

Around

THE MAGAZINE OF THE
BATON ROUGE BAR ASSOCIATION

No. 314, February 2017

the Bar



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On the cover:

The February Bar Luncheon, which is set for Wednesday, Feb. 15, 2017, will be a joint meeting of the membership of the BRBA, the Baton Rouge Association of Women Attorneys, the Federal Bar Association (Baton Rouge chapter) and the Louis A. Martinet Legal Society. The event will take place at Ruffino's at De La Ronde Hall. Photographed on the cover are the presidents of each of the participating organizations: (L to R) Mark Barbre (FBA); Jan Reeves (BRAWA); Karli Glascock Johnson (BRBA); and Ashley Greenhouse (Martinet).

The photo was taken at Cocha, a new downtown restaurant located next to the BRBA at 445 N. Sixth St.

Cover photography by Pamela Labbe.

Special thanks to Margot May for designing this issue.



4	Contributors
4	Gail's grammar
5	Letter from the president "Celebrating Black History Month" BY KARLI GLASCOCK JOHNSON
6	February bar luncheon
7	"Interview with Louis A. Martinet Legal Society President Ashley Greenhouse" BY KERII LANDRY-THOMAS
10	"Opening the Doors: The struggle to desegregate LSU Law School" BY DR. SHARLENE SINEGAL-DECUIR
13	"Amusement park and adventure sport liability in Louisiana" BY JAMES D'ENTREMONT
16	Bar news
18	Foundation footnotes

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GAIL'S GRAMMAR

Conditional clauses state what must occur or not occur before something can happen. They start with words such as if, when and unless. Writing the conditional clause first emphasizes the condition and sets up the main point.

EXAMPLES:

If she accepts his proposal on Valentine's Day, they'll be married in June.

If you do not send a check by Feb. 28, I will file suit.

Leading with the conditional clause is a good rule to follow unless the clause is long and convoluted. If the sentence is more readable with the condition at the end, you might want to consider simplifying the clause.

Send suggestions for future Gail's Grammar columns to Gail Stephenson at GStephenson@sulc.edu, or call Gail at 225.771-4900 x 216.

AROUND THE BAR supports participation of the membership in its production. We encourage the submission of articles and letters to the editor. Articles should be less than 1,800 words, typed and single-spaced. A Word file should be emailed as an attachment to: pamela@BRBA.org.

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letter from the president

BY KARLI GLASCOCK JOHNSON

Celebrating Black History Month

For New Year's Day, my family has a standing date with the family of my dear friend, Magistrate Judge Erin Wilder-Doomes (who dispenses with formality and permits us to address her as "Erin" in this casual setting). Erin's maternal grandparents, Joe and Nathalia Douglas, are always there, visiting from Topeka, Kansas. We visit, eat cabbage and black-eyed peas, and watch football. It is a tradition I treasure.



Karli Glascock Johnson

Mr. and Mrs. Douglas always have wonderful stories about their early lives, and this time, those stories were especially relevant to my topic of Black History Month. You see, they grew up attending Topeka's segregated schools. They lived through the initial desegregation efforts spearheaded by the landmark case of *Brown vs. Board of Education of Topeka*. Later, Mr. Douglas served as president of the Topeka School Board, even as the *Brown vs. Board of Education* litigation continued into its fourth decade.

But the stories did not match my expectations precisely. I had assumed that there would be a clear narrative about the progress made since those days of segregation. Weren't we, a comfortably colorblind gathering of blacks and whites, evidence of that progress? Perhaps, and Mr. and Mrs. Douglas did say that, in many respects, things are better for black Americans today.

But what caught my ear were the stories of close interracial friendships they enjoyed as children, even living in a world with segregated schools. Apparently, we did not invent "comfortably colorblind" in the modern era. And Mrs. Douglas spoke of her feelings of great loss at the closing of Washington Elementary School, the segregated school she attended as a child, which was shut down as part of the desegregation effort. I was touched by these recollections of meaningful relationships that flourished in the midst of injustice.

I left with a sense that my happily colorblind life was worth cherishing. But not at the expense of turning a blind eye to the injustices that endure today. Black History Month gives us an opportunity to reflect on our nation's long and difficult struggle to address the injustices perpetrated on black Americans. This reflection must give rise to a resolve to continue the fight. I know that the Baton Rouge Bar Association will continue to fight against injustice, wherever it manifests itself. Baton Rouge will be a better city for it.

I hope to see you Wednesday, Feb. 15, at the February Bar Luncheon. 📍

february bar luncheon

BRBA to hold joint meeting with BRAWA, FBA (BR chapter) and Martinet Society

The BRBA will hold its February Bar Luncheon Wednesday, Feb. 15, 2017, at Ruffino's at De La Ronde Hall, 320 Third St. This month's luncheon is a joint meeting of the BRBA, the Baton Rouge Association of Women Attorneys, the Federal Bar Association (Baton Rouge chapter), and the Louis A. Martinet Legal Society.



Mayor-President Sharon Weston Broome

Speaking at this month's joint bar luncheon will be Mayor-President Sharon Weston Broome. Her journey as a public servant has spanned for over two decades, starting with the Metro-Council and culminating with her election as the first female elected mayor-president of Baton Rouge, East Baton Rouge Parish.

Broome spent two decades in the state Legislature, during which she served as a Representative (District 29) and a Senator (District 15). Through the legislation she authored, Broome leaves a legacy of empowering children, families and communities.

Broome, a native of Chicago, Illinois, holds two degrees in communications and worked as a reporter for WBRZ-TV for five years. She has served as an adjunct instructor at the LSU Manship School of Mass Communication, Baton Rouge Community College and Southern University.

Sharon and her husband, Marvin Broome, have three children and three grandchildren.

Members of the BRBA, BRAWA, FBA-BR chapter and Louis A. Martinet Legal Society may attend the February Bar Luncheon at Ruffino's at De La Ronde Hall for \$30 per person. Guest price is \$40 per person. Please RSVP to Kelsie Bourgeois by noon Friday, Feb. 10, 2017. "No shows" will be invoiced.

Cancellations must be made by noon Friday, Feb. 10, 2017. Fax this form to 225-344-4805 or email it to kelsie@brba.org.

PLEASE COMPLETE THIS FORM AND FAX THIS ENTIRE PAGE TO THE BRBA AT (225) 344-4805 BY NOON FRIDAY, FEB. 10, 2017.

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LUNCHEON — **YES**, register me for the **FEBRUARY BAR LUNCHEON** at Ruffino's at De La Ronde Hall, 320 Third St., which will take place **WEDNESDAY, FEB. 15, 2017, at 11:45 a.m.** at \$30 per BRBA, BRAWA, FBA (BR chapter) or Martinet member. Guests who are non-members may attend for \$40 per person. **SPACE IS LIMITED. Please reserve your seat by sending in this form to Kelsie Bourgeois at the BRBA by Friday, Feb. 10, 2017, at noon. Fax to 225-344-4805 or email to kelsie@brba.org.** Cancellations must be made by noon Friday, Feb. 10, 2017. "No shows" will be invoiced. Online registration is also available at www.BRBA.org.

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Interview with Louis A. Martinet Legal Society President Ashley Greenhouse

BY KERII LANDRY-THOMAS

Mentoring is the theme that is most prevalent throughout the following interview with Ashley Greenhouse, the 19th president of the Louis A. Martinet Legal Society. In that role, she sets forth a new agenda for the growth and identity of the organization.

Greenhouse, a Louisiana State University Law Center graduate, discussed how it felt to be a new attorney when she passed the bar in 2009. Her goal is to help bridge the gap between new attorneys and established attorneys in the Martinet Legal Society. Greenhouse, 34, discussed her goals for her tenure as president, and the role of the organization after the events that occurred in Baton Rouge this past summer.

Greenhouse graduated from Louisiana Tech in Ruston in accounting. During her senior year in college she was mobilized to Fort Polk, where she served as a finance specialist. After graduating from Louisiana Tech, she attended the LSU Law Center. Greenhouse began practicing family law with the firm of Haley & Associates in 2009.

Greenhouse, a staff attorney at the 19th Judicial District Court, works with Commissioner Quintillis Lawrence. Although she said she enjoys the job she has now, Greenhouse found that working with juveniles was the most rewarding experience of her career. Greenhouse noticed that young people really benefit from someone who cares. Through her juvenile court experience she discovered that mentoring is needed, not just for juveniles but also for new attorneys.



ATB: Why did you go to law school after you graduated with an accounting degree?

AG: I always wanted to go to law school. When I went to Tech I really didn't know what I was going to major in. Accounting was the first thing on the list and that's why I went in accounting.

I always tell people if aviation would have been before accounting, I probably would be flying planes today. I never practiced accounting.

ATB: So, you said you served in the Army reserves. Tell me about that.

AG: I gained all the confidence in the

world from my experience in the Army reserves. I always say my biggest regret was not staying in the Army longer. During senior year in college I was mobilized in support of Operation Enduring Freedom, where I served as a finance specialist. In that role, I had an opportunity to assist active-duty soldiers and their spouses as they prepared to go abroad. I served nine years in the Army reserves. My rank was staff sergeant when I got out, before I graduated law school.

ATB: *What did you do after law school?*

AG: Immediately after law school I practiced family law, forming Haley & Associates with Ronald Haley. At the time, I had the opportunity to do a lot of pro bono work at juvenile court, and it's probably the most rewarding thing that I have done since I began practicing. You know, those kids are looking for someone to respect. I believe they are looking for someone to help re-direct them. It really was the best way that I could give back to the community and effect change.

It was a huge commitment, but it was really important to me and Ron (Haley), and so we did a lot over there. In family court, of course, I love to help folks. This is work for us, but for these folks, this is their real life. I try my best to give them the tools to effectively manage their existing relationships. I try to give them what they want while still maintaining a piece of respect for the other person. I never want to be the nasty lawyer. Most of our clients have to maintain some type of relationship with the opposing party.

ATB: *Now you work as a staff attorney at the 19th JDC with Commissioner Lawrence. Tell the readers about that experience.*

AG: I actually met Commissioner Lawrence when I was visiting his unit when I was a first-year law student. He tried to recruit me for the JAG Corps. I never imagined that I would have this opportunity to work for him. I have learned so much from him.

ATB: *How did you get involved with the Louis A. Martinet Society?*

AG: In law school I became involved with the Louis A. Martinet Society. The organization gave me an opportunity to network with attorneys who looked like me. I've just

continued to be active since law school. In law school I was president of the local BLSA chapter and served on the regional board my third year. Those organizations were active with Martinet.

ATB: *What are some activities that the organization sponsors?*

AG: Martinet has been a staple for African-American attorneys by providing them with tools to be successful. In the past, organizations like Martinet were necessary to partner with African-American attorneys so that they could be successful in practice. While we are available for those things, there is less of a need for us in that capacity. Instead, we have opportunities to help the community

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with expungement days and we have a reading-from-the-start program, which brings attorneys into the schools to read with kids and have a presence in the schools. Something big that has happened recently is our contribution to the community with all the events that happened over the summer.

ATB: Tell me more about Louis A. Martinet's contribution after the events from the past summer.

AG: In light of the Alton Sterling incident, we had so many people calling about Martinet's response. Without making immediate comments, we decided to respond by just being lawyers. We knew people had the right to protest, so we decided to protect people's right to protest. We chose, as an organization, to provide pro bono services for anyone who was arrested during peaceful protest. We worked closely with the National Lawyers Guild, which bonded people out. Our organization had attorney volunteers to take these cases. Additionally, as an affiliate of the National Bar Association, we partnered

with other Martinet chapters around the state, 100 Black Men of Metro Baton Rouge and the Lawyers' Committee for Civil Rights Under the Law, and brought in presenters from the "Black Movement Law Project" to provide training on legal observing and jail support. That's what we contributed to our community. It was important and we needed to respond.

ATB: What are your goals for the organization under your tenure?

AG: My hope for the organization during my tenure is to have Martinet focus on a strong mentorship component. I want more seasoned attorneys to be there for the new attorneys. I want to increase participation and have offerings to meet the needs of the 21st century attorney. We plan to offer CLEs at every general body meeting. In fact, we held a Martinet Thanksgiving lunch, where we offered an hour of CLE training and professional headshots because we have so many solo practitioners. We are trying to have new and creative ideas to meet the needs of our members. 



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Opening the Doors: The struggle to desegregate LSU Law School

BY DR. SHARLENE SINEGAL-DECUIR

In April 1946, Thurgood Marshall called a special meeting in Atlanta with lawyers from several southern states that worked with the National Association for the Advancement of Colored People (NAACP) on suits through their local NAACP chapters. At the meeting, Marshall and the lawyers decided to file suits in 11 southern states and the District of Columbia, simultaneously, demanding equality in all public education facilities including professional and graduate schools.¹ Among the many lawyers present were Alexander Pierre Tureaud, a 1925 graduate of Howard University Law School. He was a New Orleans native and the only regularly practicing black attorney in Louisiana between 1938 and 1947.² Tureaud would go on to file most of the important civil rights litigation in Louisiana and in time earned the name “Mr. Civil Rights.”³

Prior to the special NAACP meeting in April, Charles Hatfield III, a resident of New Orleans and a senior at Xavier University, wrote to the registrar at Louisiana State University seeking admission into the LSU Law School.⁴ Ten days later, Hatfield received a letter from LSU Law Dean Paul M. Hebert stating, “LSU does not

admit colored students and Southern University, the principal State supported College for Negroes, is authorized by statute to establish a law school for Negroes.”⁵ Dean Hebert’s response provided the basis for a suit against the LSU Law School because, at the time, no law school existed at Southern University. On Oct. 10, 1946, Tureaud filed a suit on behalf of Hatfield.⁶

Meanwhile, the LSU Board of Supervisors sent requests to the Louisiana State Board of Education strongly recommending the creation of a black law school at Southern University. On June 14, 1947, a budget of \$40,000 was allocated to establishing such a law school.⁷ Southern University Law School opened in the fall of 1947 with four part-time professors lent from LSU and eight students.⁸ Unfortunately, Charles Hatfield never enrolled in

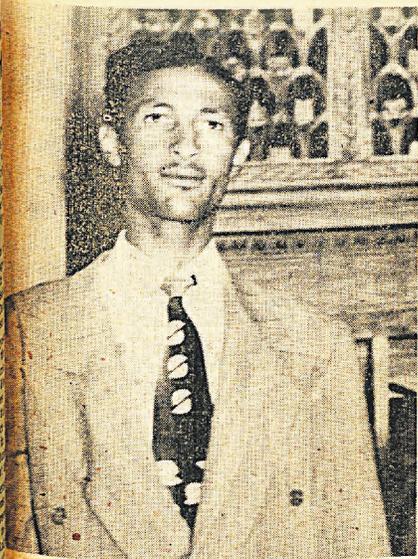
the Southern University Law School. However, in May 2002, just one month before his death in June at the age of 87, he received Southern University Law Center’s first Honorary Juris Doctorate.⁹ The *Hatfield* case is extremely significant not only for the creation of Southern University Law School but for displaying the inequalities between the newly created law school and LSU Law School.



Roy S. Wilson



Wilson Enrolls As Law School Student



LSU'S FIRST NEGRO student is Roy S. Wilson, of Ruston, who registered to attend the Law School. Wilson is married and two children, but does not expect to live with them while in Baton Rouge. He will live in a University dormitory.

Roy S. Wilson, 30-year-old Negro, was enrolled in the LSU Law School following completion of registration this morning. He was scheduled to start classes today as a special student since he registered too late to take courses for credit. Admission of Wilson came following a decree issued by a three-judge federal court in New Orleans Monday. The decree prohibited the Board of Supervisors from denying admission to Wilson and other qualified Negroes where the sole grounds are that they are members of the Negro race. University officials are expected to appeal the decree to the U. S. Supreme Court. Wilson, who was originally scheduled to arrive on the campus at 2 yesterday afternoon to start registration, finally appeared in the office of Law School Dean Henry G. McMahon at 4:05 where he was met by his

The two, accompanied by J. K. Haynes of Ruston and Alex L. Pitcher, Baton Rouge attorney, went immediately into Dean McMahon's office where Wilson began filling out registration cards and arranging his schedule. Wilson plans to live in one of the University dormitories, Tureaud said. Asked if other Negroes who had applied for admission would seek to enter, Tureaud said, "We're going to inquire into their possibilities too." Wilson is the youngest of 16 children of W. S. and Ida Wilson of Ruston. He is married and has two children, one 6

and the other 7. He was a private in the army during World War II. He received his bachelor's degree in education from Grambling College and taught one year in Jackson Parish. "I've always wanted to be a lawyer," Wilson said. He expects to practice in Ruston, where there are no Negro attorneys, when he is graduated.

Senate to Install Members Tonight

Tonight's meeting of the Student Senate will have full membership for the first time this year. Nineteen new members are to be installed during the session which begins at 5:15 p.m. in the Law Building.

Chest Goal Lower Than Last Year

Following the season's conclusion

The senate normally has a total of 36 members, but many posts

Approximately four years after the *Hatfield* case, on July 12, 1950, 12 black students applied for admission to the LSU Law School. The LSU Board of Supervisors denied their admission on the premise that Louisiana had established a law school for blacks at Southern.¹⁰ Tureaud and Marshall saw this as their chance to challenge the equality of the two schools as mandated by the 1896 *Plessy v. Ferguson* decision. They decided to sue LSU on behalf of one of the 12 plaintiffs, Roy Wilson, an Army veteran from Ruston who possessed all of the qualifications required for admission to the law school.¹¹

Federal District Judges J. Skelly Wright and Herbert Christenberry and U.S. Fifth Circuit Judge of Appeals Judge Wayne Borah comprised the three-judge panel that heard *Roy Wilson v. Board of Supervisors of LSU*. In the suit, Tureaud and Marshall argued that the law school at Southern University failed in comparison and equality to the law school at LSU. After extensive testimony by the presidents and law school deans of both Southern University and LSU, the inequalities of the two schools were evident, especially in the operating budgets. LSU Law School had an annual operating budget of approximately \$2,000,000; the entire amount appropriated for establishing the law school at Southern was only \$40,000.¹² Still, the attorneys representing LSU argued that all of the facilities at Southern were "excellent, including the library and other features and while the school did not have a special building, the building did have air-conditioning, LSU did not."¹³

Tureaud fought back by presenting evidence to the court that continued to prove the inequality between LSU and Southern University law schools. According to Tureaud, Southern Law School's physical plant was worth only \$3.5 million, approximately 10 percent

of the value of LSU Law School's plant, \$34 million. Tureaud continued to expose the inequalities of the two law schools by comparing the libraries and faculty. He produced documentation showing that the law library at LSU contained more than 70,000 law books as opposed to the 12,300 law books in the Southern University law library. Tureaud also demonstrated that the Southern University Law School faculty members lacked advanced degrees or previous teaching experience consistent with their counterparts on the faculty at LSU Law School.¹⁴

The attorneys for LSU, with nothing left to argue, stated that the court had no right to grant an injunction on a question only the LSU Board of Supervisors could decide. Marshall responded that he and Tureaud aim was only to "remov[e] from that consideration the question of race," and not to deprive the LSU Board of the right to consider who was admitted to the law school.¹⁵ According to Marshall, this suit prevented LSU Law School from putting into action the idea that regardless of qualifications, blacks should not be admitted.

The federal court decision stated that the law school at Southern University failed to provide the plaintiff educational advancements equal to those at LSU. Thus, it ordered Wilson to be admitted to LSU Law School. Wilson became the first black student admitted to the law school on Nov. 1, 1950.¹⁶ The *LSU Board of Supervisors* appealed the decision in *Board of Supervisors v. Wilson*, but the U.S. Supreme Court affirmed the ruling of the lower court without comment.¹⁷

While the U.S. Supreme Court reviewed the *Wilson* case, LSU opened an investigation into Wilson's "character," which led to his resignation from LSU on Jan. 17, 1951. Despite the outcome for Wilson, his case is both historic and significant because it opened the

doors of the LSU Law School to blacks who met all of the necessary qualifications for admission. In the fall of 1951 three black students, Robert F. Collins, Pierre S. Charles and Ernest N. Morial, were accepted into LSU Law School without prejudice, and in February 1954, LSU Law School graduated its first black student, Ernest N. Morial, who later went on to become the first black mayor of New Orleans. 

¹Juan Williams, *Thurgood Marshall: American Revolutionary*, (Random House, 1998), 174.

²*New Orleans Times-Picayune*, 23 January 1972.

³Louis A. Martinet Legal Society, Inc. Greater Baton Rouge Chapter, Founders A. P. Tureaud.

⁴Hatfield to Louisiana State University Registrar, Hatfield Papers, Amistad Research Center, Tulane University, New Orleans, La. Hatfield wrote to LSU's registrar on 10 January 1946.

⁵Board of Supervisors Records, RG#A0003, Report of a Meeting Representatives of LSU and Representatives of the State Board of Education held at the Louisiana State Capitol on 12 August 1946, Box 7 Folder 310. Louisiana State University Archives, LSU Libraries, Baton Rouge, Louisiana.

⁶*New Orleans Times-Picayune*, 23 January 1972; Evelyn L. Wilson, "Justice In Louisiana: From The Historical Perspective: Access to Justice: Charles J. Hatfield," Louisiana Bar Journal (August/September, 2002).

⁷Wilson, "Justice in Louisiana."

⁸News Paper Clippings, Box 28-308, New Orleans Branch NAACP Papers, University of New Orleans, Special Collections.

⁹Southern University Law Center E-News "Interim Chancellor Pierre declares 2016 The Year of Charles J. Hatfield III" Vol. 14, No., 18-24 January 2016. 1.

¹⁰Adam Fairclough, *Race and Democracy: The Civil Rights Struggle in Louisiana, 1915-1972*. (The University of Georgia Press, 1995), 154.; "Nine Apply for Admission to LSU—Board to Act on Negro Admission at August Meeting," *Louisiana Weekly*, 15 July 1950, 1.; On 12 July 1950 nine students applied, subsequently three more students applied bringing the number to 12. The applicants were Roy S. Wilson, Nephus Jefferson, Dan C. Simon, Willie C. Patterson, Charles E. Coney, Joseph H. Miller Jr., Lloyd E. Milburn, Edison G. Hogan, Lawrence A. Smith Jr., James L. Perkins, Harry A. Wilson and Anderson Williams. On 28 July 1950, LSU Board of Supervisors deny the applicants.

¹¹Adam Fairclough, *Race and Democracy: The Civil Rights Struggle in Louisiana, 1915-1972*. 154; "LSU Suit Taken under Advisement," *The Louisiana Weekly*, 7 October 1950; *Wilson v. Louisiana*, 340 U. S. 864 (1951).

¹²News Paper Clippings, Box 28-308, New Orleans Branch NAACP Papers, University of New Orleans, Special Collections.

¹³"LSU Suit Taken under Advisement," *The Louisiana Weekly*, 7 October 1950.

¹⁴Rachael L. Emanuel and Alexander P. Tureaud Jr., *A More Noble Cause: A P. Tureaud and the Struggle for Civil Rights in Louisiana*, (Louisiana State University Press: Baton Rouge, 2011), 135.

¹⁵"LSU Suit Taken under Advisement," *The Louisiana Weekly*, 7 October 1950.

¹⁶"Court Orders LSU to Admit Negro School Plans Appeal to U. S. Supreme Court," *Louisiana Weekly*, 14 October 1950.

¹⁷*Board of Supervisors v. Wilson*, 340 U.S. 909 (1951), reh.den. 340 U.S. 939 (1951). The court affirmed the lower-court decision and cited *Sweatt v. Painter*, 339 U.S. 629, and *McLaurin v. Oklahoma State Regents*, 339 U.S. 637.

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Amusement park and adventure sport liability in Louisiana

BY JAMES D'ENTREMONT

Every year, Americans flock to amusement parks and adventure-sport facilities to catch a thrill. Part of the allure of these activities is the chance to do something with a high perceived risk but in a manner where there is little actual risk. It is the perception of risk that triggers the “adrenaline rush” that makes these



activities attractive. For most people, however, the chance for a thrill alone is not enough to get them on the ride or to do the activity. Rather, the mass appeal of these activities is tied to the participant’s belief that the ride or activity is set up to be done safely and that he or she will walk away uninjured. It is the illusion of danger, not actual danger, that makes amusement park rides and adventure sports so popular. Participants generally expect that they will be properly instructed, supervised and warned of any conditions or conduct that increases their risk of harm, and that they will be safe if they follow all instructions and warnings. In other words, they expect a controlled environment where they can feel the rush without the risk.

Unfortunately, participants do not always walk away unharmed. For example, during a five-day span in August 2016, the nation saw four amusement park accidents causing serious injuries, including the decapitation of the 10-year-old son of a Kansas lawmaker on the Verrückt waterslide at Schlitterbahn Kansas City.¹ In the wake of these accidents, many questioned the safety, oversight and standards of amusement park rides and the industry as a whole.² Similar questions have been raised with regard to adventure sports as the growth in their popularity in recent years has led to a steady rise in injuries from activities such as zip lining, parasailing and other endeavors that at one

time were done almost exclusively by daredevils or experienced adventurers but are now commercialized and widely offered to the public at large for recreation. The rise in injuries from such activities have been dramatic enough to cause the medical community to “suggest the need for additional guidelines and regulations”

governing zip line operators and prompt the publication of a special investigative report on parasailing by the National Transportation Safety Board.³ Against this backdrop, many question the safety standards of the amusement park and adventure-sport industries, especially when accidents occur.

Louisiana law recognizes that while facility operators are not required to remove every element of risk associated with a ride or adventuring activity, they are responsible for providing a safe, sound and secure environment free of unnecessary and unreasonable dangers. Under Louisiana law, operators of amusement parks and adventure-sport facilities owe a general negligence duty of reasonable care under the circumstances.⁴ Although not the insurers of a participant’s safety, facility operators owe “the duty of exercising reasonable care for the safety of persons on [their] premises and the duty of not exposing them to unreasonable risks of harm or injury.”⁵ Importantly, the duty owed “must be defined in terms of the special circumstances and the special dangers” presented by such facilities, including that, regardless of the risks involved, the public generally expects such facilities to be safe when patrons and participants follow the instructions and warnings provided to them.⁶ As such, operators “must use care commensurate with the dangers of the business”

– the more dangerous the activity, the greater the degree of care required of the facility operator.⁷

Facility operators must adequately inspect and maintain the premises and equipment provided to ensure that it is in proper working order and reasonably safe for the purpose intended, identifying unreasonably dangerous conditions that are reasonably discoverable and either correcting them



or providing an adequate warning.⁸ They must also properly orient, instruct and supervise participants and facility personnel to ensure that safe and appropriate practices are followed.⁹ This includes having appropriate rules, policies, procedures and standards in place and taking reasonable steps to ensure that both participants and facility personnel know and follow them.¹⁰ The failure to do so may give rise to liability, particularly where facility personnel fail to meet industry standards or comply with the facility's own internal standards.¹¹ Conversely, although compliance with applicable standards may be evidence that an operator acted reasonably, it will not, in all cases, insulate an operator from liability, particularly where the standards themselves are lacking or where despite compliance, the operator knew or should have known that certain conditions or conduct raised the risk of harm but failed to take action to protect participants.¹²

One critical aspect of an operator's duty of reasonable care is appropriate instruction and supervision of participants. In the amusement-park setting, this obviously includes fundamental safety concerns such as making sure that riders meet the requirements to get on the ride (e.g., height, age), are appropriately secured and know and follow safety rules for the ride. Beyond that, Louisiana courts have also held that amusement-ride operators have "a duty to reduce the risk of injury to riders by shutting down the ride when dangerous or unsafe activity is observed," noting that "safety must be a foremost concern of operators" in such circumstances.¹³

Instruction and supervision are just as critical, if not more so, in the adventure-sport context because whereas the amusement-park riders are passive participants relying almost entirely on the operator to control the ride and its risks, adventure-sport participants are actively engaged in the activity. Adventure-sport participants vary in experience, fitness, knowledge and skill, and each

facility has its own idiosyncrasies. The operator must take reasonable measures to ensure that each participant is capable of performing the activity safely and, if so, is adequately instructed in the proper techniques for doing so.¹⁴ This includes orienting the participant to the equipment, procedures and rules for the specific facility regardless of the participants' overall experience or skill level to be sure that they

understand the set up and know how to properly use the equipment at that specific facility so as to avoid injury.¹⁵ For example, what might be an appropriate anchor point at one facility may look the same but not be strong enough to be safe for use at another facility. All participants need to be shown exactly how the equipment is intended to be used at that specific facility so that their safety is not compromised. For that reason, it is prudent for facility personnel to demonstrate how to properly use the equipment, especially safety-related equipment, and show participants how to safely react if faced with threatening or challenging scenarios. After demonstration, facility personnel should also observe participants to ensure that they are using proper technique before allowing them to perform the activity unsupervised or under less supervision. Whether the operator did some or all of the foregoing may be determinative of liability should an injured participant pursue a claim.¹⁶

One unique characteristic of adventure sports that is typically not seen with amusement parks is the use of written waiver forms. While such forms are commonly used in Louisiana, pursuant to Louisiana Civil Code article 2004, any clause that "in advance, excludes or limits the liability of one party for causing physical injury to the other party" is null.¹⁷ Thus, under Louisiana law, the signing of a waiver of liability will not exculpate a facility operator from liability for personal injuries.¹⁸ Although some operators attempt to circumvent article 2004 through choice-of-law or forum-selection clauses, such attempts may be suspect and subject to attack, particularly if the end result would be a waiver of liability given that such enforcement would contravene a strong public policy of Louisiana (that is, nullity of such provisions pursuant to article 2004).¹⁹ Another tactic that facility operators use to try to limit liability is to include a mandatory arbitration provision in a waiver form. Notably, however, in *Duhon*

v. Activelaf, LLC, a case involving an arbitration provision in a waiver form required by a trampoline park, the Louisiana Supreme Court recently found such a provision adhesive and unenforceable.²⁰ While the court noted that the enforceability of arbitration clauses is decided on a case-by-case basis and that its holding in *Duhon* was based on the specific facts of that case, it nonetheless provides insight for evaluating the enforceability of such provisions.

Conclusion

Operators of amusement parks and adventure-sport facilities are responsible for providing a safe, sound and secure environment for participants to enjoy the thrill of the activity free from unnecessary and unreasonable risks. This does not mean a risk-free environment. It does, however, require operators to take reasonable measures to reasonably reduce the risks of the activity or ride (and certainly not increase the risks) and make sure that all participants are adequately instructed, warned and supervised so that they do not needlessly compromise their safety or the safety of others. Notably, the degree of care required of the operator is defined by the nature of the activity: The more dangerous the activity, the greater degree of care and attention required. Operators who recognize this and make safety a priority can offer the perception of risk needed to give participants the thrill they seek while reducing or eliminating the actual risk presented so that they leave happy and unharmed. ■



³See Billock RM et al., *Zipline-Related Injuries Treated in US EDs, 1997-2012*, 33 Am. J. Emerg. Med. 1745-49 (Dec. 2015); National Transportation Safety Board, *Parasailing Safety, Special Investigative Report NTSB/SIR-14/02* (June 2014).

⁴ See *Downs v. E.O.M. Entertainment, Inc.*, 43,654 (La. App. 2 Cir. 10/22/08), 997 So.2d 125, 128-29.

⁵ *Id.*

⁶ *U.S. Fidelity & Guaranty Co. v. Brian*, 337 F.2d 881, 883 (5 Cir. 1964), *judgment modified*, 339 F.2d 602 (5 Cir. 1965).

⁷ *Id.*

⁸ *Id.*; *Ravey v. Rockworks, LLC*, 12-1305 (La. App. 3 Cir. 4/10/13), 111 So.3d 1187, 1190 (noting that duty owed “is that of reasonable and ordinary care, which includes the prior discovery of reasonably discoverable conditions on the premises that may be unreasonably dangerous, and correction thereof or a warning to the invitee of the danger”).

⁹ See *Fecke v. Bd. of Supers. of LSU*, 15-0017 (La.App. 1 Cir. 7/7/15), 180 So.3d 326, 342-343, *aff'd in part, rev'd in part on other grounds*, 15-1806 (La. 9/23/16), ___ So.3d ___, 2016 WL 5390302 (defendant

liable for failing to “properly instruct, demonstrate, and certify” that plaintiff “understood the proper techniques” for climbing an indoor rock climbing wall in accordance with facility rules manual); *Pate v. Skate Country, Inc.*, 96-0364 (La.App. 4 Cir. 10/9/96), 682 So.2d 288, 291 (failure to follow industry regarding use of “floorguards” at roller rink supported finding of negligence against facility); *Harvey ex rel. Bates v. T.H.E. Ins. Co.*, 99-1440 (La.App. 3 Cir. 6/28/00), 764 So.2d 354, 358-59 (operator breached duty to maintain amusement park ride by not having seatbelts in violation of manufacturer’s specifications notwithstanding the fact that independent third-party inspector certified the ride).

¹⁰ *Id.*

¹¹ *Id.*

¹² See e.g., *Harvey*, 764 So.2d at 358-59.

¹³ *Id.*

¹⁴ See *Fecke*, 180 So.3d at 342-43 (operator held liable for failing to properly instruct and supervise); cf. *Ravey*, 111 So.3d at 1191 (operator reasonable and not negligent where plaintiff was shown how to use equipment properly and staff observed plaintiff using equipment properly prior to accident).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ La. C.C. art. 2004.

¹⁸ *Id.* also *Fecke*, 180 So.3d at 342.

¹⁹ See *Shelter Mut. Ins. Co. v. Rimkus Consulting Group, Inc. of La.*, 13-1977 (La. 7/1/14), 148 So.3d 871, 881-82.

²⁰ *Duhon v. Activelaf, LLC*, 16-0818 (La. 10/19/16), ___ So.3d ___, 2016 WL 6123820.

¹ See Steve Visser and Lauren Del Valle, *Boy Falls off Pennsylvania Roller Coaster*, CNN (August 12, 2016), www.cnn.com/2016/08/11/us/pennsylvania-child-falls-off-roller-coaster/; Ashley May and Mary Bowerman, *Horrific Accidents at Fairs, Amusement Parks in the News*, USA Today (August 11, 2016), www.usatoday.com/story/news/nation-now/2016/08/11/falls-kansas-boy-dies-water-park-ride-horrific-accidents/88569700/; *Killer Waterslide to Be Demolished After Boy’s Decapitation*, New York Post (Nov. 23, 2016), <http://nypost.com/2016/11/23/killer-waterslide-to-be-demolished-after-boys-decapitation/>.

² See Steve Vockrodt et al., *The Making of Schlitterbahn’s Verrückt Water Slide: Too Much, Too Fast?* The Kansas City Star (August 12, 2016), www.kansascity.com/news/local/article95562432.html.

bar news

BY ANN K GREGORIE



PHOTO BY SUSAN KELLEY

Judge John W. deGravelles, pictured with Thomas D. "Beau" Bourgeois Jr. (left) and Vic Suane (right), presided over the Dec. 13, 2016, court ceremony.



PHOTO BY SUSAN KELLEY

Skip Philips, Charles Anselmo and Judge Douglas Dodd visited during the reception following the admission ceremony.

The BRBA and BR Chapter of FBA hosted Federal Court Admission Ceremony Dec. 13

The BRBA and the Baton Rouge Chapter of the Federal Bar Association hosted its annual Admission to the Federal Courts Ceremony Tuesday, Dec. 13, 2016. Judge John W. deGravelles presided over the ceremony wherein 34 attorneys were admitted to one or more of the federal courts including the U.S. District Court for the Middle District of Louisiana, U.S. District Court for the Eastern District of Louisiana, U.S. District Court for the Western District of Louisiana and the U.S. Fifth Circuit Court of Appeals.

Those admitted included Jacob Andrew Almyer, Charles Anselmo, Sean P. Avocato, John Richard Blanchard, Taylor Boudreaux, Thomas D. Bourgeois Jr., Andretta Breaux-Atkins, James M. Carroll, Craig Patrick



PHOTO BY SUSAN KELLEY

Vic Suane, Magistrate Judge Erin Wilder-Doomes, Jeanne Comeaux and Amanda Stout attended the Federal Court Admission Ceremony.

Cassagne Jr., Joseph Weston Clark, John C. Conine Jr., Daniel B. Conway, Rachal D. Cox, Rachel S. Day, Rachel Phaedra Dunaway, Heather Hearne, Philip James Hunter, Aukse S. Joiner, Megan Wiggins Kelley, Janna Messina Kiefer, Jessica C. Ledet, Kaitlin Marie Mayeux, Ashleigh Mazerac, Mitchell Locke Meredith, Gregory J. Reda, Adrian Carter Ross, Lauren Jean Rucinski, Allison Jacques "AJ" Sabine, Clare E. Sanchez, Jarred W. Schick, Jay M. Schwartzberg, Keyojuan Gant Turner, Alexandra Elise Vozzella and William J. Wilson.



PHOTO BY PAMELA LABBE

Nathaniel Hearn, BRBA 2016 President Jeanne C. Comeaux and BRBA past president Michael Walsh were photographed after the December Bar Luncheon at the Renaissance Baton Rouge Hotel.

December Bar luncheon held Dec. 7

On Dec. 7, 2016, bar members listened to Nathaniel Hearn, a young historian, discuss the importance of Pearl Harbor on the occasion of the 75th anniversary of this day of infamy.

BRBA launches an In-House Counsel Section

On Dec. 1, 2016, members of the newly formed In-House Counsel Section met to plan programming for 2017. Under the leadership of its chair, John Fenner, the section is planning quarterly meetings to discuss topics of interest. Membership in the section is open to all BRBA members serving as in-house counsel to area companies. Dues are \$25 per year. To join, contact the Bar Office.

Family Law Section holds Christmas Party

The Family Law Section held its Christmas Party on Dec. 1, 2016, at Manasseh Gill Knipe Belanger PLC. Section members, judges and guests had a wonderful time enjoying the start of the holiday season. If you are interested in joining the Family Law Section, please contact Caroline Cooper at caroline@brba.org for more information.

NABT elects Baton Rouge attorney as National President and CEO

At the National Association of Bankruptcy Trustees (NABT) recent convention, Dwayne M. Murray was elected National President and Chief Executive Officer of the association.

An SULC adjunct law professor and insolvency lawyer, Murray has served as a hearing officer for the U.S.



PHOTO PROVIDED BY DWAYNE M. MURRAY

Dwayne M. Murray gives remarks at the NABT convention.

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PRO BONO & TEEN COURT REPORTS — NOVEMBER 2016

The Pro Bono Project is financially assisted by the Interest on Lawyers' Trust Accounts (IOLTA) Program of the Louisiana Bar Foundation; Southeast Louisiana Legal Services; Franciscan Ministry Fund; Family, District and City Court Filing Fees; W.K. Kellogg Foundation; Baton Rouge Area Foundation; and the Baton Rouge Bar Foundation. Teen Court of Greater Baton Rouge is funded by the Interest on Lawyers' Trust Accounts (IOLTA) Program for the Louisiana Bar Foundation, a LANO Change Fund Grant and the Baton Rouge Bar Foundation. The Youth Education Program is financially assisted by the Interest on Lawyers Trust Account (IOLTA) of the Louisiana Bar Foundation.

The Baton Rouge Bar Foundation would like to thank all who volunteered in November.

ASK-A-LAWYER VOLUNTEERS: Jim Austin, *Butler Snow*; Barbara Baier, *Louisiana Public Defender Board*; and Thomas Acosta.

THIRST FOR JUSTICE VOLUNTEERS: Trey Dominique, *Dudley DeBosier*; T. MacDougall Womack, Charles Anzelmo, Thomas Gildersleeve, Scott Mansfield, Adam Thames, *Taylor Porter*; Scott Gaspard; Allen Posey; and Jimmy Zito.

ACCEPTING PRO BONO CASES: John Andrishok, *Breazeale, Sachse & Wilson*; Durward Casteel, *Casteel & Associates*; Nicole Buggs Hazey, *Rowe Law Firm*; Booker Carmichael, *The Carmichael Firm*; Edward Atebara, *The Law Office of Edward R. Atebara*; Willie Joseph, *The Law Offices of Willie R. Joseph, Jr.*; ReAzalia Allen; J. Keith Friley; Wren'nel Gibson and Beth O'Quin.



ACCEPTING MEDICAL LEGAL PARTNERSHIP PRO BONO CASES: Victor Loras, *Carleton, Loras & Hebert, LLC*.

SELF HELP RESOURCE CENTER ATTORNEY VOLUNTEERS: Steven Adams, *Adams Law Office APLC*; Joseph Ballard, *Entergy Services, Inc.*; Janeane Gorceya and Jennifer Prescott, *Joubert Law Firm*; Brett Sandifer, *Sandifer Law Firm, LLC*; Evelyn Wilson, *Southern University Law Center*; Sandra Ribes; and Jennifer Williams.

TEEN COURT: In November, Brittany Tassin and Jennifer Williams volunteered for the Teen Court hearing.

LAWYER IN THE CLASSROOM: *Southern University Law Center* Professor Wendy Shea and law student, Franchester Gibson, taught No Vehicles in the Park to third grade students at Southern University Lab School and Fish Tales to the second grade. 📖

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17	18	19	20	21	22
23	24	25	26	27	28



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

Duty Court Schedule

19THJDC CIVIL COURT

Jan. 23-Feb. 3 Judge Hernandez
Feb. 6-Feb. 17 Judge Fields
Feb. 20-March 3 Judge Clark

19TH JDC CRIMINAL COURT***

Jan. 27-Feb. 3 Judge Higginbotham
Feb. 3-Feb. 10 Judge White
Feb. 10-Feb. 17 Judge Marabella
Feb. 17-Feb. 24 Judge Anderson
Feb. 24-March 3 Judge Jackson

BATON ROUGE CITY COURT*

Jan. 30-Feb. 5 Judge Prosser
Feb. 6-Feb. 12 Judge Temple
Feb. 13-Feb. 19 Judge Smith
Feb. 20-Feb. 26 Judge Alexander
Feb. 27-March 5 Judge Ponder

FAMILY COURT**

Feb. 1 Judge Greene
Feb. 2 Judge Baker
Feb. 3, 6 Judge Woodruff-White
Feb. 7 Judge Day
Feb. 8 Judge Greene
Feb. 9 Judge Baker
Feb. 10 Judge Day
Feb. 13 Judge Woodruff-White
Feb. 14 Judge Day
Feb. 15 Judge Greene
Feb. 16 Judge Baker
Feb. 17 Judge Greene
Feb. 21 Judge Day
Feb. 22 Judge Greene
Feb. 23, 24 Judge Baker

JUVENILE COURT

Feb. 1-Feb. 28 Judge Haney

*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 is completely different each day, rotating on Fridays ***19th JDC Criminal Court changes each Friday at noon.*

COURT HOLIDAYS

Monday, Feb. 20 Presidents' Day
Monday, Feb. 27 Lundi Gras
Tuesday, Feb. 28 Mardi Gras

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VOLUNTEERS NEEDED! Be part of something exciting and new. The BRBF Arts Judicata Committee is planning an arts and music festival event to raise funds for the Baton Rouge Bar Foundation. All artists and performers will be lawyers / members of the BRBA. The event date is tentatively set for early fall. Contact Donna Buuck at 225-214-5556 or donna@brba.org for more information.

MOCK TRIAL VOLUNTEERS NEEDED: The Region III High School Mock Trial Competition will be held at the 19th Judicial District Courthouse Feb. 17-18, 2017. Volunteers are needed to act as judges, competition judges and timekeepers. Contact Lynn S. Haynes at lynn@brba.org to volunteer.

Calendar

Ongoing: Every Wednesday & Thursday, 3-5 p.m., Thirst for Justice takes place at St. Vincent de Paul
Ongoing: Every Tuesday & Thursday, 10 a.m.-2 p.m., Self Help Resource Center, 19th JDC

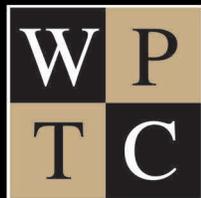
- 1 Volunteer Committee meeting, 12-1 p.m.
- 2 Ask-A-Lawyer, Charles R. Kelly Community Center, 9-11:30 a.m.;
In-House Counsel Section CLE seminar, Lamar Advertising, 5321 Corporate Blvd., 11:30 a.m.-1 p.m.;
Teen Court Committee meeting, 12-1 p.m.
- 3 Mock Trial meeting, 3:15-4 p.m.;
- 4 Mock Trial Coaches meeting, 4-5 p.m.
- 4 Ask-A-Lawyer, Main Library, 7711 Goodwood, 9:30-11:30 a.m.
- 7 Finance Committee meeting, 12-1 p.m. (conference call)
- 8 Executive Committee meeting, Kean Miller, 8:15-9:15 a.m.;
- 8 Pro Bono Committee meeting, 12-1 p.m.
YLS Council meeting, 12-1 p.m..
- 14 Workers' Comp Section meeting, Juban's Restaurant, 12-2 p.m.
- 15 Ask-A-Lawyer, Catholic Charities, 9-11:30 a.m.;
- 15 Law Day Committee meeting, 12-1 p.m.;
- 15 BRBA Board meeting, The Wine Room at The Watermark Hotel, 150 Third St., 6-8 p.m.
- 16 Family Law Section meeting and CLE, Juban's Restaurant, 12-2 p.m.
- 17 Mock Trial Competition, 19th JDC, 9 a.m.-6 p.m.
- 18 Mock Trial Competition, 19th JDC, 9 a.m.-3 p.m.
- 20 Teen Court Group Sessions, 6-8 p.m.
- 28 BRBA Office Closed — Mardi Gras

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