

# Around the Bar

THE MAGAZINE OF THE  
BATON ROUGE BAR ASSOCIATION

NOVEMBER 20, OCTOBER 2017

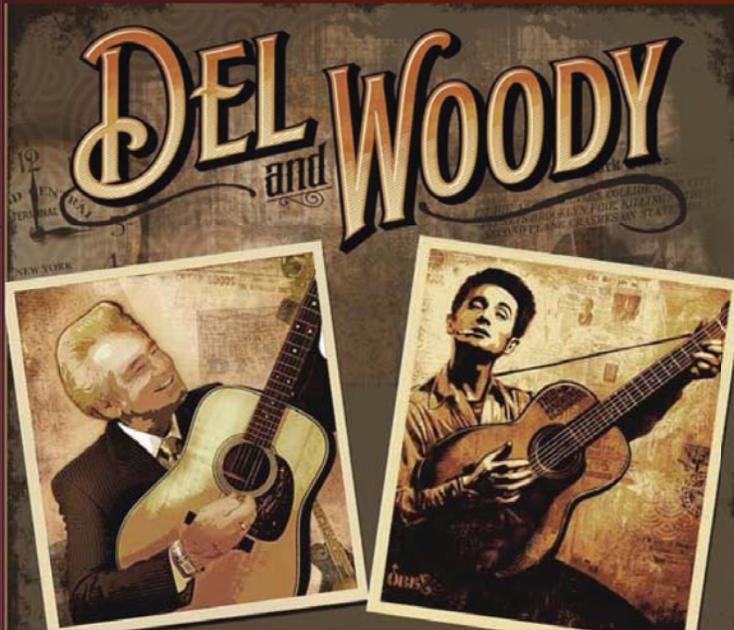


**Inside:**  
**Time travel taxation**  
**A breach from within**  
**Attorney spotlight:**  
**Michael Schillage**  
**Interview with LSU Law Dean**  
**Thomas "Tom" Galligan Jr.**  
**In memoriam: James E. Toups Jr.**

**Belly Up: Oct. 27**

A FOOD & DRINK COMPETITION TO BENEFIT  
THE BATON ROUGE BAR FOUNDATION

# This October at MANSHIP THEATRE



## DEL MCCOURY PLAYS WOODY GUTHRIE

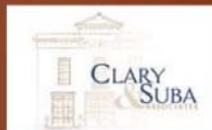
OCT 19 • 7:30PM

Led by the International Bluegrass Music Hall of Famer, 2014 Grammy Winner for Best Bluegrass Album and 2011 National Endowment for the Arts Lifetime Achievement winner, the Del McCoury Band presents a unique concert featuring new songs of completely unheard lyrics from America's folk poet, Woody Guthrie.

## CHARLES BRADLEY & HIS EXTRAORDINAIRES

OCT 26 • 7:30PM

Charles Bradley has made a name for himself as a riveting live performer and was named to the top spot on Paste Magazine's Best Live Acts of 2015. He has taken his show to venues and festivals across the globe including Coachella, Glastonbury Festival and Primavera Sound.



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On the cover:

Members of the Belly Up with the Bar are featured on this month's cover to promote the Belly Up with the Bar event, which takes place starting at 5 p.m. Friday, Oct. 27, 2017, at Live Oak at Cedar Lodge Events Center, 6300 Jefferson Hwy. This is the 19th year of the Belly Up with the Bar event.

Photographed in the pasture behind the Live Oak horse arena, where Belly Up with the Bar is held annually, are (standing, L to R) Ashley Butler, Billy Rogers, Brett Bajon, Kelley Dick, Trey Tumminello, Josh McDiarmid, Michael Schillage, Josh Anderson, Mitchell Meredith; (seated, L to R) Megan Kelley, Miah Hill, Alex Rossi, JaQuay Jackson Gray and Jennifer Racca.

Cover photography by Pamela Labbe.

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- David Butler, Jr.
- Robert S. Dampf
- Carey J. Guglielmo
- G. Trippe Hawthorne
- William C. Helm
- Melvin "Kip" Holden
- Steven C. Judice
- Glen Scott Love
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- Darrel J. Papillion
- John W. Perry, Jr.
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- Myron "Mike" Walker, Jr.
- Aub A. Ward

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No photo available

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The Baton Rouge Bar Association will be the beacon for the full spectrum of the legal profession by fostering professional courtesy; increasing the diversity of the bar and the participation of under-represented groups; maintaining a sound financial base; enhancing and developing member services and community outreach; and promoting and improving the image of the profession.

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## SAVE THE DATE: Oct. 21

The BRBA Volunteer Committee will sponsor the Fall Festival & Halloween Trunk or Treat for patients at Children's Hospital Outpatient Center 720 Connell's Park Lane, Baton Rouge, LA 70816

Trunk or Treat will bring Halloween to the Children's Hospital Outpatient Center. Patients and their families will go car to car in the parking lot where volunteers from the Baton Rouge Bar Association will give out candy and treats from their decorated trunks. Winner of best decorated vehicle will receive two Belly Up tickets.

### The Volunteer Committee needs:

- Volunteers to decorate their vehicles in a Halloween theme to hand out candy
- Volunteers to assist with games and a costume contest
- Donations of Halloween candy or Halloween treats
- Donations of Halloween costumes for boys and girls ages 8-11

Contact Carole for more information:  
225-214-5557 or carole@brba.org

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: pamelabrba@brba.org.

For advertising information call 225-344-4803 or 225-214-5560. Display ads should be high-resolution attachments (.PDF), and classified ads as text only. Please email all ad artwork to pamelabrba@brba.org. 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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# 19th Annual

## "Belly Up with the Bar" Entry Form

### Cook-off & Brewfest

## Event takes place Friday, Oct. 27, 2017

The 19th Annual "Belly Up with the Bar" is a cook-off, brewfest and outdoor party with live music—sponsored by the Young Lawyers Section of the Baton Rouge Bar Association. Proceeds from this event will benefit the BRBF's Youth Education Program. Team and individual entries are welcome. Judges will select winners in a variety of categories. Advance general admission tickets are \$30 per adult, \$25 per law student, \$12 per child ages 12 to 17, and FREE admittance to children ages 11 and under. Prices at the door are \$35 per adult or law student, and \$12 per child, so buy 'em now!

**LOCATION:** Live Oak at Cedar Lodge Events Center, 6300 Jefferson Hwy., Baton Rouge, LA 70806 in the sheltered arena.

**DATE:** Friday, Oct. 27, 2017, 5 p.m. - 9 p.m. — **mark your calendars NOW!**

**WHO CAN ENTER:** Anyone who's willing to cook and serve enough to feed/water our local bar. The entry fee — \$150 per team (up to 5 members per team) — gets you:  
 (1) in the door to try all the fabulous food and drinks  
 (2) all the beer you care to drink, and  
 (3) the chance to show off your culinary talents

**THINGS YOU'LL NEED TO BRING:**

- Enough food to serve roughly 500 "sample size" portions
- Any cooking/heating/brewing equipment necessary to serve your entry
- A team of no more than 5 members
- A sign to indicate what you're making
- Serving bowls (serving size), cups or plates

**THINGS WE'LL PROVIDE:** Forks and spoons; beer, live music . . . and fabulous prizes

**ENTRY FORM** — PLEASE FILL OUT THIS FORM AND FAX IT TO:  
 (225) 344-4805 OR MAIL IT ASAP To: Baton Rouge Bar Association,  
 ATTN: YLS, P. O. Box 2241, Baton Rouge, LA 70821. Registration deadline: Oct. 3, 2017.

**(CHECKS SHOULD BE MADE PAYABLE TO "BRBF - BELLY UP WITH THE BAR."  
 CREDIT CARD INFORMATION CAN BE PROVIDED BELOW.)**

**TEAM NAME:** \_\_\_\_\_

**TEAM CAPTAIN'S NAME:** \_\_\_\_\_

**CAPTAIN'S LAW FIRM:** \_\_\_\_\_

**CAPTAIN'S MAILING ADDRESS:** \_\_\_\_\_

**CAPTAIN'S CITY/STATE/ZIP:** \_\_\_\_\_

**CAPTAIN'S CONTACT NUMBER:** \_\_\_\_\_

**CAPTAIN'S EMAIL ADDRESS:** \_\_\_\_\_

**WHAT YOU'LL BE SERVING:** \_\_\_\_\_

**FOR "BELLY UP WITH THE BAR" TICKET INFORMATION, PLEASE CONTACT THE BRBA: (225) 344-4803.**

<p><b>Credit Card Information:</b> Type of card: (circle one) MC VISA AmExp Discover</p> <p>Name on card: _____</p> <p>Exp. Date: _____ Security code: _____</p> <p>Credit card number: _____</p> <p>Signature: _____</p>
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\*If you are unable to participate or attend, but you wish to make a donation for the BRBF's award-winning Youth Education Program, please make your check payable to the BRBF.

This project was funded in part by the American Bar Association on behalf of its Young Lawyers Division through the Fund for Justice and Education.

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TO REGISTER YOUR TEAM,  
 CONTACT DONNA AT  
 225-214-5556 OR DONNA@BRBA.ORG

# letter from the president

BY KARLI GLASCOCK JOHNSON

## Gratitude in grief

As I write this letter, the news is full of stories commemorating the anniversary of last year's flood. This coverage reminds me of all the significant losses experienced by the victims of that terrible event. In recent months, I have had several friends who lost loved ones, and I have shared their grief. Just last week my husband, Scott, his family and I lost his mother. All of this has left me with a heavy heart.



Karli Glascock Johnson

This deep sense of loss is a testament to how precious life is. With great loss comes great grief. For me, the best antidote for grief is gratitude.

Even now, I know that I have much to be thankful for. One of the great comforts Scott and I have experienced, and one we greatly appreciate, has been the love and support of our friends and colleagues, many of whom are members of the Baton Rouge Bar Association.

Coming to the aid and comfort of people in need is nothing new to our organization. The bar association and its members have contributed significantly to the lives of people who suffered losses in last year's flood. And we will continue to comfort and help those in need, because our profession is truly a calling to serve.

All of this is to say that I appreciate each of you and all that you bring to this wonderful association.

Later this month, we have a chance to come together and celebrate all that we have to be thankful for. Belly Up with the Bar is October 27, 2017, at Live Oak at Cedar Lodge Events Center, 6300 Jefferson Hwy. It is a great opportunity to spend some happy time together, enjoying food, drink and music. I hope to see you there. 🍷



Watch your **MAILBOX**  
 for your 2018 BRBA  
 dues invoice. To vote for  
 BRBA 2018 Bar Leaders,  
 your dues  
 must be paid  
 by Oct. 27, 2017.



## GAIL'S GRAMMAR

Quotation marks can indicate that a term is quirky or informal. They can also show that a familiar term is being used in an unfamiliar way. Use quotation marks only the first time the term is used.

Quotation marks are sometimes used to show irony or sarcasm. If you hate it when people use "air quotes" for those purposes when speaking, avoid the extra punctuation in your writing.

“  
*quote*  
 ”

Send suggestions for future Gail's Grammar columns to Gail Stephenson at [GStephenson@sulc.edu](mailto:GStephenson@sulc.edu), or call Gail at 225.771-4900 ext. 216.

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## Interview with Michael Schillage

*ATB: Tell us about your education.*

**MS:** I graduated from Tulane University with a double major in legal studies in business and philosophy, with a concentration in law, society and morality. I also minored in consumer behavior and marketing analysis. I attended Mississippi College for law school.

*ATB: Where are you from?*

**MS:** Monroe, Louisiana.

*ATB: Where and what type of law do you practice?*

**MS:** I work at the East Baton Rouge Parish Attorney's Office. I practice civil litigation defense in both federal and state courts. Areas of practice include 42 U.S.C. § 1983, Title VII, construction, medical malpractice, and general tort.

*ATB: Why did you want to become an attorney?*

**MS:** As a child raised around a family-owned seafood restaurant, I overheard adults talking about business issues and questions quite frequently. The conversations generally turned upon the advice of the respected family attorney. I held attorneys in great esteem based on what I saw growing up, and I knew I wanted to be a person that others could go to for assistance and guidance.

*ATB: If you were not practicing law, what would be your alternate profession?*

**MS:** If I had not planned on going to law school, I would have probably gone into engineering. With the J.D. but not practicing, I could see myself as a teacher or non-fiction author.

*ATB: What is one thing you wish you would have known before you went to law school?*

**MS:** To invest in contact lenses and glasses heavily.



PHOTO BY PAMELA LABBE

Michael Schillage

*ATB: Are you involved with the BRBA?*

**MS:** Yes, I've been a BRBA committee member of two great groups: Belly Up with the Bar and the CLE Committee. Now in my fourth year with Belly Up and as this year's chair, I must say (without bias) Belly Up is my favorite BRBA event. This year, the Baton Rouge Bar Foundation is celebrating its 19th annual Belly Up with the Bar! Belly Up is the perfect mix of philanthropy and fun. While there's no excuse needed for contributing to the Baton Rouge Bar Foundation's youth education programs, Belly Up offers a fantastic evening of food, music and friends to accomplish just that.

*ATB: What motivated you to become involved with the Baton Rouge Bar Association?*

**MS:** Coming from an out-of-state law school, I didn't know many attorneys in the Baton Rouge area. Aside from networking, I also wanted to find an outlet for community service. BRBA offered a "two birds, one stone" solution.

*ATB: What is in store for everyone at the Belly Up with the Bar event this year?*

MS: This year's edition of the event captures a great combination of the traditional Belly Up features we know and love with one new offering in store. Returning for their 16th year, Storywood will be taking the stage with their great mix of '70s, '80s, '90s and today's hit music. The teams' spectacular cooking and cocktail talents will only be matched by their booth and costume creativity. The cooking and cocktail competition portion of the evening will be judged by a great panel of local celebrity judges, who will determine the night's winners. Face painting will be available for the kids, and for those patrons 21+, we have for the first time, a

collection of local craft beers brought to us through the Louisiana Craft Brewers Guild. We're already very excited for Belly Up 2017 thanks to the early outpouring of registered teams, sponsors and donors.

ATB: *When and where is the event?*

MS: Belly Up 2017 is set for Oct. 27 from 5 p.m. to 9 p.m. at Live Oak at Cedar Lodge Events Center, 6300 Jefferson Hwy. Team and sponsorship registration can be completed online at [www.BRBA.org](http://www.BRBA.org) or mailed to Baton Rouge Bar Foundation, P.O. Box

**YLS SAVE THE DATE: Thursday, Nov. 9 | 5 - 7 P.M.**  
**— Cocktails with the Court —**

will be held at the **Manship Theatre** in the Shaw Center for the Arts

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Contact Susan for more information about this Young Lawyers Section event: 225-214-5559 or [susan@brba.org](mailto:susan@brba.org)

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## LSU

Continuing Education



2241, Baton Rouge, Louisiana 70821. There is still time to get your team registered and to sign up for a sponsorship, so please do so to secure your part in the festivities. We look forward to seeing everyone there!

*ATB: Besides Belly Up, what is your favorite BRBA activity or event?*

**MS:** The regional high school mock trial competition is a lot of fun. I've volunteered for a few years as a judge, and it's great to see so many students showing an interest in the law and in trial.

*ATB: Are you involved with any other organizations or causes?*

**MS:** My wife and I assist in the annual fundraiser art show, In the Mind's Eye, hosted by the Baton Rouge chapter of NAMI (National Association for the Mentally Ill), which is a great night filled with wonderful art pieces created by artists who suffer from mental illness.

*ATB: What is the best piece of advice you have received?*

**MS:** Go to medical school. Just kidding! The best advice I've received is that speed kills. Despite the onslaught of deadlines and fast-paced work that

## SAVE THE DATE:

**NOV. 2**

**WOMEN'S INITIATIVE  
NETWORK NEGOTIATION  
ETHICS & PROFESSIONALISM  
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**INFO ON THESE EVENTS:**

**225-344-4803**

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we all face, taking time to investigate the facts and truly think about the issues helps you find a clear path forward in the most efficient and organized manner.

ATB: *What are your leisure activities?*

MS: Spending time with my wife and son, reading, cooking and anything outdoors.

ATB: *What is the last book that you read?*

MS: "Cross the Line" by James Patterson.

ATB: *Tell us something interesting about yourself.*

MS: I'm not sure if this qualifies as interesting, but I intend to visit each of the MLB ballparks. So far, I've been to seven including some that have been replaced over time (*i.e.*, Atlanta Fulton County Stadium, Turner Field and the Astrodome).



## The Young Lawyers Section Holiday Star Project

Sign up to sponsor a child. Please fill out the form below and fax it to the Bar office at (225) 344-4805.

Name: \_\_\_\_\_  
Firm: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
Email: \_\_\_\_\_ # of stars you wish to sponsor: \_\_\_\_\_

The Baton Rouge Bar Foundation will mail your star and child's wish list directly to you, along with instructions. Should you have any questions, call Susan Kelley at (225) 214-5559.



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# A breach from within

BY MICHAEL J. deBARROS

With constant media attention on hackers, the latest computer virus, and ransomware, it's easy for organizations to focus on external threats to their data. However, the biggest threat to a company's data often comes from within the organization.

Company insiders can steal or leak data with far greater ease than outsiders. Insiders typically have access to sensitive information on a regular basis, they know how information is stored and protected, and data leaks are often caused by the careless or misguided actions of insiders. Common sources of insider leaks include lost or stolen devices (laptops, iPads, cell phones, and USB drives), misaddressed emails, weak passwords, and transmission of data to systems with little or no security. Perhaps the most dangerous aspect of insider threats is that the harmful access and activities come from trusted sources and will often go unnoticed for lengthy periods of time.

Many organizations do not know how to secure



their confidential information against these risks. The process begins by identifying the types of information stored and transmitted by the organization and categorizing that information by value and confidentiality. Companies should maintain accurate data-storage diagrams or “maps” and have a firm understanding of where sensitive data is stored. The most valuable

data should be given the strongest defenses and the most frequent monitoring.

Once the information is identified, categorized and mapped, the organization should determine who has access to the information, how the information is accessed and what each person's access allows him or her to do with the information. If the insiders do not have a legitimate need for the information, their rights to the information should be eliminated.

Use and access restrictions should be bolstered by company policies controlling the access and movement of

*Save these Dates!*

**Dec. 7, 8, 14, 15, 28 & 29**

— CLE by the HOUR 2017 —

@ the RENAISSANCE BATON ROUGE HOTEL

7.0 hours of CLE each day

Early Registration Deadline: Nov. 20, 2017

Visit our website at [www.BRBA.org](http://www.BRBA.org)

or

Contact Ann K. Gregorie or Kelsie Bourgeois for more information:

Ann: 225-214-5563 or [ann@BRBA.org](mailto:ann@BRBA.org)

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information. The policies should be clearly communicated to employees, and the importance of securing information should be reinforced. In most corporate environments, few employees have any significant understanding of IT-security-related issues. As a result, viruses and malware are downloaded, accounts are hacked and corrupt devices are introduced to the corporate network. User awareness programs are key to educating insiders, and insider education is one of the most powerful tools in preventing data leaks.

Organizations should also develop an incident-response plan before a data leak occurs and update the plan at least once a year. The response plan should include the contact information of attorneys, IT forensic experts and vendors who can assist in collecting and preserving information, minimizing damages and notifying affected individuals and governmental agencies of the data leak. The plan should also identify who will have decision rights when an incident occurs and set forth action items to be completed immediately after the company learns of a potential data leak.

Companies handling sensitive information are advised to carry a wide variety of insurance covering costs associated with data leaks. Many traditional insurance policies do not cover electronic data loss or liabilities associated with data leaks, forcing companies to turn to

specialized insurance products. Cyber policies can cover a panoply of risks, including losses to an insured's data or hardware, data-recovery expenses, the costs to hire forensic investigators, business-interruption losses, data-breach-notification and credit-monitoring services, and settlements, judgments and the costs of legal defense. However, cyber policies differ from one insurer to another and there is currently no standard cyber policy in the insurance market. To get the most out of cyber coverage, policyholders are best served by working closely with their staff members, brokers, attorneys and insurers to understand where their particular risks lie and what they are purchasing.

There is no silver bullet to protect against data leaks, and organizations need to be dynamic in their approach. One of the biggest mistakes a company can make is to view data security as an "IT problem" and not as a business problem. The consequences of a data leak can be serious and fines, injunctions, government audits and criminal liability can be imposed. The ability to quickly and inexpensively transfer data, files, records and other information around the globe has opened up a world of opportunity for many businesses, but it also presents a new world of risks. The risks are high; so be prepared, be proactive and develop a comprehensive strategy for addressing the risks. ▀

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# Time travel taxation: Developing trends in retroactive tax laws<sup>1</sup>

BY ANTONIO "TONY" CHARLES FERACHI & SHAWN DARAY

In the last decade, states have started to embrace a recent phenomenon in applying tax legislation retroactively to time periods prior to the enactment of the statute. This trend has taken off given the continuous flow of favorable court decisions that have upheld such actions. This article focuses on the current legal standard in place and highlights some of the recent decisions that show how far the courts have interpreted that standard.

## Where it all began: the United States Supreme Court

This trend began in *U.S. v. Carlton*, where the U.S. Supreme Court held the retroactive application of an amendment to the federal estate tax statute limiting a deduction did not violate the Due Process Clause of the Fifth Amendment.<sup>2</sup> In 1987, the statutory amendment adopted limited the availability of a recently added deduction for half the proceeds of sales of securities by the executor of an estate to an employee-stock-ownership plan to estates of decedents who owned the securities immediately before death.<sup>3</sup>

The executor of an estate, Carlton, bought and sold corporate stock after the decedent's death in 1985, taking advantage of the available tax deduction passed in 1986 but before the 1987 amendment.<sup>4</sup> The amendment retroactively applied to the date of the original deduction adopted in October 1986.<sup>5</sup>

Justice Blackmun, writing for the majority, opened with, "This Court repeatedly has upheld retroactive tax legislation against a due process challenge."<sup>6</sup> Justice Blackmun stated that some of the Supreme Court's decisions have held the validity of a retroactive tax provision under the Due Process Clause depends on whether retroactive application is arbitrary and irrational.<sup>7</sup> The Due Process Clause provides for a prohibition against "arbitrary and irrational legislation that applies generally to enactments in the sphere of economic policy."<sup>8</sup>

Justice Blackmun explained that the due process standard applied to retroactive tax statutes is the same as that generally applicable to retroactive economic legislation.<sup>9</sup> Due process is satisfied if the retroactive application of a statute is supported by a legitimate legislative purpose furthered by rational means.<sup>10</sup> When this standard is met, the judgments about the wisdom of the legislation remain exclusively with the executive

and legislative branches.<sup>11</sup> Further, Congress' purpose in enacting an amendment in order to avoid significant unanticipated revenue loss was neither illegitimate nor arbitrary, as Congress was acting to correct what it reasonably viewed as a mistake in the original law that would have created significant unanticipated revenue loss.<sup>12</sup> Justice Blackmun also noted that Congress acted promptly and established only a modest period of retroactivity.<sup>13</sup>

The executor's reliance on the pre-amended version of the provision was, alone, insufficient to establish a constitutional violation.<sup>14</sup> "Tax legislation is not a promise, and a taxpayer has no vested right in the Internal Revenue Code."<sup>15</sup> Based on that principle, the Court noted that a taxpayer's claim of detrimental reliance on tax legislation was insufficient to establish a constitutional violation.<sup>16</sup> The executor's lack of notice regarding the amendment was dismissed as a taxpayer "should be regarded as taking his chances of any increase in the tax burden which might result from carrying out the established policy of taxation."<sup>17</sup>

In a separate concurring opinion, Justice O'Connor noted that "the Court has never intimated that Congress possesses unlimited power to readjust rights and burdens . . . and upset otherwise settled expectations."<sup>18</sup> The governmental interest in revising the tax laws must at some point give way to the taxpayer's interest in finality and repose.<sup>19</sup> For example, a "wholly new tax" cannot be imposed retroactively, even though such a tax would surely serve to raise money.<sup>20</sup> She stated that "a period of retroactivity longer than the year preceding the legislative session in which the law was enacted would raise, in [her] view, serious constitutional questions."<sup>21</sup> Justice O'Connor's concurrence highlights that the majority's rule of a "modest period of retroactivity" is seeking to balance the government's interests against the taxpayer's expectations of certainty and fairness.

## States' legislative purposes upheld

Following the *Carlton* decision, state courts began to jump on the retroactivity bandwagon. Protection of the stable flow of state revenues has been widely accepted as a legitimate reason for retroactive legislation. Even beyond the protection of the state revenue, many state courts

have upheld retroactive statutes for a variety of purposes, including, but not limited to, fixing a prior loophole in a tax statute and clarifying existing law. The result of what is now a long list of state court rulings shows a pattern of state courts upholding legislative retroactive law provisions. Some examples are discussed below.

### Michigan

In *IBM v. Department of Treasury*, the Michigan Supreme Court considered whether the plaintiff multistate taxpayer could use the Multistate Tax Compact's three-factor apportionment formula for its 2008 Michigan taxes, or whether, as the Department of Treasury argued, it was required to use the newly created Michigan Business Tax Act's sales-factor-only apportionment formula.<sup>22</sup> The Michigan Legislature enacted a statute that repealed the Compact retroactively and effective beginning Jan. 1, 2008.<sup>23</sup> Multiple taxpayers challenged the constitutionality of the statute. The Court of Claims and the Court of Appeals rejected the taxpayers' argument that the retroactive repeal violated the Due Process Clause of the U.S. Constitution, reasoning that the taxpayers had no vested right in the validity of the state's enactment of the Compact. The Michigan Legislature stated that it was merely clarifying the statute that it believed had been misconstrued by the judiciary.<sup>24</sup> When remanded to the Court of Claims, the court held that the state's retroactive repeal of the Compact applied to IBM for the tax year 2008.<sup>25</sup>

### Washington

In 2005 the Washington Legislature enacted the Estate and Transfer Tax Act.<sup>26</sup> In 2013 the Act was amended to include trusts created before 2005 in a surviving spouse's taxable estate if the surviving spouse died after May 17, 2005.<sup>27</sup> The amendment was in response to the ruling in *In re Estate of Bracken*,<sup>28</sup> which held certain estates could not be taxed when the deceased spouse died before the 2005 Act.<sup>29</sup> In upholding the retroactive tax law, the Washington high court in *Estate of Hambleton* stated that the Legislature was merely clarifying its intent to include trusts created before 2005 in the surviving spouse's Washington taxable estate.<sup>30</sup> The court held that correcting a mistake in the law and preventing fiscal shortfalls are legitimate legislative purposes.<sup>31</sup> The court also held that the taxpayer held no vested right and stated that a vested right "must be something more than a mere expectation based on an anticipated continuance of the existing law."<sup>32</sup>

### Arizona

In *Enterprise Leasing Co.*, the Arizona Supreme Court found that a six-year pollution-control-equipment tax-credit amendment did not violate the Fourteenth Amendment Due Process Clause.<sup>33</sup> The Arizona legislature initially estimated the cost of the credit to be \$2.5 million

annually, but, absent legislative clarification of the statute, the cost of the credit would increase to \$15 million annually.<sup>34</sup> In 2000 the legislature amended the statute to clarify its intent when enacting the statute in 1994.<sup>35</sup> The Arizona Supreme Court echoed *Carlton*, stating that "[t]ax legislation is not a promise, and a taxpayer has no vested right in the Internal Revenue Code."<sup>36</sup> Further, the court stated that the taxpayer cannot contend its rights vested even when it filed a claim one month prior to the challenged amendment.<sup>37</sup> The claim was still pending for verification and acceptance by the department of revenue; therefore, the right did not vest.<sup>38</sup>

### How far can retroactive time periods go?

The reaction of state courts has been favorable overall in upholding the periods of retroactivity enshrined in state retroactive tax laws. State courts even have expanded well beyond Justice O'Connor's one-year limitation in *Carlton*.<sup>39</sup> Michigan courts have upheld the longest periods of retroactive tax statutes against due process challenges, going back as far as 11 years.<sup>40</sup>

Washington is not far behind Michigan. In *Estate of Hambleton*, the Washington Supreme Court upheld an eight-year retroactive law change to Washington's estate tax law.<sup>41</sup>

The Kentucky Supreme Court allowed a retroactive tax bill to have a six-to-ten-year period of retroactivity, finding the amendments rationally related to the purpose of regulating revenue.<sup>42</sup>

A minority of cases have adhered to Justice O'Connor's suggestion in her concurrence in *Carlton* that a one-year period for retroactivity may be the standard.<sup>43</sup> However, the majority of state courts have found "modest" retroactive time periods spanning many years beyond just one.

### Status of the law

Overall, the weight of authority points to a positive uptick in state legislatures drafting retroactive tax laws and state courts upholding their constitutionality under the two-pronged due process test given in *Carlton*.<sup>44</sup> The most common reasons have included clarifying the meaning of a statute or using retroactive provisions to fix or address potential budget issues. Such reasons have been upheld as valid for applying tax laws retroactively. Although Justice O'Connor suggested in her concurrence in *Carlton* that a one-year period for retroactivity may raise concerns, she stopped short of any prohibition against upholding such periods. Most state courts have expanded well beyond one year being considered a "modest period of retroactivity."

As many states continue to deal with budget concerns, the issues of retroactive tax laws will only increase in the coming years. Only time will tell how expansive the *Carlton* standard handed down 20 years ago will continue to develop. ■

<sup>1</sup>The ideas expressed in this article are solely that of the authors and do not represent the views of the Louisiana Department of Revenue. Nothing in this article is meant to be considered an official pronouncement, policy and/or informal advice on behalf of the Department.

<sup>2</sup>*U.S. v. Carlton*, 512 U.S. 26 (1994).

<sup>3</sup>*Id.* at 28.

<sup>4</sup>*Id.*

<sup>5</sup>*Id.*

<sup>6</sup>*Id.* at 30, citing *United States v. Hemme*, 476 U.S. 558 (1986); *United States v. Darusmont*, 449 U.S. 292 (1981); *Welch v. Henry*, 305 U.S. 134 (1938); *United States v. Hudson*, 299 U.S. 498 (1937); *Milliken v. United States*, 283 U.S. 15 (1931); *Cooper v. United States*, 280 U.S. 409 (1930).

<sup>7</sup>*Id.*

<sup>8</sup>*Id.* (internal citation omitted).

<sup>9</sup>*Id.*

<sup>10</sup>*Id.* at 30-31, quoting *Pension Ben. Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 729-30.

<sup>11</sup>*Id.*

<sup>12</sup>*Id.* at 32.

<sup>13</sup>*Id.*

<sup>14</sup>*Id.* at 33.

<sup>15</sup>*Id.* (internal citation omitted).

<sup>16</sup>*Id.*

<sup>17</sup>See *Welch v. Henry*, 305 U.S. 134 (1938).

<sup>18</sup>*Id.* at 37 (internal quotation omitted).

<sup>19</sup>*Id.* at 37-38 (internal citation omitted).

<sup>20</sup>*Id.* at 38 (internal citation omitted).

<sup>21</sup>*Id.*

<sup>22</sup>*International Business Machines Corp. v. Dep't of Treasury*, 496 Mich. 642 (2014).

<sup>23</sup>*Gillette Comm. Operations N. Am. & Subsidiaries v. Dep't of Treasury*,

878 N.W.2d 891, 901 (Mich. 2016).

<sup>24</sup>*Id.*

<sup>25</sup>*International Business Machines Corp. v. Dep't of Treasury*, No. 11-000033-MT (Mich. Ct. Cl. April 28, 2015).

<sup>26</sup>*In re Estate of Hambleton*, 181 Wash.2d 802, 810 (2014).

<sup>27</sup>*Id.* at 813.

<sup>28</sup>*In re Estate of Bracken*, 175 Wash.2d 549 (2014).

<sup>29</sup>*In re Estate of Hambleton*, 181 Wash.2d at 813.

<sup>30</sup>*Id.* at 814.

<sup>31</sup>*Id.* at 825.

<sup>32</sup>*Id.* at 828 (internal citation omitted).

<sup>33</sup>*Enterprise Leasing Co. of Phoenix v. Arizona Dept. of Revenue*, 221 Ariz. 123.

<sup>34</sup>*Id.* at 125.

<sup>35</sup>*Id.*

<sup>36</sup>*Id.* (quoting *United States v. Carlton*, *supra* at n. 1).

<sup>37</sup>*Id.*

<sup>38</sup>*Id.* (internal citations omitted).

<sup>39</sup>See *Carlton*, *supra*, 512 U.S. at 28.

<sup>40</sup>See *General Motors Corp. v. Dep't of Treasury*, 290 Mich. App. 355 (2010) (Eleven year retroactive change in law did not violate due process). See also *GMAC, LLC v. Dep't of Treasury*, 781 N.W. 2d 310, 320 (2009) (Court held seven-year retroactive statutory amendment as "modest").

<sup>41</sup>*In re Estate of Hambleton*, 181 Wash. 2d at 813.

<sup>42</sup>*GTE v. Revenue Cabinet*, 889 S.W.2d 788 (Ky. 1994).

<sup>43</sup>See *Rivers v. South Carolina*, 489 S.E.2d 261; see also *City of Modesto v. National Med, Inc.*, 128 Cal.App. 4th 518, 529 (Cal. Ct. App. 2005); *James Square Assocs. LP v. Mullen*, 21 N.Y.3d 233, 249 (N.Y. 2013).

<sup>44</sup>See *Carlton*, 512 U.S. at 30-32.

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# bar news

BY PAMELA LABBE



PHOTO BY PAMELA LABBE

The Bag of Donuts provided musical accompaniment while (L to R) Magistrate Judge Erin Wilder-Doomes, BRBA President Karli Glascock Johnson and BRBA Board Member Melissa Cresson sang “Walk Like an Egyptian” at the 2017 Bench Bar Conference at the Hilton Sandestin July 26-29, 2017. The tradition of the BRBA president singing with the band at Bench Bar began in 1993, when then-BRBA President Michael McKay sang with the Bench Bar Boogie Band.

## Bench Bar Conference held in Sandestin July 2017

The annual Baton Rouge Bar Association Bench Bar Conference was held July 26-29, 2017, at the Hilton Sandestin. Organized by co-chairs Jordan Bollinger and Hayden A. Moore, the conference attracted approximately 125 registrants and followed the theme of Reality TV.

The BRBA thanks its dedicated sponsors who support this program. Raffle sales of the LSU Game Day Package supported the programs of the Baton Rouge Bar Foundation. The winner of the raffle was Dennis Blunt. Each year Dr. Michael J. Goff / Louisiana Health & Injury Centers holds its own raffle. This year Judge Pam Moses-Laramore was the winner of an 13” Apple MacBook Pro.

The highlight of the Thursday night Dine and Dance with The Donuts was the musical performance of BRBA President Karli Glascock Johnson, Magistrate Judge Erin Wilder-Doomes and Board Member Melissa Cresson. Dressed in 1980s-style attire, the three sang “Walk Like an Egyptian” as The Bag of Donuts provided musical accompaniment.

New to this year’s event was an early arrivals reception on Wednesday, July 26, a Pool Side Cabana reception on Friday, July 28, and a Family Game Night later on Friday night.

## Belly Up scheduled for Friday, Oct. 27

Belly Up with the Bar will take place at 5 p.m. Friday, Oct. 27, 2017, at Live Oak at Cedar Lodge Events Center (formerly Live Oak Arabians), 6300 Jefferson Hwy.



PHOTO BY PAMELA LABBE

Workers’ Compensation Judge Pamela Moses-Laramore won the Thursday night drawing, sponsored by Louisiana Health & Injury Centers. Photographed moments after the drawing for the MacBook Pro are (L to R) Elizabeth Turnipseed, Judge Moses-Laramore and Dr. Michael J. Goff.



PHOTO BY PAMELA LABBE

Fred T. Crifasi, Lorraine Crifasi, Shirley Papillion, Darrel Papillion and Edmund Giering attended the 2017 Bench Bar Conference in Florida. The group is photographed (above) enjoying the Thursday night event.



1. Special thanks to our Bench Bar Conference sponsors, including Thomson Reuters and FindLaw, a part of Thomson Reuters.
2. Family Court Judge Pamela Baker is photographed with her daughter, Sydney Saltamachia, and her daughter's fiancé, Phil Caire, 19th Judicial District Court Judge Wilson Fields and Baton Rouge City Court Judge Kelli Terrell Temple.
3. Bench Bar Conference 2017 Co-chairs Jordan Bollinger and Hayden A. Moore.
4. CLE Speakers Franz Borghardt and Amy Newsom.
5. BRBA staff members Caroline Cooper Ching, Donna Buuck and Kelsie Bourgeois were photographed during the early arrivals reception
6. BRBA President Karli Glascock Johnson, Workers' Compensation Judge Pamela Moses-Laramore, Michael Walsh, Amy C. Lambert and Emma Grace Lambert.
7. 19th Judicial District Court Judge Bonnie Jackson participated in a panel discussion.
8. Edmund Giering and his wife, Cathy, attended the conference along with their children.

Music from the band Storywood will entertain the crowd as they participate in the silent auction, purchase raffle tickets to benefit the Baton Rouge Bar Foundation and taste excellent cuisine and specialty drinks. Celebrity judges will choose the winners, who will be honored with handmade trophies.

All proceeds from Belly Up support the Baton Rouge Bar Foundation. This year's chairman is Michael P. Schillage, and the staff liaison to the committee is Donna Buuck. To register a team, contact [donna@brba.org](mailto:donna@brba.org) or 225-214-5556. This project was funded in part by the American Bar Association on behalf of its Young Lawyers Division through the Fund for Justice and Education.

## Recent developments at the BR Bar Association

The BRBA Board of Directors for the Association and the Foundation adopted new logos this past summer. Each logo features an image of the Louisiana State Capitol building and includes red and blue text, and the logos were first introduced to the membership at the annual Bench Bar Conference. Teasers for the Association's new website were also on display during the Conference. And the new wall photo composite is also in the works.

Since 1985, *Around the Bar* has been published 10 times a year, but starting in 2018, members will receive the issue six times a year. The October 2017 issue of the magazine (what you are reading now) is the 320th issue. Because of increases in printing and postage costs along with decreases in the number of bar luncheons, the Board decided to follow the nationwide trend of producing printed materials less often, with the goal of becoming more efficient and remaining relevant. The magazine will continue to be available online and in the BRBA newsletter six times a year.

## YLS Cocktails with the Court to be held Nov. 9

The Manship Theatre in the Shaw Center for the Arts, 100 Lafayette St., will be the location once again for the BRBA Young Lawyers Section's annual Cocktails with the Court, a reception to honor area judges and their law clerks. The event will be held 5-7 p.m. Thursday, Nov. 9, 2017. This project is funded in part by the American Bar Association on behalf of its Young Lawyers Division through the Fund for Justice and Education. Reception sponsors include Citizens Bank & Trust; DeCuir, Clark & Adams, LLP; Marionneaux Kantrow, LLC; Saunders & Chabert; and Smith Shanklin Sosa, LLC.

For more information about this reception, contact Susan Kelley at 225-214-5559 or [susan@brba.org](mailto:susan@brba.org).



PHOTO BY PAMELA LABBE

Monica Vela-Vick presented the Region III High School Mock Trial traveling trophy to Team Captain Ruby Roberg, a student from the 2017 first-place winning mock trial team from West Feliciana High School. The presentation was made during the BRBA June Bar Luncheon held June 14, 2017, at Ruffino's Catering at De La Ronde Hall. Vela-Vick chaired the 2017 Mock Trial Committee.

## BRBA Volunteer Committee members read to children for the Boys & Girls Club of GBR

BRBA Volunteer Committee members spent time this past summer reading books to young people to prevent summer learning loss. The six-week project of the Boys & Girls Club of Greater Baton Rouge provided a summer enrichment program for more than 500 youth. Between June 5 and July 13, 2017, Volunteer Committee members signed up to read aloud for 30 minutes to attending youth.

For more information about future volunteer projects of the BRBA Volunteer Committee, contact Carole McGehee at 225-214-5557 or [carole@brba.org](mailto:carole@brba.org).

## Teen Court of Greater Baton Rouge holds summer training session for high school student volunteers

A Teen Court Training Session was held Saturday, June 3, 2017, at the East Baton Rouge Parish Juvenile Court for high school student volunteers and for youth scheduled to participate in the program this fall.

Otha "Curtis" Nelson Jr. served as the lead trainer, and Farah Gheith, Gail Adkins Grover and Monica Vela-Vick served as trainers for this training session.

Teen Court Coordinator Donna Buuck, with the assistance of R. Lynn S. Haynes, organized the day-long event for the 25 attending teens.

Contact Donna at 225-214-5556 or [donna@brba.org](mailto:donna@brba.org) for more information. 



# Interview with LSU Law Dean Thomas “Tom” Galligan Jr.

BY KATHRYN DUFRENE

*ATB: How did you come into academia from a career in private practice?*

TG: During my third year of law school, I was in anti-trust class and my professor said he wanted to see me in his office. I had no idea what it was about. This professor was the chair of faculty recruitment at my law school, and he encouraged me to think about teaching. Ever since then, it was a seed planted in my brain. After nearly four years of practicing law in Seattle, my wife was pregnant with our first child and I thought, “If I don’t try this now, I’ll be on Queen Anne Hill driving a Volvo, wondering if I would be happier if I was teaching.” So I asked around for advice on how to get into academia. In the end, I decided to get my LL.M, so I got a leave of absence from my firm to get an LL.M at Columbia, and I never looked back.

*ATB: And you started your teaching at LSU!*

TG: During my LL.M year, I interviewed for teaching positions, one of which was at LSU. I interviewed in January 1986 and got the job to teach UCC sales, commercial paper and remedies. After my first year, I picked up torts and taught it until I left LSU in 1998. I taught admiralty also.

*ATB: Do you think that practicing first was beneficial to your current career? If so, how?*

TG: Absolutely. Practicing law gave me a realistic exposure to what litigation is about. I was lucky enough to have 9 or 10 trials or arbitrations for which I was primarily responsible. While I do enjoy getting up and talking in front of people, it wasn’t often enough for the intellectual side of me, which was the attraction to teaching. And teaching still allows me to be in front of people every day doing what I love.

*ATB: There is a long-standing civil law versus common law debate at LSU Law. Where do you fall on that?*

TG: Though I’m not a big fan of requirements in general, civil law is what LSU Law is all about. But we do both. You’re a better lawyer if you’ve learned both systems. I tell prospective students that there are two great legal systems in the world: civil and common. Most the rest of the world is civil law. Most of the U.S. is common law, but it is increasingly moving toward being statute dominated. When you graduate from LSU Law, you can practice anywhere in the world. Bunkie to Beijing, Plano to Paris. It’s a real plus.

*ATB: What has been the most challenging part of being Dean at LSU Law?*

TG: Managing the finances to operate the school. LSU has had 17 budget cuts in nine years, and the law school budget has been a victim of those cuts every time. We have fewer faculty than 10 years ago, and we need to reach into our reserves to balance the budget. And of course, this is all happening at a time when we’ve seen a huge decline in people applying to law school since 2008. A little over 20 percent of every dollar spent the past year came from state. Everything else came from tuition, fees and donations. The real difficulty is determining how to maintain a quality education with limited resources. If you talked to 100 law school deans, 98 would probably say this is the biggest challenge.

*ATB: On the flip side, what is the most rewarding part of being Dean at LSU Law?*

TG: Without a doubt, being with students and working with students is my favorite part. I was president at Colby-Sawyer, a private liberal arts college, for the 10

*“Practicing law gave me a realistic exposure to what litigation is about. I was lucky enough to have 9 or 10 trials or arbitrations for which I was primarily responsible. While I do enjoy getting up and talking in front of people, it wasn’t often enough for the intellectual side of me, which was the attraction to teaching.”*

years before I became dean here. I loved it there, but it is great to be back with law students and law faculty. I'm a lawyer, and even in those 10 years, I never thought of myself as other than a law professor, so it's great to be back in a law school, particularly at LSU.

*ATB: How has LSU Law changed seen since your first bout here?*

TG: When I left LSU Law in 1998, attrition was still 28 to 33 percent. The walls used to bleed those last two weeks of the semester. Now people are here to learn, not to be excluded. Student activity is way up, too. The student organizations and advocacy programs are booming. Experiential learning in the form of clinics, externships, trial advocacy, moot court and more are fantastic. The diversity of the student population is also much improved and emphasized. There is a commitment to being a welcoming and inclusive community. Finally, the faculty is more focused and productive as scholars, in addition to their teaching.

*ATB: What about Baton Rouge?*

TG: It's bigger, bigger, bigger. There is so much more going on; not much was here when I was here before. There's a downtown now! Traffic is worse. The people are still great; the food is still wonderful. Everything that was good about Baton Rouge has only gotten better.

*ATB: What changes are you anticipating in the future under your leadership as Dean?*

TG: I definitely expect to have some discussions about restructuring the first-year curriculum. While we don't want to mess around with something that works, that mindset can be a moat against change. I would like to focus on experiential learning more too. The clinics, advocacy programs and externships all make up a menu

with a lot of different choices, but there is no "program," per se. So I would like to explore how to make that a more coherent program and figure out how to balance these types of courses with the substantive and analytical sides of law school. We have also changed our research grant program, hired faculty in conjunction with the main campus and added a few additional courses. We created a faculty review process, which was all approved by the faculty themselves. The 3+3 program is about to start.

*ATB: Tell us a little bit about your family.*

TG: I'm married with four kids. Susan is my wife, and we have been married for 35 years. My children are Patrick (lawyer), Sarah (library director), Aisling (starting medical school at Brown University in the fall) and Jennifer (fundraiser for Junior Achievement of Middle Tennessee). Fun fact: All three of my daughters were born here in Baton Rouge.

*ATB: I have heard that you're a runner too?*

TG: I was a marathon runner in my day. I did my 24th marathon in 2009, but I haven't done one since. I started running when I was in law school, but my time in Baton Rouge was really when I got back into it heavily. I fondly remember running the lakes with Cheney Joseph; we were real pals. I still run with the running club sometimes, or should I say I run behind the running club?

*ATB: Do you have any thoughts you would like to share with the Bar Association?*

TG: It's wonderful to be back. I look forward to continuing to work with the Bar Association. I have noticed that our faculty is now comprised of some younger, newer professors that the Bar doesn't know yet. I would love to, with the Bar's help, attempt to connect some of the new faculty with the Bar and all it has to offer. ■



**TEEN COURT OF GREATER BATON ROUGE**  
needs attorneys to volunteer to assist with the program.

To find out more, contact Donna Buuck at 225-214-5556 or [donna@brba.org](mailto:donna@brba.org)  
or R. Lynn Smith Haynes at 225-214-5564 or [lynn@brba.org](mailto:lynn@brba.org).

# in memoriam

BY CLAUDE F. REYNAUD JR.

## Remembering James E. Toups Jr.

Capt. James E. (Jim or Jimmy) Toups, U.S. Navy, Ret. was a prominent attorney who practiced with Breazeale, Sachse & Wilson, LLP for 38 years, specializing in real estate and estate planning. He was also one of the most influential presidents of the Baton Rouge Bar Association. That said, Jim was so much more than that.

First, he was passionate about the people and things he loved. His family always came first. Betsy, his wife of 54 years, was a young student at Sophie Newcomb College from Tennessee when the handsome, young naval ROTC student at Tulane met her. They wed shortly after Jim's graduation and before Jim's tour of active duty as a line officer on the U.S.S. Turner Joy. Jim and Betsy had two children, Jay and Lacy, to whom Jim was thoroughly devoted. It was indeed fun to watch when Jay actually became better at tennis (a lot better) than his dad on afternoons and evenings at the Bocage Racquet Club.

Beyond his family was the Navy. Anchors aweigh! Jim retired from the Navy Reserve as a captain. He was correctly proud of his service on active duty and as a reserve officer. He prominently acted as a recruiter for the Naval Academy in the Baton Rouge and New Orleans region, becoming a Blue and Gold Officer of the Naval Academy. On any occasion of any importance, Jim would wear his sparkling dress whites to functions in Baton Rouge, New Orleans and elsewhere.

Because this is *Around the Bar*, I would be remiss if we did not discuss Jim's bar activities. He was president of the Baton Rouge Bar Association in 1985, and served on the Louisiana State Bar Association House of Delegates for 10 years. He regularly attended the Louisiana State Bar Association Annual Meeting in the days when it was held at the Broadwater Inn in Biloxi and was always part of memorable events there, some of which occurred in the daytime and some of which occurred well into the numerous social hours. When he was president of the



Newlyweds Jim and Betsy Toups toast to their future.



Photo of The Bar Tender — 1986

BRBA, he named this publication *Around the Bar*. He also started the concept of the Bench Bar Conference. Both of these initiatives have been a tremendous success.

It is easy to understand how Jim could accomplish so much as bar president. Jim was always so pleasant to be around that really no one could say “no” to his ideas.

In my 30-plus years of practicing law with him, I never saw him say anything cross or critical to anyone. During the years Jim unselfishly served the Baton Rouge Bar Association and the State Bar, it was not necessarily the most well compensated activity within our firm. Since then, because of Jim's leadership, BSW has had numerous Bar Association officers, including the 2016 president, Jeanne C. Comeaux. BSW extends its warmest and deepest gratitude to Jim for his effort with the Bar, and his effort within our firm to help us understand its importance.

I do not know what Jim would make of today's millennial world. He dressed to a tee every day in a suit or, as alluded to above, sometimes in his naval whites. His

posture was military straight. Yes, he was quite proper, but he was also a great deal of fun. It was often observed that Jim would have his “first dessert” in the form of a fancy cocktail before his meal at various social occasions where we were all together. I never actually saw him have a drink with an umbrella in it, but I think that was probably because there were no umbrellas available at the time. Rest assured, however, that after the meal, he would still have the real dessert. This was a function of what had to be a gigantic “sweet tooth.”

Jim understood the importance of networking within the community well before it was called that. He and Betsy would have people from the firm over every year, if not more frequently. Good times were had by all like the Salassis, the Nolands and the Simoneauxes. Jim and

Betsy also opened their home to the younger lawyers of the firm, practicing the art of inclusion more than any other partner. I remember vividly attending “hospitality suites” in his hotel room at the Broadwater Inn for the LSBA conventions. He did this with other lawyers and clients, always with a friendly, smiling demeanor. Even in the social context, he was always willing to serve. He was chairman of the Baton Rouge Assembly, president of the Baton Rouge Round Table, and president of the City Club. As with his role as bar president, he served each of those organizations well, dutifully and enthusiastically.

Although a Greenie, Jim loved LSU sports. Of the parties that he and Betsy would host, many were before LSU home games. In those days, there was not very much tailgating at all. There were cocktail parties, which were relatively dressy affairs, at people’s homes, and Jim and Betsy seemingly always had one every season. If I did not see Jim and Betsy at their cocktail party, we would see them at a cocktail party elsewhere at one of their friends’ houses. It was truly a grand time in a different era, and Jim and Betsy were in the middle of that version of LSU football, the social occasion that it was.

Jim loved sports and was a competitor. He was not the fastest runner nor could he jump the highest, but if he guarded you in a pickup basketball game, you would know you have been guarded. He was one of those guys who set a pick with his elbows up and dared you to do something about it. I also recall, in the days when our firm would play other firms in basketball, he would simply not let someone drive the lane easily. In fact, I thought he was going to take another lawyer’s head off in one such foul. That was Jim’s way — 110 percent. In softball, he was the pitcher for the BSW team for almost 20 years until a rocket shot off the bat of an opponent hit his eye socket and crushed it, forcing Jim to retire from softball once and for all. In



Jim Toups is likely enjoying his “second dessert” with Murphy Foster III (left) at the BSW 1986 Thanksgiving Day lunch.

the same competitive fashion on the tennis court as on the basketball court, Jim would call the lines very closely, probably more to get under the skin of the opponent than to actually win the point. That said, it really was great fun playing with the competitive Jim. Tennis would then be followed by friendship and considerable libations. He was a competitor, but he was social. Competition was just part of the camaraderie.

Lastly, I must say a little bit about my personal relationship with Jim. I started with BSW in 1977, and Jim was already a partner. Of all the partners at the time, he was the most gracious and generous to help a newbie, like myself and the others with me, understand how to be a lawyer. The youngest associate (me) had the unfortunate duty of collecting Godchaux’s bad debts. We had 1,500 collection files, and Jim remarkably went with me to teach me how to confirm a default (both in City Court and District Court) and how to take a J.D. rule, garnish wages or seize some asset of the poor debtor. He did this without compensation just because he wanted to help. In later years, with other young associates, he would take them on a tour of the courthouse for almost a full day, showing them the conveyance records, the mortgage records, and how to file something and take it through civil processing. Again, for no recompense and for no other reason other than he just wanted to help. He became a friend and role model to every young lawyer. When I first met him as a law clerk in 1975, there was no referring to him as “Mr. Toups” — it was always, “Call me Jim.”

The purpose of this article is obviously to honor Captain Toups. However, it is also to be instructive of how to conduct oneself with honor, compassion and integrity in every endeavor. Jim did that without fail. The world today needs a few more people like Jim.

Jim, we at BSW and all of the Bar miss you. 



The photo above was taken at the 2001 Past Presidents’ Dinner, which was held at the Middleton Bar Center. Photographed (L to R) are Jim Toups, Michael McKay and Gerald Walter.

PHOTO BY PAMELA LABBE

# Celebrate Pro Bono

## National Pro Bono Week

### Oct. 22-28, 2017

Do Good • Do Justice • Do Pro Bono

**Geaux Casual for Pro Bono will kick off the celebration**

## Friday, Oct. 20

**with a jeans-day fundraiser for the Baton Rouge Bar Foundation Pro Bono Project.**

WHO: All attorneys

WHAT: Geaux Casual for Pro Bono

WHEN: Friday, Oct. 20 (or other date best for your office)

WHY: Benefits BRBF Pro Bono Project

COST: \$5 per person to participate

**During Pro Bono Week, the Baton Rouge Bar Foundation Pro Bono Project will give back to the community by hosting:**

- Ask-A-Lawyer at Catholic Charities
- Thirst For Justice at St. Vincent de Paul
- Self Help Resource Center at The Family Court of East Baton Rouge Parish
- Lawyers in the Libraries at the Delmont Gardens Branch Library

With your help, we can remove legal barriers and improve outcomes for the most vulnerable in our community. For more information about volunteering, please contact: Caroline Cooper Ching — 225-214-5558; Robin Kay — 225-214-5561; or R. Lynn Haynes — 225-214-5564.

**Save these CLE Seminar dates • #celebrateprobono**  
**8 to 10 AM — Oct. 20**

Free 2.0 hour CLE seminar for accepting a successions or a contractor fraud case from the Pro Bono Project.

**8 to 10 AM — Oct. 25**

Free 2.0 hour seminar for accepting a SSI/SSDI appeals case from the Pro Bono Project.

# foundation footnotes

PRO BONO & TEEN COURT REPORTS — JULY 2017

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, Huey and Angelina Wilson Foundation, LANO Change Fund and the Baton Rouge Bar Foundation.

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

**ASK-A-LAWYER VOLUNTEERS** — Jim Austin and Adam Parker, *Butler Snow; Prentice White, Southern University Law Center; and Paul Matzen.*

**THIRST FOR JUSTICE VOLUNTEERS** — Gavin Richard, *Law Office of Gavin M. Richard, LLC; Caroline Bond, Jeffrey Cody and Kathryn Dufrene, Shows, Cali & Walsh, LLP; Terry Bonnie, Terry L. Bonnie, APLC; Fred T. Crifasi; Allen Posey and James Zito.*

**TAKING PRO BONO CASES** — Felix Dejean, *DeJean Law Firm, LLC; Ryan Johnson, Jones Walker; Janeane Gorcyca Abbott, Joubert Law Firm; Eboni Rose, Louisiana Division of Administration, Office of General Council; Doran Drummond, Law Office of Keith Giardina; Sharon Florence, Law Office of Sharon Y. Florence, LLC; Gregory Reda, Phelps Dunbar; Cynthia Reed, Southern University Law Center; Booker Carmichael, The Carmichael Firm; Loreal Jackson, The Law Office of LM Jackson, LLC; Ta'Tanisha Youngblood, Youngblood Law Firm, LLC; Donald Hodge and Kaila Hutchinson.*

**ACCEPTING MEDICAL LEGAL PRO BONO CASES** — Victor Loras, *Carleton, Loras & Hebert, LLC; Aub Ward, Naquin & Ward; and Donald Hodge.*

**ACCEPTING FLOOD PROOF PRO BONO CASES** — Lindsey Dupree, *Black and Dupree Law Firm; Dele Adebamiji and Wendra Moran.*



**SELF HELP RESOURCE CENTER VOLUNTEERS** — Steven Adams, *Adams Law Office APLC; John Obebe, East Baton Rouge Office of the Public Defender; Janeane Gorcyca Abbott, Joubert Law Firm, APLC; Ryan Brown, Roedel Parsons; David Handelman and Julia Wilson, Southeast Louisiana Legal Services; and Julie Folse.*

**SELF HELP RESOURCE CENTER LAW STUDENT VOLUNTEERS** — Trennecia Holt and Nick Roszczynialski, *Southern University Law Center.*

**VOLUNTEERS NEEDED** — With many still struggling to recover from the flooding in 2016, we are in need of volunteers to handle contractor fraud cases, small successions and SSI/SSDI appeals. Please consider lending your expertise to resolve these cases, and if these are particular areas of interest, join us for one of our upcoming CLE seminars.

- **Friday, Oct. 20** — Issues Arising from the Flood: Small Succession/Clear Title and Contractor Fraud
- **Wednesday, Oct. 25** — The Basics of SSI/SSDI Appeals

**TEEN COURT** — Jamie Flowers, Brittany Tassin and Monica Vela-Vick served as judges and teen attorney mentors for the July Teen Court hearing. In July teen court participants discussed healthy relationships with Brittany Tassin and Dominique Dunbar of STAR, Sexual Trauma and Response. Judge Kelli Terrell Temple spoke with the teens about drug and alcohol awareness and consequences. 📌

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For classified or display ad rates, contact Pamela at (225) 214-5560 or email: pamelam@BRBA.org

# October 2017

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

## Duty Court Schedule

### 19<sup>TH</sup> JDC CIVIL COURT

Oct. 2-Oct. 13 Judge Kelley  
 Oct. 16-Oct. 27 Judge Morvant  
 Oct. 30-Nov. 10 Judge Johnson

### 19<sup>TH</sup> JDC CRIMINAL COURT\*\*\*

Sept. 29-Oct. 6 Judge Anderson  
 Oct. 6-Oct. 13 Judge Erwin  
 Oct. 13-Oct. 20 Judge Jackson  
 Oct. 20-Oct. 27 Judge Daniel  
 Oct. 27-Nov. 3 Judge Moore

### BATON ROUGE CITY COURT\*

Sept. 25-Oct. 1 Judge Pro Tempore  
 Oct. 2-Oct. 8 Judge Prosser  
 Oct. 9-Oct. 15 Judge Temple  
 Oct. 16-Oct. 22 Judge Smith  
 Oct. 23-Oct. 29 Judge Alexander  
 Oct. 30-Nov. 5 Judge Pro Tempore

### FAMILY COURT\*\*

Oct. 2 Judge Woodruff-White  
 Oct. 3 Judge Day  
 Oct. 4 Judge Greene  
 Oct. 5 Judge Baker  
 Oct. 6 Judge Greene  
 Oct. 9 Judge Woodruff-White  
 Oct. 10 Judge Day  
 Oct. 11 Judge Greene  
 Oct. 12-13 Judge Baker  
 Oct. 16 Judge Woodruff-White  
 Oct. 17 Judge Day  
 Oct. 18 Judge Greene  
 Oct. 19 Judge Baker  
 Oct. 20, 23 Judge Woodruff-White  
 Oct. 24 Judge Day  
 Oct. 25 Judge Greene  
 Oct. 26 Judge Baker  
 Oct. 27 Judge Day  
 Oct. 30 Judge Woodruff-White  
 Oct. 31 Judge Day

### JUVENILE COURT

Oct. 1-Oct. 31 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, Oct. 9 Columbus Day

## Classified Ads

**BATON ROUGE OFFICE SPACE:**  
 Established firm; 201 Napoleon St., Downtown near 19th JDC and Federal courthouses, area for support staff, off-street parking, conference room, color copier, fax, internet, etc. Some over-flow work available. Call Scott Gegenheimer: 225-346-8722.

**OPENING FOR A PARALEGAL/LEGAL**  
 secretary at a Baton Rouge firm located downtown. Candidates should possess strong organizational, interpersonal and communication skills, and strong computer and case management software skills are a must. Knowledge in MS Office Suite and Adobe preferred. Email resume to lisab@scwllp.com. Benefits offered.

**REGISTER YOUR COOKING TEAM TODAY!**  
 Are you thinking about participating in this year's Belly Up with the Bar event? Register your team today. Call 225-214-5556 for info.

**CLE BY THE HOUR IS COMING!**  
 Are you ready? The CLE by the Hour seminar schedule will be posted on the BRBA website once it is ready. See www.BRBA.org for details or contact Ann K. Gregorie at 225-214-5563 or ann@brba.org.

**HAVE YOU RECEIVED YOUR 2018 BATON ROUGE BAR ASSOCIATION MEMBERSHIP DUES? Don't Delay, pay today so that your vote will count.**

For your vote to count for your favorite BRBA Bar Leaders, you must have paid your 2018 BRBA Membership Dues. Make sure the BRBA has your current mailing address and your current email address on file so that you won't miss out! Reach out to the BRBA to update your contact information by calling 225-344-4803.

## 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

- 4 Belly Up with the Bar Committee meeting, 12-1 p.m.;
- 5 Volunteer Committee meeting, 12-1 p.m.
- 5 Ask-A-Lawyer, 9-11:30 a.m., Charles R Kelly Community Center, 3535 Riley St.;
- 7 Teen Court Committee meeting, 12-1 p.m.
- 7 Ask-A-Lawyer, 9:30-11:30 a.m., Baker Branch Library, 3501 Groom Rd.
- 10 Finance Committee meeting, 12-1 p.m. (conference call);  
 Belly Up with the Bar Committee meeting, 12-1 p.m.;
- 11 Executive Committee meeting, 8:15-9:15 a.m.
- 12 LSBA Justice Conference, Crowne Plaza Hotel
- 13 LSBA Justice Conference, Crowne Plaza Hotel
- 18 Ask-A-Lawyer, 9-11:30 a.m., Catholic Charities;  
 Belly Up with the Bar Committee, 12-1 p.m.
- BRBA Board of Directors meeting, 6-8 p.m.
- 20 Geaux Casual — A jeans day fundraiser for the Baton Rouge Bar Foundation;  
 CLE seminar: Issues Arising from the Flood: Small Successions / Clear Title and Contractor Fraud, 8-10 a.m.;
- BRBA Criminal Law Section meeting & CLE seminar, 12 p.m.
- 21 Fall Festival and Halloween Trunk or Treat (Volunteer Committee project), Children's Hospital Outpatient Center, 720 Connell's Park Ln., Time: TBA
- 22 National Pro Bono Week begins (Oct. 22-28)
- 24 Lawyers in the Libraries, Delmont Gardens Library, 9:30-11:30 a.m.
- 25 CLE seminar: The Basics of SSI/SSDI Appeals, 8-10 a.m.
- 27 Belly Up with the Bar (event), 5-9 p.m., Live Oak at Cedar Lodge Events Center, 6300 Jefferson Hwy.

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