor, the rescued or a rescuer, the aftermath of these two storms will be a benchmark for years to come.*

*The Louisiana State Bar Association (LSBA) continues to solicit "storm" stories from our members. We have heard of tremendous stories of civility and professionalism, of members opening their offices and hearts to more than 8,000 displaced members. We have received stories from members who actively participated in the job of search-and-rescue, whether through military channels or on their own. Requests for assistance through the SOLACE (Support of Lawyers/Legal Personnel, All Concern Encouraged) network have been answered at lightning-speed, with some members initially needing the assistance later offering to assist others in appropriate fashion once able to do so. Some members have told us of specific hurricane-related cases they have handled thus far, whether generated through the Call Center, a disaster recovery center or obtained on their own.*

*We also have heard from members with less-than-positive accounts . . . the lack of professionalism and charges of constitutional rights violations. These stories will have their place in future publications.*

*The LSBA is still soliciting "storm" stories of all types . . . professionalism-related, outcomes of cases generated through the Call Center or via disaster recovery centers or shelters, incidences of rescue/recovery, and other topics uniquely your own. E-mail your stories and contact information to [dlabranche@lsba.org](mailto:dlabranche@lsba.org). Photos illustrating your story also are being accepted.*

*See pages 291-295 for a sampling of your stories. . . .*



**Lt. Col. Patrick Robert Bossetta meets President George W. Bush.**

## Service to Community and Country

Here is a hurricane story that exemplifies the essence of true professionalism and selfless service to this community and our country.

My brother, Lt. Col. Patrick Robert Bossetta, had to abandon his law practice to serve active duty for 12 months in Iraq this past year. He was only home a few months, and still on active duty, when Katrina hit. He commands the helicopter unit of the National Guard at Jackson Barracks, which was destroyed.

His unit began flying rescue/recovery on a 24-hour basis as soon as it became safe. They pulled thousands of people from floodwaters and rooftops, enduring being fired upon, endangering their own safety, and having to leave their families to fend for themselves. He flew countless hours dropping sandbags on the levee breaches. He was honored to fly President Bush for his survey of our city, along with (New Orleans) Mayor Ray Nagin and a host of politicians and celebrities who also viewed the destruction.

He is still on active duty and has not been able to address the destruction of his own properties in the city, take care of his family, or return to his law practice. When "Court TV" aired a documentary featuring Pat's unit on the "Heroes of Katrina," Patrick stepped back and let his unit shine in the spotlight. He is humble, a brilliant leader, adored by his unit, and just a spectacular individual.

As a veteran of two wars, he opined that the destruction of New Orleans was worse than Iraq. He is exhausted, thin and has had no downtime to recoup from the combat he experienced in Iraq. He (and his unit) are totally selfless. They are really true heroes and he is the essence of true professionalism in any field he enters. He is still on active duty and still serving us.

**Barbara Bossetta  
Mandeville, La.**

## A Case of Child Custody

I have been a member of the Louisiana Bar since 1991 but have never practiced in Louisiana. I joined the Air Force JAG Corps after graduating from Loyola in 1991. I met and married my husband in the JAG Corps. After my husband's retirement, my family settled in Tallahassee, Fla. We have recently opened a small law office with a general practice.

On the Friday after Katrina hit, I got a client in who needed an attorney in Tallahassee who was licensed to practice in both Florida and Louisiana. With the magic of Internet searches, my name popped up. She had been divorced in Jefferson Parish. She and her ex-husband had a split custody arrangement that rotated the two children between the two households every other week. Since the ex-spouses lived about a mile apart in the same school district, this situation had worked out well. On the Sunday night before the hurricane hit, the parents were supposed to change custody back to the mother. However, the father of the children refused and evacuated first to Mississippi, then to North Carolina, while the mother, my client, evacuated to Florida.

When my client came in on the Friday after the hurricane, she had not been able to contact her children. The father refused to either discuss the situation or relinquish custody. As you can imagine, she was frantic. Of course, she had not thought to bring copies of her divorce and custody paperwork when she left the city. I agreed to help her out, thinking this could probably be solved by a phone call or a letter by someone who was not personally and emotionally involved. I accepted a few hundred dollars as a retainer thinking I would end up refunding most of it back to her when this matter was settled with about an hour's worth of work. In the father's defense, I could see that in the extraordinary circumstances of this natural disaster he was just a dad trying to keep his children safe.

I was wrong. This matter consumed



# AFTER THE STORM

almost a solid full week and was frustrated at every turn. The basic problem was jurisdiction. Under the Uniformed Child Custody Jurisdiction Enforcement Act, Louisiana was the home state of the children and the only state with authority to act on an enforcement action. The only way another state (either Florida or North Carolina) could step in and assume jurisdiction was if the children had lived in that state for at least six months prior to the action, or if the home state (Louisiana) had relinquished jurisdiction. I drafted a motion arguing that Louisiana had, in effect, relinquished jurisdiction because of necessity. The courts in Jefferson and Orleans parishes and the Louisiana Supreme Court were closed for at least the next month. Courts in other parishes said they would not take these cases. We needed a court order and we could not get one because the Jefferson court was closed and neither Florida nor North Carolina could act because the children had not lived there for the past six months.

I spent hours on research, drafting motions, trying to contact her Louisiana attorney, phone calls to other parishes, e-mailing the president of the Louisiana State Bar Association, consulting with CLE lecturers in Florida family law, in discussions with judicial assistants in both Louisiana and in Leon County, Florida, e-mailing former classmates with a family law practice in Louisiana, talking to and faxing documents to the sheriff and the city attorney in Sylva County in North Carolina, and many calls and messages to the father. Everyone was very helpful, but we just could not get around the jurisdictional issue.

In the end, we were able to work this out with the father once things calmed down. Florida had agreed to take all Katrina displaced school children without shot or school records, so the father agreed to allow them to enroll near Tallahassee. Later, my client and her ex-husband returned as quickly as possible to their homes in Louisiana. I did not use any of my dusty knowledge of Louisiana law, but I was able to use my knowledge

of the Louisiana legal system and contacts within the state. I can still say that I have never actually practiced in Louisiana. I did not ask for more than the original retainer and was just happy to see a good resolution. By the time I averaged out my time, I earned less than \$11.50 per hour for our fledgling little firm. However, the experience and education were invaluable. It was a rewarding victory.

**Mary Alice David**  
**Major, United States**  
**Air Force Reserve**  
**Tallahassee, Fla.**

## In the Trenches ... and the Boats

I spent days living on the second floor of my neighbor's home on Napoleon Avenue (in New Orleans) with 8 1/2 feet of water on my doorstep. I was blessed to have two good friends stay with me who recognized the needs of our neighbors and accepted the dangers and perils of being a volunteer during a time of mass tragedy, compounded by confusion, poor planning and an inconceivable response. Their names are Beaux Whalen and Paul Gonzales and I am eternally grateful for their company, encouragement and ideas.

Beaux, Paul and I spent four days in boats going from house to house in the immediate flooded areas around my home. We started at daylight and drove our boats home at sunset. We were able to rescue over 100 neighbors, but we had to leave thousands behind. We focused on areas where no other water-based rescue operations were taking place and we could not travel more than one block without hearing the cries for help, people beating from the inside of attics and the pleas for supplies. These people were confused, scared, dehydrated, hungry, tired, elderly, disabled, people needing oxygen, needing dialysis.

The wealthier neighbors kept tabs on which neighbors were staying. They also had communication equipment and plenty of essential supplies. The poorer neighbors were not as organized. They had water for only a day or two. There were

16 people to some houses. The poor continue to suffer the most. They have no idea how to swim and many are taught that playing with a pit bull would be safer than going into the water for fear of drowning. So they have stayed in their houses, baking, dying.

We had a radio at night to keep us "informed." Our local news radio station, WWL, failed miserably. They were not broadcasting where the drop-off stations were. They were not informing the locals stuck in the water of the best escape routes. While we heard screams at night and banging on rooftops from trapped survivors, WWL was entertaining political debate discussing fault, blame and rebuilding New Orleans. Why weren't they discussing volunteer efforts and relief? Still today, where is their leadership?

I don't think (this article) is an appropriate time to share the sad realities of what I've seen in New Orleans.

I am very grateful to be alive and I am deeply troubled and saddened that I left. I never met one aggressive person. I was never intimidated. I felt no threat of violence, other than the mass hype being proliferated by the media. The reports of the media caused me and many other volunteers to leave the city in fear of our

lives. Maybe this was good, I just don't know.

I am in Morgan City and I can mobilize over 100 people who will be happy to participate in saving lives TODAY. They are local fishermen and sportsmen who have boats and are willing to go into the city with me, but we cannot get clearance. No response from the mayor's office. No response from the federal agencies I have contacted. My friends in Morgan City report that over 400 volunteer fishermen from the St. Martin, St. Mary and Lafayette area have been turned around and told they could not go into the City of New Orleans because it was "too dangerous" or for some other reason. I have been sending a video and details of this disaster to news agencies around the country. I am hoping that someone can get through to the "brass." My fear is that it is all too little and too late.

For all of my friends who live in other cities around our country, please don't let this happen to you. Make sure your mayor has a plan. Make sure your governor has a plan. You don't want to be walking around your home town FIVE DAYS AFTER a national emergency wondering why you, as a private citizen, can still see hundreds of people trapped, dying slowly, with no hope of survival.

The day I can return to New Orleans, I will. I will help clean the streets, remove the debris and rebuild my city according to the historical codes that are in place. I will help the displaced and assist in relief efforts. The spirit of New Orleans will not be broken. Our natives are strong, generous and carry the same passion for the Crescent City that I have shared with you all. . . .

**Mark Morice**  
New Orleans, La.

### Help in Continuing a Hearing

Nothing real big, but it was big for me. I had evacuated from New Orleans to Arkansas, and there was a hearing that I randomly found out about, much less received official notice of, in a case I was defending. My opposing attorney, Kent Payne of Baton Rouge, not only was gracious enough to call me about the hearing that I was about to miss, but also drafted and filed MY motion to continue it, due to the fact that I was five hours away from the site of the hearing. The case is *Weatherford v. Favaro* and it is still pending.

**Nahum D. Laventhal**  
Metairie, La.

Continued Next Page

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# AFTER THE STORM

## Contempt of Court?

After Hurricane Katrina had passed, I decided to assist the Plaquemines Parish Sheriff's Office with its search-and-rescue operations. Although we came across many unbelievable sights and interesting stories from the places and people we saw, one was notable.

On day three or four, we traveled by boat in the Mississippi River from Belle Chasse to Venice and then around the west bank area up to West Pointe a la Hache. In route, we picked up two people from the Mississippi River levee in the area of Diamond and 20 or so from vessels in the Empire area. The two on the levee were hesitant in leaving since they had set a camp on top of the levee (sheets tied to poles over a mattress, canned goods from a local store, fishing poles, etc.). It looked like a scene from the television show "Survivor." Their location on the levee was next to the temporary courthouse in Diamond (fire destroyed the original one in Pointe a la Hache in 2002).

During the process of gathering their belongings and getting them aboard our boat, they recognized me from working as an assistant district attorney. They quickly pointed out that they had an upcoming court date for Sept. 6 and that they did not want to be held in contempt of court. I was to tell the judge they were present and ready for court. Since the temporary courthouse in Diamond was destroyed by Hurricane Katrina, and still under water then, and realizing that it

would be quite awhile before we could have any trials again, I told them they could hold me and the judge in contempt of court because we would not be there.

*Charles Ballay is the first assistant district attorney for Plaquemines Parish and a director in the law firm of Ballay, Braud & Colon in Belle Chasse.*

**Charles J. Ballay**  
Belle Chasse, La.

## Insurance Coverage Problem Avoided

My parents-in-law, the Carpenters, in their 80s, lived near the New Orleans Lakefront in the Lake Vista Subdivision. As Katrina approached, my wife Christel (their daughter) implored them to leave New Orleans to get out of harm's way, at least to Baton Rouge where her brother lives. They refused as late as Saturday night, Aug. 27, after the contraflow out of New Orleans had begun. Sunday morning, Aug. 28, we went to 9 a.m. Mass. When we got home, my wife called her parents on the phone, telling them that if they did not leave immediately, she would call the Louisiana State Police to pull them out involuntarily. We have a friend who is a state trooper who coincidentally was at the Louisiana Superdome at the time . . . The threat of being forced out of their home by the police finally convinced her parents to pack up and leave. They packed clothes for just a couple of days, put their cat in a travel cage, and left in their car with \$600 cash and a credit card, leaving their

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checkbook and prescription medicines behind, obviously thinking they would be home in a couple of days. It took them eight hours to get to Baton Rouge, exhausted. My father-in-law had been through two major surgeries and radiation treatment for cancer earlier in the year and was weakened from that.

When Tuesday, Aug. 30 arrived and the news of the flooding of the city began spreading, their hopes of returning home were scuttled. Even worse, I was informed by my wife that her father had in early August decided not to renew his flood insurance policy which he had been paying premiums on for more than 40 years since they moved to Lake Vista from Maryland in 1963. They believed they had lost all their possessions including their home with no hope of compensation.

I implored my wife's brother in Baton Rouge, with whom her parents were staying, to contact State Farm, with whom they had their homeowner's insurance and through whom they purchased their flood insurance policy, and send in the check for renewal of the flood insurance policy. I wasn't sure what grace period existed under the policy, but had told my wife's folks that maybe they were within the grace period and could possibly still be covered. Her brother sent the premium check to State Farm, the policy was reinstated retroactive to Aug. 9, and the flood insurance claim was paid in full for the loss of their home and possessions. They were grossly underinsured, but still the recovery was substantial and far better than nothing. The money came in handy, as my father-in-law fell in Baton Rouge roughly a month after Katrina, broke his hip and underwent surgery to repair it. We had him transferred to Lafayette General Hospital's rehab unit where he stayed for three weeks, while we brought my mother-in-law to stay with us in Lafayette while he was rehabbing. We got them into a fine nursing home here just a mile from our home, and they are back together again and are grateful to be alive and together. My wife is relieved that her parents did not stay in New Orleans as

## Volunteering to Help

I would like to volunteer to help at the disaster centers for a few hours each week. I am living in Marrero, now. I am available for centers in West Jefferson and Plaquemines only because I have limited transportation resources at this point. I would gladly help with bankruptcies, if I can get access to DSL. (I have Internet access now because a neighbor lets me use her land line. I cannot get a land line in Marrero until Feb. 1, 2006.)

I was living in Buras in lower Plaquemines Parish. That is my office you see next to the fallen water tower in Buras. . . . Because I actually believed that I would be back the next day, I left Buras in the wee hours of Aug. 29 with only my pets, my toothbrush and the clothing on my back. I finally got back down there last week, and there is nothing left. . . .

Once I obtain either a suit and dress shoes or information on any nearby clothing stores that might be open, I will begin working at the relief centers. I know it will do me a lot of good to get back into the swing of things by working at the relief centers.

**Jeanne O'Boyle  
Marrero, La.**

they clearly would have been trapped in their home that took in roughly five feet of salt water for three weeks, and they were in no physical condition to attempt to crawl out onto their roof to be rescued. They would have perished if they had not finally heeded my wife's begging them to leave. My wife can now see them every day and is so grateful to be able to do so. The money they recovered from their flood insurance claim is being used to supplement my father-in-law's federal pension to cover the cost of the nursing home for them. If I had not been part of their family and had not been a lawyer, I doubt they would have thought to seek reinstatement of the flood insurance coverage and would have been left with a total loss. I really didn't do much except to rely on my experience as an attorney to let them know that they still might have coverage, and they did! So a bit of good came from what otherwise was a catastrophe for my wife's family.

**Frank W. Dawkins  
Lafayette, La.**

## Office Space and Equipment Offered

During the first two weeks following Katrina, three major law firms offered to

provide our entire firm, at no charge, with office space and related equipment for as long as we were unable to return to our New Orleans office. These firms were Vinson & Elkins, L.L.P., Houston office; Arnold & Porter, L.L.P., Washington, D.C. office; and Sidley Austin Brown & Wood, L.L.P., Dallas office.

Such unselfish offers of assistance from firms in other cities was not only very heartwarming to our band of refugees, but represents, to me, the highest ideals of professionalism by those firms. We were fortunate enough to have found space in Baton Rouge, but will never forget how those firms extended offers of refuge during the dark days of uncertainty that followed the storm.

**Louis Y. Fishman  
New Orleans, La.**

## Law Books and Other Resources Donated

Jon Claitor of Claitor's Law Books in Baton Rouge, in the weeks after Katrina, donated more than \$150,000 of 2005 Green Books and other resources to a regional ministry dedicated to assisting hurricane victims avoid eviction and insurance claim denial.

**Douglas D. Brown  
Hammond, La.**

# AFTER THE STORM

## Local/Specialty Bars, Others Step Up

### **Baton Rouge Bar Assists in Mobilizing Initial Legal Assistance Hotline**

Within three days of Hurricane Katrina's strike on Louisiana, a Legal Assistance Hotline was up and running, thanks to the quick mobilization efforts of the Baton Rouge Bar Association staff, particularly Executive Director Ann Scarle and Greg Bodin.

The hotline remained at the Baton Rouge Bar Association's offices until Oct. 14 when the Call Center was moved to the campus of Louisiana State University's (LSU) Paul M. Hebert Law Center to allow for more phone lines.

Since Oct. 14, the Call Center, a joint project of the Louisiana State Bar Association, the Louisiana Bar Foundation, the American Bar Association's Young Lawyers Division and the Federal Emergency Management Agency (FEMA), has fielded more than 4,700 calls. The service, offered free to the public, will remain active at least through February, and possibly longer if funding allows and needs dictate.

Hundreds of attorneys have provided countless hours of free legal advice to hurricane survivors through the Call Center. The free legal assistance is available Monday through Saturday, from 8 a.m. to 8 p.m., by calling 1-800-310-7029.

More than 500 Louisiana attorneys participated in disaster relief training to be better able to assist survivors at the hotline, at shelters and at more than 30 Federal Emergency Management Agency (FEMA) Disaster Recovery Centers currently operating statewide.

About 80 law students from LSU Law Center, Loyola University Law School

and Southern University Law Center were trained to handle the intake of phone calls, and attorneys statewide have volunteered to answer the subsequent legal inquiries, either in person at the Call Center or by agreeing to take the referrals.

Call Center volunteers report that about 70 percent of the callers are requesting information on landlord/tenant and homeowner issues, followed closely by questions on insurance, family law, FEMA, employment and property issues. The Call Center program handles only non-fee-generating cases. In cases where attorneys will receive fees, Call Center personnel refer individuals to local lawyer referral services. Volunteers also refer individuals to appropriate local, state or national agencies for further assistance.

"The Call Center has received thousands of queries and answered many hurricane victims' legal questions," said LSBA President Frank X. Neuner, Jr. of Lafayette. "We owe a debt of gratitude to the Baton Rouge Bar Association for taking on the hotline project when no one else could. I also thank Elizabeth Foote, whose determination and attention to detail has made the Call Center a reality," he added.

### **Lafayette Parish Bar, Lafayette Legal Community Respond to Disaster Needs**

Lafayette's legal community, with the help of the Lafayette Parish Bar Association (LPBA), came together quickly to help those affected by Hurricanes Katrina and Rita by providing pro bono legal services to storm survivors and assisting displaced attorneys in need.

Once the basic survival needs of food, water and shelter were satisfied, many



**Richard Broussard, along with the Lafayette Parish Bar Association, set up a volunteer center in Vermilion Parish to assist the victims of Hurricane Rita in filling out FEMA applications.**

Hurricane Katrina and Rita survivors discovered they were facing any number of legal problems on the way to rebuilding their lives. Members of the LPBA are helping to meet those legal needs by offering free, short-term, emergency-related legal assistance to hurricane survivors.

"LPBA members are committed to donating their time and expertise to assist the displaced citizens of Louisiana," said LPBA President Joseph R. Oelkers III. "Being able to provide legal services on a pro bono basis is one way LPBA members can help victims get on the road to recovery," he said.

To prepare volunteers for these services, the LPBA conducted a disaster training seminar with Louisiana State Bar Association (LSBA) President Frank X. Neuner, Jr., representatives from the Federal Emergency Management Agency (FEMA), the Red Cross, the LSBA Young Lawyers Section and others to provide attorneys with an overview of FEMA, knowledge on how the legal community can provide services to disaster victims and frequently asked questions during disaster relief. Susan Simon gave an overview of the LSBA disaster training manual to assist attorneys in helping survivors.

Contributions were collected for the LSBA/Louisiana Bar Foundation Disaster Relief Fund to help rebuild the New Orleans area legal infrastructure so lawyers may provide needed legal services to citizens and restore damaged offices and records.

The LPBA Young Lawyers Section recruited attorneys and partnered with FEMA to set up a booth at a Disaster Recovery Center. The section also aided the relief efforts by holding a successful School Uniform and Supply Drive for all of the displaced students in Lafayette Parish.

As an additional resource, the LPBA added a link to its Web site, [www.lafayettebar.org](http://www.lafayettebar.org), to provide members and the public with the most up-to-date information regarding the Louisiana court system, the LSBA and additional relief efforts.



**Louisiana State Bar Association President Frank X. Neuner, Jr. explained to the Lafayette Parish Bar Association members what the LSBA has done in response to the disasters and how to volunteer.**



**New Orleans attorney Bobby Delise spoke at the Lafayette Parish Bar Association's disaster training seminar about his experiences in the aftermath of Hurricane Katrina.**



**Tony Credeur, executive director of the Acadiana Chapter of the Red Cross, described what he needed from lawyers willing to volunteer their services. He spoke at the Lafayette disaster training seminar.**

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# AFTER THE STORM

## New Orleans Bar Association Opens Internet Café

The New Orleans Bar Association has opened the Internet Café to address the needs of displaced attorneys. The café has Internet access, offers free office space with the use of computers and copy machines and provides hot coffee. Designed to meet the needs of attorneys who find themselves temporarily displaced due to Hurricane Katrina, this service, located in the New Orleans Central Business District, is open to all New Orleans attorneys and provides office space where attorneys can meet with clients and hold depositions.

## Kean Miller Contributes to Baton Rouge Area Foundation's Katrina Fund

Kean Miller Hawthorne D'Armond McCowan & Jarman, L.L.P., contributed \$20,000 to the Baton Rouge Area Foundation and its Hurricane Katrina Displaced Residents Fund.

"Baton Rouge is our home. We work here, we live here, and we have been fortunate to work in partnership with the Baton Rouge Area Foundation for more than 20 years," said Gary A. Bezet, managing partner of the 106-lawyer firm. "We are confident that the Baton Rouge Area Foundation is helping those who have lost so much, and who now also call Baton Rouge home," Bezet said.

The contribution assisted the Baton Rouge Area Foundation in helping those displaced by Hurricane Katrina who are now living and working in the Greater Baton Rouge area.

"This generous contribution comes at an important time for our Hurricane Katrina Displaced Residents Fund. With so many worthwhile national organizations providing critical human services and raising funds, it is easy to overlook what is happening in our own backyard. We appreciate this important community gift from our friends at Kean Miller, and we encourage others in the Baton Rouge business community to respond to Kean Miller's philanthropic example," said John Davies, president and CEO of the

## NOBA Hosts "Welcome Home New Orleans" Social



The New Orleans Bar Association (NOBA) hosted a "Welcome Home New Orleans" social on Oct. 27 to welcome attorneys and members of the judiciary on their return to the city. More than 130 people attended the event. From left, Judge Terri Flemming Love, Judge Jay C. Zainey, Rachel Piercey and former NOBA President John Pearce.

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Baton Rouge Area Foundation.

The Hurricane Katrina Displaced Residents Fund benefits those individuals evacuated to Baton Rouge from the hurricane-impacted areas in Greater New Orleans, who are now unable to return for what may be an extended period. Evacuees are facing numerous challenges related to housing, food, education, health care and basic survival necessities. This fund is supporting those entities and programs in the Baton Rouge area that are endeavoring to meet these critical needs, as well as addressing the impact this influx of residents is having on the Baton Rouge area.

### **Shreveport Bar Foundation Contributes to Katrina Relief Efforts**

The Shreveport Bar Foundation, the charitable arm of the Shreveport Bar Association (SBA), made several contributions to agencies requesting financial assistance in the aftermath of Hurricane Katrina. These contributions were made possible through donations from association members to the SBA Katrina Disaster Relief Fund, established shortly after the storm.

The Foundation contributed \$10,000 to the Shreveport-Bossier Rescue Mission, an agency providing rent-free housing for displaced victims of the hurricane; \$5,000 was donated to the Northwest Louisiana Food Bank to purchase supplies and food products for evacuees; another \$5,000 was donated to the Northwest Louisiana Interfaith Pharmacy, Inc. to be used to purchase medicine and medical supplies for evacuees; \$5,000 is being donated to the Northwest Chapter of the American Red Cross to help with their relief efforts; and another \$2,038 was contributed to purchase computers for use at the Hirsch Coliseum evacuee shelter in Shreveport.

In two months, SBA members contributed more than \$32,500 to the Katrina Disaster Relief Fund and are committed to continue this fund-raising effort as long as there is a need. SBA President

### **Southwest Louisiana Bar Association President Discusses Aftermath of 2 Storms**

“About 5,000 Hurricane Katrina evacuees were housed at the Lake Charles Civic Center and Burton Coliseum. We were involved as a bar association providing pro bono legal advice almost immediately. . . .

“The day the levee broke in New Orleans or the next day at the latest, I received a call from Randy Fuerst, a local attorney, asking me as president of the local bar what the bar association was going to do to help with the problem at the Civic Center. . . .

“On that first day, Randy, mostly on his own but with some help from the bar association, raised money to buy supplies, blankets, etc., for the evacuees. Later, Randy also was very helpful with the pro bono services we provided at the shelters, which became known as the Katrina Legal Project.

“Jim Ortego runs our local pro bono program and reduced-fee legal service corporation, Southwest Louisiana Legal Services Corporation. I met with Jim and our mayor, Randy Roach, during the week of Katrina and told him I would work with the state bar and put something together to provide legal services to the evacuees at the shelters. Randy demanded that we do something NOW, and, after the Thursday meeting, the next Monday we began manning tables at both shelters on a daily basis. I was later told by Susan Simon that we were the first bar association in the state to have something up and running with a presence in the shelters.

“A lot of credit goes to Jim Ortego and his group. We manned the tables and his group kept track of the forms and disposition of the cases. . . . We are also serviced in this area by Acadiana Legal Services Corporation in Lafayette and the Lake Charles office is headed by Jennifer Robinson. . . .

“Between the two storms, Susan Simon, Celia Cangelosi and others from the state bar came to Lake Charles to hold a training seminar. I was quite proud of the fact that we had more than 100 lawyers, paralegals and support staff attend the session on that Friday afternoon. (We have only 400 members of our local bar). . . .

“The Katrina Legal Project came to an abrupt end when Hurricane Rita approached and all the Katrina evacuees were evacuated from Lake Charles, most never to return. . . . Rita was a different situation than Katrina. We had plenty of damage in Lake Charles, but no evacuees. The existing legal structure, both private and the legal service corporations, are handling everything within their setups. . . . There are many lawyers in Lake Charles who are offering assistance through the Legal Assistance Call Center Hotline and, despite their own problems of dealing with Rita, they are providing pro bono services for storm survivors.”

**Jeffrey M. Cole**  
**President, Southwest Louisiana Bar Association**

Tommy Johnson urged all association members to not forget about the disaster relief effort, even though media attention is beginning to decline.

"This is going to be a long-term process of rebuilding for the victims of this devastating natural disaster and we want them and the community to know that we are committed to help both now and in the future," Johnson said.

If you would like to donate to this disaster relief fund, forward your tax-deductible contribution payable to "Shreveport Bar Foundation" (with the notation *Katrina Disaster Relief Fund*), c/o Shreveport Bar Foundation, P.O. Box 2122, Shreveport, LA 71166-2122.

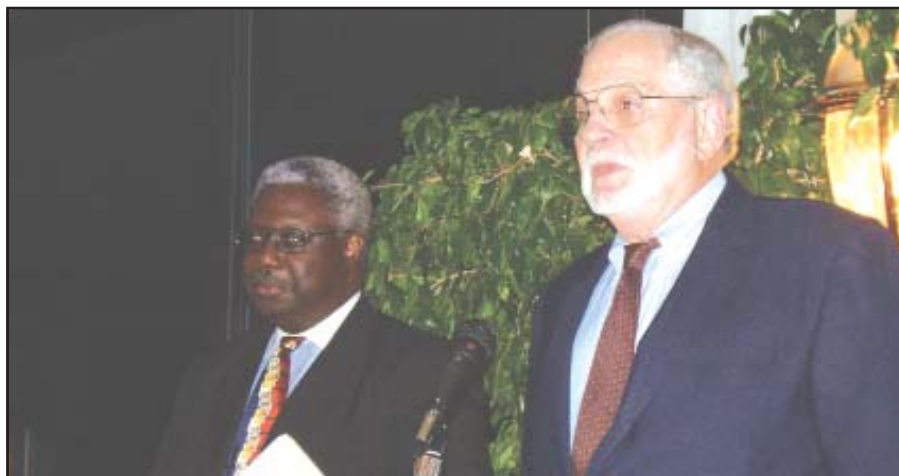
For more information about the SBA's Disaster Relief Fund, contact the Shreveport Bar Association office at (318)222-3643 or log on to the SBA Web site at [www.shreveportbar.com](http://www.shreveportbar.com).

## Katrina Disaster is Focus of Joint Dinner

The tragedy of Hurricane Katrina, and its effects on the legal community and the courts, was the focus of a Sept. 19 dinner for the Bar Association of the 5th Federal Circuit, the Harry V. Booth and Henry A. Politz Inn of Court and the Shreveport Bar Foundation (SBF). The theme of the dinner was "Hopes and Impediments."

Following dinner, guests were welcomed by Judge Stephen V. Callaway, president of the Inn of Court, who noted that, while the Inn and the SBF had jointly held annual dinners in the past, this was the first time that the federal bar association had participated. Ben Politz, program chair for the Inn, then provided an explanation of the role of the Inn of Court in the legal community and an outline of the upcoming goals of the Inn. Roy S. Payne, SBF president, recognized SBF fellows and annual members and informed guests of the work of the SBF with the Hurricane Katrina Relief Fund and other charitable activities.

A special presentation was made by Larry Pettiette to Judge Tom Stagg, a founder of the Booth/Politz Inn of Court.



Fifth Circuit Court of Appeal Judges Carl Stewart, left, and Jacques Weiner described effects of Hurricane Katrina on the court.



Judge Tom Stagg received an award from Larry Pettiette for being a founder of the Harry V. Booth and Henry A. Politz Inn of Court.

Judge Carl Stewart and Judge Jacques Weiner described the effects that Hurricane Katrina was having on the operations of the United States 5th Circuit Court.

The evening closed with remarks from Reid Brau, executive director of the Northwest Chapter of the Red Cross, one of the recipients of the Shreveport Bar Foundation's Katrina Disaster Relief Fund.

## Martinet Society, NBA, Southern Law Center Offer Legal Information Seminars

The Louis A. Martinet Legal Society,

in conjunction with the National Bar Association and Southern University Law Center, offered the second in a series of legal information seminars on Nov. 14 to people affected by Hurricanes Katrina and Rita. More than 200 people from the New Orleans area attended the seminar at True Light Baptist Church in Baton Rouge.

The purpose of the seminar was to help hurricane survivors identify their legal needs, then equip them with basic legal information and resources. The first phase of the seminar included four brief presentations by panelists on topics ranging from the Louisiana legislative special session to insurance, tax, bankruptcy and consumer law-related issues. The second phase was formatted as a question-and-answer session.

Several people were instrumental in developing and presenting the seminar, including Chancellor Freddie Pitcher, Jr., Prof. John Pierre, Prof. Donald North, Prof. Evelyn Wilson and Rachel Emanuel, all with Southern University Law Center; Louisiana State Rep. Cheryl Gray and the Louisiana Legislative Black Caucus; Preston J. Castille, Jr., Jason Decuir and Todd Manuel, all with Taylor, Porter, Brooks & Phillips; Shelton Dennis Blunt, Phelps Dunbar; Deidre Robert, assistant East Baton Rouge Parish attorney; and Charles Hansberry, assistant Louisiana attorney general.





## Red Mass in December Focuses on Healing and Renewal of New Orleans

The St. Thomas More Catholic Lawyers Association sponsored a Red Mass for the healing and renewal of New Orleans on Dec. 1 at St. Louis Cathedral in New Orleans. Archbishop Alfred Hughes was the celebrant and homilist. The Mass also marked the reopening of several courts in the New Orleans area, including the Louisiana Supreme Court.

Members of the judiciary joined a walking procession from the Louisiana Supreme Court on Royal Street to the cathedral. Following the Mass, the St. Thomas More Catholic Lawyers Association hosted a reception at the Supreme Court.



**Louisiana Supreme Court Justice Bernette J. Johnson greeted Archbishop Alfred Hughes following the Red Mass on Dec. 1. Photo courtesy of Frank Methe/Clarion Herald.**



**Members of the judiciary formed a procession to the Red Mass from the Louisiana Supreme Court Building on Royal Street.**



**Louisiana Supreme Court justices and many others attended the Dec. 1 Red Mass. Photo by Peggy Cotogno/New Orleans Bar Association.**

# AFTER THE STORM

# Thank You!

## More Than \$400,000 Received in Donations to LSBA/LBF Disaster Relief Fund

Hurricanes Katrina and Rita dealt major blows to Louisiana and its citizens. As those harrowing days unfolded after the storms, the true toll became painfully illuminated. Property (personal and business) was destroyed. The lives and livelihoods of untold numbers of people were disrupted, some temporarily, some permanently. Most horrifying, the death count rose daily as the waters receded.

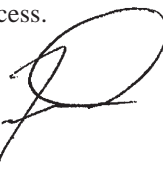
Louisiana's justice system was not immune to the havoc and destruction caused by the hurricanes. More than 8,000 Louisiana attorneys – nearly half of the membership of the Louisiana State Bar Association – were displaced and unable to offer even basic legal services. With courthouses closed in the affected areas, judges and court staff scrambled to find temporary office space. Many attorneys' offices were flooded, with records either damaged or destroyed. Continued communication between attorneys and their clients became urgent, a need quickly met using the Louisiana State Bar Association's Web site as the conduit.

It is often in the darkest moment that the brightest light shines. This bright light came from our legal colleagues across the country, and the assistance came quickly and deeply and in many forms. Law firms, attorneys and law-related organizations nationwide donated to the Louisiana State Bar Association/Louisiana Bar Foundation's Disaster Relief Fund. (*See donors list on pages 303-311.*) Because of the generosity of our colleagues, we have been able to award grants from this Fund to assist our attorneys in rebuilding their practices. More grants will be awarded as funds permit.

To date, 577 grants of \$500 and 57 grants of \$1,000 have been given to deserving attorneys whose lives and practices have been disrupted. Additionally, a \$25,000 grant has been made to the New Orleans Bar Foundation to assist it in setting up an "Internet café" at its office and five workstations and offices have been fully equipped at the Louisiana Bar Center in New Orleans for use by attorneys.

In this giving season, on behalf of the Louisiana State Bar Association, I wish to send our deepest gratitude to our legal colleagues, both for the monetary donations and countless offers of professional services.

The hurricanes caused major damage to our state but they did not, and will not, destroy the resiliency and courage of Louisiana's citizens. Although many problems remain, I am confident our state will come through these challenges stronger than ever. I am especially proud and grateful of the role our legal colleagues nationwide have played in our rebuilding process.



Frank X. Neuner, Jr.  
President, Louisiana State Bar Association

# LSBA/LBF Disaster Relief Fund Donors

(As of Dec. 16, 2005)



The Louisiana State Bar Association/Louisiana Bar Foundation Disaster Relief Fund was established shortly after Hurricanes Katrina and Rita devastated parts of southern Louisiana. Donations to the Fund, aimed at assisting attorneys whose

offices and practices were damaged or destroyed by the storms, have been distributed in the form of grants to individual attorneys and to associations offering work space for displaced attorneys. The response from law firms, attorneys and law-related organizations nationwide has been overwhelming. As of Dec. 16, more than \$440,000 has been received. We offer our gratitude to the following donors who offered their help in our time of greatest need.

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# AFTER THE STORM

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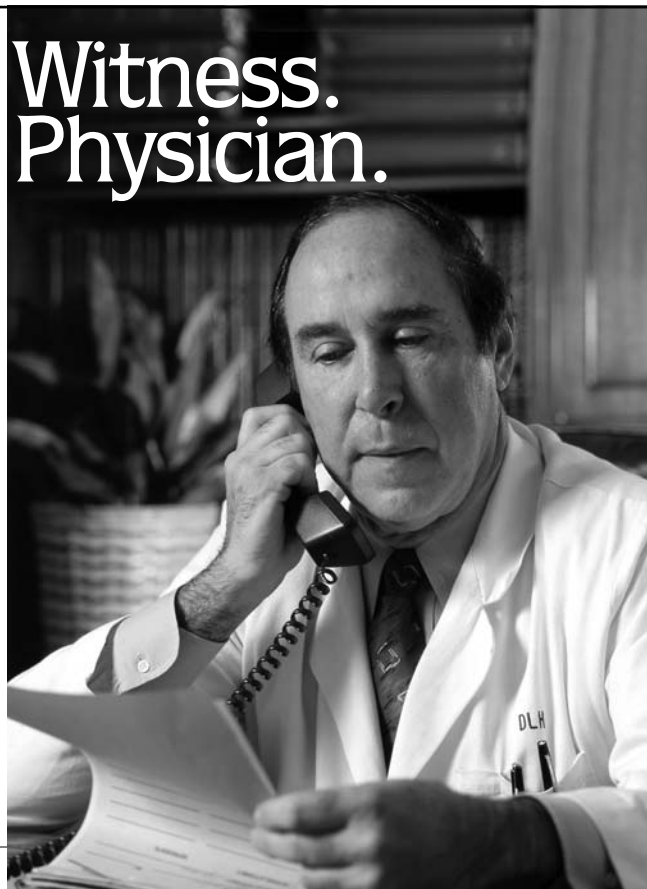


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# After the Storm:

## The Collaborative Effort Among LSBA, Gilsbar, CNA and New York Life

In the wake of Hurricane Katrina, many Louisiana State Bar Association (LSBA) members across south Louisiana have been temporarily or permanently displaced and all of our lives have been changed forever. It's easy to dwell on the disaster and the challenges that we will have to overcome, but let's take a few moments to reflect on the good and positive activities that resulted from Katrina. As always, we hope you enjoy and reap the benefits of being an LSBA member... but in the wake of Hurricane Katrina, we hope you value your membership more than ever.

### Valued Partners

The LSBA works hard to partner with companies that support our organization, our mission and our work. The LSBA has a long-standing relationship (more than 45 years) with Gilsbar, Inc. Gilsbar is the endorsed agent of insurance programs and services for LSBA members. The company partners with selected carriers to bring members quality personal and professional coverage. In the days and weeks after the storm, as you faced the loss of homes, vehicles and businesses, Gilsbar and its partner carriers were working behind the scenes to help relieve some of your stress.

Immediately following the storm, CNA and Gilsbar issued an automatic renewal of all qualified professional liability policies in order to extend continuous coverage to its members. This generous extension provided an opportunity for insureds to take care of their personal tragedy without the additional headache of worrying about renewing their professional liability insurance policies. CNA extended premium due dates for those insureds who needed it most.

CNA also made a \$10,000 contribution to the LSBA/Louisiana Bar Foundation Disaster Relief Fund. About \$5,000 of the donation was to provide business center assistance for displaced attorneys and the other portion provided grants for attorneys.

For members with an LSBA-sponsored medical, life, disability or business overhead expense insurance plan, New York Life Insurance Co. and Gilsbar extended grace periods for due dates by an additional 60 days. They also provided assurance to members that there would be no lapse in coverage for members and/or their families during this time.

### The Story Behind the Seminar

Since early summer, the LSBA and Gilsbar had been planning to host a fall CLE seminar. The seminar was interrupted by Katrina, but, through the collaboration of the LSBA, Gilsbar's Loss Prevention Counsel and CNA, the seminar, "*Rebuilding Your Practice After Disaster Strikes*," was born. With only weeks to reorganize, regroup and reschedule, the new, more pertinent seminar was developed and delivered.

The seminar brought together speakers from across the country who lived through their own disaster experiences, including an attorney from Texas who survived a killer tornado and Steven Krane, New York Bar president during 9/11. All speakers donated their time and, through their powerful testimonies and experiences, Louisiana attorneys received a glimpse of hope in the dark days following Katrina.

With more than 80 attorneys in attendance, the seminar was a success. The

same line-up of speakers presented similar seminars in New Orleans on Jan. 12 and in Lake Charles on Jan. 13.

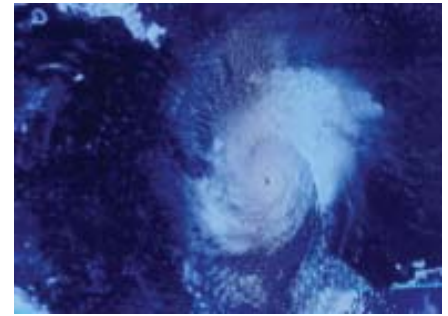
### Benefits of LSBA-Sponsored Insurance Plans

The long-standing relationship between Gilsbar and the LSBA is proof of the quality of insurance services provided to LSBA members through the years. The LSBA insurance committee works closely with Gilsbar to develop plans that suit the needs of individual members while providing exclusive member benefits. Membership representation through insurance committees assures that the best interest of association members remains in the forefront of all decisions.

Advising the LSBA Legal Malpractice Insurance Committee on all areas relating to legal malpractice, Gilsbar funds and manages the Loss Prevention Program, including the LSBA Office of Loss Prevention. This program is available to assist LSBA members in the prevention of legal malpractice and the improvement of office practices and procedures.

### Our Commitment to the Future

We know the past few months have been taxing on your time, energy, family and practice. In the months and years to come, the LSBA, Gilsbar, CNA and New York Life are committed to the success of Louisiana and its legal profession. We look forward to continuing to provide outstanding member services and partnerships that will benefit you, your family and your business.







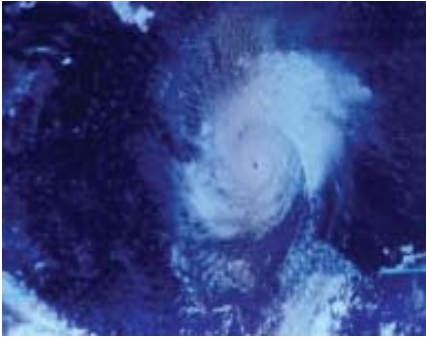
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# Public Adjusting:

## Unauthorized Practice of Law in Louisiana

By Steven G. "Buzz" Durio and Timothy A. Maragos

It is no secret that the miseries brought in the wake of Hurricanes Katrina and Rita were compounded by bureaucratic missteps and general ignorance of the scope of the problems. Now, four months since Katrina made landfall and caused a breach in the very fabric of our state, another threat to the security and well-being of our citizens looms. But harm from unregulated and illegal public adjusters can still be prevented.

"Adjusting" is an aspect of the insurance industry regulated state-by-state. Most often this is accomplished through the executive branch, frequently by a Department of Insurance. This department regulates insurance companies, agencies and other entities that provide adjusting services, either of their own claims, or independently for other insurance companies. Sometimes adjusting services are marketed to and on behalf of the general public. In these instances, the provision of adjusting is regarded as "public adjusting."

Louisiana does not regulate public adjusting. However, this lack of regulation is not the result of legislative machinations; there is a more fundamental problem. In Louisiana, as a result of judicial decisions, public adjusting, which traditionally includes analyzing coverage, estimating the extent of damages, negotiating with the insurance company, and often handling client funds, is considered the practice of law. Therefore, public adjusters who are not lawyers are essentially engaged in the unauthorized practice of law – an activity which is illegal.

Despite *Louisiana Claims Adjustment Bureau, Inc. (LCAB) v. State Farm Ins. Co.*, No. 38,709-CA (La. App. 2 Cir. 6/23/04), 877 So.2d 294, which only last

year reaffirmed a long-standing series of court decisions holding public adjusting to be unlawful, public adjusters have become an all-too-common feature of the post-disaster landscape.<sup>1</sup> Because "public adjusters" from other states often migrate seasonally into Gulf states such as Louisiana after hurricanes, they are sometimes pejoratively referred to as "storm troopers." The general public — and even most lawyers — are unaware that these are considered illegal contracts, and hurricane victims have signed agreements with out-of-state public adjusters without realizing that there is no real enforcement mechanism to protect the Louisiana citizen from being victimized a second time.

The practice of law in Louisiana is regulated by the Louisiana Supreme Court, which is assisted in enforcement of the Rules of Professional Conduct through its Disciplinary Board and Office of Disciplinary Counsel. These entities have no power to prohibit public adjusting by non-lawyers nor to take action against laymen who might be engaged in public adjusting, or any other form of the unauthorized practice of law. The resulting gap between the regulatory authority of the Commissioner of Insurance over laymen and the regulatory power of the Supreme Court over licensed lawyers means that there is no entity regulating the behavior of public adjusting by non-lawyers in Louisiana and no protection for the consumer of these services. The gap should be filled by enforcement of La. R.S. 37:212-213, which makes the unauthorized practice of law a "serious misdemeanor," but prosecutions under that statute are infrequent.

The responsibility for enforcement of

criminal statutes rests primarily upon the district attorney for the parish in which an unauthorized practice of law incident, such as public adjusting, occurs. The Louisiana State Bar Association's Public Access and Consumer Protection Committee (originally known as the Unauthorized Practice of Law Committee) has for many years fielded complaints, issued "cease and desist" letters, referred prosecutions, and assisted in the criminal and civil actions when citizens have been victimized by those in violation of the statute. Little has come of these efforts on the criminal side, but a consistent series of decisions in civil actions establishes that contracts for public adjusting are null and void and violations of the public policy prohibiting the unauthorized practice of law.<sup>2</sup>

### Public Adjusting

According to the Web site of the National Association of Public Insurance Adjusters, a public adjuster is "an authority on loss adjustments who you can retain to assist you in preparing, filing, and adjusting your insurance claims." This site maintains that public insurance adjusters are qualified to practice "in virtually all jurisdictions" and are "fully-qualified professionals." They are compensated by "a percentage of the insurance company's settlement" on the theory that this more closely aligns their interest with the insured's. They do not represent insurers in order to represent insureds "exclusively and independently." Their qualifications and licensing "varies from state to state." Public adjusters assist in all types of first-party claims for property damage, but evidently do not get in-

volved in personal injury claims. Their brief 10-point Code of Ethics explicitly forbids “improper solicitation” and “engage[ing] in the unauthorized practice of law.”<sup>3</sup>

## The Practice of Law

The practice of law in Louisiana is defined by many judicial decisions now codified at La. R.S. 37:212A:

- A. The practice of law means and includes:
  - (1) In a representative capacity, the appearance as an advocate, or the drawing of papers, pleadings or documents, or the performance of any act in connection with pending or prospective proceedings before any court of record in this state; or
  - (2) For a consideration, reward, or pecuniary benefit, present or anticipated, direct or indirect,
    - (a) The advising or counseling of another as to secular law;
    - (b) In behalf of another, the drawing or procuring, or the assisting in the drawing or procuring of a paper, document, or instrument affecting or relating to secular rights;
    - (c) The doing of any act, in behalf of another, tending to obtain or secure for the other the prevention or the redress of a wrong or the enforcement or establishment of a right; or
    - (d) Certifying or giving opinions as to title to immovable property or any interest therein or as to the rank or priority or validity of a lien, privilege or mortgage as well as the preparation of acts of sale, mortgages, credit sales or any acts or other documents passing titles to or encumbering immovable property.

This statute was first enacted as Act 202 of 1932, and excepted in present paragraph A(2)(c):

except, without resort to court proceedings, the enforcing, securing, settling, *adjusting* or compromising of defaulted, controverted or disputed accounts, or claims. (emphasis added)

In *Meunier v. Bernich, et al*, 170 So.2d 67 (La. App. 1936), this exception was held unconstitutional on the theory that it violated the principle of separation of powers and only the judicial branch had the power to regulate the practice of law. *Meunier* was based on the inherent power of the judiciary and held:

this inherent power necessarily includes the right of the court to define the practice of law.

*Meunier* at 575. The remainder of the statute survived because it was “in aid” and not in derogation of the court’s powers. *Meunier* at 577-78.<sup>4</sup>

The court in *Meunier* recognized that the exception for public adjusting was “not only an encroachment upon the inherent judicial power but it tends to impede and destroy the court’s authority over the legal profession.” *Meunier* at 577. The court also identified “a stronger reason why the exception is unconstitutional” in Article 7, § 10 of the 1921 Constitution conferring original and exclusive jurisdiction in disbarment proceedings.<sup>5</sup>

The court found that *Meunier* “attempted to perform the services which only an attorney at law was entitled to render and for this reason the contract was illegal and against public policy.” *Meunier* at 577. This finding was based on the fact that:

*Meunier* does more than mere investigation . . . he undertook . . . to enforce, secure, settle, adjust, or compromise . . . it became necessary for him to examine the facts of the case and to advise . . . regarding

. . . liability . . . in the adjustment of claims he advises clients respecting their rights and liabilities as a matter of law. . . . Thus, in the performance of his contract, *Meunier* had to advise his client concerning the redress of a legal wrong, which advice he was not qualified to impart because he does not possess the legal training exacted by the Supreme Court.

*Meunier* at 573-74.

The Public Access and Consumer Protection Committee was involved as *amicus curiae* in *Louisiana Claims*, a recent civil case involving public adjusting and unauthorized practice. *Louisiana Claims* resulted in a decision reaffirming *Meunier*. In *Louisiana Claims*, a public adjuster sued State Farm for refusing to negotiate with public adjusters which State Farm claimed were engaged in unauthorized practice of law. The court began by noting its previous decision in *Duncan v. Gordon*, 476 So.2d 896 (La. App. 2 Cir. 1985), in which it was held that, when a person who is not an attorney represents another in the negotiation and settlement of a personal injury claim for consideration, pursuant to a contingency fee contract, that person has engaged in the unauthorized practice of law. State Farm contended that it was true that LCAB was engaged in unauthorized practice and this was an absolute defense to LCAB’s claim of defamation. The 2nd Circuit reasoned:

It is the unauthorized practice of law because the person must advise the client of issues concerning the redress of a legal wrong. In order to dispense the kind of legal advice to its clients necessary in this case . . . LCAB . . . would have had to perform the functions of a licensed attorney . . . evaluating a claim and determining whether it has merit or is instead frivolous must be done by a licensed attorney.

*Louisiana Claims* at 299.

The rationale of *Meunier* and *Louisiana*



*ana Claims* is that public adjusting inherently involves the giving of legal advice and is therefore unauthorized practice of law, without regard to whether or not the claim being “adjusted” is a first-party or third-party claim and without regard to the basis of the fee, whether contingency or hourly. *Meunier* recognized that allowing public adjusting by non-licensed laymen would undermine the Supreme Court’s ability to enforce discipline on attorneys at law. This difficulty is not limited to contingent fees and solicitation but, because of the increasingly complex ethical regulation of lawyers, extends to many other areas. If public adjusters are allowed to settle cases with third parties, receive their client’s check, make disbursements and the like, the rules, *e.g.*, regarding conflicts of interest, aggregate settlements, interest on trust accounts, overdrafts on trust accounts, handling of disputed fees and the like, will all be eviscerated.

All of these problems are realized in the aftermath of every significant hurricane, and there is great concern that they may reach epidemic proportions following Katrina and Rita. After Hurricane Andrew, for example, public adjusters involved in supervising reconstruction of public housing projects in Louisiana and Florida were involved in a scheme by which claims were inflated. These schemes involved multiple states and millions of dollars in damages, with substantial effects on the general public. When these practices were discovered, the reconstruction projects were halted for years. The net result was that many members of the general public were indefinitely displaced from their residences without recourse.

The civil process by which the public adjusters involved in the post-Andrew claims were prosecuted took years and was extraordinarily cumbersome, particularly when compared to the regulatory enforcement powers that would have been exercised against similarly unethical practices perpetrated by lawyers.<sup>6</sup> Indeed, the Office of Disciplinary Counsel has virtually instantaneous emergency power to suspend licenses and recover

and administer client trust funds when lawyers are discovered to be involved in schemes like those perpetrated by public adjusters after Andrew.

## Criminal Prosecution for Unauthorized Practice of Law

Since the 1922 decision in *State v. Rosborough*, 152 La. 945, 94 So. 858 (La. 1922), unauthorized practice has been prosecuted as a crime under various versions of a statute, now La. R.S. 37:213. Unauthorized practice of law, which is a “serious misdemeanor,” is defined in La. R.S. 37:213A:

A. No natural person, who has not first been duly and regularly licensed and admitted to practice law by the supreme court of this state, no corporation or voluntary association except a professional law corporation organized pursuant to Chapter 8 of Title 12 of the Revised Statutes, and no partnership or limited liability company except one formed for the practice of law and composed of such natural persons, corporations, voluntary associations, or limited liability companies, all of whom are duly and regularly licensed and admitted to the practice of law, shall:

- (1) Practice law.
- (2) Furnish attorneys or counsel or an attorney and counsel to render legal services.
- (3) Hold himself or itself out to the public as being entitled to practice law.
- (4) Render or furnish legal services or advice.
- (5) Assume to be an attorney at law or counselor at law.
- (6) Assume, use, or advertise the title of lawyer, attor-

ney, counselor, advocate or equivalent terms in any language, or any phrase containing any of these titles in such manner as to convey the impression that he is a practitioner of law.

- (7) In any manner advertise that he, either alone or together with any other person, has, owns, conducts, or maintains an office of any kind for the practice of law.

Despite the longevity of this statute, it is deficient in several respects. First, it explicitly prohibits only such activities as are defined in a separate statute to be the practice of law. As discussed above, this separate statute defining the practice of law was amended to except public adjusting in explicit terms. When the exception for public adjusting was subsequently declared unconstitutional, the statute was reenacted by simply omitting the offending language. This has left in the Revised Statutes no language explicitly prohibiting the activity of public adjusting, nor any language specifically identifying the work of public adjusters as the practice of law, with the result of potentially obscuring jurisprudence which has consistently held public adjusting to be the unauthorized practice of law.

Secondly, the wisdom of elevating the offense of unauthorized practice to “serious misdemeanor” criminal status might reasonably be questioned in several respects. Enforcement of such a statute, which affords the right to a jury trial, is subject to the resources and demands of the local district attorney. District attorneys often cannot devote scarce resources or give appropriate priority to make criminal enforcement of unauthorized practice effective. Also, attaching criminal consequences to an activity that is separately licensed in other states but is here criminally punished as unauthorized practice often makes successful prosecution more difficult.

## Act 148 of 2003; La. R.S. 22:1476

This state of the law under La. R.S. 37:212-213, and *Meunier* through *Louisiana Claims*, was complicated in 2003 by the passage of Act 148, now La. R.S. 22:1476.<sup>7</sup> Subsection 1476A defines “public adjusting” for the limited purpose of “this section.” Subsection 1476B prohibits contingent fee agreements for “public adjusting” by non-attorneys. No part of the statute authorizes or legalizes anything, much less “public adjusting.” A reading of La. R.S. 22:1476, consistent with *Meunier* and *Louisiana Claims*, would suggest that this statute’s purpose and effect is to augment existing law by statutorily condemning what is evidently perceived as an especially pernicious practice.<sup>8</sup> Under this straightforward reading, the statute would be construed “in aid” of the exclusive judicial power to regulate the practice of law, and held to be constitutional.<sup>9</sup>

Unfortunately, La. R.S. 22:1476 has already been misconstrued by out-of-state public adjusters as impliedly legalizing public adjusting in Louisiana. This reading overlooks or purposefully ignores the language of La. R.S. 37:212-213, the *Meunier* holding that the practice of law cannot constitutionally be amended for this purpose by statute, and the broader context of the Louisiana jurisprudence by which public adjusting has uniformly been held illegal for almost 70 years.<sup>10</sup> In the broader light of La. R.S. 37:212-213, *Meunier* and *Louisiana Claims*, in which adjusting by non-attorneys constitutes unauthorized practice (regardless of the basis of the fee), subsection 1476B cannot be read, merely by negative implication, to reverse the presumption of illegality which already extends beyond the specifically invalidated contract to the underlying activity.<sup>11</sup> Reading a negative implication of La. R.S. 22:1476 to positively authorize public adjusting by non-attorneys except by contingent fee agreement would undermine the exclusive judicial authority to regulate the practice of law and, under the *Meunier* analysis, render the statute unconstitutional.

## Alternatives

Notwithstanding *Meunier*, the persistence of public adjusters, as evidenced by the situation described in *Louisiana Claims*, suggests that some alternative means of prohibiting or regulating this activity should be explored. This is particularly true when coupled with the consistent lack of criminal enforcement of La. R.S. 37:213. There is the potential for additional legislative or regulatory action, but many Louisiana State Bar Association members advocate the commencement of civil litigation which would place the question of regulatory responsibility directly before the courts.

### Regulation by the Commissioner of Insurance

Last year, the commissioner’s office sponsored the introduction of a bill that would have provided for the licensing of public adjusters. This would have effectively removed the aspects of the practice of law inherent in public adjusting from the authority of the Supreme Court and permitted licensed laymen to undertake certain aspects of the practice of law. Such legislation would presumably have been unconstitutional under *Meunier*. More importantly, the *de facto* authorization of public adjusting through statutory licensing would have resulted in standards applicable to non-lawyers being different from standards applicable to lawyers, even if the two were performing the same functions on behalf of a client. Perhaps for these reasons, opposition materialized, and the commissioner’s bill was withdrawn.

Nevertheless, because of the persistent influx of foreign public adjusters to the state in the wake of Hurricanes Katrina and Rita, the commissioner exercised emergency authority to promulgate a regulation<sup>12</sup> requiring the registration of public adjusters with his office. While the commissioner’s desire to identify and track out-of-state adjusters who stormed into Louisiana was commendable, the emergency regulation only lent weight to

the misperception that such activity is legal.

## Potential Legislation

Any attempt to amend La. R.S. 37:212 carries constitutional implications and jeopardizes 80 years of consistent interpretation by *Meunier*, *Duncan* and *Louisiana Claims*. Additional legislation in this area may unnecessarily “politicize” this issue and create an opportunity for lobbying by foreign interests. The broad definition of the practice of law serves an important prophylactic purpose, protects the public, and should not be impaired. It is the authors’ belief that wholesale legislative changes should not be considered until after exhausting all other efforts, *i.e.*, civil litigation under existing statutes and jurisprudence, or renewed criminal prosecution.

That said, many district attorneys, judges and others familiar with the penalty provisions of La. R.S. 37:213 favor tinkering with those provisions only. Among the ideas suggested are “staging” the offense by making a first offense a misdemeanor punishable by a fine and increasing penalties for second and third offenses to include more serious punishment. This would make a first offense much more likely to be prosecuted and would eliminate the present need for jury trial, which wastes scarce resources, until the offense level is sufficiently serious.

### Should Civil Action Be Considered?

Other professions have had significant success in protecting the public from unlicensed practitioners by becoming the protagonists in civil litigation. In particular, *State of Louisiana, through the Louisiana State Board of Examiners of Psychologists of the Department of Health and Human Services v. Atterberry*, 95 CA 0391, 664 So.2d 1216 (1 Cir. 1995), has been suggested as a guide for civil action against public adjusting.

In *Atterberry*, the defendant was a licensed professional counselor in

Houma, La., with a master's degree in clinical psychology, who was apparently not licensed as a psychologist by the Board of Examiners of Psychologists of the State of Louisiana. *Atterberry*, at 1218. He was administering several tests in the course of his counseling practice which he claimed were authorized in his counseling practice by La. R.S. 27:1101, *et seq.* The board claimed that the administration or interpretation of these tests was within the practice of psychology as defined in La. R.S. 37:2352(5). *Atterberry*, at 1221-23. The appellate opinion in *Atterberry* did not clearly enunciate which position was correct, but determined that the trial court had not abused its discretion in issuing the injunction preventing *Atterberry* from using the tests. *Atterberry*, at 1224.

In the authors' view, the *Atterberry* decision appears to be an attractive alternative to referring public adjusters for criminal prosecution. It should be noted, however, that the Board of Examiners for Psychologists is specifically authorized by statute to prosecute actions for injunction. There is no similar specific grant of authority for injunctive actions in the authorizing statutes and organizational documents of the Louisiana State Bar Association. Moreover, there is no criminal statute outlawing the actions sought to be enjoined by the psychologists. Thus, there are questions as to whether the bar association would have standing to pursue injunctive relief and whether the existence of the criminal statute would preclude the right to seek civil recourse.

Yet, those questions do not survive serious scrutiny. Standing questions the interest and authority, or the existence of a right of action in favor of the plaintiff, and was not directly addressed in *Atterberry*. The issue was raised as to whether injunctive relief could be granted in the absence of irreparable harm. The court found so, based on La. R.S. 37: 2361B:

The board may apply for an injunction in any court of competent jurisdiction to enjoin any person from committing any act which is in violation of this Chapter.

While there is no precisely comparable provision in the authorizing statutes or organizational documents of the Louisiana State Bar Association, Article III § 2 of the articles does provide that the association shall have all the rights, powers and privileges of a nonprofit corporation, especially referencing La. R.S. 12:201, *et seq.* La. R.S. 12:207 B(3) provides the power to "sue and be sued" in corporate name.

The *Atterberry* court also found irreparable harm because: "By allowing *Atterberry* to practice psychology, there is the potential for erroneous assessments, which could cause irreparable injury to those persons the State and the Board are trying to protect." *Atterberry*, at 1224. This logic was not supported by any cited authority but appears equally applicable to unauthorized practice of law. The case against a public adjuster, who is not licensed or regulated in any way, would seem to be stronger than the case of the Board of Psychologists against *Atterberry*, a licensed and regulated professional counselor. Like the Board of Examiners of Psychologists, parts of the Louisiana State Bar Association charge is to protect the public.

The existence of the criminal provisions does not appear to be a significant obstacle to civil litigation. While some federal court decisions have held that the unauthorized practice of law is not an actionable tort because of the existence of the criminal statutes (*see Hickman v. Douglas*, 1996 WL 626330 (E.D. La. 1996), and *Domingue v. Salomon Smith Barney*, No. 6:00CV2745, on the docket of the United States District Court for the Western District of Louisiana), these decisions turn on implied private rights of action under federal law, and not principles of state law (*e.g.*, murder is a crime and also a tort). If the proper context is considered, these decisions should be inapplicable to injunctive actions under state law, which traditionally apply to a broader range of activities.

Thus, civil litigation against a recidivist "public adjuster" would seem to be available and, we suggest, well-warranted under *Atterberry*.

## Conclusions

Our experiences during Hurricane Andrew have proven that unregulated public adjusting in Louisiana has allowed laymen from other states to perpetrate frauds and other injuries upon the general Louisiana public. The comprehensive, immediate and effective enforcement procedures of the Office of Disciplinary Counsel would have swiftly neutralized lawyers who had undertaken the same schemes, thereby protecting the public from greater injury. It is clear that the constitutional basis of the holdings in *Rosborough* and *Meunier* make it impossible for public adjusting to become a legitimate, legal activity within the state of Louisiana. Nevertheless, recent actions by the Legislature and the Commissioner of Insurance seem to have emboldened foreign public adjusters. We believe that enforcement of the existing criminal statutes, or the institution of civil injunctive action, is urgently necessary. Short of that, Louisiana practitioners should advise Louisiana clients that contracts with public adjusters are null, void, against public policy and unenforceable.<sup>13</sup>

## FOOTNOTES

1. Discussed at page 315 *infra*.

2. See the decisions discussed in *Louisiana Claims Adjustment Bureau, Inc. v. State Farm Ins. Co.*, *supra*.

3. See [www.napia.com](http://www.napia.com). Public adjusters should be distinguished from independent adjusting firms which only represent insurers.

4. This broad and general legislative definition of the practice of law includes public adjusting in light of the judicial decision excising the language that clearly excepted it, but the lack of any specific reference to public adjusting undermines the deterrent purpose a more explicit statute might serve. The existence of the definitional statute also obscures the inherent and exclusive judicial authority to define the practice of law.

5. This provision is carried over in the Constitution of 1974 as Article 5, § 5(B).

6. See *Bacmonila Apartments, Ltd. v. Travelers Indemnity, et al*, No. 94-CV-01092 of the United States District Court for the Western District of Louisiana.

7. The full text of R.S. 22:1476 is as follows:



A. As used in this Section, "public adjuster" means an individual, except a duly licensed attorney at law, who, for compensation, acts on behalf of an insured or aids the insured in any manner in negotiating for or effecting the settlement of a claim for loss or damage resulting from an accident or other occurrence covered under an insurance policy that insures against loss or damage to property, or any person who advertises or solicits for employment as an adjuster of such claims.

B. Any contract or arrangement between an insured and a public adjuster which provides for payment of a fee to the public adjuster which is contingent upon, and calculated as a percentage of, the amount of any claim or claims paid to, or on behalf of an insured by the insurer shall be against public policy and is null and void.

8. La R.S. 22:1476 could in this sense be read to authorize additional actions against public adjusting, for example pursuant to regulation by the Commissioner of Insurance, or in addition to or in the event of non-prosecution pursuant to La. R.S. 37:213.

9. See Meunier at 577-78 as discussed in this article.

10. It is implausible to suggest that the Legislature would attempt to legalize by mere

negative implication of a narrow collateral statute an activity which it had previously and unsuccessfully attempted to legalize by explicit exception in a broader, more directly applicable and pre-existing statute. See Act 202, discussed in this article.

11. Any more than a statute specifically condemning "murder for hire" would negatively imply the legality of murder. The negative implication can only return us to the general context. Reading the statute inversely, to positively approve everything it does not explicitly condemn, is also highly questionable, both logically and legally.

12. Emergency Rule 16, Title 37, Part XI, Chapter 27.

13. The Public Access and Consumer Protection Committee has no objection to damage estimates provided by persons who have the requisite training or education. Insureds and third parties have a right to obtain appropriate expert assistance in determining the scope of their damage or loss. However, public adjusters do not limit their activities to merely providing an estimate of damage. Public adjusters interpret policy provisions, advise claimants as to their rights under insurance policies, advise claimants on the additional steps in prosecuting their claims and provide other similar advice to claimants. Without question, these additional services constitute the unauthorized practice of law. The public, in employing public adjusters, then relies on legal advice given by a non-lawyer without the protection afforded by the ethics system established for attorneys in Louisiana.

## ABOUT THE AUTHORS

Steven G. "Buzz" Durio and Timothy A. Maragos currently serve as members of the Louisiana State Bar Association (LSBA) Board of Governors. Both are former members of the LSBA Public Access and Consumer Protection Committee, which is specifically charged with assisting the prosecution of unauthorized practice of law. Durio is a former chair of the committee, has appeared as a witness on behalf of the committee in actions involving unlicensed adjusters, and wrote the amicus



S. Durio



T. Maragos

brief by the bar in the Louisiana Claims case discussed in this article. He has appeared as a speaker on this subject before the Judicial College and the Association of District Attorneys. Maragos is currently chair of the LSBA Public Information Committee and also serves as a hearing committee chair of the Louisiana Attorney Disciplinary Board. (Durio, c/o Durio, McGoffin, Stagg & Ackermann, P.O. Box 51308, Lafayette, LA 70505-1308) (Maragos, c/o John E. Ortega & Associates, Ste. 100, 4023 Ambassador Caffery Parkway, Lafayette, LA 70503-5272)

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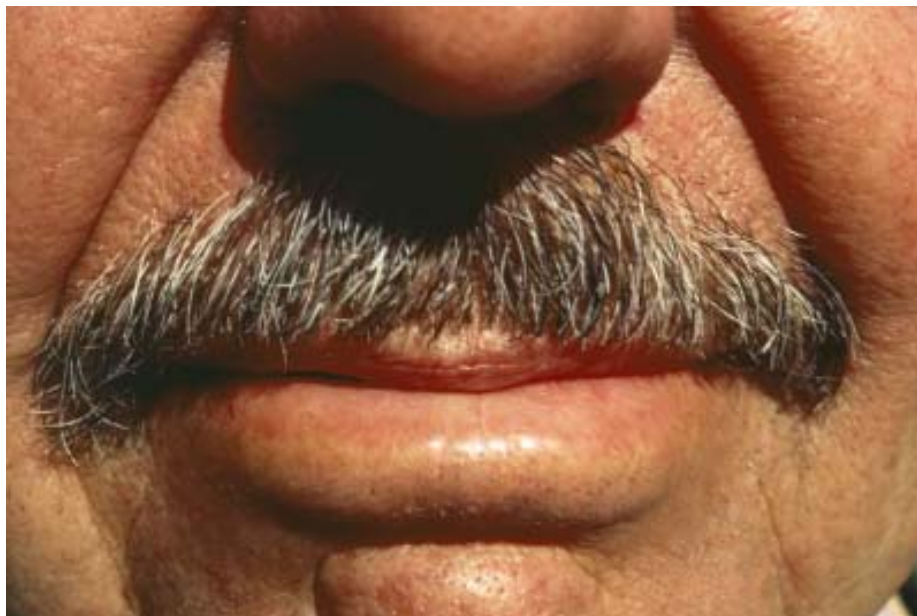


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# The Rise and Fall of the Spittoon in the Practice of Law

By Walter Carroll, Jr.

**W**hen did you last encounter a functioning spittoon? Certainly not recently — very possibly never — but in times past, spittoons, or cuspidors as they are sometimes called, were quite ordinary for the American public, and for lawyers in particular.

The spittoon's *raison d'être* was the tobacco-chewing habit of the American male, and of an occasional female as well, when snuff became less popular in the 19th century. It was plug tobacco that brought forth this device, as the discard of the chewed end products of a wad of tobacco is an absolute must. The spittoon was born to accommodate this need, and, at the same time, save the nation's floors and carpets.

The Oxford English Dictionary suggests the year 1840 as the earliest English language reference to this appliance. The spittoon is essentially an American in-

vention and some of the most colorful early references come from foreign observers who were introduced to the appliance during visits to this country. By the time of Charles Dickens's first American tour in 1843, the spittoon was a staple of the court system. Dickens gave this account of a Washington, D.C., court scene:

In the courts of law, the judge has his spittoon, the crier his, the witness his, and the prisoner his; while the jurymen and spectators are provided for, as so many men in the course of nature must desire to spit incessantly. . . . The thing itself is an exaggeration of nastiness, which can not be outdone.

Not only were spittoons everywhere, but their presence was generally required by law or ordinance in places of public accommodation. They were a fixture in every railroad depot, hotel lobby, saloon,

restaurant, library, passenger ship, bank lobby, public office and courtroom. Louisiana barbershop-licensing regulations required at least one in every barbershop. It does not appear that any law existed which affirmatively required the use of spittoons, but this result was accomplished by making spittoons available and at the same time outlawing spitting on the floor in any public place. These colorful provisions have mostly disappeared, though La. R.S. 40:1121 still incorporates a 1908 act which prohibits spitting "upon the floor or walls of any passenger car, street car, depot or waiting room, court house, church house, school house, or any other public building." A current City of New Orleans ordinance forbids spitting on streetcars and ferry boats.

Ceramics were sometimes used but most spittoons were made of polished brass and, over time, certain design variations evolved. For the waiting rooms of

railroad passenger depots, where users might be at some distance from the target, a design developed with an enlarged funnel-shaped upper part that offered an easier mark from a distance. While not required by law, every proper law office was fully equipped with models that were usually smaller, reflecting the greater level of refinement, care and skill expected in such locations.

So numerous were spittoons that they were a hazard of sorts. A longtime member of the New Orleans bar recalls that, as a very green lawyer, he was sent to the Civil District Court to obtain the court's approval of some purely perfunctory and routine order. After depositing the proposed order with the judge's clerk, he took his seat to wait being called. When he was called a short while later, so intent was he to reach the bench in his first court appearance that he tripped over one of the courtroom's several heavy brass spittoons, upsetting it and sending it spinning across the courtroom floor. In a modern carpeted courtroom, a collision with anything would be embarrassing enough, but the grand CDC courtroom had a marble floor so that the projectile spittoon created a resounding noise, commanding the immediate attention of everyone present, as it skidded across the marble floor and slammed into the marble wainscoting, all to the profound chagrin and embarrassment of the young lawyer.

Spittoons became less numerous with the reduced use of chewing tobacco, though in the South this change was slower to come about than in some other areas. Spittoons were removed from the United States Senate in the 1940s, though it is recently reported that two senators chew tobacco. The last justice to use a spittoon behind the U.S. Supreme Court bench was Justice Sherman Minton in 1956. His use of his spittoon is said to have always concerned the fastidious Justice Harold H. Burton sitting beside him.

In the 1950s, when a number of New Orleans's larger law offices were quartered in the Whitney Bank Building, the building's night janitorial crews regularly lined the building's Common Street sidewalk in the dark, very early morning

*In the 1950s, when a number of New Orleans's larger law offices were quartered in the Whitney Bank Building, the building's night janitorial crews regularly lined the building's Common Street sidewalk in the dark, very early morning hours with a long row of office spittoons to be emptied, cleaned and partially filled with water.*

hours with a long row of office spittoons to be emptied, cleaned and partially filled with water.

In 1963, the *New Orleans States-Item* reported that spittoons had largely disappeared and were difficult to find even in local antique shops. An antique dealer was quoted as saying, "These days you only get to see a brass spittoon on the late, late show. . . ." There were still some in the legal fraternity who continued their dependence. Often local lawyers, in taking the testimony of witnesses abroad, bring a court reporter with them to record

and transcribe testimony, as foreign court reporters are usually not accustomed to perform in the same manner as is expected here. In 1980, a considerable ruckus developed in the Grand Suite of the Hotel Norge in Bergen, Norway, when in order to continue with the testimony of witnesses, the tobacco-chewing court reporter from Louisiana first had to be accommodated by a wary hotel manager with a makeshift spittoon, a device unknown in those parts.

Today the spittoon, which earlier was in every courtroom and every proper law office, is gone — relegated to the Internet as an antique or a collectible for sale. By practitioners in general, and by our staff colleagues in particular, it will not be missed.

#### ABOUT THE AUTHOR

Walter Carroll, Jr., a 1950 graduate of Tulane Law School, is retired from the New Orleans firm of Terriberry, Carrol & Yancey, L.L.P., where he practiced admiralty law for 40 years. While practicing, he was a member of the Executive Committee of the U.S. Maritime Law Association and was president of the New Orleans Bar Association. (Ste. 606, 1750 St. Charles Ave., New Orleans, LA 70130-6719)



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## BOOK REVIEW

### *Courting Justice, From NY Yankees v. Major League Baseball to Bush v. Gore, 1997-2000*

by David Boies

Reviewed by E. Phelps Gay

***Courting Justice, From NY Yankees v. Major League Baseball to Bush v. Gore, 1997-2000* by David Boies, 496 pages, Miramax Books (2004), \$15.95 (paperback).**

David Boies, the “lawyer everyone wants,” according to the *New York Times*, has written an interesting and instructive book, now out in paperback, detailing several of his high-profile cases (and one pro bono case) from 1997-2000. The result shows us an outstanding trial lawyer at the top of his game.

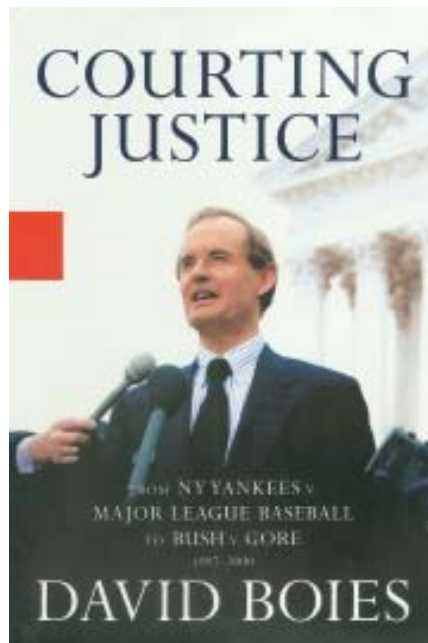
Like most trial lawyers, Boies is not without ego. Who else, with an apparently straight face, could write this sentence: “As I once explained to Steve Kroft on *60 Minutes*, everyone is entitled to a lawyer but not everyone is entitled to me.”? Also, like most trial lawyers, Boies approaches his work with a lively sense of humor. This is established early in the book when he recalls that a CBS executive, on learning that Boies would be defending the company against a libel suit brought by Gen. William Westmoreland, expressed concern that Boies was not a First Amendment expert. Boies quotes his wife Mary as immediately responding: “Don’t worry. It’s a short amendment.”

From 1997-2000, Boies pro-secuted the Microsoft antitrust case (having been chosen by the Justice Department partly because of his role in successfully defending IBM against government antitrust claims); represented the New York Yankees to protect a \$95 million licensing contract with Adidas against

Major League Baseball’s revenue-sharing rules; litigated and settled on behalf of plaintiffs an antitrust class action against the elite auction houses, Christie’s and Sotheby’s; tried to verdict an asbestos remediation claim by Manhattan building owner Sheldon Solow against W.R. Grace; filed a lawsuit on behalf of comedian Garry Shandling against his personal manager, Brad Grey, for taking excessive profits without ensuring that Shandling received independent advice; recovered several hundred million dollars on behalf of class members in a price-fixing claim against vitamins manufacturers; protected, on a *pro bono* basis, the rights of a young woman whose wealthy Guatemalan husband had kidnapped their children; and, of course, represented Democratic presidential candidate Al Gore in the contested Florida race in 2000, winning an order from the Florida Supreme Court for a full statewide recount, only to see it reversed by a 5-4 majority of the U.S. Supreme Court.

Without question, Boies is a busy lawyer. Fortunately for his readers, he also enjoys telling a good story.

For litigators, the Microsoft case offers an illustration of the perils of demonstrative evidence. It can be devastatingly effective, but when it goes south it can be just as ruinous. In an effort to prove that a program designed to turn off the Internet Explorer browser would only “degrade” its Windows operating system, Microsoft introduced into evidence a carefully crafted videotape. A top corporate executive with a doctoral degree in computer science explained it in detail to Judge Thomas Penfield Jackson. At the end of this presentation,



courtroom observers were impressed.

However, according to Boies, by the end of his cross- and recross-examinations, during which the tape was shown to have completely misrepresented what it purported to prove, Microsoft's defense was in shambles. Although it had eight witnesses left to call, Microsoft never recovered from the videotape debacle. Boies tells the story with relish, but also with respect for his colleagues on the other side. Like most good trial lawyers, he knows that the distance from hero to goat can be very short indeed.

Along the way, Boies offers insightful comments that seasoned trial lawyers will recognize and appreciate. For example, describing his approach to the Microsoft trial, Boies writes: "Probably the biggest mistake plaintiffs' lawyers make is complicating their case with unnecessary issues and evidence." The truth of this statement is underscored not only by his achievement of winning the trial, but also by the remarkable accomplishment of completing discovery and preparing for trial in less than a year. Far from getting lost in a wilderness of discovery, Boies narrowed the case down to six key themes. Keeping those in mind, he was able to see and reach his destination.

Another example is this primer on deposition strategy:

The goal of the examiner is to press and cajole witnesses into taking positions as absolute as possible in which they either give up more than they should or stake out a position that is ultimately not sustainable and ends up damaging their credibility . . . . The goals of witnesses are to provide balanced answers that give the examiner what he is entitled to (and will probably be able to prove in any event) while providing the qualifications and context that limit the usefulness of the concessions — and to avoid staking out positions in terms so stark or absolute that they cannot be sustained.

As Boies demonstrates in describing Bill Gates's disastrous deposition, those who do not adhere to these witness goals can pay a heavy price.

This reader particularly enjoyed the story of Amy Weil Habie, a young woman from Michigan who happened to marry José "Joey" Habie, heir to an agricultural and textile empire in Guatemala. In 1989, the couple had twins, Alexandra and Daniel, but later the marriage failed. Pursuant to a divorce settlement, the children were to live with Amy in the United States. What Amy didn't anticipate was that her husband would kidnap the children and take them to live with him and his new wife in Guatemala.

Boies tells a labyrinthine tale of charges and counter-charges, indictments against Amy in Guatemala, efforts to convince indecisive Florida judges to enforce the terms of the divorce settlement, requests by the U.S. State Department to extradite Amy to Guatemala (foiled, in part, by Boies's government contacts, including his "old friend" Warren Christopher, who crops up again in the *Bush v. Gore* chapter), Habie's use of fabricated documents to make bogus claims against his ex-wife, lawyers filing Bar complaints against each other, and certain ominous trips Boies took to Guatemala for the purpose of "reasoning" with Mr. Habie and his protectors. These events culminate in the trial of a lawsuit against Mr. Habie's mother in a Florida courtroom, which in turn leads to Habie's agreement to share

custody of the children.

The expense of such *pro bono* representation would prove staggering for most law firms. According to Boies, it was not insignificant for Cravath, Swaine & Moore, which by 1997 had incurred more than \$300,000 in unreimbursed expenses and more than \$3 million in lawyers' time. Even Boies admits that had he known what he was getting into, he might not have taken the case. But, "I had agreed to represent Amy and that was not a commitment I could walk away from merely because the going got tougher than I expected . . . ."

This chapter illustrates that our best lawyers accept their *pro bono* responsibilities and find a way to fulfill them together with their fee-generating commitments. It also confirms that *pro bono* service can be among the most rewarding experiences in the life of a lawyer.

Most litigation settles. Almost by definition, trials are more dramatic than settlements. But, in his chapter on the antitrust case against Christie's and Sotheby's, Boies demonstrates that settlement negotiations in high-stakes litigation can take on their own peculiar drama.

The first part of the story describes the competitive bidding process among high-powered law firms to become lead counsel for the class. Under rules set by the court, lead counsel could not recover any fees if the ultimate recovery was less than the bid. However, lead counsel

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would be entitled to 25 percent of any recovery in excess of the bid. Most firms submitted confidential bids in the \$75 million to \$150 million range. Taking no chances, Boies's firm bid \$405 million. On hearing this news, one of his colleagues observed: "David Boies must be on some kind of *pro bono* kamikaze mission. Count me out."

The second part of the story centers on the delicate settlement process, involving negotiations with each defendant and discussions of possible Mary Carter agreements and "most favored nation" clauses. The settlement finally reached, highly advantageous for the class (and Boies), was due in no small part, on the evidence presented here, to Boies's skillful exploitation of each side's anxiety about being left standing as the sole defendant at trial, in a case where the evidence was damning and where the plaintiffs' lawyer, defendants knew, was someone who would without hesitation take the case to trial. As Boies writes, "If litigation is like bridge, the settlement of litigation is like poker."

The book concludes with three chapters devoted to *Bush v. Gore*. It seems evident that author and publisher placed them at the end of the book to entice readers to read up to that point. But, for this reader, the earlier chapters covering less well-known litigation proved more interesting.

Not that Boies doesn't tell the story of the 2000 election contest in Florida with humor and immediacy. He does —

giving us a lively, firsthand account of hanging chads and overseas ballots, of trials by day and media interviews by night, of strategizing with Al Gore, Warren Christopher and campaign chair William Daley, of strategically rushing to lose before state district court Judge N. Sanders Sauls so that he could win before the Florida Supreme Court prior to the date the law required final certification of a winner. No doubt historians will find this chapter of permanent interest, regarding the rest of the book as the ephemera of one lawyer's work in a certain time and place; but, speaking only for myself, this material seemed too familiar to hold one's interest as compellingly as the previous chapters. In many respects, it was tantamount to reading a story which you have already seen unfold on television before a national audience.

Perhaps the most interesting part of the *Bush v. Gore* chapters comes at the end, when Boies expresses with considerable passion his views on what he perceives to be a terribly wrong U.S. Supreme Court decision. I will not reproduce here his catalog of criticisms aimed at the court, except to note that Boies believes it should not have taken the case at all and that the majority's equal protection argument ran counter to principles enunciated in prior cases.

Typically, however, Boies doesn't end on a sour note. One hallmark of a good trial lawyer may be not only a sense of humor, but its close relative, optimism.

Boies tells the story of a Russian reporter who, genuinely puzzled, asked him why the people of America were not marching in the streets, outraged because the Supreme Court, not the voters, had decided the outcome of the election. Boies cites "the faith that the American people have in the stability of our democracy" and the faith that people still repose in the Supreme Court. "The same court that gave us *Dred Scott*, *Plessy*, and *Korematsu* also gave us *Brown v. Bd. of Education*, *Miranda*, and *Roe v. Wade*. The Court's reputation, and our faith in it, will survive an occasional lapse."

Finally, it should be noted that the intended audience for this book is the general reader. Boies covers some complex legal ground — antitrust, constitutional and international law issues among them, but he does so in the context of telling good stories. In a brief chapter covering his early years, he describes his struggles with dyslexia. Amazingly, Boies did not read until the third grade, but this helped him become a champion debater because he learned to speak without notes.

Never taking himself too seriously, Boies conveys how much he has enjoyed practicing law and how satisfying a life one can lead as an advocate. He has given us an informative and engaging account of his adventures as a lawyer at the turn of the century. Trial lawyers in particular will find this book worthy of their attention.

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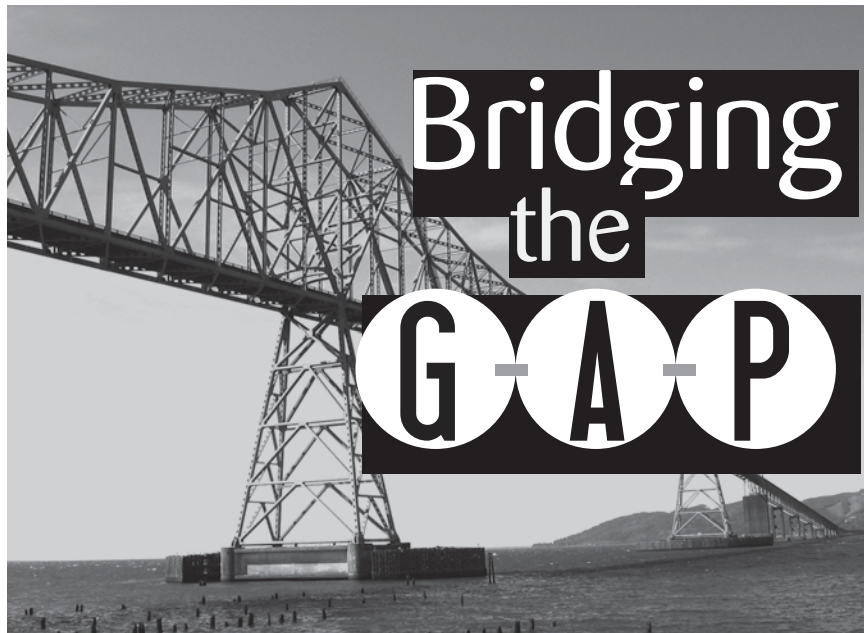
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## PUBLIC Ethics Advisory Opinions

These Public Opinions have been prepared by the Publications Subcommittee of the Louisiana State Bar Association's Rules of Professional Conduct Committee. The issues and topics covered within these opinions originate from actual requests for ethics advisory opinions submitted to the Ethics Advisory Service by lawyer members of the Association.

In selecting topics and issues for publication, the Publications Subcommittee has reviewed opinions referred to it by Ethics Counsel and/or panel members of the Ethics Advisory Service for purposes of determining whether the opinions submitted address issues of interest, importance and/or significance to the general bar and which are not highly fact-sensitive. The Publications Subcommittee has made every effort to promote and maintain confidentiality of the parties involved in the original requests.

Recommended format for citation of PUBLIC opinions: e.g., "LSBA-RPCC PUBLIC Opinion 05-RPCC-001 (04/04/2005)".

Questions, comments or suggestions regarding the opinions, the publication process or the Ethics Advisory Service may be directed to Richard P. Lemmler, Jr., Ethics Counsel, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130; direct dial (504)619-0144; fax (504)598-6753; e-mail: RLemmler@lsba.org.

## PUBLIC Opinion 05-RPCC-004<sup>1</sup>

### Safekeeping the Property of Clients and Third Parties

*A lawyer's obligation to safeguard funds or property runs not only to the client, but also to third parties whom the lawyer knows to have certain legally enforceable rights to the funds or property. Enforceable third-party rights which must be protected include judgments, liens or privileges, and written guarantees. The lawyer's obligation to third parties is separate and distinct from the obligation to the client and may not be disregarded at the request or direction of the client. In the case of a dispute over funds between a client and a third party making a legally enforceable claim, the lawyer may not unilaterally arbitrate the distribution but should consider seeking resolution by the court.*

Client loyalty is a basic tenet of the Louisiana Rules of Professional Conduct (2004), but so is the exercise of independent professional judgment. Thus, there are circumstances in which the rights of third parties trump the client's desires or directives. One such circumstance arises when third parties have claims against client funds. The lawyer must be very careful to assure that claims arising because of a judgment, a legally enforceable lien or privilege, or a written contract/guarantee are protected, even if the client would prefer to take possession of all of the money or property and pay the debt himself.

Usually this issue arises as the result of the payment of a settlement or a judg-

ment in a personal injury case. The payment is generally made in the name of both the lawyer and the client, and the funds are thus placed in the lawyer's trust account for subsequent distribution between the lawyer and the client in accord with the fee agreement. Often, however, medical or other types of bills related to services provided to the client by third parties have not been paid in full prior to the resolution of the case. The intent is generally that these third parties also should be paid out of the proceeds of the settlement or judgment, and most clients readily agree that the funds can be distributed in that fashion.

Occasionally, however, a client will balk at the proposed distribution to third parties and seek instead to receive all of the funds, less the lawyer's fees and expenses. The client may even indicate a desire/choice to pay outstanding third-party bills himself. The natural instinct of the lawyer is to do as directed by the client, on the premise that the funds belong to the client. However, the lawyer must take care to determine if indeed all of the funds actually belong to the client. If the lawyer has actual knowledge of a lien, a privilege, a judgment or a guarantee of payment, then the funds do not belong solely to the client. Instead, a third party also has an interest in the funds up to the amount of the lien, privilege, judgment or guarantee, and it is an interest that the lawyer must recognize and protect.<sup>2</sup>

Rule 1.15(d) of the Louisiana Rules of Professional Conduct (2004) requires that, upon receipt of funds or property in which a client and/or a third party has an interest, the lawyer shall promptly notify both the client and the third party. It also

requires that the lawyer promptly deliver to the client and to the third party that to which they are each entitled. Finally, it requires the lawyer, upon request by the client or third party, to promptly render to the client or third party a full accounting regarding such funds or property. If the client and third party cannot agree as to the disbursement, the lawyer must preserve *the amount in dispute* until a resolution can be found.<sup>3</sup> Nothing in this Rule prevents distribution of amounts not in dispute.<sup>4</sup> Thus, the client may still receive the amount that is not claimed by the third party and the lawyer may still receive a fee.

If the client and third party cannot agree on the distribution, the lawyer may not impose a resolution. In almost all cases, the lawyer will be precluded from

acting as an advocate for a particular disposition of the funds, since to do so usually will place the lawyer in a conflict with two parties to whom distinct obligations are owed, or in conflict with the lawyer's own obligations with respect to the matter. Under those circumstances, the lawyer should consider turning the issue and the funds in dispute over to the court for resolution.<sup>5</sup>

#### FOOTNOTES

1. The comments and opinions of the Committee — public or private — are not binding on any person or tribunal, including — but not limited to — the Office of Disciplinary Counsel and the Louisiana Attorney Disciplinary Board. Public opinions are those which the Committee has published — specifically designated thereon as “PUBLIC” — and may be cited. Private opinions are those that have not been published by the Committee — specifically designated

thereon as “NOT FOR PUBLICATION” — and are intended to be advice for the originally-inquiring lawyer only and are not intended to be made available for public use or for citation. Neither the LSBA, the members of the Committee or its Ethics Counsel assume any legal liability or responsibility for the advice and opinions expressed in this process.

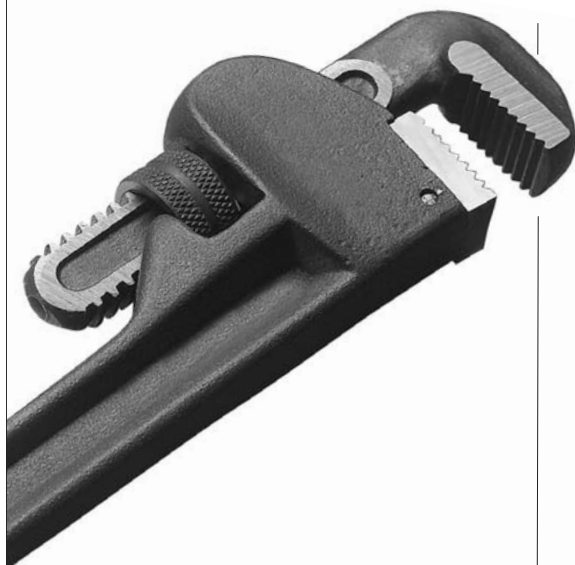
2. Rule 1.15(a) of the Louisiana Rules of Professional Conduct (2004) obligates the lawyer to “. . . hold property of clients or third persons that is in the lawyer's possession separate from the lawyer's own property . . . in a separate [trust] account maintained in a bank or similar institution . . . or elsewhere with the consent of the client or third person . . . .”

3. Rule 1.15(e) of the Louisiana Rules of Professional Conduct (2004).

4. In fact, Rule 1.15(e) states that “. . . The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute . . . .”

5. For example, the lawyer may file a concursus proceeding and deposit the funds in dispute into the registry of the court for safekeeping until the dispute has been resolved.

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# FOCUS ON Professionalism

By Bobby J. Delise

LSBA'S POST-HURRICANES' RESPONSE

*These are the times that try men's souls.  
The summer soldier and the sunshine  
patriot will, in this crisis, shrink from the  
service of their country; but he that  
stands it now, deserves the love and  
thanks of man and woman.*

In December 1776, when our fledgling nation was at its lowest ebb in its fight for independence, Thomas Paine sought to encourage his fellow citizens by penning the words above. In those waning days of the birth year of the United States, the ragtag Continental Army was in retreat from the confident British, more and more loyalists were pledging their allegiance to King George, and the only hope for our newborn republic and its promise of freedom lay in the hands of the fighting patriots and in the perseverance, talent and conviction of George Washington and our founding fathers, all inspired by the hopes and dreams of the "Spirit of '76." The citizens, leaders and Continental Army persisted in their fight for freedom and now, 229 year later, we reap the rewards of their sacrifice and valor.

The citizens of Louisiana find themselves in similar "trying" times in the wake of Hurricanes Katrina and Rita. Unlike many storms of the past, the fury and destruction of these storms did not pass on Aug. 29 and Sept. 24. For many of our citizens in Louisiana, and our friends and neighbors in Mississippi, Alabama and Texas, the departure of the storms will mark not the end but rather the beginning of years, and perhaps lifetimes, filled with challenges, disappointment and frustration.

Anyone who has visited the devastation in our state cannot walk away without a feeling of sadness and sympathy for our fellow citizens. Perhaps never in our state's history are so many citizens from all walks of life wracked with hopeless-

ness and despair as they try to dig their way out of the destruction, look for encouragement and support from our neighbors and government, and somehow find a way to rebuild their communities and lives.

These storms struck such a serious blow that it is not uncommon to hear a question which only months earlier would have tested our imagination: "Do you think New Orleans will ever make it again?"

Our brother and sister judges and attorneys, along with their families and staffs, have suffered and continue to suffer personal and commercial losses, forcing many to relocate their practices and families throughout our nation. During the immediate wake of the storms, it was estimated that nearly 40 percent of the membership of the Louisiana State Bar Association was displaced. Many relocated within Louisiana. Others found "refuge" in states as far away as Alaska and Maine. For some, the option to return to our state remains unfeasible. While the economic loss to our state is high, the cultural and personal loss to Louisiana should they not return is incalculable.

How our Louisiana legal community responds to this cataclysmic event on behalf of our fellow citizens, neighbors, clients and membership will forever define our generation in the post-Katrina era. Historically, the legal profession has always assumed a leadership role within every community, large or small, metropolitan or rural. As attorneys and judges, we customarily sit on civic, charitable, corporate and private boards and foundations. The legal profession is always at "ground zero" in every crisis, lending counsel, advice and wisdom that only comes from the discipline and training of our unique legal study, experience and expertise. Now, more than ever in our state's history, Louisiana's attorneys and

judges are invaluable in assisting Louisiana and her people to navigate the troubled waters left by Katrina and Rita.

Our Bar membership's initial response, not surprisingly, has been one of the many uplifting stories of the post-Katrina/Rita era. Countless acts of kindness, charity and thoughtfulness have been, and continue to be, displayed throughout the state. Examples of attorneys and judges providing fellow members with office space, staffing, communications, equipment, shelter and resources have been so widespread as to be the norm rather than the exception. Opposing attorneys assisting displaced lawyers with their drafting and filing of pleadings, endless exchanges of "professional courtesies" and simple acts of kindness provide relief and comfort for those struggling to continue to advocate for their clients while at the same time trying to lend support to their families and associates.

In addition to individual efforts of our members, the Louisiana State Bar Association's (LSBA) response to the particular needs of our members and their clients has been exemplary. Through the institution of such programs, to name just a few, as the Disaster Relief Task Force, the disaster training seminars for volunteer lawyers, the Legal Assistance Hotline, the LSBA/Louisiana Bar Foundation's Disaster Relief Fund and direct support assistance for displaced lawyers, our association has provided comfort and aid to the citizenry of Louisiana and to our membership.

Leading and guiding the efforts of our Bar has been our leader, Bar President Frank X. Neuner, Jr. In the days following Katrina's destruction of southeast Louisiana, Frank's leadership and guidance has been a reassuring and settling presence. Within hours of the storm's departure, Frank spearheaded the effort



to reopen the Bar Center in Lafayette, helped secure housing and office space for the Bar's staff and provided expertise and wisdom in liaison with the Louisiana Supreme Court to help in the restoration of the rule of law in Louisiana. In recognition of his contribution during the critical days after the storm, the LSBA's Professionalism and Quality of Life Committee has awarded Frank our association's first Professionalism Award. His contribution to the Bar and citizens of Louisiana will long be remembered and appreciated.

The response of our profession in the aftermath of Katrina and Rita should come as no surprise. Over the last several years, the LSBA, with the urging, encouragement and guidance of the Louisiana Supreme Court, along with the leadership of the federal and state benches, has emphasized and encouraged the practice of civility, courtesy, selflessness, patience and kindness within our profession. Though perhaps reluctant at first, our Bar membership has embraced and supported the "professionalism movement," the establishment of the one-hour, mandatory CLE professionalism requirement and strong emphasis on stressing the basic tenets of "professional" con-

duct. As a testament to this support, the leading member associations of our Bar have given formal support of the one-hour, mandatory CLE requirement, as have the chief judges of each of the three federal district courts of Louisiana. Additionally, the Louisiana Trial Lawyers Association, the Louisiana Association of Defense Counsel, the Louisiana Parish Attorney Association, the Louisiana Criminal Defense Counsel, our state's four law schools and the American Inns of Court have recently designated representatives for membership on LSBA's Professionalism and Quality of Life Committee.

Our committee, energized with the inclusion of the association and law school representatives, and sensitive to the surfacing needs of our membership "post-Katrina/Rita," promises to provide new programs and projects to help fulfill its mission of supporting professionalism and emphasizing a more fulfilling quality of life within our practice of law. In furtherance of this promise, the committee is in the process of planning a professionalism program for 3L students in the law schools as a follow-up to the nationally acclaimed Law School Professionalism Orientation program for first-year

students. Now, more than ever, professionalism and civility should be the foundation of our day-to-day interaction with the public, bench and fellow members of the bar.

The members of the post-World War II "baby boom" generation were often asked: "What did your parents do during the war?" Years from now, when New Orleans once again assumes its mantle as the "Crown Jewel of the South," our children and grandchildren will be asked: "What did your parents and grandparents do following the storms of 2005?" In response, I pray that they will respond that their parents' generation did not "shrink from the service" of Louisiana, but rather, as a legal community, they helped rebuild their beloved state, and they did so in an honorable and *professional* manner and for that they will forever "deserve the love and thanks" of those who followed.

*Bobby J. Delise is co-chair of the Louisiana State Bar Association's Professionalism and Quality of Life Committee. He is a partner in the Metairie firm of Delise, Amedee & Hall. He can be reached at (504)836-8000 or via e-mail at bdelise@dahlaw.com.*



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## Family Law

### Custody

**Peacock v. Peacock**, 39,950 (La. App. 2 Cir. 5/4/05), 903 So.2d 506.

Although Ms. Peacock's letter to Mr. Peacock advising him of her intent to relocate from Louisiana to Indiana did not comply with the notification provisions of the relocation statute, other than to provide him with actual notice, his failure to file any objection, or even to object to the move itself, precluded an appeal on that issue. Mr. Peacock's only filing was a motion to modify custody/visitation. The trial court properly found that there had been a material change in circumstances and did not err in establishing a new visitation arrangement. That

arrangement was in two stages, the first part of which allowed for alternating three-week, physical-custodial periods, and the second of which made Ms. Peacock the primary custodian and provided Mr. Peacock with liberal visitation. The trial court also appropriately fixed child support in two stages, making an adjustment upon the child's reaching the age of 5. Mr. Peacock was also appropriately cast for costs for Ms. Peacock's motion to dismiss his appeal since he did not timely pay the estimated costs of the appeal.

**Henry v. Henry**, 04-1249 (La. App. 5 Cir. 5/31/05), 904 So.2d 800.

The court of appeal affirmed the trial court's denial of Ms. Henry's request to relocate. Even though the court of appeal found that Mr. Henry's visitation needed to be supervised by his current wife, and that he would have to complete substance abuse and behavioral evaluations and treatment before seeking unsupervised

visitation, because a relocation would significantly impair and/or sever the child's relationship with her father, friends, stepmother, and step-siblings, the relocation was not in the child's best interest.

**Senousy v. Senousy**, 05-0198 (La. App. 3 Cir. 6/1/05), 905 So.2d 461.

The parties' initial considered decree provided that neither party could remove the children from the country without prior court approval. On Mr. Senousy's motion for leave to bring the children abroad, the trial court ruled that he could take the children abroad upon providing Ms. Senousy with a 30-day advance notice by certified mail of the times and dates of the departures. The court of appeal reversed, finding that since the judgment changed the requirement from obtaining court permission to simply providing notice, *Bergeron* had to be met, and Mr. Senousy, who did not appear at the hearing, provided no testimony as to

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why the prior arrangement was so deleterious that a change was justified.

**Cain v. Cain**, 39,903 (La. App. 2 Cir. 5/11/05), 903 So.2d 590, writ denied, 05-1517 (La. 6/15/05), 904 So.2d 679.

The trial court did not err in awarding sole custody to Ms. Cain as a result of Mr. Cain's mental health problems, communication difficulties with her, and safety issues regarding the children's visitation with him. Although evidence pre-dating a prior custody decree would be inadmissible, such evidence may be admissible for impeachment purposes as to truthfulness or accuracy of the parties' testimony. Mr. Cain was entitled to seek a revision to the plan of implementation upon completing an evaluation and therapy with a mental-health provider.

**Martin v. Martin**, 39,631 (La. App. 2 Cir. 5/18/05), 903 So.2d 619, writ denied, 05-1606 (La. 6/22/05), 904 So.2d 714.

The trial court's order that Ms. Martin was prohibited from filing further pleadings until she produced proof that she and her husband had undergone mental-health evaluations was affirmed, because of Ms. Martin's disobedience of the court's order that she submit to the examination

before filing additional custody proceedings, the state's interest in protecting her children from further sexual abuse, and to prevent her from improper use of the court system.

### Child Support

**State v. L.T., Jr.**, 04-1455 (La. App. 5 Cir. 5/31/05), 903 So.2d 657.

The court of appeal, with one judge dissenting, found that Mr. Taylor's basic allowance for subsidies and basic allowance for housing that were paid to him as part of his naval service, but were non-taxable, were not income for child support purposes, by analogy to La. R.S. 9:315C(4)(d)(ii) regarding non-taxable per diem allowances.

### Spousal Support

**Pucheu v. Pucheu**, 04-1372 (La. App. 3 Cir. 5/25/05), 904 So.2d 69.

The issue in this fault case was whether Ms. Pucheu's pre-existing mental illness was sufficiently proven so as to excuse her fault in the dissolution of the marriage. The trial court found that she was at fault, but that her mental illness excused her fault, thereby entitling her to

final spousal support. The court of appeal reversed, finding that she had failed to show by a preponderance of the evidence that the mental illness was the cause of all of her behaviors constituting fault. She failed to present medical evidence, including that of her treating psychiatrist, that her behavior was caused by her specific mental condition even during periods of remission.

### Property

**McGee v. McGee**, 04-0288 (La. App. 1 Cir. 3/24/05), 905 So.2d 300.

The McGees jointly obtained a loan during their marriage, secured by a mortgage on Mr. McGee's separate immovable property, and used the funds to build a home on his property. The trial court found the land, home and loan to be Mr. McGee's separate property, and awarded Ms. McGee reimbursement for one-half of the community funds paid toward the principal of the loan. On Mr. McGee's appeal, the court of appeal reversed, finding that the debt was a community debt, since incurred during the marriage for the common interest of the spouses in constructing a home in which they resided during the marriage. He was obli-

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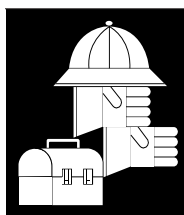


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gated to reimburse her for one-half of those community funds used to construct the home, which was his separate property since on his separate immovable property. Further, she owed one-half of the remaining balance of the community loan.

— **David M. Prados**

Member, LSBA Family Law Section  
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## Labor and Employment Law

### Union's Protest on Hotel's Sidewalk Deemed Protected Activity

In *Venetian Casino Resort, LLC*, 345 NLRB No. 82 (2005), the board upheld an administrative law judge's decision, finding that a hotel violated Section 8(a)(1) when it interfered with a union's demonstration. Determined to gain the public's attention after an unsuccessful attempt to negotiate a neutrality agreement with the hotel, the union "decided

to take its labor dispute directly to prospective employees and to the general public" on March 1, 1999. The union held a 1,000-person demonstration on the sidewalk in front of the partially constructed Venetian Hotel in Las Vegas. The hotel's security guards summoned the local police and requested that citations be issued and that the union be excluded from the hotel's sidewalk. The security guards also placed the union's business agent under citizen's arrest.

After the union's demonstration, the hotel sought declaratory relief in the United States District Court for Nevada against the union and government officials, claiming the conduct of the demonstration had the effect of converting the hotel's private property (*i.e.*, the sidewalk) into a public forum and amounted to a taking of property in violation of the due process clause, and further seeking a preliminary injunction barring government officials from authorizing demonstrations on its property and requiring enforcement of private property rights. The issue in *Venetian Casino Resort v. Local Joint Executive Board*, 45 F.Supp.2d 1027, 1029 (D. Nev. 1999), as phrased by the district court, was:

to consider whether a pedestrian walkway, located on private property parallel and adjacent to the Las Vegas Strip and connected at both ends to public sidewalks, is a forum for First Amendment purposes.

The court denied the hotel's requests and held that the sidewalk, although located on private property, serves the needs of the general public and is a public forum. The hotel does not have the right to exclude individuals from the sidewalk based upon permissible exercises of the public's right to expression under the First Amendment.

The board held that "because the sidewalk was a public forum and the union demonstrators were involved in protected activity, the [hotel's] actions in response violated Section 8(a)(1) of the Act." The board yielded to the district court's finding that the sidewalk located on private property could be considered a public forum for First Amendment activities. The demonstration was an effort to convey the union's message that the hotel should be operated under a union contract and a campaign to future employees of the hotel to become union members. The hotel's obstruction of the union's Section 7-protected message violated Section 8(a)(1) of the Act.

### "Weekend Supervisor" Duties Can Cause Supervisor Status

In *Wilshire at Lakewood*, 345 NLRB No. 80 (2005), the board, in the wake of an appeal filed with the U.S. Court of Appeals for the 8th Circuit by Wilshire, reconsidered this matter *sua sponte* and reversed its earlier decision that had held that Registered Nurse Lisa Jochims was not a supervisor under Section 2(11) of the National Labor Relations Act. In its previously issued one-paragraph decision, the board found that Jochims exercised no independent judgment to responsibly direct employees. In its latest determination, the board held that Jochims possessed supervisory authority apart from the issue of her judgment to responsibly direct employees — determining that it did not have to review the matter based on whether she exercised independent judgment related to directing employees as other factors suggested that Jochims was a supervisor under Section 2(11).

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The board considered several factors in determining R.N. Jochims's status as a supervisor. A significant factor was that she was the facility's "weekend supervisor" and the highest-ranking and highest-paid person on the weekend staff. In addition to her responsibilities for patient care and interaction with patients' families, she also attended managerial meetings and was responsible for proper employee staffing, time and attendance, checking that employees performed their tasks correctly, correcting employees if they did something wrong and completing an employee evaluation.


















Further, the board looked to the factor that Jochims was permitted to document an employee's gross infraction of residential care on a disciplinary form. Specifically, the board found that this action began the disciplinary process rather than being a mere reporting mechanism like

any other employee could engage in by reporting an infraction to his or her supervisor. The board found that this form of write-ups was a showing of independent judgment that played a substantial role in the decision to discipline an employee and was indicative of supervisory authority. Also, Jochims's record showed that she had sent two employees home for workplace violations and had allowed two employees to leave before the end of a shift to attend to family emergencies. These decisions were made without Jochims contacting a supervisor.

In determining supervisory status, without basing it on the employee's independent judgment to responsibly direct employees, the board recognized that Section 2(11) supervisory status does not just come with exercising these enumerated powers in an affirmative way, but also choosing not to exercise these pow-

ers. It stated, "Reasonably read, Section 2(11) deals with the authority to decide whether to take the actions listed therein." The board found that Jochims's exercise of independent judgment in issuing disciplinary write-ups, in sending employees home early and in preparing an employee evaluation, coupled with secondary indicia, caused her to be a supervisor under the Act.

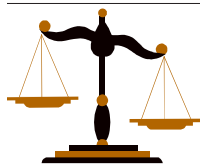
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#### Act No. 63, Amending and Reenacting R.S. 44:4.1(B)(5) and Enacting R.S. 13:3715.4 and 3715.5

Section 3715.4 protects from any kind of discovery, and prevents from being admitted into evidence in any civil action, any information "created, generated, or complied" by a medical-professional-liability-insurance company, a healthcare-provider-professional-and-public-liability trust created pursuant to La. R.S. 22:5, the Office of Risk Management, or the PCF. However, any factual information that is otherwise discov-

erable from a healthcare provider or otherwise admissible in evidence "shall not be deemed confidential because it has been reviewed or used for purposes of risk management or loss prevention" by a medical professional liability insurer, a public trust, the Office of Risk Management or the PCF.

Section 3715.5 is commonly referred to as the "I'm sorry" statute. It provides that any oral or written statement, gesture, or conduct by a healthcare provider "expressing or conveying apology, regret, grief, sympathy, commiseration, condolence, compassion, or a general sense of benevolence made to a patient, a relative of the patient, or an agent or representative of the patient" shall not constitute an admission or a statement against interest and shall not be admissible "to establish liability, or for any other purpose, including impeachment," in panel proceedings, arbitration pro-

ceedings, or civil actions. However, a statement of fault that is part of, or in addition to, any such communication, is not made inadmissible pursuant to this statute.

#### Act No. 127, Amending and Reenacting R.S. 40:1299.39.1(A)(1)(e), (2)(a), (3)(a) and/or R.S. 40:1299.47(A)(1)(e), (2)(a), (3)(a) and (c), and enacting R.S. 40:1299.39.1(A)(5) and 1299.47(A)(5), and repealing R.S. 40:1299.47(K)

All references to "60" day deadlines were changed to "90" day deadlines.

Confirmation to the claimant that the filing of a medical-review panel complaint has been officially received, and whether the named defendant or defendants are qualified, now must be made by "certified mail, return receipt requested." However, if the certified mail is not claimed or is returned undeliverable, the State or the PCF shall provide notification by regular first-class mail.


The requirement that the medical-review panel must render its opinion within 180 days after the selection of the last panel member was deleted.

— **Robert J. David**

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### LOCAL AFFILIATES

#### Lafayette Young Lawyers Association Holds Installation Ceremony

The Lafayette Young Lawyers Association recently held its annual installation ceremony. More than 17 young lawyers were installed as officers and chairs for the upcoming year.



Attending the Lafayette Young Lawyers Association installation ceremony were, from left, Judge Thomas R. Duplantier; Yasmin Welch; Joseph R. Oelkers III, Lafayette Parish Bar Association president; Timothy A. Maragos; and Judge John D. Trahan, chief judge of the 15th Judicial District Court.



Tiffany Thornton, new Lafayette Young Lawyers Association president, is congratulated by the members of her firm, Durio, McGoffin, Stagg & Ackermann, from left, Bill Stagg, Jim Shelton, Shawn Carter, Mike Vallen, Gary McGoffin and Jill Wade.

New Orleans Bar Association (NOBA) Young Lawyers Section Treasurer Larry Demmons, second from right, converses with those attending the recent "Welcome Home New Orleans" social.



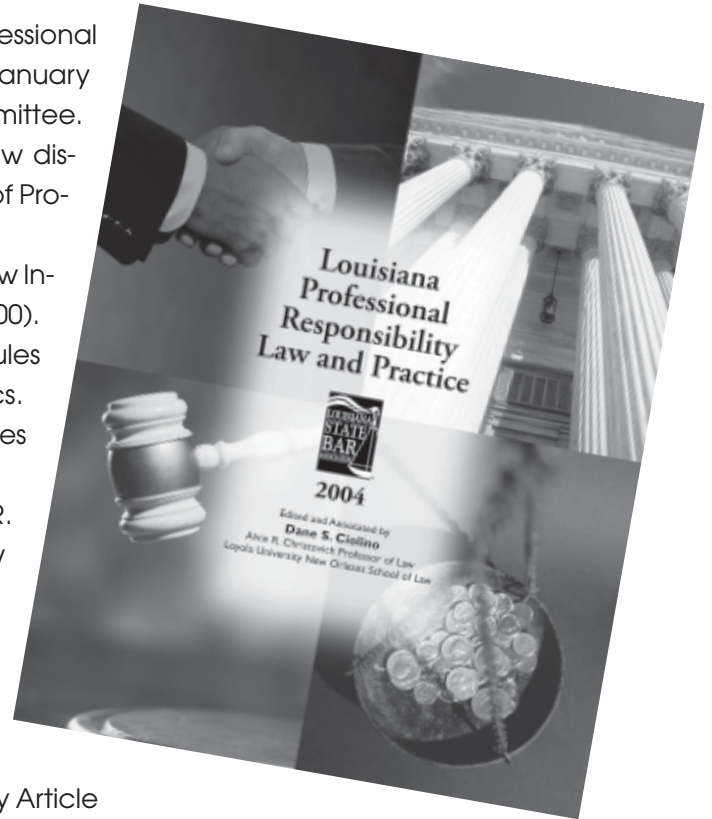


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# PEOPLE

## LAWYERS ON THE MOVE

Janet S. Boles of The Boles Law Firm has moved to Ste. A, 7914 Wrenwood Blvd., Baton Rouge, LA 70809; phone (225)924-2686.

Briney & Foret announces that Brandon O. Wallace has become associated with the firm.

Kean Miller Hawthorne D'Armond McCowan & Jarman, L.L.P., announces that **Anthony G. Boone**, **Richard D. McConnell, Jr.**, **Katie L. Deranger** and **T. Shane Sandefer** have joined the firm in the Baton Rouge office.

Runako T. Kumbula was appointed as an assistant attorney general for the District

of Columbia's Attorney General's Office. She is a prosecutor in the Criminal Section of the Public Safety Division.

McGlinchey Stafford announces that seven new associates have joined the firm: Jason M. Bigelow, Thomas L. Watson II and Lauren E. Campisi in the New Orleans office; Dawn M. Rawls, Eboni M. Townsend and Lexi J. Trahan in the Baton Rouge office; and Leah D. Sumrall in the Monroe office.

Cory P. Roy announces the opening of his law office, located at 118 East Mark St., P.O. Box 544, Marksville, LA 71351.

Sher Garner Cahill Richter Klein & Hilbert, L.L.C., announces that Ellen M. Pivach and Jeffrey D. Kessler have joined the firm as associates.

Shows, Cali & Berthelot, L.L.P., announces that the firm's name has been changed to Shows, Cali, Berthelot & Morris, L.L.P. Also, in addition to practicing with the firm, partner **E. Wade Shows** is currently serving as parish attorney for East Baton Rouge Parish.

Simoneaux Carleton Dunlap & Olinde, L.L.C., welcomes **John B. Dunlap III** back to the firm, following his year of Louisiana National Guard service in Baghdad.

Stone Pigman Walther Wittmann, L.L.C., announces three new associates have joined the firm: **John Mark Fezio**, **Justin P. Lemaire** and **Heather S. Lonian**.

Tillman & Willett, L.L.C., announces that Kristie E. Luke has joined the firm as an associate in the Alexandria office.



Anthony G. Boone



John W.  
deGravelles



Katie L. Deranger



John B. Dunlap III



John Mark Fezio



Justin P. Lemaire



Heather S. Lonian



Richard D.  
McConnell, Jr.



Paul G. Pastorek



T. Shane Sandefer



E. Wade Shows

## NEWSMAKERS

Kenneth J. deBlanc, retired clerk of the 3rd Circuit Court of Appeal, received the J.O. Sentell Award at the 2005 National Conference of Appellate Court Clerks. He served as clerk from Jan. 1, 1966 through June 30, 2004.

**John W. deGravelles**, a partner in the Baton Rouge firm of deGravelles, Palmintier, Holthaus & Fruge, has been selected as a Fellow in the International Academy of Trial Lawyers.

Edward T. Hayes, a partner with Saporito Law Firm in New Orleans, attended the World Trade Organization's sixth Ministerial Conference in Hong Kong, China, from Dec. 13-18.

**Paul G. Pastorek** with Adams and Reese has been named by Gov. Kathleen B. Blanco as general counsel for the Louisiana Disaster Recovery Foundation.

Frank P. Simoneaux of Simoneaux Carleton Dunlap & Olinde, L.L.C., has been named to the National Advisory Council of the American Judicature Society.

## RETURNING FIRMS

Several firms have returned to their New Orleans offices:

- ▶ Adams and Reese on Nov. 7;
- ▶ Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., on Oct. 24;
- ▶ Kean Miller Hawthorne D'Armond McCowan & Jarman, L.L.P.;
- ▶ Liskow & Lewis, A.P.L.C., on Nov. 7;
- ▶ Phelps Dunbar on Oct. 17.

Returning to its Metairie office:

- ▶ Garvey, Smith, Nehrbass & North, L.L.C.

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## People Deadlines & Notes

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

Publication	Deadline
April/May 2006 .....	Feb. 3, 2006
June/July 2006 .....	April 4, 2006
Aug./Sept. 2006 .....	June 2, 2006

Announcements are published free of charge to members of the Louisiana State Bar Association. *Only the names of Louisiana State Bar Association members are published.*

LSBA members may publish photos with their announcements at a cost of **\$50 per photo**. Firms submitting multiple photos for publication must remit \$50 for each photo.

Payment for photos must be submitted when the announcement is submitted (adhering to the submission deadlines above). All photos must be paid for prior to publication.

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

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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 Oct. 1, 2005.

Respondent	Disposition	Date Filed	Docket No.
Rebel Garnett Ryland	Transferred to disability inactive status.	7/28/05	05-1922 K
Joseph R. Casanova	Reinstated.	8/17/05	03-916N

### REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Oct. 3, 2005.

#### Decisions

**Michael Chris Aguiard**, New Iberia, (2005-B-2237) **Interim suspension** ordered by the court on Sept. 19, 2005. JUDGMENT FINAL and EFFECTIVE on Sept. 19, 2005.

**Alan J. Green**, Gretna, (2005-B-2215) **Interim suspension** ordered by the court on Aug. 25, 2005. JUDGMENT FINAL and EFFECTIVE on Aug. 25, 2005.

**Inez F. Kerth**, Waggaman, (2005-OB-2133) **Transferred to disability inactive status**, ordered by the court on Aug. 18, 2005. JUDGMENT FINAL and EFFECTIVE on Aug. 18, 2005.

**Michael F. Melton**, New Orleans, (2005-OB-0409) **Permanent disbarment** ordered by the court on June 17, 2005. JUDGMENT FINAL and EFFECTIVE on July 1, 2005. *Gist*: Engaging in the unauthorized practice

of law; failure to cooperate with the Office of Disciplinary Counsel in its investigation; and engaging in conduct prejudicial to the administration of justice.

**Alvin L. Weddle, Jr.**, New Orleans, (2005-B-1996) **Interim suspension** ordered by the court on Aug. 2, 2005. JUDGMENT FINAL and EFFECTIVE on Aug. 2, 2005.

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

#### No. of Violations

Lack of diligence in the representation of a client .....	1
Making false and misleading statements to a tribunal .....	1
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For the April issue of the Journal, all classified notices must be received with payment by Feb. 17, 2006. Check and ad copy should be sent to:

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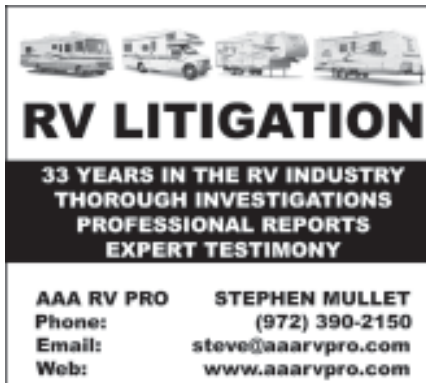
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**General counsel position,** Franciscan Missionaries of Our Lady Health System. The Franciscan Missionaries of Our Lady have served as sponsors of Catholic health care in Louisiana since 1911. The Franciscan Missionaries of Our Lady Health System was organized in 1984 as a holding company to provide strategic guidance and oversight to our sponsored organizations. These include Our Lady of the Lake Regional Medical Center, Baton Rouge; Our Lady of Lourdes Regional Medical Center, Lafayette; St. Francis Medical Center, Monroe; St. Elizabeth Hospital, Gonzales; as well as Calais Health, a corporate health subsidiary, and Louise Insurance Company, an offshore captive insurer. Position Summary: Reporting to the president/chief executive officer, and serving as a key member of the executive leadership team, the general counsel will provide executive leadership, direction, guidance and assistance on legal and strategic matters related to FMOLHS ([www.fmolhs.org](http://www.fmolhs.org)) and its subsidiaries in a manner which is consistent with FMOLHS and the Franciscan Missionaries of Our Lady's mission, vision and values. Key to the success of this position will be the ability to develop the processes and the infrastructure to oversee and ensure the delivery of high-quality and most cost-effective

legal services to all entities within the System, whether by in-house or retained counsel. Primary responsibilities will include: implementing processes to ensure System and entity compliance with legal and regulatory requirements; overseeing the System's corporate structure and interrelationships among components; advising the board and management on legal matters relevant to their undertaking; relating legal issues to applicable canon law requirements and to corporate mission and values; educating management and the board on changes in the law. The general counsel will, likewise, provide advice and direction with respect to FMOLHS ongoing efforts to form partnerships and networks with those who share a common strategic vision and compatible values. Interested individuals should contact Ms. Pam Shows, Vice President, Human Resources, at (225)922-7457 or [Pshows@fmolhs.org](mailto:Pshows@fmolhs.org).

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

**Legal research/writing.** Top of spring 1967 class, LSU; LL.M., Yale, 1968. Writings include briefs, memoranda and pleadings at courts of all levels, plus law review articles. Experience includes both general civil practice and major litigation. Statewide e-mail service. References upon request. William T. Tête, (504)891-6064.

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## UPDATE

### Kean Miller Donates Dictionaries to Area Students

More than 9,000 third-grade students in East Baton Rouge, West Baton Rouge and Iberville parishes received personal dictionaries on Dec. 8 as part of a regional education support project sponsored by the law firm Kean Miller Hawthorne D'Armond McCowan & Jarman, L.L.P.

In January, Kean Miller will deliver dictionaries to more than 2,000 students in Calcasieu Parish.

This year marks the fourth that the Kean Miller staff has purchased dictionaries through "The Dictionary Project," a grassroots organization in South Carolina for third-grade classrooms.

"It is especially important that we support our local schools this year in light of Hurricane Katrina. The East Baton Rouge Parish school system alone added more than 5,000 students to its rolls," said Steve Boutwell, a spokesperson for the firm.

The Baton Rouge-based law firm has delivered more than 25,000 dictionaries in the past three years and, in September, donated 2,000 high-school-level dictionaries to displaced students from New Orleans.

The Louisiana Resource Center for Educators assisted Kean Miller in purchasing, organizing and bagging the books for distribution to students. The firm also provided a free workshop for teachers and principals focusing on tips and techniques for using the dictionaries in everyday lesson plans.

"Many of these children have access to a dictionary in the classroom, but we wanted to give them this gift to keep and take home," said Gary A. Bezet, managing partner of the firm.

### "Belly Up with the Bar"



The Baton Rouge Bar Association's "Belly Up with the Bar" event was Oct. 14. Southern University Law Center students, from left, Courtney Joiner, Brandon Brown, Ken Bernhardt, Jonas Weatherbie and Philip McQueen, were the Second Year Blues Brothers and took home the People's Choice Award in the food category and the First Place Best Law School Award for their bacon-wrapped shrimp. The event is a fund-raiser for Baton Rouge Bar Foundation Youth Education programs. Donna Buuck is the staff coordinator. This is the seventh year of the event.



The Louisiana Bar Foundation (LBF) sponsored a booth with a Mexican theme at the Baton Rouge Bar Association's "Belly Up with the Bar" event. LBF staff members Wendy Cooper, Laura Sewell and Dennette Young and LBF board member Suzanne Jones served chips and salsa and strawberry margaritas and provided rub-off tattoos for children.



## LOCAL & SPECIALTY BARS

### Lafayette Parish Bar Association



Tyron Picard, president of the Greater Lafayette Chamber of Commerce, with Cindy and Kenny L. Oliver, incoming Lafayette Parish Bar Association president.



Frank X. Neuner, Jr., Louisiana State Bar Association president and Lafayette Outreach for Civil Justice campaign founder; Susan Holliday, Lafayette Parish Bar Association executive director; and Joseph R. Oelkers III, 2004-05 Lafayette Parish Bar Association president, accepted the American Bar Association's Harrison Tweed Award for their outstanding efforts to provide pro bono legal services in Lafayette Parish.



Joseph R. Oelkers III, 2004-05 Lafayette Parish Bar Association president, presented board members with a special gift, from left, Valerie Garret, Sachida Raman, Richard Mere and Lafayette Parish Bar Association Executive Director Susan Holliday.



Joseph C. Giglio, Jr. with the Lafayette Parish Bar Foundation presented John E. McElligott, Jr. and Glenn Armentor with special awards for their dedication as Lafayette Outreach for Civil Justice campaign chairs.



Joseph R. Oelkers III, 2004-05 Lafayette Parish Bar Association president, presented the Lafayette Parish Bar Association Chair Awards to, from left, Rebekah Huggins, Community Service; Richard Mere, Lafayette Volunteer Lawyers; Charles Ziegler, Bench Bar; John Grant, editor of the *Promulgator*; and Miles Matt, Taskforce Committee.



Attending the annual court opening reception at St. John's Cathedral in Lafayette were, from left, Judge John D. Trahan, 15th Judicial District Court; Kenny L. Oliver, incoming Lafayette Parish Bar Association president; Joseph R. Oelkers III, Lafayette Parish Bar Association president; Susan Holliday, Lafayette Parish Bar Association executive director; Frank X. Neuner, Jr., Louisiana State Bar Association president; Lamont Domingue; and Richard Mere.

## Shreveport Bar Honors Deceased Members and New Attorneys

Eight deceased Shreveport attorneys were honored during the Shreveport Bar Association's (SBA) annual Memorial and Recognition Ceremony Oct. 21 in Courtroom G of the Caddo Parish Courthouse. Also, Louisiana Supreme Court Justice Jeffrey P. Victory swore in 16 new attorneys.

Hon. Charles R. Scott, chief judge of the 1st Judicial District Court, presided over the ceremony and SBA Memorial and Recognition Chair Larry Pettiette served as master of ceremonies and delivered the general eulogy. Deceased members being honored and their eulogy presenters were: Algie D. Brown, eulogy presented by Michael S. Hubley; Larry S. Butler, eulogy presented by Susan D. Scott; Paul Wilkinson Cary, eulogy presented by Charles W. Strickland; Rollin W. Cole, Jr., eulogy presented by J. Brooks Greer III; Carl L. Ekendahl, eulogy presented by Danyne W. Malone; Edward Craig Hickman, eulogy presented by Kenneth L. Hickman; Thomas B. Wilson, Sr., eulogy presented by Joseph R. Gilsoul; and Walter J. Woodman, eulogy presented by George H. Mills, Jr.

Following the memorial presentations, Chris Johnson, president of the SBA Young Lawyers Section, introduced the following new attorneys: Emily Gregorio Chafin, Scott J. Chafin, Misty M. Futrell, Dana Graham, Amber Huffman, Michael Leachman, Lisa D. Lobrano, Samantha McAllister, Joel A. Rice, Robin Samson McCoy, Melissa A. Scott, Matthew R. Smitherman, Lauren Sproehnle, Adrienne Danielle White, Rendi Beth Wiggins and Brad E. Wilkerson.

A reception was held in Courtroom B immediately following the ceremony.

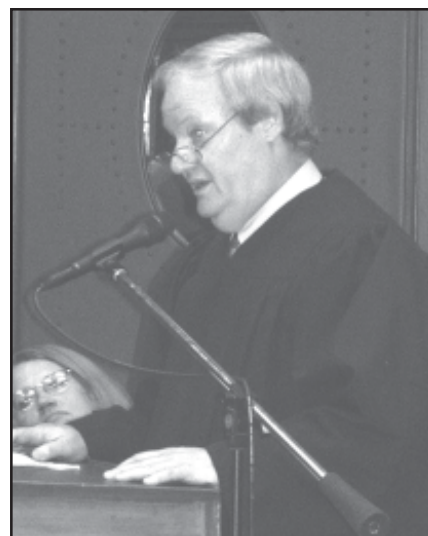
Earlier in the day, the new attorneys attended a seminar and luncheon held at the Petroleum Club. Speakers included Chris Johnson, SBA Young Lawyers Section president; John Frazier, SBA president-elect; Mike Spence, 1st



**Hon. Charles R. Scott, chief judge of the 1st Judicial District Court, opens court at the start of the Shreveport Bar Association's annual Memorial and Recognition Ceremony Oct. 21.**



**Shreveport Bar Association Young Lawyers Section President Chris Johnson served as moderator of the New Attorney Seminar.**



**Louisiana Supreme Court Justice Jeffrey P. Victory administers the oath to new Shreveport area attorneys.**



**Shreveport Bar Association Memorial and Recognition Ceremony Chair Larry Pettiette delivered the general eulogy.**



Judicial District Court administrative assistant; 1st Judicial District Court Judge Scott J. Crichton; 2nd Circuit Court of Appeal Judge Charles B. Peatross; and United States Magistrate Judge Mark L. Hornsby.

## Shreveport Bar Foundation Supports Community Programs in a Big Way

Shreveport Bar Foundation (SBF) President Roy S. Payne recently presented contributions to two community organizations in need of financial assistance.

A check for \$5,000 was presented to Jeanette Mladenka, representing Community Support Programs. The donation was used to help sponsor a large fund-raising event, with the proceeds going to benefit the many programs and projects in the Shreveport-Bossier community.

Payne also presented a check in the amount of \$2,500 to Alyssa Roberts Politz, director of the Shreveport office of Prevent Child Abuse Louisiana for its Best Dads Program.

Earlier in the year, the SBF (the charitable arm of the Shreveport Bar Association) donated funds to sponsor the Volunteers for Youth Justice "Champion for Children" fund-raising dinner and badminton tournament. The two VYJ events

raised \$35,800 to help fund the many annual youth-related projects.

Over the past two years, the SBF has donated more than \$58,500 \$31,500 to

various community-related projects and an additional \$27,000 to various agencies assisting with the Hurricane Katrina disaster relief efforts.



Shreveport Bar Foundation President Roy S. Payne, from left, with Alyssa Roberts Politz, director of Prevent Child Abuse Louisiana, and Shreveport Bar Association President Tommy J. Johnson. The foundation contributed \$2,500 to the organization's Best Dads Program.

## Have a Hurricane-Related Case "Success" Story?

Did you have a successful outcome for a case generated from the Legal Assistance Call Center, a shelter or a disaster recovery center? Let us know about it. Stories are being compiled for in-house publications and possibly for external media efforts.

Send submissions to [dlabranche@lsba.org](mailto:dlabranche@lsba.org).



Shreveport Bar Foundation President Roy S. Payne presented a \$5,000 check to Jeanette Mladenka, representing Community Support Programs.

## Judge Tom Stagg Receives SBA Professionalism Award

United States District Court Judge Tom Stagg is this year's recipient of the Shreveport Bar Association's (SBA) Professionalism Award. This award is presented annually to an SBA member "who best exemplifies the high ideals and standards set forth by the Louisiana State Bar Association's Rules



**Judge Tom Stagg**

of Professional Conduct, as well as the aspirational goals for attorney conduct adopted by the Shreveport Bar Association." Past recipients of the award include Frank M. Walker, Jr., Kenneth Rigby, Justice Pike Hall, Jr., Judge Henry A. Politz, Harry R. Nelson, Roland Achée and Edwin Blewer, Jr.

Judge Stagg of Shreveport received his BA degree from Louisiana State University in 1943. During World War II from 1943-46, he served in the United States Army, receiving the Combat Infantry Badge, Bronze Star for Valor and Purple Heart with Oak Leaf Cluster. After the war ended, he resumed his education and attended Cambridge University in England in 1946, followed by Louisiana State University Paul M. Hebert Law Center, where he received his JD degree in 1949.

He began the practice of law in 1949 with the firm of Hargrove, Guyton, Van Hook and Hargrove. He practiced solo from 1953-58 and thereafter was senior partner with the law firm of Stagg, Cady, Johnson and Haygood and its successor firm Stagg, Cady and Beard. In 1974, he was appointed to the federal bench by President Richard M. Nixon and served as chief judge of the Western District of Louisiana from 1984-91. He took senior status in March 1991; however, he still maintains a full staff and case assignments.

Judge Stagg served many years with

## Shreveport Bar Association



Louisiana State Bar Association (LSBA) President Frank X. Neuner, Jr., far left, was the guest speaker at the October luncheon meeting of the Shreveport Bar Association. With him are, from left, Robert Pugh, 1975-76 LSBA president; Tommy Johnson, 2005 Shreveport Bar president; and John Frazier, incoming Shreveport Bar president.



Shreveport Bar Association presidents (past and current) were honored at the October meeting of the association. Front row from left, Ron Miciotto, 2001; Kenneth Rigby, 1973; David Klotz, 1996; Allison Jones, 2004; Art Carmody, 2003; Cecil Ramey, 1970; and Tommy Johnson, 2005. Back row from left, Haller Jackson, 2002; Caldwell Roberts, 1998; Robert Pugh, 1971; Ben Coleman, 1980; Robert Mayo, 1983; Sidney Nelson, 1989; and Don Miller, 1993.



the Republican National Committee and has been a delegate to numerous national Republican conventions. He was elected as a delegate to the Louisiana Constitutional Convention in 1973, where he served as chair of the Committee on Rules and the Committee on the Executive Department.

He was recognized in April 2004 as the Louisiana Bar Foundation's Distinguished Jurist of the Year. In May 2004, he was selected as an honorary member of the Louisiana Chapter of Order of the Coif. In October 2004, he received the LSU Law Center's Distinguished Alumnus Award.

## LOUISIANA BAR FOUNDATION

### LBF Welcomes New Fellows

The Louisiana Bar Foundation welcomes the following new Fellows:

Barbara G. Baier ..... Baton Rouge  
William J. Billeaud ..... Metairie  
Philip S. Brooks ..... New Orleans  
Robert L. Broussard ..... Lafayette  
Michael K. Fitzpatrick .... New Orleans  
James M. Garner ..... New Orleans  
Lewis M. Gladney ..... Natchitoches  
Brace B. Godfrey, Jr. .... Baton Rouge  
Franchesca L.

Hamilton-Acker ..... Lafayette  
Douglas R. Holmes ..... New Orleans  
Hon. Sheral C. Kellar ..... Baton Rouge  
Hon. Lori A. Landry ..... St. Martinville  
Michael J. Mestayer ..... New Orleans  
John T. Nesser IV ..... New Orleans  
Trenton J. Oubre ..... Baton Rouge  
Hon. Kathleen S.

Richey ..... Baton Rouge  
G. Edward Williams, Jr. .... Lafayette

Check

[www.lsba.org](http://www.lsba.org)

often for information and updates from the Louisiana State Bar Association.

## Krewe Donates \$17,500 to SBA



Krewe of Justinian Captain XI Jim Fortson presented Shreveport Bar Association (SBA) President Tommy J. Johnson with a check in the amount of \$17,500. The Krewe of Justinian makes an annual donation to the SBA from proceeds it receives through fund-raising efforts. Over the past six years, the krewe has donated more than \$110,000 to the SBA. Funds are used for projects undertaken by both the Bar Association and the Bar Foundation.

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Louisiana Bar Foundation  
Oral History Profile:

**Professor Thanassi  
Yiannopoulos**

The Louisiana Bar Foundation (LBF) recently completed an oral history on Professor Thanassi Yiannopoulos, an internationally renowned scholar of both admiralty and civil law.

Yiannopoulos reminisces about teaching, international conferences, new disciplines, *Hero Lands Co. v. Texaco*, the Louisiana Legislature and the Louisiana Civil Code.



**Prof. Thanassi  
Yiannopoulos**

He began his teaching career at Louisiana State University in 1958. In 1979, he began teaching at Tulane University as the W.R. Irby Professor of Law. Since 1992, he has been the Eason-Weinmann Professor of Comparative Law at Tulane. Yiannopoulos is generally recognized as a leading authority on Louisiana Property Law and the Louisiana Civil Code. He has been instrumental in revising the Louisiana Civil Code as reporter for the Louisiana State Law Institute.

The LBF actively works to preserve Louisiana's significant legal history through its Oral History Program. The program began in 1999 under the direction of the LBF Education Committee, currently being chaired by Professor Kathy Lorio. For more information about the Oral History Program, visit the LBF Web site at [www.raisingthebar.org](http://www.raisingthebar.org).



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**[www.lsba.org/lamp](http://www.lsba.org/lamp)**



# Lucid INTERVALS

By Vincent P. Fornias

HOLIDAY MEANING

*As our own end-of-year present to the public, we have prepared a handy comprehensive guide to help our reader(s) divine the hidden meanings of those holiday gifts from significant others. Void where prohibited.*



<i>Gift</i>	<i>From Spouse</i>	<i>From Former Spouse</i>	<i>From Office Assistant</i>	<i>From Client</i>
Gold	Love	Regrets	Graft	Results
Silver	Appreciation	Acceptable alimony	Too many raises	Half-interest in S. African mine
Tupperware®	Honeymoon's over	Depends on whether it's been through the rinse cycle	Needs a raise – badly	Your bill will be audited
Booze	Warning about January bills	Cirrhosis wish	Confiscate the holiday party video!	In D.W.I. conviction denial
A Wad of Unmarked Currency	That Junior League trip made a stop in Guatemala	Entrapment attempt	She won the office bowl pool	Imminent "IOLTA" Hall of Fame status
Underwear	New or used?	Whose?	Lawsuit	Disbarment
E-Mail Greeting	Found another love	www.insults.com went free	Looking for other employment	Found another lawyer
Fruit Basket	Your Metamucil ain't working	How rotten?	Regifting	Uses lots of your competitors
Puppy	Needs new carpeting	Hates your present spouse	Got night job at SPCA	Owens landscape business
Python	Hated the Tupperware®	How fast is the puppy?	Two weeks' notice	Got his year-end bill

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