

Around

THE MAGAZINE OF THE
BATON ROUGE BAR ASSOCIATION

No. 256, April 2011

the Bar



Bar Luncheon
Thursday, April 7

Inside:
Louisiana's prohibition
on texting while driving

Tax changes for 2011

Interview with Attorney
General Buddy Caldwell

In memoriam:
Vanue B. Lacour

BRBA Bench Bar Conference:
April 28 - 30

2011 BRBA Bench Bar Conference

April 28-30

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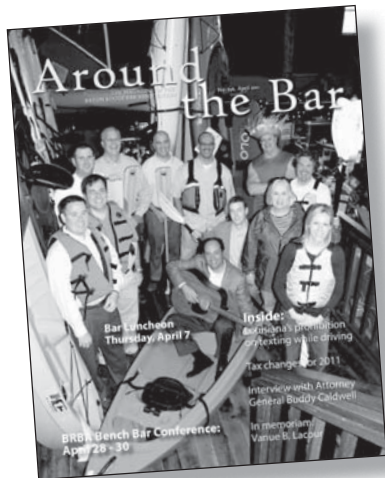
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We have reserved a block of rooms from
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through Saturday, April 30, 2011.

**Come boogie with the Bench Bar Boogie Band as they make
their final appearance at a BRBA Bench Bar Conference.**



Featuring the
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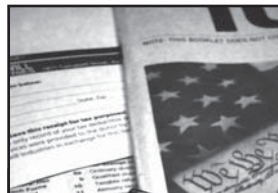


On the cover:

This month's cover photo features 2011 BRBA Bench Bar Conference Committee members Kelly Balfour, Aaron Chaisson, Bartley Bourgeois, Michael Lutgring, Judge Bill Morvant, BRBA President Preston J. Castille Jr., Steve Adams, Lawrence Gettys, Judge Toni Higginbotham, Patrick Broyles (vice chair), Abboud Thomas (chair) and Brooke Barnett. The Committee is photographed inside The Backpacker, 7656 Jefferson Hwy., Baton Rouge, La. Special thanks to The Backpacker for letting us use a variety of props.

Bench Bar Conference 2011 will take place at the Marriott Grand Resort in Point Clear, Ala., April 28-30, 2011.

Cover photography by Pamela Labbe.



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For advertising information call Pamela Labbe at 225-214-5560. Display ads should be e-mailed as a high-resolution attachment as a .PDF, and classified ads as text only. Publication of any advertisement shall not be considered an endorsement of the product or service involved. The editor reserves the right to reject any advertisement, article or letter.

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letter from the president

BY PRESTON J. CASTILLE JR.

Epidemic, crisis or “It is what it is”?

At a recent Teen Court hearing, District Attorney Hillar Moore announced he had to leave early. Earlier that day, the police had found two bodies in the trunk of a car and his office was needed at the Violent Crime Unit. “It’s only Feb. 7 and already we have eight murders. We have an epidemic in our city,” he warned, “and more people should be alarmed.” Among other things, Hillar has hired more assistant district attorneys to fight crime in our city. However, our D.A.’s proactive efforts to prevent crime and rally the community ultimately may be his greatest achievements.



Preston J. Castille Jr.

The conversation reminded me of my short stint on the City Court bench a couple of years ago. While a rewarding experience, I often felt the frustration that Hillar expressed. I quickly learned what was exhausting about being a judge; it wasn’t the number of hours spent on the bench, but rather the sobering reality of the ills of our society. Watching throngs of young people enter the criminal justice system day after day was frightening.

Each day jail callout was like the movie *Groundhog Day*. At 8 a.m., the duty judge faced a room full of prisoners. While the names change, the profile of the inmates remain the same: 18 to 25 years old; ninth or tenth grade education at best; unemployed or underemployed; most male, but shockingly more and more female; about 90 percent Black; and most needing a public defender.

Uneducated, unskilled and unemployed. How would these men and women ever provide for themselves or their families? While few of them were married, most had children. Hence the cycle would likely become multi-generational. Their lack of personal resources begged the question: Was city court just a step toward more serious criminal offenses? Social consequences aside, a big question for our community is: Can we truly afford more district attorneys, city prosecutors, public defenders, police officers and prisons?

As the parent of a 15-year-old son, I often looked into the eyes of many of the young men and choked back emotions as I realized they were not much older than my child. Indeed, many looked like my son or friends of his. If you washed away the look of despondency, sharpened their diction, filled their brains with knowledge, would these criminal defendants have a different lot in life? What causes a person to turn to a life of crime? At what point after conception does little Johnny choose to become one of our “most wanted,” as he appears on the evening news? Or, is he in some way virtually predestined to enter the criminal justice system?

The questions and problems are many. As we continue our yearlong community justice symposium, this month we will explore “crime and the criminal justice system” with our sheriff, district attorney, public defender and parish attorney. While there should be little doubt we are facing a major crisis in our community, frankly, it’s probably easier to say, “It is what it is.” I don’t know who coined this phrase, but I presume here it would mean we’ve always had poverty and crime, and that simply will not change no matter how hard we try. However, I refuse to believe that’s true. I think we make our own choices and destinies, both as individuals and as communities. Epidemic, yes. Crisis, certainly. “It is what it is,” no way. ■

april bar luncheon

THURSDAY, APRIL 7, 2011

2011 COMMUNITY JUSTICE SYMPOSIUM: Crime and the Criminal Justice System

The BRBA will hold its April Bar Luncheon and Community Justice Symposium at 11:45 a.m. **Thursday, April 7, 2011**, at De La Ronde Hall. Judge Louis Daniel of the 19th Judicial District Court will moderate a panel discussion of **Crime and the Criminal Justice System**, which will feature EBR Parish Sheriff Sid Gautreaux, EBR Public Defender Michael Mitchell, EBR District Attorney Hillar Moore III, and EBR Parish Attorney Mary Roper.

Following the luncheon is a 1.0 hour CLE seminar on criminal law starting at 1:30 p.m. The CLE seminar

speaker is Jean Faria. Seminar cost is \$50 per BRBA member and \$75 per non-member.

Admittance to the bar luncheon is \$20 per BRBA member and \$30 per non-BRBA member. We accept payment in advance and at the door.

VISA, MasterCard and American Express are accepted. Fax this form to 225-344-4805 before noon **Monday, April 4, 2011**, to register.

Checks are payable to the BRBA, P.O. Box 2241, Baton Rouge, LA 70821.



19th Judicial District Court
Judge Louis Daniel



EBR Parish Sheriff
Sid Gautreaux



EBR Public Defender
Michael Mitchell



EBR District Attorney
Hillar Moore III



EBR Parish Attorney
Mary Roper

SCHEDULE OF FUTURE COMMUNITY JUSTICE SYMPOSIUM & BAR LUNCHEONS:

THURSDAY, MAY 12, 2011 — May Bar Luncheon: Where Will the Children Go? Our Juvenile Justice System;

11:45 a.m. De La Ronde Hall. Speakers: Elizabeth Betz, Judge Laura Davis, Ruth Johnson, Judge Pamela Taylor Johnson, Sherry Patrick, Judge Kathleen Richey and Judge Lisa Woodruff-White. Moderator: Laurie Marien.

Sponsored by the BRBA Family Law Section, which will hold a brief business meeting for Family Law Section members following the May luncheon.

THURSDAY, JUNE 2, 2011 — June Bar Luncheon: The State of Our Correctional Institutions

11:45 a.m. De La Ronde Hall. Speakers: Warden Burl Cain, Louisiana State Penitentiary and Warden James Rogers, Louisiana Correctional Institute for Women. Moderator: Amanda Stout. *Sponsored by the BRBA Young Lawyers Section.*

Please fax this page to the Baton Rouge Bar Association, (225) 344-4805, by noon Monday, April 4, 2011.

Bar Roll No. _____ Please check applicable boxes: BRBA member non-member guest

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YES, register me for the **APRIL BAR LUNCHEON** at DE LA RONDE HALL taking place Thursday, April 7, 2011, at a cost of \$20 per BRBA member, and \$30 per nonmember. Reservations may be transferred, but not canceled, after 12 p.m. **Monday, April 4, 2011**. "No shows" will be billed.

YES, register me for the **1-HOUR CREDIT CLE SEMINAR** at DE LA RONDE HALL, beginning at 1:30 p.m. Thursday, April 7, 2011, \$50 per BRBA member, and \$75 per nonmember. Reservations may be transferred, but not canceled, after noon **Monday, April 4, 2011**. "No shows" will be billed. The topic of the CLE seminar will be that of criminal law. Speaker: Jean Faria

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message from the chair

BY ABOUD THOMAS, 2011 BENCH BAR CONFERENCE CHAIR

Calling all Baton Rouge Bar Association members. This year's Bench Bar Conference is surely setting up to be one of the best ever. The conference will celebrate all of our past presidents. We are calling all of them back to celebrate this year, hence the name Calling Lost Souls (although they certainly have not all been lost souls). Once again, the conference will be held at the Marriott Grand Hotel in Point Clear, Ala., April 28-30. Luckily, we have coordinated the conference to take place at the same time that area schools are on spring break. As usual, our current president, Preston J. Castille Jr., will be the headliner at the Friday night dance. While his chosen song is a mystery, I understand he has been practicing for a long time. There will be a special surprise involving all of our past presidents that you won't want to miss!

A new feature this year is the addition of the Benjy Davis Project. Thanks to Judge Laura Davis' and Amos Davis' arm twisting, Benjy Davis agreed to perform this year on Thursday night.


Bench Bar to feature new band and the return of tennis

The weather will be wonderful, as usual, as the conference is set in late April, perfect for golf, which again will feature a three-person scramble format golf tournament.

In the tradition of bringing back the past, we are raising from the ashes the tennis tournament. The Grand Hotel has a beautiful tennis facility, and no doubt this will be a lot of fun.

We are still looking for sponsors and have created many new levels of sponsorship. It is not too late to sign up. If you have not yet registered, I encourage you to do so immediately.

There will be a plethora of judges in attendance. The CLE will be outstanding with new programs offered discussing online social networking (Facebook and Myspace) and a special appearance by new U.S. Attorney for the Middle District Don Cazayoux.

In addition, we have arranged for the Bird Cage to stay open late to accommodate us. 

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yls corner

BY AMANDA STOUT, 2011 YLS COUNCIL CHAIR

Volunteer!

The Baton Rouge Bar Association, Baton Rouge Bar Foundation and the Young Lawyers Section offer several ways for members to volunteer their time and talents to support the bar and the community.

This month, the Volunteer Committee will be hosting its annual Easter egg hunts at local elementary schools. Volunteers are needed to donate candy-filled eggs and participate in the Easter egg hunts. In addition, volunteers are always needed to wear the rented Easter bunny costume.

The Young Lawyers Section is also planning our annual Belly Up with the Bar event. This year's event is being chaired by Vic Suane, and the vice-chair is Julie McCall. Belly Up with the Bar has grown to be one of the most popular events hosted by the BRBF and the YLS. Lawyers, judges, law students, paralegals and others affiliated with the legal community look forward to this event every year to showcase their culinary talents.

Belly Up with the Bar is scheduled for Oct. 21, 2011, in the backyard of the law firm of Moore, Thompson, Lee & Bryoles, and the committee to plan this event is presently being formed.

I have served on the Belly Up with the Bar Committee for several years and found it to be a great way to get involved in the bar, meet other lawyers and judges, participate in a fun event and raise money for the youth education programs sponsored by the BRBF (such as the new Junior Partners Academy, Law Day, Teen Court and the high school Mock Trial competition).

If you are looking for a way to become more involved, I encourage you to join the Belly Up with the Bar Committee. Planning meetings will begin in a few weeks. Contact Vic (victor.suane@keanmiller.com), Julie (julie@kswb.com) or the committee staff liaison, Donna Buuck (donna@brba.org), for more information on how to join the Belly Up with the Bar Committee. ■



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tales from the bar side

BY VINCENT P. FORNIAS

Let me commence with a couple of disclosures – and one crucial non-disclosure. First, I am old enough to have tried a case or two in the courthouse before the now “old courthouse” – the Baton Rouge Junior High building on Laurel Street. Talk about moving up in class! Second, as anyone who has ridden in a vehicle with me, and as the well-compensated folks at Home 360 know – I am anything but a left-brained, directionally gifted, handy pencil-protector-wearing guy. Without the mantra of “righty tighty, lefty loosey,” I am one lost puppy. And so what follows is not an expert critique by a competent person – it is simply a reflection of a handful of comments by undisclosed practitioners who have now experienced, up close and personal, our fabulous new courthouse.

Aesthetically, it is truly something to behold and to take untold pride in. It is second to none. Until you get to the elevators. Speaking of elevators, legend has it that the courthouse in Iberia Parish retains to this day an old “close the gate” elevator that for many years was navigated manually by one Charlie, its faithful operator. One day, after Charlie’s departure to the hereafter, a plaque was installed inside the elevator noting “the good Lord pushed the button and Charlie had to go.” (We know not whether the Almighty pushed the “up” or “down” button). But let us get back to our elevators. If you happen to appear on a Monday morning around 9 a.m., then bring either loads of reading material or a chaise longue, because you will be tarrying significantly in the narrow hallway awaiting your turn to ascend to the courtrooms. A space in one of the four elevators available to “the public” is as treasured as a tee time at St. Andrews. Hint: take the escalator to the second floor, ride the elevator down to its destination and stand back as the upwardly bound masses crowd in below.

So let’s assume hypothetically you actually arrive at one of the upstairs courtrooms and are trying your case.

Court improvement

You notice a disturbing, puzzling, disconcerting notation on a handrail next to the jury box: “Caution: the handrails are non-standard.” So what, pray tell, is not “standard” about these rails, and what dastardly hazard are you encountering in using them?

Speaking of hazards, you had best look down as you address the jury, because The Mother of All Tripping Hazards exists just below you in the form of a tapered wooden board apparently used to brace a handicapped ramp leading to a witness stand next to the jury box. Picture Atticus Finch meets “America’s Funniest Videos.” “Caution: your summation may become non-standard.”

Another confidential source takes issue with the “white noise” feature that is emitted near the jury box to keep jurors from hearing sidebar discussions. The problem is if you speak too softly, the court reporter cannot hear you. Our source got so frustrated during a recent *voir dire* that he finally just blurted out, “I said I’m excusing the plant manager with the crew cut.” He figured if he was shooting at the king, he may as well kill him. Audibly.

Someone else mentioned a wooden box of some sort located between the counsel tables with the rostrum situated in front of it. For those lawyers still flying solo in the presentation of exhibits, this box acts as the greatest obstruction since the Cuban trade embargo, relegating you to a veritable voyage around the Cape of Good Hope back to the counsel table to retrieve each next exhibit. Oh, and this rostrum is as stationary as the Rock of Gibraltar.

But alas, when all is said and done, those are all mere insignificant inevitable bugs that will be ironed out in our fancy new digs. For each one of these little challenges, we hear hardy praise for the myriad dramatic technological and practical improvements. Perhaps at the top of the list is the already legendary “*Salon des Avocat*” located on the first floor, a sanctuary for lawyers – kind of our own little Playboy Club. If you can avoid the tempting

goddies of the Dearman’s Café that you must traverse to reach it, the payoff is a place to escape, sometimes from your own clients, to read depositions or prepare the cross examination of a forthcoming expert. The trick, of course, is to budget enough time to catch your return elevator to the courtroom.

And, for the record, this column was not paid for with taxpayer dollars. ■

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Tax changes for 2011

BY WILLIAM C. POTTER, CPA, JD & BRANDON LAGARDE, CPA, JD

In the last year, several tax laws have been enacted containing provisions that significantly affect you. The following is a summary of the key changes effective in 2011.

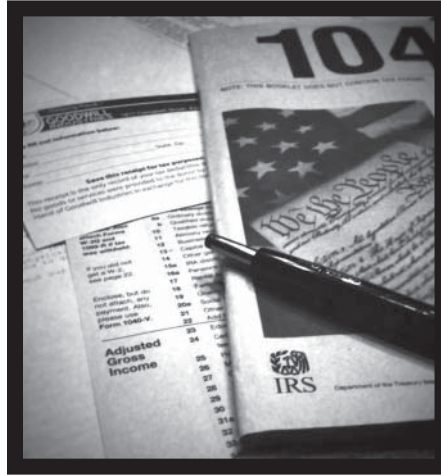
Changes in individual income taxes

Ordinary income and capital gain rates remain steady:

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 extended the Bush-era tax rates into 2011 and 2012. The tax rates for 2011 range from 10 to 35 percent. Without the Tax Relief Act, the tax rates would have reverted to pre-2001 levels ranging from 15 to 39.6 percent. The capital-gains tax rates will also remain the same, with a zero percent rate and a 15 percent rate applied to long-term gains and a 15 percent rate applied to qualifying dividends. Without the Tax Relief Act, the 15 percent rate would have risen to 20 percent and dividends would have been taxed at ordinary rates instead of the 15 percent rate.

Employment / self employment tax: For 2011, employees pay only 4.2 percent (down from 6.2 percent) Social Security tax on wages earned. Similarly, self-employed persons will pay only 10.4 percent Social Security self-employment taxes on self-employment income up to \$106,800. In either case, the maximum savings for 2011 will be \$2,136 (2 percent of \$106,800) per taxpayer. If both spouses earn at least as much as the wage base, the maximum savings will be \$4,272. The employer's portion remains at 6.2 percent.

Ability to treat certain IRA distributions as charitable contributions: Taxpayers who are 70 ½ years of age or older can make tax-free distributions to a charity from an individual retirement account (IRA) of up to \$100,000. These distributions aren't subject to the charitable-contribution percentage limits since they are neither included in gross income nor claimed as a deduction on the taxpayer's return. Under the 2010 Tax Relief Act, these rules are available for charitable IRA transfers made in tax years beginning before Jan. 1, 2012. These transfers count toward the taxpayer's minimum-distribution requirement.



Increased estate and gift tax lifetime exemption: The 2010 Tax Relief Act made many changes in estate, gift and generation-skipping transfer taxation. For 2011, the estate-and-gift-tax lifetime exemption is \$5 million. This is a substantial increase in the gift tax exemption from \$1 million in 2010.

For 2011, the gift-tax annual exclusion remains at \$13,000. In addition to the annual exclusion amount, the following can be given without prompting a gift tax:

- Charitable gifts
- Gifts to a spouse
- Gifts to a political organization

for its use

- Gifts of educational expenses—this includes only payments made directly to the educational institution for tuition and related fees
- Gifts of medical expenses—this includes only payments made directly to the medical facility

Tax changes for businesses

Mandatory e-Filing: As of Jan. 1, 2011, employers are required to make all federal tax deposits electronically. This includes deposits of employment tax, excise tax, and corporate income tax.

“Retained worker” credit: As part of the HIRE Act that went into effect last year, employers may claim a credit of up to \$1,000 for retaining qualified new employees. Qualified employees are those employees who (1) were unemployed for a period of 60 days prior to being hired, (2) hired between Feb. 3, 2010, and Jan. 1, 2011, and (3) remain an employee for at least 52 consecutive weeks. Employers are required to obtain an affidavit from any individual it claims is a qualified employee. In the affidavit, the employee must attest to the fact that he or she was not employed for the requisite 60-day period prior to the hire date.

Small employers may establish “simple cafeteria plans”: Effective for tax years beginning Jan. 1, 2011, small employers may adopt a “simple cafeteria plan.” Under such a plan, the employer is provided with a safe harbor from the nondiscrimination requirements for specified qualified benefits offered under a cafeteria plan, including

group term life insurance, benefits under a self-insured medical-expense reimbursement plan and benefits under a dependent-care-assistance program. Small employers are defined as having an average of 100 or fewer employees on business days during either of the two preceding years.

Accelerated depreciation of assets acquired in 2011: Section 179 and bonus depreciation allow businesses to write off costs more quickly. This includes purchases of machinery, equipment, certain vehicles, furniture, computers and software.

Section 179 allows purchasers of new and used fixed assets to deduct most, or even all, of their costs for these purchases. The limit to the total deductible costs per year is \$500,000 for 2011 and completely phases out if you place in service more than \$2,000,000 of property for the year. Section 179 deductions are available only up to the amount of business profit; therefore, a business that is unprofitable may consider using bonus depreciation instead.

The new law also allows 100 percent bonus depreciation on purchases of new equipment. This can apply to amounts that exceed \$500,000 or as a substitute for Section 179 on the first \$500,000. After 2011, the tax-deductible bonus depreciation amount returns to 50 percent.

Stock basis reporting rules: Beginning in 2011, brokers that are required to file information returns (1099-Bs) reporting gross proceeds of a “covered security” (such as corporate stock) must include in the information return the investors adjusted basis in the covered security and the type of gain triggered by the sale of such security (long or short term gain or loss). A “covered security” includes all stock acquired beginning in 2011, except for stock in a mutual fund or stock acquired with a dividend reinvestment plan (DRP). Reporting for these and other types of securities and options will begin in 2012 and 2013.

In conjunction with the new broker reporting, effective Jan. 1, 2011, issuers of corporate stock, domestic or foreign, must file a return with the IRS and stockholders (or their nominees) describing any organizational action (e.g., stock split, merger or acquisition) that affects the basis of the specified security, the quantitative effect on the basis of that specified security and any other information required by IRS. The issuer’s return must be filed within 45 days after the date of the organizational action or, if earlier, by Jan. 15 of the year following the calendar year during which the action occurred.

Changes in real estate information reporting: Beginning Jan. 1, 2011, any person who receives rental income from real estate will be treated as someone in the business of renting property for information reporting purposes.

The new law requires all taxpayers receiving rental income (including passive investments) from real property to file information returns with the IRS for rental property expenses of \$600 or more during the tax year.

Under the new law, the exceptions apply to:

- Any individual who receives rental income of not more than a minimal amount (to be determined by the IRS).
- Any individual if substantially all of his or her rental income is derived from renting the individual’s principal residence on a temporary basis.
- Any other individual for whom the information reporting requirement would cause hardship (to be defined by the IRS).

Watch for changes to these real-estate-information reporting requirements. Efforts are currently underway in Congress to modify or repeal this provision. ■



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Weapons of mass distraction:

A funny thing happened on the way to consensus

BY VINCENT P. FORNIAS

Take my stress. Please.

Those aficionados of Readers Digest know that a venerable feature of the periodical is a collection of funny anecdotes entitled “Laughter, The Best Medicine.” But did you know that there is a growing body of scientific and historical evidence that humor, or the ability to even temporarily change your emotional landscape, does indeed have dramatic medicinal benefits?

It is a known fact that humor has been identified as an essential cornerstone to society by anthropologists across almost every culture, country, religion or ethnic group – even in Washington, D.C., sometimes intentionally. Think of the myriad references to the benefits of humor in literature, music and the arts:

- “Always laugh when you can. It is cheap medicine.” — Lord Byron
- “A good laugh and a long sleep are the best cures in the doctor’s book.” — Ancient Irish Proverb
- “A clown is like an aspirin – only he works twice as fast.” — Groucho Marx
- “I’d rather laugh with the sinners than cry with the saints.” — Billy Joel
- “I’ve always been crazy – but it’s kept me from going insane.” — Waylon Jennings
- “Sometimes laughter is a matter of life and death.” — From the film “Fried Green Tomatoes”
- A merry heart doeth good like a medicine, but a broken spirit drieth the bones.” — Old Testament, Proverbs 17:22

Indeed, let us go back to the ancient Greeks and to the very origin of the very word “humor.” The Greeks conceived of four basic fluids that were contained in the human body, which they christened The Four Humors (black bile, yellow bile, phlegm and blood). It was their view that if any of these were somehow out of balance to the others, the entire equilibrium and health of the body was thereby affected.

The Greeks were not that far off. Scientifically, doctors at the University of Maryland School of Medicine conducted a study on the process of vasodilation, *e.g.*, the ability of your blood vessels to expand. The wider the vessel, the greater the blood flow to the brain. The greater the blood flow, the more positive and constructive the subject’s outlook. They chose a control group of some 40 local college students, separating them into screening rooms of 20 apiece. One room was shown the opening minutes of the movie “Saving Private Ryan” – the beach landing sequence on D-Day, in all its goriness, stress and

chaos. The other room was shown an identically long segment from one of comedian Bill Murray’s cinematic triumphs, “Kingpin,” chock full of one liners, pratfalls and just plain silliness. Then each group’s blood vessels were scientifically measured. Amazingly, 14 of the 20 in the “Private Ryan” group displayed constriction, or narrowing, of their vessels, with an average of 35 percent less blood flow to the brain. In contrast, fully 19 of the 20 “Kingpin” watchers displayed dilated vessels, with an average of 22 percent increase in blood flow.

A similar college study involved exposing a class full of serious-minded business students to a comedy video before a tough negotiation exercise. The result was a palpable increase in working together to reach a consensus.

Anecdotally, Norman Cousin, longtime beloved editor of “Saturday Review,” wrote about his being diagnosed with a debilitating, crippling case of arthritis in the 1960s. He tried all that medical science had to offer with little or no relief. In desperation, he went home and fed himself a steady diet of Marx Brothers movies, and soon his recovery was palpable. His detailed account, “Anatomy of an Illness,” became a best seller in 1979.

Hormonally, long-distance runners have long ago sworn by the “runner’s high,” a pleasure-producing, almost addictive feeling, relating to the release of endorphins into the blood stream. It is this chemical that helps reduce anxiety-producing hormones, such as adrenaline and cortisol, unleashed by our bodies as it literally primes for a fight. Comic relief apparently performs the same function as running a 10-kilometer race.

And more and more institutions are making this important connection. A children’s hospital in Chicago for the last decade has staffed a “humor cart” laden with gag toys and jokey doodads, with a trained attendant who makes rounds with one single goal – to elicit a small giggle from an infirm child. The indirect goal is to decrease the child’s anxiety, making his body less likely to resist treatment. One attendant described it as “the element of forgetting where we are.”

So how do all of these comedic building blocks apply to a structured, concentrated negotiation such as your typical mediation? You begin with the premise that many participants in this process (especially plaintiffs in personal injury cases, many of whom are “rookies” in the process) are either very angry and/or fearful as they enter the negotiation. For them, it is anything but “another day at the office.” Any mediator worth his salt knows that unless you can peel away the armor of resentment and fear in your participants, you are doomed to failure. In essence, humor helps to cut through the emotional roadblocks to

a rational and productive collaboration, so essential to reaching a consensus.

As a mediator, I have often resorted by trial and error to more than my share of what I call “S & M.” No, my techniques rarely involve whips, chains or handcuffs, though the occasional medieval weapon might occasionally be in order. No, my “S & M” stands for Sarcasm and Mockery, and it can take many and varied forms, depending upon myriad personalities and circumstances. Any one mediation is subject to a thousand crossroads, subjecting any use of humor to intuitive timing directed at creating a reconnection with the party or a changing of the climate in the negotiation. Techniques may vary from using cartoons with self-styled captions that assist in reality checks to not-so-subtle anecdotes or parables that utilize gallows humor to send the message that in the end, we are all together in the same lifeboat in a very big ocean. Sometimes humor is used a la Rodney Dangerfield’s “no respect” routine, a self-effacing tool that helps to feel the participant’s pain and fosters the essential ingredients of trust and rapport. But alas, timing is everything, and humor used at the wrong time in a negotiation can literally add fuel to the flames. The effective mediator is, in essence, as much of a mood scientist – and potentially a mood changer, good or bad – as your standard-issue stand-up comedian in a dark smoke-filled room. At the end of the day, you work really hard to sow the seeds of a therapeutic snicker, and hope

the hecklers and naysayers stay away.

In closing, we salute the old Bard himself, William Shakespeare, who apparently would have made an outstanding mediator, for it was he who perhaps put it best: “Frame your mind to mirth and merriment, which bars a thousand harms and lengthens life.” ■

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Drive now, TXT L8R: Louisiana's prohibition on texting while driving is on the right track

BY JESSICA ORGERON



What's more dangerous on the road than an intoxicated driver? An "intoxicated" driver, according to a number of recent studies.¹ And yet, nearly one in five Americans,² and almost 50 percent of motorists from ages 18 to 24,³ admit to texting while driving. While society continues to weigh the pros and cons of permitting other cell phone use while driving, at least 31 states have now prohibited texting while operating a motor vehicle.⁴ Louisiana has joined the effort to curb this epidemic of distracted driving, most recently by toughening up the State's three-year-old ban on texting and driving.

Louisiana's ban on texting while driving

The Louisiana Legislature first outlawed text messaging while driving in 2008 with La. R.S. 32:300.5, which provides for a penalty of up to \$175 for the first illegal text and fines of up to \$500 for subsequent violations.⁵ However, few tickets were issued under the original provision, because it could be enforced only as a "secondary action when the officer detains a driver for an alleged violation of another provision of this chapter."⁶ During the 2010 Legislative Session, this language was struck and the statute amended to make texting while driving a primary offense—meaning that if an officer sees you texting behind the wheel, he can pull you over, even if you do not otherwise appear to be driving recklessly.

The current text of La. R.S. 32:300.5 states that "no person shall operate any motor vehicle upon any public road or highway of this state while using a wireless telecommunications device to write, send, or read a text-based communication." Although this language sounds broad enough to prohibit almost any contact with your BlackBerry, the law provides a number of exceptions. Dialing a number or spelling out or selecting a name to call are permissible under this provision. Likewise,

navigating using a GPS, texting to report illegal activity, summoning "medical or other emergency help" and texting to "prevent injury to a person or property" are expressly excepted. Finally, there are categories of people—including physicians, law enforcement officers, and firefighters—whose activities may be excluded from application of the provision under certain circumstances.⁷

Issues of interpretation and enforcement

The message of the statute is straightforward for the driver who uses her cell phone only to call and text: calling is OK while driving; texting is not. However, in light of the myriad functions that a smartphone can provide, the details of the prohibition require a more careful reading. The phrase "write, send, or read a text-based communication" is defined by the statute as "using a wireless telecommunications device to manually communicate with any person by using a text-based communication referred to as a text message, instant message, or electronic mail." Although the terms "text message, instant message, or electronic mail" are not further defined in statute, common knowledge tells me that I definitely can't send or read SMS messages (texts), use Gchat (instant messaging) or check my Gmail (electronic mail). However, the definition is more troublesome when applied to, for example, updating a Facebook status or "tweeting" from my Twitter profile. Although neither of these activities is generally considered texting or instant messaging, the limits of these definitions have not been tested under Louisiana law.⁸

The prohibition on "text-based communication referred to as a text message, instant message, or electronic mail" may not provide perfect clarity; however, this language is arguably more concrete than what has been enacted in some other states. For example, Maryland's

statute provides in part that a person may not “write or send a text message while operating a motor vehicle,”⁹ begging the question of how to define “text message.” On the one hand, “text message”¹⁰ is a term that has taken on a specific meaning to the public and the legal community,¹¹ but on the other hand, the aggregate of the dictionary definitions of the words “text” and “message” could be interpreted expansively to encompass “the use of a cell phone to communicate in any way.”¹²

This ambiguity has led at least one author to suggest that Maryland’s provision may be unconstitutionally vague—potentially affronting due process and chilling free speech—because the driver will not know which activities are prohibited and may refrain from engaging in permissible free speech activities.¹³ Under Louisiana law, “a statute is vague if its meaning is not clear to the average citizen or if an ordinary person of reasonable intelligence is incapable of discerning its meaning and conforming his conduct to it.”¹⁴ La. R.S. 32:300.5 probably does not meet this standard of impermissible vagueness. A plain reading of the statute clearly prohibits three specific activities while driving: texting, instant messaging and e-mailing. It is unlikely that the term “text message” in the Louisiana statute could be reasonably read beyond its colloquial meaning, because “text message” is followed by the terms “instant message” and “electronic mail,” each of which has a dictionary definition and a popular meaning that is generally understood—even by a relatively technologically illiterate person like me.

Even if Louisiana’s law is clear enough to survive constitutional challenges, its current construction may produce unfair results. Beyond the realm of “text-based communications,” smartphones offer countless other distracting applications like games, calendars and photo editors. Under current law, a person penciling in a dental appointment would not be violating the law—while an individual reading a text message with directions to the dentist’s office could be ticketed. Furthermore, the statute faces difficult enforcement issues. If a texting driver is pulled over and protests that she was only dialing a number, the law enforcement officer faces unappealing options: let the accused violator go, proceed to court for a battle of the witnesses, or enter a Fourth Amendment minefield attempting to search the cell phone for evidence of illegal activity.¹⁵ These enforcement concerns may account for why only 76 tickets had been issued statewide under the newly revised statute as of November 2010.¹⁶ These fairness and enforcement issues could be partially curtailed if the provision was broadened so that only hands-free, voice-controlled calling was allowed; however, such an expansive prohibition would likely face considerable opposition from the Louisiana public at this time.

Focused on the road ahead

Although most people I’ve chatted with agree to the dangers of texting while driving, many still admit not being able to resist the urge to read that incoming e-mail from work or text from a friend. More than one person was of the opinion that the texting ban seemed unfair because “everybody’s doing it,” and because other distractions, such as eating while driving, aren’t also specifically disallowed.¹⁷

Despite these objections, the statistics tell a consistent story: texting while driving is dangerous. As smartphone users can tell you, constant access to text-based communications can become an addiction, e-mail-checking a compulsion and text-messaging an unconscious reflex. Breaking the habit is a critical matter of public safety.

Louisiana’s texting prohibition as written may not be ideal, but along with education efforts and new technologies, it may assist in changing public behavior. Efforts to combat drunk driving took years to penetrate the public psyche; similarly, it will likely take time to spread the message that Americans must put down their devices and keep their eyes on the road. ■

¹A. Starkey De Soto, *Intoxication: Texting While Driving. Does The Punishment Fit The Crime?*, 32 U. Haw. L. Rev. 359, 378 (2010).

²*Id.* at 361.

³ Sen. Butch Gautreaux, Senate Transportation, Highways, and Public Works Committee, April 9, 2010, citing a report by Edgar Schneider and Associates (available at <http://senate.legis.state.la.us/Transportation/Archives/2010/video.htm>).

⁴ Editorial, *Northeast Mississippi Daily Journal*, Feb. 4, 2011 (available at <http://www.nems360.com/>, search “texting while driving”).

⁵ Any fine amount is doubled if a crash occurs.

⁶ La. R.S. 32:300.5 (2008).

⁷ Alas, there is no exception provided for the attorney, even in case of a legal emergency.

⁸ Less likely to fall under this definition of prohibited “text-based communication” are activities like surfing the Internet, checking a stock market app or downloading to iTunes; however communication arguably occurs here as well.

⁹ Md. Code Ann., Transp. § 21-1124.1 (Westlaw through 2010 Reg. Sess.).

¹⁰ Alan Lazerow, *Near Impossible to Enforce at Best, Unconstitutional at Worst: The Consequences of Maryland’s Text Messaging Ban on Drivers*, 17 Rich. J.L. & Tech. 1, 46 (2010).

¹¹ *Id.*

¹² *Id.* at 44, using definitions as provided in the Merriam-Webster Online Dictionary (available at <http://www.merriam-webster.com/dictionary/>).

¹³ *Id.*

¹⁴ *State v. Iteriano*, 03-1760 (La. 2/13/04) 868 So.2d 9, 14.

¹⁵ For an interesting analysis of this issue, see C. Rheney Williams, *The Trouble with Texting: The Future of Searches Under the Automobile Exception after Arizona v. Gant*, 4 Charleston L. Rev. 919 (2010).

¹⁶ 76 ticketed for texting while driving, WBRZ, Nov. 12, 2010 (available at <http://www.wbrz.com/news/76-ticketed-for-texting-while-driving/>).

¹⁷ However, any obviously distracted driver could probably be ticketed for reckless operation of a motor vehicle. La. R.S. 14:99.



Interview with Louisiana Attorney General Buddy Caldwell

BY ART VINGIELLO

VITAL STATISTICS

Full Name: James D. Caldwell

Nickname: Buddy

Age: 64

Position: Louisiana Attorney General

Born & Raised: Columbia, La.; Tallulah, La.

Education: Tallulah High School; Tulane University, B.A.; and Tulane Law School, J.D., 1973

ATB: Tell us about your family background.

Caldwell: Well, I grew up in Tallulah with five sisters and a baby brother who's 13 years younger than me, so I was the only boy for all those years. Now I'm in the middle. I have three older sisters and two younger sisters. My oldest sister is a pediatrician; I've got a sister who works for the State of California Probation and Parole. My next sister died of breast cancer. She had been with Probation and Parole in Louisiana and Texas. My next sister married a bone surgeon (so she doesn't have to do anything), but she's a psychiatric social worker. She graduated from Newcomb. I have three sisters who graduated from LSU and two from Newcomb. Four of them were real good singers. My father was an opera singer by profession, but he was a professional baseball coach up in Columbia after the Second World War. He came back and helped, actually, with the Superdome. He was called in by Gov. John McKeithen to see if we could find a way to fit baseball into the Dome within the budget. My father was familiar with all the logistics of all the professional baseball parks in the country, and so John McKeithen got him to get with Dave Dixon to see if they couldn't design a way to do it. But they couldn't do it and stay within budget, so that's why they don't have baseball in the Dome.

I went to Tulane to play football and run track. But actually baseball was my best sport, even though I wasn't on the team. I was offered a professional baseball deal, but my mother said, "Son, you are going to be a doctor." She wouldn't let me go play professional baseball. So I said, "Ok, I'm going to be a damn lawyer," and that's exactly how that happened. I kept my word with her.

ATB: And you became a Juris Doctor.

B: Right, Juris Doctor. I became a Juris Doctor so it wasn't all a loss. I worked in a drugstore from the time I was in the fourth grade. I filled in stock and learned everything in the National Formulary. I had a wonderful family background

in medicine and pharmacy. I have six Tulane pharmacists in my family. My daddy met my mother in Caldwell Parish because she was the Caldwell Parish nurse.

ATB: Did you go to Tulane Law School?

Caldwell: Yes, I got my law degree from Tulane. I wanted to go back to practice law. So I went back to Tallulah and hung out my own shingle in 1973. About four years later, I was elected D.A. I was in federal court for about 12 years doing reapportionment cases. I was in a 70 percent minority district, that's where I come from, and I had to represent the public bodies. They didn't have any money so whatever plan they came up with I had to tend to it. A lot of federal reapportionment cases have my name in them, especially the one that says it's illegal to racially apportion. It's called *Marshall v. Edwards*, that was my case. I picked it up when I came in and started out at Stewart Marshall in Lake Providence versus Edwin Edwards, who was the governor; that's the way you had to do the suits, and I finished it up in the Fifth Circuit. The law said if you have a certain percentage of minority in your community, they're not entitled to proportional representation. The districts have to be drawn up hopefully with equal population, but they had to be drawn up compact, contiguous and otherwise fair, and they can't take incumbency in consideration. So I was probably the only D.A. in the state that personally handled reapportionment cases.

ATB: How does that background as a D.A. help you as the Attorney General?

Caldwell: I've personally tried my cases; I've personally written my briefs. I did all my own oral arguments, my appellate arguments, the federal court arguments and even arguing to the U.S. Supreme Court on behalf of Louisiana. That experience has really helped me be able to help the state. Baton Rouge is the center of government. The government agencies are here, and they need good legal guidance. It's very convenient for them to come in and

request opinions of the Attorney General's office. They have to be high quality.

We work with the police and investigators, civil and criminal. We do the civil work for the school boards, police juries, hospital service districts, port commissions and the levy districts. If you bring a high level of experience then nobody can pull anything over you. You don't have to rely on somebody who may have a bureaucratic mentality.

ATB: Your office deals in many highly charged political areas. If politics is defined as the authoritative allocation of resources, how do you make sure that your office gets the resources it needs when budgets everywhere are shrinking?

Caldwell: Well, we say with the lawyer you can only shrink it so far. There are cases that deal with this issue. One is *Reed v. Washington Parish*, which was argued with me as the president of the District Attorney's Association, I think it was in 1988. That case says the government has to supply the reasonable and necessary expenses to run the district attorney's office. Reasonable and necessary expenses must be paid for both civil and criminal work. There was a companion case called *McCain v. Grant Parish*, these are Louisiana Supreme Court cases, that said the same thing for judges, the reasonable and necessary expenses must be paid. The reason for that is (and another highlight on the difference between the legal profession and regular politicians who are policy makers is) that you can't refuse to give a lawyer an expert who is defending the parish or the state. You can't refuse to give them a place to work because that effectively destroys their independent judgment—all the things in the Code of Professional Responsibility that separate a lawyer from the other professions. The work of the state and local governments will go down the tube if the lawyer can't represent them. They can't legally do the reasonable and necessary things they've got to do to make the system work. You can't, in the criminal system, deny funds for a jury pool. You have to give them enough gas to get to the other end of the parish or to the courthouse, or let them have investigators to investigate the cases.

ATB: How does your technological unit work with other divisions of the office?

Caldwell: Well, what we basically have is a technology group — the High Tech Crimes Unit. We're able to monitor computers, and when you see enough evidence to make an

arrest, you go to the location and you coordinate that with the law enforcement in that area. Then you can seize all kinds of evidence. You may find pamphlets for making bombs or other potential crimes. Another thing is that we have started a Fugitive Apprehension Unit, which means people who are missing in criminal and civil cases, we can send our people to any other state to pick people up and bring them back in, if we have warrants. We've done so on at least 500 different people that we've gone to pick up just since I've been here. And this is absolutely essential; you may not be able to prove a case, but for one witness, so you can't reward them for being a fugitive.

ATB: How does your office get involved in criminal investigations?

Caldwell: Well, even though we don't have original criminal jurisdiction, we've handled 1,500 criminal cases after being asked to assist the local district attorneys. Because of my background, I think the D.A.s feel much more comfortable having a career veteran on the ground prosecuting because I tried my murders, rapes and armed robberies myself; I didn't hand them off to anybody. My assistants handled a few cases, but I did all the bad ones myself. So the D.A.s know that I work the witnesses.

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ATB: Let me jump topics just a little bit. The oil spill and the oil spill claims process have been in the news a lot lately. How is your office involved in that?

Caldwell: Well, we've been heavily involved from five to six days out. We first became involved with four other gulf state attorney generals (Florida, Alabama, Mississippi and Texas) because we didn't know where the oil was going. We knew it was far enough out to go anywhere, and we were sitting here on the verge of hurricane season – April 20, 2010. So we became involved with BP. Gulf state attorney generals got together and had our first meeting in Mobile, then Jackson, Miss., then in New Orleans. We immediately set up a meeting with the BP General Counsel and head of BP to try to make sure that initially when people were making claims that the process would be set up fairly. Under the EPA statutes, BP had accepted responsibility and had an obligation to supply a claims process. The claims process is for private claims, and so there is a difference in private people's claims and private business losses from public business losses. We were involved in helping monitor the private claims process, which is what Mr. Kenneth Feinberg is handling now. The public losses, tax revenue of the remediation process and monitoring the government losses, different government bodies had different losses. The parishes would have certain losses for revenue that they should claim on their own,

and they would get their own lawyers to help with those claims. But the big huge losses were where the Attorney General's offices has the major, pivotal role and stepping in to monitor and where necessary to be lead regarding the most horrific portion of the case, and the part of the case with the most damages is our baby.

ATB: Were you a member of the Baton Rouge Bar Association even while you were D.A. in Tallulah?

Caldwell: Yes, I came down and played with Wade Shows' team in the softball tournament and then performed with the Bench Bar Boogie Band at the Bench Bar Conference several years ago.

ATB: Is that when you first started doing your Elvis shows?

Caldwell: No, John Sinuefield got me into that when he was still in Lake Charles. He asked me to do an Elvis show. I asked, "Well, why do you want me to do that?" He said, "Well, you sound just like him, and you have since high school." And I did it!

ATB: Did John go to high school with you?

Caldwell: Yeah, yeah, we graduated from Tallulah High



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school together in 1964. We're the same age, and we talk very similarly. So John asked me, and I did my first real show over in Lake Charles in 1984. I did about six or eight songs. Before the show, they kept me in a broom closet where I had to pour beer on my hair to keep from overheating. And I had to stay in there for an hour and a half in the broom closet because I was dressed in my show shirt and sunglasses. I couldn't let anybody see me like that. So I did that show in the Lake Charles Civic Center with the Platters band. That was about 200 shows ago.

ATB: Wow, 200 shows?

Caldwell: Yeah, basically I would do them for charity. I would never charge anybody. But I've done them for cancer organizations, other charities and for conferences like the Baton Rouge Bench Bar Conference. That's a really good thing for the bar to be able to relax and get good legal education with social interaction and good camaraderie. It takes the vitriolic nature out of the practice.

Because we all work together, and our prosecutors and public defenders are a part of the same system, it's been real important for us to get along. The public defenders, for example, normally know more about the prosecutors

and the quality of the cases then the other lawyers who charge tens of thousands of dollars to represent people. We know there are so many really, really good public defenders throughout the state; they are absolutely necessary. They go in, and they pick out what issues and which cases they can actually help the person with. And they help us, in a sense, to screen the cases for things that may be wrong and that's extremely valuable. They're the best at it. But it's very important for us to reemphasize the stability, the decorum and the respect, that attorneys can show the courts and the other lawyers. Getting to know the opposition in a social setting can take some of the bitterness out of these cases. I've seen the practice of law really change over the last 34 years. We need to make sure that, whether the client is right or wrong, we represent that client zealously within the parameters of the Code of Professional Responsibility. ■

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bar news

BY CHRISTINA GIRAU

Junior Partners Academy is off to a great start

The Baton Rouge Bar Foundation partnered with third graders from Dalton Charter Elementary to develop a new youth mentoring program called the “Junior Partners Academy.”

The most recent workshop focused on the historic *Brown v. Board of Education* case and took place Friday, Feb. 25, 2011. The attorneys “segregated” the class by separating the students who had summer birthdays. A discussion followed about fairness, equal rights and the *Brown* case. Barbara Baier, Calli Boudreaux, Preston J. Castille Jr., Ethel Clay, Ashley Darville, Jamie Gurt, Terrel Kent and John Smith gave the presentations.

The junior partners received official JPA membership certificates and vests at the first JPA activity Jan. 7, 2011. from Judge Trudy M. White, Judge Bill Morvant and Judge Darrel White (Ret.). The Jan. 7 law-related activity was SELURON (no rules spelled backwards), which was created by Streetlaw Inc. and was led by Steve Carleton, Preston J. Castille Jr., Christie Chapman, Linda Law Clark,



PHOTO BY PAMELA LABBE

BRBA President Preston J. Castille Jr. speaks to third grade students at Dalton Elementary School as part of the BRBF's Junior Partners Academy.

Ethel Clay, Ashley Darville, Melanie Fields, Gail Grover, Jamie Gurt, Crystal Losey, Eric Miller, Jan Reeves, Deidre Robert, John Smith, Sharon Williams and Kathy Wright.

The JPA is designed to inspire, capture and promote the interest of kids in the field of law by having monthly interactive lessons, activities and field trips with “class attorneys” or BRBF mentors.

If you are interested in volunteering for the JPA program, contact Donna Buuck at 225-214-5556 or donna@brba.org.

Wills for Heroes program assists Baton Rouge firefighters, spouses in January

The Baton Rouge legal community was able to give back to local heroes Saturday, Jan. 29, 2011, at the Wills for Heroes event sponsored by the Louisiana State Bar Association and the BRBA. Baton Rouge area firefighters and their spouses were provided free wills and powers of attorney from Baton Rouge volunteer attorneys at the Middleton Bar Center.

Volunteer attorneys were solo practitioners Samantha R. Ackers, Joanna Hynes, Mary Thompson and Janice Villarubia. Volunteers from law firms were Rebecca Wisbar, Akers & Wisbar, LLC; Andy Kolb, Baker Donelson Bearman Caldwell & Berkowitz, PC; Sharon Williams, Barrister Litigation Support Solutions, Inc; Brandon Decuir, Decuir, Clark & Adams, LLP; Monica Griffith-Braud, Derren Johnson & Associates; Robert Savage, EBR Public Defender's Office; Kevin Curry, Kean, Miller, Hawthorne, D'Armond, McCowan

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For more information about future Wills for Heroes events or to volunteer, contact Robin Kay 225-214-5561 or robin@brba.org.

Volunteer Committee holds recruitment lunch

The BRBA Volunteer Committee and Panel held a recruitment lunch Thursday, Feb. 10, from 11:30 a.m. to 1 p.m. at the Middleton Bar Center. Attendees enjoyed an afternoon of free lunch and networking to encourage more BRBA members to join the committee. The event was coordinated by the Volunteer Committee Chair Donna Lee and staff liaison Carole McGehee.

BRBA Public Law Practice Section meeting to feature Butch Speer as guest speaker April 21


State House Clerk Alfred "Butch" Speer will discuss re-districting at the BRBA Public Law Practice Section meeting April 21, 2011. The location of the meeting is TBA, and it will take place from 12 to 1 p.m.



PHOTO BY PAMELA LABBE

Robert Savage (right) volunteered to notarize official documents Saturday, Jan. 29, 2011, through the Wills for Heroes program. This month's program assisted Baton Rouge firefighters and their spouses. In the photo above, Savage explains necessary details to a client.

BRBF and SULC partner to host an Ask-A-Lawyer

Local attorneys offered free legal advice and counseling to the public Feb. 24, 2011, at an Ask-A-Lawyer workshop that was held at the Southern University Law Clinic. The workshop was coordinated by the BRBF Pro Bono Project and the Southern University Law Center. Volunteer attorneys were SULC professors Alvin Washington and Tracie Woods, David Bateman of the Bateman Law Firm and Danielle Munro. BRBF Pro Bono Coordinator Trang Nguyen organized the event. 

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PHOTO BY PAMELA LABBE

Volunteer Committee Chair Donna Lee, Mackenzie Ledet, David Ogwyn, Rachel Smith, Heather Landry and Rebecca Clement were photographed at the Volunteer lunch, held Feb. 10, 2011, at the Middleton Bar Center to encourage participation with BRBA Volunteer Committee projects.



PHOTO BY PAMELA LABBE

Michelle Buckalen, Robert Savage, Caroline Grace and Beau Brock attended the recruitment lunch, held Feb. 10, 2011, and sponsored by the BRBA Volunteer Committee.



PHOTO BY PAMELA LABBE

Public Law Practice Section Chair Nina Hunter (left) honored last year's chair, Sheri Morris (right), with a plaque of appreciation during the Feb. 1, 2011, BRBA Public Law Practice Section meeting.



PHOTO BY PAMELA LABBE

A swearing in ceremony of 2011 officers was held at the Feb. 1, 2011, Baton Rouge Bar Association Public Law Practice Section meeting.



PHOTO BY PAMELA LABBE

Judy Amick (left) was named Paralegal of the Year by the Baton Rouge Paralegal Association. She was awarded the honor Feb. 16, 2011, by Beverly Creech Chauvin (right), BRPA Paralegal of the Year Committee Chair and last year's winner. Amick is the paralegal of Emily Black Grey of Breazeale, Sachse & Wilson.

GAIL'S GRAMMAR

One meaning of the prefix *re* is *back*. Adding *back* after a word that begins with *re* is usually redundant.

Most courts now limit pages; some even limit the number of words in a brief. A good first step toward more concise writing is to avoid redundancy by getting rid of *back* following words such as revert, return, refer, rebound and remit.

Send suggestions for future Gail's Grammar columns to Gail Stephenson at GStephenson@sulc.edu, or call Gail at 225.771.4900 x 216.

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in memoriam

BY CHANCELLOR FREDDIE PITCHER JR.

Editor's note: This article is an edited version of the tribute given during Dean Vanue B. LaCour's funeral by Freddie Pitcher Jr.

Tribute to Vanue B. Lacour, a former dean of SULC

Dean Vanue B. Lacour, a founding member of the law faculty assembled to launch the Southern University School of Law in 1947, was the founding partner in the law firm of Lacour, Wilson and Calloway, and later Lacour and Calloway. Also, he was my professor, mentor and adviser.

He guided me in making several major career decisions in my life, including the one that led to me becoming chancellor of the Southern University Law Center today. Time does not permit me to properly pay tribute to Dean Lacour and to recognize all of his accomplishments, for he touched the lives of so many through his quest to right the wrongs of society and uplift the downtrodden, through his work as an attorney, and through his real passion – the teaching of law.

Inspired to become a lawyer at an early age, Dean Lacour, after graduating first in his class in high school at Central Colored High School in Shreveport and in college at Xavier University in New Orleans, pursued his dream at Howard University School of Law. His academic prowess fell off a little at Howard, in that he graduated number two in his class.

His time at Howard shaped his worldview and prepared him for several tough legal battles later on. He was taught by some of the greatest legal minds in America: Charles Hamilton Houston, William H. Hastie, James Nabrit, Spotswood Robinson and George E.C. Hayes, to name a few. They, together with Thurgood Marshall, were architects of *Brown v. Board of Education of Topeka, Kansas*, and were stalwarts in the civil rights struggle. His professors infused in him a deep appreciation for the law and how the law could be used to change the conditions of African Americans in this country and Louisiana, especially.

In his 26 years as a professor at the Southern University School of Law, teaching a wide range of courses, with contracts and obligations as two of his mainstays, Dean Lacour helped to produce nearly one-third of the African-American lawyers in Louisiana. They all will agree that he was an excellent teacher and a tough taskmaster.

Now let me fast forward to 1988, the year he was inducted into the National Bar Association Hall of Fame during the Association's Annual Meeting in Washington, D.C. Dean Lacour was unable to attend, so I was asked to accept the award on his behalf. When I returned to Baton Rouge, I called him and said this award was too important



Dean Vanue B. Lacour

of an honor for me to just bring the plaque to his house; his accomplishments deserved all of the pomp and circumstance that went along with this great recognition. I called Michael Patterson, president of the BRBA at the time, to ask if I could make a formal presentation of the National Bar Award at the BRBA Annual Meeting. I wanted the members of the bar to meet this outstanding legal scholar and lawyer, who almost single-handedly changed the succession and forced heirship laws in the state of Louisiana. In my introduction, I chronicled all of his major cases he had won; many of the cases had precedential value and were being referred to in classes in the four law schools of the state. Perhaps the most famous of all of his cases was

decided by the U.S. Supreme Court in 1972. The case, "*Weber vs. Aetna Casualty & Surety Co.*, 406 U.S. 164, listed Vanue B. Lacour, Baton Rouge, La., - Attorney for Petitioner, and W. Henson Moore, Baton Rouge, La., - Attorney for Respondents. Justice Lewis Powell delivered the opinion for the court.

The Court held that "Louisiana's denial of equal recovery rights to dependent unacknowledged illegitimates violates the Equal Protection Clause of the Fourteenth Amendment. ... The inferior classification of [these children] bears ... no significant relationship to these recognized purposes of recovery which workmen's compensation statutes commendably serve." Case reversed and remanded. It was a tremendous win for Dean Lacour.

When I called him to receive his plaque, he was acknowledged with a resounding standing ovation from several hundred lawyers in attendance at the BRBA meeting. This response was a more proper and fitting recognition for this legal giant.

In 2004, Dean Lacour was inducted into SULC's Hall of Fame. Last year, pursuant to the unanimous vote of the faculty, a \$100,000 Endowed Professorship was established in his honor. Of that amount, \$60,000 was received from Louisiana Outside Counsel Settlement Fund and a \$40,000 match was received from the Louisiana Board of Regents. Dean Lacour sent me a note thanking me and the faculty for this honor, but suggested that only persons with strong scholarship agendas be awarded the Professorship that bore his name. I assured him that would be the case. ■

West's Jury Verdicts - Baton Rouge

| Venue/Case Type | Major Injury | Trial Type | Result |
|--------------------------------|-------------------------------|------------|-----------|
| <u>East Baton Rouge Parish</u> | | | |
| Labor & Employment | Monetary damages | Bench | \$40,091 |
| Vehicle Negligence | Unspecified personal injuries | Bench | \$48,810 |
| Vehicle Negligence | Unspecified personal injuries | Bench | \$3,716 |
| Vehicle Negligence | Unspecified personal injuries | Settlement | \$30,000 |
| <u>West Baton Rouge Parish</u> | | | |
| Vehicle Negligence | Neck, arms, lower back | Bench | \$150,000 |

West's Case of the Month

Bus Passenger Receives \$3.7K Following Collision With Driver Dosing at the Wheel

Bryant v. Butler

TYPE OF CASE:

Vehicle Negligence • Motor Vehicle v. Motor Vehicle
 Vehicle Negligence • Passenger
 Vehicle Negligence • Rear-End
 Vehicle Negligence • Bus
 Vehicle Negligence • Inattention
 Vehicle Negligence • Impaired Driver
 Vehicle Negligence • Interstate/Freeway
 Insurance • Automobile Policy

SPECIFIC LIABILITY:

Motorist fell asleep at the wheel and collided with a bus, injuring its passengers

GENERAL INJURY:

Unspecified personal injuries; medical expenses; lost income; disability

COURT:

District Court of Louisiana, Nineteenth Judicial District, Parish of East Baton Rouge

DOCKET/FILE NUMBER:

578,965

JUDGMENT:

Plaintiff, \$3,716.00

JUDGMENT DATE:

June 28, 2010

JUDGE:

Timothy E. Kelley

ATTORNEYS:

Plaintiff: Spencer H. Calahan, Law Offices of Spencer H. Calahan, Baton Rouge

Defendants: Bryan Haydel Jr., Baton Rouge

TRIAL TYPE:

Bench

BREAKDOWN OF AWARD:

\$2,500.00 to plaintiff for general damages
 \$1,216.00 to plaintiff for special damages

SUMMARY OF FACTS:

Lawrence E. Bryant was a passenger on a Greyhound bus operated by Harold Johnson, Dec. 21, 2008, while it was traveling east on Interstate 10 in St. Martin Parish, La. Bryant asserted the bus was rear-ended by Jonathon A. Butler, who allegedly fell asleep behind the wheel.

Bryant said he sustained personal injuries in the collision.

Bryant filed a lawsuit against Butler and his liability insurer, USAgencies Casualty Insurance Company, in June 2009, in the Nineteenth Judicial District Court for the Parish of East Baton Rouge. The plaintiff asserted Butler had caused the accident when he followed too closely, failed to maintain a proper lookout, failed to timely apply his brakes, and failed to maintain control of his vehicle.

The plaintiff asked to be compensated for his physical and mental pain and suffering, physical disability, loss of income, loss of earning capacity, and loss of enjoyment of life.

The defendants generally denied the plaintiff's allegations. Their affirmative defenses included the plaintiff's own fault, comparative fault, and failure to mitigate damages. They also asserted their entitlement to credit or offset for any sums paid to the plaintiff for any of his damages.

Butler's insurance policy with USAgencies reportedly provided bodily injury liability limits of \$10,000 per person and \$20,000 per accident.

In a pretrial order filed in April 2010, the defendants explained there were multiple claims brought against Butler for the accident in question and only \$1,764 remained under the bodily injury policy limits.

The defendants asserted they had offered \$1,764 to Bryant to settle his claims; however, he allegedly rejected the offer.

The matter proceeded to a bench trial with Judge Timothy Kelley presiding. In a judgment signed June 28, 2010, the court entered judgment in favor of the plaintiff, against the defendants, awarding \$2,500 for general damages and \$1,216 for special damages.

Judge Kelley ordered the defendants to pay legal interest and court costs.

CASE CITE: *West's J.V. La. Rep.*, Vol. 6, Iss. 5, p. 5 (2010); 2010 WL 4277652

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foundation footnotes

PRO BONO PROJECT & TEEN COURT FEBRUARY REPORTS

PRO BONO PROJECT REPORT

Thanks to all volunteers who donated time to the Pro Bono Project in February 2011.

Thirst for Justice solo practitioner volunteers were **Terry Bonnie**, **Byron Kantrow**, **Michael Malinowski**, **Judge Melvin Shortess (Ret.)** and **Emily Ziober**.

Thirst for Justice volunteers from firms were **Brian Juban**, **Keegan**, **DeNicola**, **Kiesel**, **Bagwell**, **Juban & Lowe**; **Mac Womack**, **Taylor**, **Porter**, **Brooks & Phillips, LLP**; and **Robert Wooley**, **Adams and Reese**.

The law student intake volunteers were **Justin Bello**, **Barry Edwards**, **Janey Hogan**, **Sarah McDonagh** and **Victoria Welch**, *LSU Paul M. Hebert Law Center*.

The Baton Rouge Bar Foundation intern was **Randi Pena**, *LSU Paralegal Program*.

The Ask-A-Lawyer volunteers were **Emily Ziober** and **Ken Mayeaux**, *LSU Paul M. Hebert Law Center*.

The volunteers for the Southern University Law Center Ask-A-Lawyer (Feb. 24) were **David Bateman**, *Bateman Law Firm*; **Danielle Munro**, *Attorney at Law*; and **Alvin Washington** and **Tracie Woods**, *Southern University Law Center*.

The law student intake volunteers were **Virginia Baker**, **Jason Benford**, **Michael Busch**, **Lori Crawford**, **Benny Council**, **Peggy Garris**, **Jeremy Gathe**, **Natoria Hubbard**, **Lisha Landry**, **Chris Lear**, **Eugene Martin**, **Terry McGothen**, **Amani Perkins**, **Kelly Porter**, **Shayla Price**, **Wendy Ramnarine**, **Clinton Schexnayder**, **Charlotte Washington** and **Lana Woods**, *Southern University Law Center*.

The following volunteers accepted cases in February: **Joanna Hynes**, *Attorney at Law* and **Eric Miller**, *The Kullman Firm*.



The Pro Bono Project is financially assisted by the Interest on Lawyers' Trust Accounts (IOLTA) Program of the Louisiana Bar Foundation; Capital Area Legal Services; Family, District and City Court Filing Fees and the Baton Rouge Bar Foundation.

TEEN COURT REPORT

Two Teen Court hearings were held in February 2011. **Crystal Losey French**, **Lindsay Watts**, **Barbara Baier**, **Weldon Hill**, **Ben Chapman** and **Jeff Wittenbrink** served as judges and jury monitors. **Jennifer Williams**, a student from *Southern University Law Center*, served as a jury monitor.

Volunteers are needed to serve as judges for the Teen Court hearings and to assist with training sessions. If you are interested in volunteering, please contact Donna Buuck at 225-214-5556 or via e-mail to donna@brba.org.

Teen Court of Greater Baton Rouge is funded by a grant from the Louisiana Office of Juvenile Justice (formerly the Office of Youth Development), a grant from the Louisiana Bar Foundation's IOLTA program and from the Baton Rouge Bar Foundation. This project is also supported in part by Grant No. 2009-JF-FX-0059 awarded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice.

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April 2011



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Duty Court Schedule

| | | | | | | |
|----|----|----|----|----|----|----|
| | | | | | 1 | 2 |
| 3 | 4 | 5 | 6 | 7 | 8 | 9 |
| 10 | 11 | 12 | 13 | 14 | 15 | 16 |
| 17 | 18 | 19 | 20 | 21 | 22 | 23 |
| 24 | 25 | 26 | 27 | 28 | 29 | 30 |

*Unless otherwise noted, all meetings will be held at the Baton Rouge Bar office.

Calendar of Events

19THJDC CIVIL COURT

| | |
|-------------------|---------------|
| March 28-April 8 | Judge Fields |
| April 11-April 22 | Judge Morvant |
| April 25-May 6 | Judge Kelley |

19TH JDC CRIMINAL COURT***

| | |
|-------------------|----------------|
| March 25-April 1 | Judge Anderson |
| April 1-April 8 | Judge Erwin |
| April 8-April 15 | Judge Jackson |
| April 15-April 22 | Judge Daniel |
| April 22-April 29 | Judge Moore |
| April 29-May 6 | Judge Johnson |

BATON ROUGE CITY COURT*

| | |
|-------------------|-----------------|
| March 28-April 3 | Judge Davis |
| April 4-April 10 | Judge Temple |
| April 11-April 17 | Judge Wall |
| April 18-April 24 | Judge Alexander |
| April 25-May 1 | Judge Ponder |

FAMILY COURT**

| | |
|-------------------|----------------------|
| March 28-April 1 | Judge Dampf |
| April 4-April 8 | Judge Lassalle |
| April 11-April 15 | Judge Baker |
| April 18-April 22 | Judge Woodruff-White |
| April 25-April 29 | Judge Dampf |

JUVENILE COURT

| | |
|------------------|--------------|
| April 1-April 30 | Judge Richey |
|------------------|--------------|

NOTE: Duty Court changes at 5 p.m. each Friday unless otherwise specified.

*City Court's Duty Court schedule changes each Monday at 8 a.m.

**Family Court's Duty Court schedule changes at 4 p.m. each Friday

***19th JDC Criminal Court changes each Friday at noon

COURT HOLIDAYS

| | |
|------------------|-------------|
| Friday, April 22 | Good Friday |
|------------------|-------------|

Classifieds

EASTER BASKET AND STUFFED-PLASTIC EGG DRIVE
Friday, April 15, 2011, is the deadline to drop items off at the Middleton Bar Center, 544 Main Street. Contact Carole at 225-214-5557 or carole@brba.org for more information.

BENCH BAR CONFERENCE 2011

Be sure to make your hotel room reservations early at the Marriott Grand Hotel in Point Clear, Ala., for the 2011 BRBA Bench Bar Conference. The Benjy Davis Project will be performing. Come see the Bench Bar Boogie Band's Final Conference Performance!

Registration forms are online at www.brba.org/forms/BBC2011.pdf. For more information, contact Ann G. Scarle at 225-214-5563.

ATTORNEYS OR JUDGES WHO BELIEVE

they have problems with alcohol and/or drugs are welcome to attend meetings with other similarly situated attorneys/judges held Tuesdays at The City Club, 355 North Blvd. Contact number: 225-753-3407. Thursday meetings are held at Bocage Racquet Club, 7600 Jefferson Hwy. Contact number: 225-928-5053. Both meetings are dutch treat and are from 12 to 1 p.m. Strict anonymity is observed outside these 12-Step Meetings.

LAW EXPO COMMITTEE MEMBERS

are needed to help plan the BRBA's only fundraiser/event to benefit the Association. The September bar luncheon and Law Expo event will be held Thursday, Sept. 8, 2011, at The Belle of Baton Rouge Casino & Hotel. Contact Pamela Labbe at 225-214-5560 or pamelab@brba.org for more information.

- 1 Late registration rate begins for the BRBA Bench Bar Conference
- 5 YLS Council meeting, 12 p.m.;
- 6 Bench Bar Committee meeting, 12 p.m.
- 6 La. Judicial College Spring Judges Conference;
- Thirst for Justice, St. Vincent de Paul, 3-5 p.m.
- 7 Ask-A-Lawyer workshop, 9-11:30 a.m., Delmont Service Center;
- April Bar Luncheon & Community Justice Symposium, 11:45 a.m., De La Ronde Hall;
- La. Judicial College Spring Judges Conference;
- Thirst, St. Vincent de Paul, 3-5 p.m.
- 8 Junior Partners Academy, Dalton Elementary, 10 a.m.;
- La. Judicial College Spring Judges Conference
- 9 Ask-A-Lawyer workshop, 9:30-11:30 a.m., Scotlandville Library
- 11 Publications Committee meeting, 12 p.m.;
- Community Outreach meeting, 12 p.m.;
- Teen Court Hearing, 5:45 p.m., EBR Juvenile Courthouse
- 12 Member Services meeting, 12 p.m.;
- 13 Pro Bono Committee meeting, 12 p.m.;
- Operations & Finance meeting, 3:30 p.m.;
- Executive Committee meeting, 4 p.m.;
- Thirst, St. Vincent de Paul, 3-5 p.m.
- 14 Volunteer Committee meeting, 12 p.m.
- Thirst for Justice, St. Vincent de Paul, 3-5 p.m.
- 18 CLE Committee meeting, 12 p.m.
- 20 Ask-A-Lawyer workshop, 9-11:30 a.m., Catholic Charities;
- Thirst, St. Vincent de Paul, 3-5 p.m.;
- Board of Directors meeting, 6 p.m., Mansurs on the Blvd.
- 21 Public Law Practice Section meeting, 12 p.m., location: TBA;
- CLE Committee meeting, 12 p.m.
- 22 Office Closed — Good Friday Holiday
- 23 Ask-A-Lawyer workshop, 9:30-11:30 a.m., Carver Library
- 26 Youth Education Committee, 12 p.m.
- 27 Teen Court Committee meeting, 12 p.m.;
- Thirst for Justice, St. Vincent de Paul, 3-5 p.m.
- 28 Bench Bar Conference 2011, Marriott Grand Hotel in Point Clear, Ala.;
- Thirst for Justice, St. Vincent de Paul, 3-5 p.m.
- 29 Bench Bar Conference 2011
- 30 Bench Bar Conference 2011



For more information about the Baton Rouge Bar Foundation's Teen Court program, contact Donna Buuck at 225-214-5556 or donna@brba.org or R. Lynn Smith Haynes at 225-214-5564 or lynn@brba.org.



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