

30th
Anniversary

Around

THE MAGAZINE OF THE
BATON ROUGE BAR ASSOCIATION

No. 296, April 2015

the Bar

Law Day Committee

EVENT DATE: Friday, May 1

Inside:
Spoliation of evidence
Care instructions for
your mediator
Attorney spotlight:
Kara B. Kantrow
Interview with
19th JDC Commissioner
Nicole Robinson



UPCOMING BRBA CLE SEMINARS:

Family Law Section Meeting & Cyberstalking and Cyberbullying CLE Seminar

April 16 • 12 - 2 p.m. • Sullivan's Steakhouse • 5252 Corporate Blvd. • 1.0 hour of CLE

Recent Developments in Social Media and Professional Responsibility (Ethics)

April 17 • 7:30 a.m. - 9 a.m. • Middleton Bar Center • 1.0 hour of CLE

Self Help Resource Center CLE Seminar

April 24 • 12 - 1 p.m. • 1.0 hour of CLE

The Family Court in and for the Parish of East Baton Rouge • 300 North Blvd.

Managing Client Expectations: Working with Clients to Have a WOW Client Experience (Professionalism)

April 29 • 4 - 5 p.m. • Flemings • 7321 Corporate Blvd. • 1.0 hour of CLE (*wine tasting to follow, 5 - 6 p.m.*)

Nuts & Bolts of Employment

May 8 • 7:45 a.m. - 12 p.m. • Middleton Bar Center • 4.0 hours of CLE

Workers' Compensation Section Meeting & Evidence Update CLE

May 12 • 12 - 2 p.m. • Drusilla Seafood Restaurant • 1.0 hour of CLE

Family Court of East Baton Rouge Parish Judges' Panel Discussion CLE Seminar

May 21 • 12 - 2 p.m. • City Club of Baton Rouge • 355 North Blvd. • 1.0 hour of CLE

Nuts & Bolts of Civil Law: A Primer

June 19 • 7:45 a.m. - 12 p.m. • Middleton Bar Center • 4.0 hours of CLE

Family Law Section Meeting & Evidence CLE Seminar

June 24 • 12 - 2 p.m. • Juban's Restaurant • 3739 Perkins Rd. • 1.0 hour of CLE

Nuts & Bolts of Family Law

July 10 • 7:45 a.m. - 12 p.m. • Middleton Bar Center • 4.0 hours of CLE

YLS Summer Sizzlin' CLE

July 17 • 8 a.m. - 12:15 p.m. • Middleton Bar Center • 4.0 hours of CLE

BRBA Bench Bar Conference 2015

July 23-25 • Grand Hotel Marriott Resort, Golf Club & Spa • Point Clear, Ala. • 12.5 hours of CLE

For more information on available CLE seminars, please go to: http://www.brba.org/Web/Member_Resources/CLE.aspx

(You can also click on the "Continuing Legal Education" hyperlink on www.BRBA.org to view that page.)

Or contact Katherine Fremin at 225-344-4803 or katherine@brba.org for more information.



On the cover:

This year's BRBF Law Day activities will take place Friday, May 1, 2015, at the Baton Rouge River Center Theatre. The mini-mock trials that take place after the Law Day Opening Ceremony will be held at the 19th Judicial District Court, The Family Court in and for the Parish of East Baton Rouge and Baton Rouge City Court.

Pictured on the cover of this month's *Around the Bar* are members of the 2015 Law Day Committee, including (L to R) Robert Savage, Talya Bergeron, Richard Bromfield, Glen Petersen, Hanna Thomas and Jeff Wittenbrink. The background is an American flag mural painted on the outside wall of The Law Offices of Ossie Brown.

Cover photography by Pamela Labbe.



- 4 Contributors
- 5 Letter from the president
"Strive mightily toward the ideal of justice" BY ROBERT J. BURNS JR.
- 6 Gail's grammar
- 7 Tales from the bar side
"Don't mess with Smokey" BY VINCENT P. FORNIAS
- 8 Bar news
- 10 West's Jury Verdicts
- 11 Attorney spotlight
"A visit with YLS Chair-elect Kara B. Kantrow" BY JOSEPH J. CEFALU III
- 12 "Navigating the muddy waters of spoliation evidence" BY DANIELLE L. BOREL
- 14 "Care and feeding of your mediator" BY VINCENT P. FORNIAS
- 19 "Interview with 19th Judicial District Court Commissioner Nicole Robinson"
BY DIANNE M. IRVINE
- 22 Foundation footnotes

Volunteers Needed for LAW DAY 2015 Courtroom Sessions

The Baton Rouge Bar Foundation will celebrate LAW DAY on Friday, May 1, 2015. Following the Opening Ceremony, middle and high school students will converge on the 19th Judicial District Court, The Family Court in and for the Parish of East Baton Rouge and Baton Rouge City Court for interactive courtroom sessions from 10:30 a.m. to noon. This is where WE NEED YOUR HELP!

All volunteers will receive a script and instructions. Your participation will help students develop a deeper understanding of our legal system, and volunteering is fun!

To volunteer, please complete the form below and fax it to 225-344-4805; email it to: donna@brba.org; or call Donna at 225-214-5556.

Name: _____
 Firm: _____
 Address: _____
 City: _____ State: _____ Zip: _____
 Phone: _____ Fax: _____ Email: _____
 Moderator: _____ Civil: _____ Criminal: _____ Prosecutor: _____

contributors



Danielle L. Borel, an associate with Breazeale, Sachse & Wilson, LLP, is a contributing writer.



Robert J. Burns Jr., a partner in the Perry, Atkinson, Balhoff, Mengis, Burns & Ellis firm and a managing partner of Perry Dampf Dispute Solutions, is the 2015 president of the Baton Rouge Bar Association.



Joseph J. Cefalu III, an associate with Breazeale, Sachse & Wilson, LLP, is an assistant editor of *Around the Bar*.



Vincent P. Fornias, an assistant editor of *Around the Bar*, is a solo practitioner whose practice focus is alternative dispute resolution.

Dianne M. Irvine, a consultant on higher education policy and legal issues, is a member of the Publications Committee.

Pamela Labbe is the communications coordinator of the Baton Rouge Bar Association.

Gail S. Stephenson, an assistant editor of *Around the Bar*, is the director of legal analysis and writing and an associate professor of law at Southern University Law Center.



Published by the Baton Rouge Bar Association
P. O. Box 2241, Baton Rouge, LA 70821
Phone (225) 344-4803 • Fax (225) 344-4805 • www.brba.org

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.

OFFICERS

Robert J. Burns Jr., President.....767-7730
Jeanne C. Comeaux, President-elect381-8051
Karl G. Johnson, Treasurer389-3704
Linda Law Clark, Secretary346-8716
Darrel J. Papillion, Past President236-3636

DIRECTORS AT LARGE

Shelton Dennis BluntMelissa M. Cresson
Christopher K. JonesMelanie Newkome Jones
Amy C. LambertDavid Abboud Thomas

EX OFFICIO

Danielle Clapinski • Charles Hardie • Joanna B. Hynes
Robin Krumholt • Scott M. Levy • Eric Lockridge
Matthew Meiners • Judge Pamela Moses-Laramore
Debra Parker • Michael Platte • Michelle Sorrells

ABA DELEGATE

Erin Wilder-Doomes

BANKRUPTCY SECTION

Eric Lockridge.....Chair

BUSINESS/CORPORATE LAW SECTION

Michael PlatteCo-chair
Matthew Meiners.....Co-chair

CONSTRUCTION LAW SECTION

Charles Hardie.....Chair
Matt TerrellPast chair

FAMILY LAW SECTION

Joanna B. HynesChair
Anne Richey MylesChair-elect
Jennifer M. Moisant.....Secretary
Wendy L. EdwardsPast chair

PUBLIC LAW PRACTICE SECTION

Danielle Clapinski.....Chair
Christopher K. OdinetPast chair

WORKERS' COMPENSATION SECTION

Robin L. Krumholt.....Co-Chair
Debra T. Parker.....Co-Chair
Michelle M. SorrellsCo-Chair
Judge Pamela Moses-LaramoreCo-Chair

YOUNG LAWYERS SECTION OFFICERS

Scott M. Levy, Chair.....336-5200
Kara B. Kantrow, Chair-elect.....769-7473
Loren D. Shanklin, Secretary.....223-6333
Laranda Moffett Walker, Past ChairN/A

YOUNG LAWYERS SECTION COUNCIL

Francisca ComeauxJordan Faircloth
Chelsea M. GomezMackenzie Smith Ledet
Erin B. Sayes

BATON ROUGE BAR ASSOCIATION STAFF

Ann K. Gregorie, Executive Director214-5563
Donna Buuck, Youth Education Coordinator214-5556
Emily Chambers, Pro Bono Coordinator214-5558
Katherine Fremin, Executive Assistant344-4803
R. Lynn S. Haynes, Asst. Teen Court Coordinator214-5564
Robin Kay, Pro Bono Coordinator214-5561
Susan Kelley, Office Manager214-5559
Pamela Labbe, Communications Coordinator214-5560
Carole McGehee, Lawyer Referral Coordinator214-5557
Julie Ourso, Bookkeeper214-5572

PUBLICATIONS COMMITTEE

Editor: Ed Walters — 236-3636
Asst. Eds.: Joseph J. Cefalu III — 381-3176
Vincent P. Fornias — 769-4553
Grant J. Guillot — 346-1461
Gail S. Stephenson — 771-4900, ext. 216
Art Vingiello — 751-1751

Graphic Design / Ad Sales: Pamela Labbe — 214-5560

Robert CollinsDianne M. IrvineGracella Simmons
Rachel L. EmanuelMelanie N. JonesRebecca Wisbar
Lane EwingDale LeeJeff Wittenbrink
Greg GounerJohn McLindonRobert A. Woosley
Lexi HolingaChristopher K. Odinet

All Rights Reserved • Copyright ©2015

VOLUNTEERS ARE NEEDED TO HELP WITH A MONTHLY

LAW CLUB

FOR YOUTH IN THE GARDERE AREA.

We need lawyer volunteers to help with a law club for middle and high school students in the Gardere/South Burbank area. You will work with teens as they learn more about the field of law. To volunteer or for more information, please contact Lynn S. Haynes at lynn@brba.org or 225-214-5564.

The "Future Legal Eagles" law club is funded by a grant from the South Burbank Crime Prevention and Development District.

VOLUNTEERS ARE NEEDED TO HELP WITH A

SUMMER YOUTH LEGAL INSTITUTE

FOR TEENS IN THE GARDERE AREA IN JUNE.

To volunteer or for more information, please contact Lynn S. Haynes at lynn@brba.org or 225-214-5564. We will need speakers, coaches, visitors and more.

The Summer Youth Legal Institute is funded by a grant from the South Burbank Crime Prevention and Development District.

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 1,500 words, typed and single-spaced. A Word file should be emailed as an attachment to: pamela@BRBA.org.

For advertising information call Pamela Labbe at 225-214-5560. Display ads should be high-resolution attachments (.PDF), and classified ads as text only. Please email all ad artwork to pamela@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.

Copyright © by the Baton Rouge Bar Association. All rights reserved. Reproduction in whole or part without permission is prohibited. To request permission or for more information, contact Pamela Labbe at 225-214-5560 or pamela@BRBA.org.

letter from the president

BY ROBERT J. BURNS JR.

Strive mightily toward the ideal of justice

Lou Gehrig was, without a doubt, my favorite athlete. In truth, he was my childhood hero. Yes, I'm a baseball fan. And, no, I don't like the New York Yankees. But, Gehrig's legend transcended the game, so it was easy to forgive his being a Yankee. He was inserted into the lineup June 1, 1925. For the next 14 years, he never missed a start. That's 2,130 consecutive games as a starter for the

best baseball team in the world. He played, even with broken bones or illness. He showed up every day. They called him the Iron Horse. He was Mr. Reliable. And that's what I loved about him—or so I thought. The truth is that I'd never seen him play. I had no idea whether he was a good fielder, whether he was a jerk in the dugout, or whether he was a good husband or father. As an impressionable young boy, I simply bought into the Gehrig myth and was infatuated by the tough guy image that his record suggested.

Then, in my early thirties, I read a book about him that put him under a microscope. The book (*The Luckiest Man: The Life and Death of Lou Gehrig* by Jonathon Eig) went deep into his relationships, his marriage, his disease and his death. When I finished the book, I had a palpable sense of disappointment. My hero had been tarnished, at least in my eyes. There was more to him than his myth revealed. And, it was not all flattering. Whatever pedestal I had placed him on, it was my fault for not allowing his imperfections to be a part of the story.

Growing up, I also had an affection for Robert Kennedy. He was not just the brother of one of the most popular American presidents. He was a lawyer and served as Attorney General of the United States during a tumultuous period of domestic American history. He also played an integral role—perhaps the key role—in defusing the Cuban missile crisis. As a result, the world stepped back from the brink of nuclear disaster. His behind the scenes role in American affairs, both domestic and abroad, captivated me.

I didn't know much about his politics—and to this day, I don't really focus on that aspect of his career. What I admired most about him were his speeches. They seemed to transcend mere politics—to me, it was as if his was the voice that brought the ideal of justice to the ends of the earth. But, like Gehrig, as I've read more about him, my image of Robert Kennedy has sharpened, and with that some of his imperfections have come more clearly into focus. I now understand that the man was more complex than a simple listing of his accomplishments and offices. He was good and bad, a success and a failure, admirable and flawed—just like the rest of us.

Where is all of this going? Well, whether you admire the man or despise his flaws, Robert Kennedy's words will live on in the shadow of the 19th Judicial District Courthouse. At North Boulevard Town Square on April 9, 2015, at 3:30 p.m., the Baton Rouge Bar Foundation will donate to the people of Baton Rouge, in honor of its 75th anniversary, an architecturally significant clock that will stand near the entrance to the building. Beneath the clock, a bronze plaque will read:

Laws can embody standards; governments can enforce laws—but the final task is not a task for government. It is a task for each and every one of us. Every time we turn our heads the other way when we see the law flouted—when we tolerate what we know to be wrong—when we close our eyes and ears to the corrupt because we are too busy, or too frightened—when we fail to speak up and speak out—we strike a blow against freedom and decency and justice. — Robert F. Kennedy

Donated by the Baton Rouge Bar Foundation to the People of Baton Rouge

I hope that the words of this fellow lawyer resonate with all who read them. I hope that Baton Rougeans take these words to heart as they enter the courthouse on their way to jury duty. I hope



Robert J. Burns Jr.

that downtown tourists stop and take in this message as they stand at the doors of our court. I hope that children stop to read these words and ponder their meaning. I hope that government officials take up the challenge that they present. I hope that the lawyers who enter the courthouse see themselves in Kennedy's charge. And I hope that all of them see the truth of Kennedy's message: that laws and courts are nothing without the men and women who are willing to stand up in the name of "freedom and decency and justice" to make our system work.

Thanks to all who take up that challenge. You rightly have a place alongside Kennedy (and perhaps even Gehrig) and all those who, despite our innate weaknesses, strive mightily toward the ideal of justice. It is a worthy goal, indeed. ■

Mark Your Calendar!

BRBA 30th Annual Law Expo

Thursday, Sept. 17

L'AUBERGE CASINO & HOTEL BATON ROUGE • 777 L'Auberge Ave.

3.0 hours of CLE seminars available,
including ethics and professionalism.

Speakers: H. Alston Johnson III and Charles B. Plattsmier
Contact Pamela Labbe at 225-214-5560 or pamela@brba.org
for sponsorship or exhibitor information.

GAIL'S GRAMMAR

Ellipses, when used correctly, eliminate extraneous material and make your writing more concise. Use three dots to show you've eliminated material in the middle of a quotation. If material is omitted at the beginning of a quotation, do not begin with an ellipsis. If you want to begin a quote in the middle of a sentence, capitalize the first word and put brackets around the first letter to show it was lowercased in the original, meaning something was left out. Use four dots (ellipsis plus a period) to show material was omitted at the end of the sentence.

ORIGINAL QUOTE:

This Court recently discussed the concept of a peremptory exception of no right of action and stated that this exception assumes that the petition offers a valid cause of action and considers whether the instant plaintiff is a member of the class that has a legal interest in the underlying case.

CORRECTLY ALTERED QUOTE:

[T]he . . . peremptory exception of no right of action . . . assumes that the petition offers a valid cause of action . . .

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



After handling hundreds of cases during more than 25 years, we know that even the best attorneys need professional assistance in addressing and presenting complex accounting, financial and business issues. In fact, a qualified litigation consultant on your team can mean the difference between winning and losing a case. Let us improve your odds.

Our team of professionals are prepared to offer assistance and testimony in areas such as:

- Fraud and forensic investigation
- Business valuations
- Financial damage analysis
- Claims settlement administration
- Lost profits and income projections
- Personal injury claims
- Marital property settlements
- Bankruptcy matters
- Business insurance claims

BATON ROUGE
DENHAM SPRINGS
NEW ORLEANS



www.HTBCPA.com
225.928.4770
info@htbcpa.com



DIANE LANDRY | CPA; RONNIE GAGNET | CPA, CVA, CFF; & JILL KENNEDY | JD

tales from the bar side

BY VINCENT P. FORNIAS

Just as you hunker down, wallet in hand, to deal with the annual April fund-the-feds rite, consider where your hard-earned money is being spent. Credit is given to our own John McClindon for this eye-opening discovery, right in the dust-covered pages of the U.S. Code. Specifically, we call our dedicated reader(s) to 18 U.S.C. § 711-713:

Sec. 711—"Whoever . . . knowingly and for profit manufactures, reproduces, or uses the character 'Smokey Bear' . . . or any facsimile thereof, or the name 'Smokey Bear' shall be fined under this title or imprisoned not more than six months, or both."

Sec. 711a—Same penalties for "Woodsy Owl," or the associated slogan, "Give a Hoot, Don't Pollute."

Sec. 713—Same penalties for the great seal of the United States, or the seals of The President or the Vice President of the United States, or the seal of the United States Senate, or the seal of the United States House of Representatives, or the seal of the United States Congress.

Don't mess with Smokey

All of this Congressional sausage-making leads us at least to the following musings:

- Do we get off with a slap on the wrist if we refer to "Smokey THE Bear?"
- Who or what the hey is "Woodsy Owl?"
- Do friends not let friends create a seal for the United States Supreme Court?
- Do you get a double fine and hard labor if you pollute using a federal seal?
- Where was OUR legislature in 1984 when Seymour D. Fair, our own abused World Expo mascot, needed their help?
- What poor sap did John McClindon bill for uncovering these little jewels?

And remember, only YOU can prevent federal crimes. 

PARALEGAL STUDIES PROGRAM

Approved by
The American Bar Association

FIND PARALEGALS FOR:

full-time
part-time
permanent
short-term

EMPLOYMENT

contact Andrea Ash

AAsh@outreach.lsu.edu

225/578-6760

www.outreach.lsu.edu

LSU

Continuing Education



Special Needs Trust

A Special Needs Trust is a trust established for a child or other person with special needs, sometimes funded with settlement proceeds of personal injury claims.

If designed properly, a Special Needs Trust can help:

- Protect and administer the assets of an individual with special needs
- Facilitate a better quality of life
- Prevent the loss of governmental benefits

You may need a Financial Advisor to assist with the investment decisions within a Special Needs Trust. You may also need a fiduciary to serve as trustee of a Special Needs Trust. UBS Financial Services Inc. can help you with this process through our Designated Trust Services Program.*

If you are interested in learning more about the Designated Trust Services Program, please contact:

Charles Terrebonne, Vice President-Wealth Management
UBS Financial Services Inc.
7150 Jefferson Highway, Suite 650, Baton Rouge, LA 70806
225-922-6924 800-375-2000 charles.terrebonne@ubs.com

*Participating trust companies in the Designated Trust Services Program supply trustee services for personal trust accounts. These institutions are unaffiliated with UBS Financial Services Inc. Neither UBS Financial Services Inc. nor its employees offer tax or legal advice. You should consult with your personal, legal or tax advisors regarding your personal circumstances.

ubs.com/fa/charlesterrebonne



UBS Financial Services Inc. is a subsidiary of UBS AG. ©2014 UBS Financial Services Inc.
All rights reserved. Member SIPC. 7.00_Ad_4.5x5_081208_TerC

bar news

BRBF Law Day Activities to take place May 1

The BRBF is hosting several contests—essay, poster and video—in which middle and high school students can participate as part of its Law Day activities. This year Law Day is Friday, May 1, 2015, and all activities will take place at the Baton Rouge River Center Theatre. Volunteers are needed to assist with the day's events. Talya Bergeron is the chair of the 2015 Law Day Committee, and Robert Savage is the vice chair. Donna Buuck is the staff liaison to the committee.

In addition, the BRBF Law Day 2014 program received the Law Day 2014 Activity Award in February at the Mid-Year Meeting in Houston, Texas. Ryan Brown served as the 2014 Law Day Committee chairman. For more information about this event or to volunteer, contact Donna at 225-214-5556 or donna@brba.org.

Sponsorships available for Law Expo 2015

The Fall Expo & Conference is Thursday, Sept. 17, 2015, at L'Auberge Casino & Hotel Baton Rouge. Call Pamela at 225-214-5560 for sponsorship information.



A group of Southern University Law Center students are participating in the Texas Legislative Internship Program (TLIP) in the 84th Legislative District this semester. All earned college credit while gaining invaluable real life, hands-on experience in public policy. Senator Rodney Ellis created TLIP in 1990 because of his mentor, the late Congressman Mickey Leland, who stressed the importance of using one's individual success to provide opportunities for others. Photographed above are (front row, L to R): Lindsey Linder, Samone Jones, Shaina Pomerantz; (second row): Robert McKnight, Amy Anazia, Sen. Rodney Ellis and Sen. Judith Zaffirini; (back row): Shamil Patel, Danielle Broussard, JaQuay Jackson-Gray, Patrick Celestine, Greg Anthony and Mya Strauss. The 2015 class for the TLIP includes 66 students from Texas, Louisiana, Pennsylvania and South Africa, and they join the more than 600 who have served as interns with this program in the last 25 years.

**BUSINESS
LOANS
WITH A
Personal
TOUCH.**

CAMPUS  FEDERAL®
BE A PART OF ITSM

campusfederal.org | 888.769.8841



Your Credit Union for Business



NCUA



PHOTO BY MONICA VELA-VICK

Mock trial team members from Zachary High School and Baton Rouge Magnet High School are photographed above during the final round of the competition, which concluded Saturday, Feb. 28, 2015.



PHOTO BY MONICA VELA-VICK

Photographed above is the team that placed first in the regional mock trial competition from Zachary High School. This is the second consecutive year that Zachary places first in this competition.



PHOTO BY MONICA VELA-VICK

Photographed above is the team that placed second in the regional mock trial competition from Baton Rouge Magnet High School.


A team from Zachary High School won first place at the Region III Mock Trial Competition

The Region III Mock Trial Competition was held Feb. 27-28, 2015. Twenty-three teams from various high schools competed. Baton Rouge Magnet High School and Zachary High School competed in the final round on Saturday, and Zachary High was declared the winner. Both teams represented Region III at the statewide competition March 28, 2015, in Lake Charles, La.

The chair of the BRBF Mock Trial Committee, Tavares A. Walker, would like to thank all volunteers for their time and for making this event possible. Lynn S. Haynes served as the staff liaison to the committee. The East Baton Rouge Clerk of Court's Office provided lunch for the Mock Trial participants Friday, Feb. 27, 2015. The staff prepared chicken and sausage gumbo as well as seafood gumbo.

BRBA members to serve as state bar officers

Darrel J. Papillion, past president of the BRBA and a partner with Walters, Papillion, Thomas, Cullens, LLC, will be installed as president-elect of the Louisiana State Bar Association in June 2015.

Scotty E. Chabert Jr. is the Louisiana State Bar Association Young Lawyers Division secretary. Brad Tate and Kristi Richard are the District 5 representatives on the LSBA's Young Lawyers Division Council. 

**PLEASE JOIN US
FOR THE
CLOCK UNVEILING
CEREMONY**

THURSDAY, APRIL 9, 2015

**BEGINS AT 3:30 P.M.
NORTH BOULEVARD
TOWN SQUARE**

**RECEPTION
TO FOLLOW.**

RSVP BY CALLING 225-344-4803.



West's Jury Verdicts – Baton Rouge

Venue/Case Type	Major Injury	Trial Type	Result
<u>East Baton Rouge Parish</u>			
Animals	Leg lacerations	Bench	\$33,653
Contracts	Monetary damages	Bench	\$32,376
Contracts	Monetary damages	Bench	Defense
Vehicle Negligence	Unspecified	Bench	Defense
<u>U.S.D.C., M.D. La.</u>			
Vehicle Negligence	Death	Jury	Defense

West's Case of the Month

Court Favors Police Officer, City in Suit Involving Collision at Intersection

Preyas Sevak v. Matthew Craft Dunaway and the City of Baton Rouge

TYPE OF CASE:

Vehicle Negligence • Motor Vehicle v. Motor Vehicle
Vehicle Negligence • Emergency Vehicle

SPECIFIC LIABILITY: Police officer who was operating a police unit disregarded a red traffic signal at an intersection and collided with another vehicle

GENERAL INJURY: Unspecified personal injuries; medical expenses; property

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

DOCKET/FILE NUMBER: 602948

RESULT: Defendants, \$0

RESULT DATE: March 25, 2014

JUDGE: Timothy Kelley

ATTORNEYS:

Plaintiff: Peter T. Dudley, Pierce & Shows APLC, Baton Rouge, LA
Defendants: Veronica Jones, Senior Special Assistant Parish Attorney - East Baton Rouge Parish, Baton Rouge, LA

RESULT TYPE: Bench

Related Court Documents:

Plaintiff's petition: 2011 WL 11757177
Pretrial order: 2013 WL 8609481
Judgment: 2014 WL 2623941

SUMMARY OF FACTS:

Preyas Sevak was reportedly operating his 2001 Nissan Altima automobile south on Louisiana Highway 61 near its intersection with Sherwood Forest Boulevard in East Baton Rouge Parish, La., July 3, 2010. Sevak said at the same time, Matthew Craft Dunaway, a police officer who was allegedly acting within the course and scope of his employment with the city of Baton Rouge, was operating a police unit east on Sherwood Forest Boulevard near its intersection with Louisiana Highway 61.

According to Sevak, Dunaway disregarded a red traffic signal at the intersection and struck his automobile. Sevak said he suffered personal injuries due to the collision and sustained property damage to his vehicle.

Sevak filed a petition against Dunaway and the city of Baton Rouge in the Nineteenth Judicial District Court for the Parish of East Baton Rouge in June 2011. The plaintiff asserted the defendants' negligence had caused the accident and his resulting injuries and damages. Specifically, the plaintiff argued Dunaway had failed to maintain control over his vehicle, failed to stop his vehicle at the intersection or take evasive measures to avoid a collision and drove in an inattentive and/or distracted manner.

The plaintiff further argued that the police unit Dunaway was driving at the time of the accident was owned and insured by the city of Baton Rouge. The plaintiff sought damages for his personal injuries, pain and suffering, inconvenience and medical expenses, as well as property damage to his vehicle caused by the collision.

The defendants generally denied the plaintiff's allegations and denied liability in the matter. They asserted that at all times, Dunaway had operated his police unit with due regard for others' safety. The defendants argued that Sevak's own negligence had caused the accident, in that he had failed to adhere to uniform traffic regulations related to an approaching emergency vehicle that had its aural and visual signals activated. The defendants also disputed the nature and extent of the plaintiff's injuries and damages caused by the accident.

The matter proceeded to a bench trial with Judge Timothy Kelley presiding in January 2014. In a judgment signed March 25, 2014, Judge Kelley entered judgment in the defendants' favors against the plaintiff, dismissing Sevak's claims against the defendants with prejudice.

In his judgment, Judge Kelley noted that he had determined that Sevak had "failed to meet his burden of proof at trial establishing fault or liability on the part of [the] defendants."

CASE CITE: 2014 WL 2803793

Copyright © 2015 Thomson Reuters. All rights reserved. Reprinted with permission. To submit your jury trial, bench trial, settlement, and arbitration results for publication in West's Jury Verdicts – Louisiana Reports and possible selection for Around the Bar, visit www.westsjuryverdicts.com/BRBA/ To request a free case report for any case listed above, call 800-689-9378.

A visit with YLS Chair-elect Kara B. Kantrow

ATB: *Where are you from?*

KBK: I was born and raised in Houston, Texas.

ATB: *Where did you go to college and law school?*

KBK: I attended Mount Holyoke College located in South Hadley, Ma., for college and Louisiana State University for law school.

ATB: *What prompted the move up north to Massachusetts for college?*

KBK: For college, I wanted to experience something different than what I was used to growing up. Going to Mount Holyoke College afforded me that opportunity. The area is beautiful, and I love cold weather.

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

KBK: My father graduated from law school, but ended up becoming a CPA, and while he never practiced law, I thought it would be a good experience and beneficial to me regardless of what I ended up doing. Thankfully, I very much enjoy the practice of law.

ATB: *What kind of law do you practice?*

KBK: I work at Marionneaux Kantrow, LLC, with my primary focus being in regulatory law, specifically practicing before the Louisiana Public Service Commission. We represent electric utilities, gas/water/sewer utilities, and companies involved in the transportation of waste.

ATB: *Any relation to the Kantrows at Kantrow Spaht Weaver & Blitzer?*

KBK: Unfortunately (just joking). My husband, father-in-law, and sister-in-law all work there.

ATB: *Seeing as you and your husband are both attorneys, do you ever envision working together someday?*

KBK: As of right now, my office is across town from his.



Kara B. Kantrow

While I would not mind being closer in proximity, across the hall would be too close!

ATB: *What are your leisure activities?*

KBK: I enjoy spending time with my family (my husband, our two sons, and our six-year-old English Bulldog named Munch). I also very much enjoy exercising, dining out (no cooks in the family), and attending just about any LSU sporting event.

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

KBK: *The Ultimate Dino-Pedia: The Most Complete Dinosaur Reference Ever*—to my four-year-old son.

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

KBK: That trust is hard to earn, but easy to lose.

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

KBK: How terrible it is trying to capture all of your time on a daily basis.

ATB: *What is your favorite BRBA activity or event?*

KBK: The annual softball tournament. My firm sponsors a team, the “Utility Players.”

ATB: *Any big plans as the future chair of the Young Lawyers Section?*

KBK: We are always looking for new projects and ways to expand our services to young lawyers, but no specific plans as of right now.

ATB: *Tell us something interesting about yourself.*

KBK: Growing up, I was a huge tomboy, and I also played college basketball. To this day, my husband is afraid to play me one-on-one. ■

Navigating the muddy waters of spoliation of evidence

BY DANIELLE L. BOREL

There was a time when the term “spoliation” was still new to many litigants, attorneys and courts. Spoliation of evidence is not a concept created and imported by the English courts; rather, the tort of spoliation of evidence is an American-grown concept that was established in California courts in the mid-1980s.¹ Yet, 30 years has passed and spoliation of evidence remains a confusing and mysterious concept that eludes litigants, attorneys and Louisiana courts.

There are three problem areas plaguing spoliation law: (1) spoliation of evidence, as both the adverse presumption remedy and an independent tort claim, is poorly defined by Louisiana law, and the distinctions between the two continue to be lost amongst unclear discussions in Louisiana jurisprudence; (2) the Louisiana Supreme Court has yet to adopt a definite set of elements for the tort of spoliation; and (3) whether negligent spoliation is actionable as an adverse presumption or a tort remains in question. All in all, Louisiana’s spoliation doctrine is as clear as mud.

Adverse presumption vs. independent tort claim of spoliation

Louisiana jurisprudence does not properly distinguish the adverse presumption of spoliation of evidence from the tort of spoliation.² In *Randolph v. General Motors Corp.*, it appears the trial court apportioned 50 percent of fault to the defendant simply for its spoliation of evidence, not for the underlying products liability cause of action. The Louisiana First Circuit Court of Appeal reviewed the lower court’s decision, and despite being presented with a tort claim of spoliation, discussed only the doctrine behind the adverse presumption, reversing the lower court’s tort liability determination.³ Similarly, in *Harris v. St. Tammany Parish Hosp. Serv. Dist. No. 1*, the plaintiffs sought damages for spoliation under the tort, but the court discussed only the adverse presumption.⁴

Several key distinctions exist between the adverse presumption and the tort of spoliation. The adverse presumption of spoliation “allows for a jury instruction to be given that the destroyed evidence is presumed to have contained information detrimental to the party who destroyed the evidence unless such destruction is adequately explained.”⁵ On the other hand, the tort of spoliation allows a party to collect damages for harm the destruction

of evidence caused the litigant’s cause of action.⁶ Further, the tort of spoliation offers a remedy against third parties responsible for spoliating the evidence—though the tort can be brought against opposing parties, as well—while the adverse presumption is effective only against parties to already pending litigation.⁷

No clear elements for spoliation

Litigants lack definitive guidance of the necessary elements for proving and succeeding on a spoliation claim (for the adverse presumption or the tort). For example, in *Arnold v. Brookshire Grocery Co.*, the Third Circuit attempted to outline the elements of spoliation: “[I]n order to state a cause of action of spoliation one must demonstrate two elements: (1) the intentional or negligent destruction of evidence and (2) that the first element was for the purpose of depriving the plaintiff of its use.”⁸ While these elements initially appear to allow claims for both intentional and negligent spoliation, the fact that the court then requires the action be taken “for the purpose of depriving the [other party]” seems to indicate that only intentional acts will meet this test. These elements create a Catch-22 for a prejudiced party asserting a negligent spoliation claim as the party cannot meet the first element with a negligent act while also meeting the second element. However, this standard has been subsequently recited by other Louisiana courts without consideration of the merits of elements.⁹

Louisiana courts have never uniformly followed an established set of elements for deciding spoliation claims; however, after examining Louisiana jurisprudence, it appears that Louisiana courts tend to analyze spoliation claims and the adverse presumption by considering three elements. These elements are not always clearly articulated within the cases, and the courts often blur the lines between them. An outline of the unstated elements discussed by Louisiana courts is as follows:

- 1) Spoliating party had knowledge of an initiated or future lawsuit;
- 2) Spoliating party failed to produce evidence needed by the opposing party; and
 - a. The evidence previously existed;
 - b. The lack of production of the evidence

impairs the opposing party's case; and
3) Spoliating party had the requisite level of intent.¹⁰

Courts also frequently consider whether the spoliating party had an "adequate" explanation as to why the evidence could not be produced.¹¹

Viability of a negligent spoliation claim

As referenced above, whether negligent spoliation is an actionable claim is still unresolved. The requisite level of intent, or lack thereof, necessary to prevail on a spoliation claim depends on the circuit in which the parties are litigating. While all Louisiana courts of appeal have recognized intentional spoliation of evidence as an actionable claim,¹² no such unanimous agreement can be found on the issue of negligent spoliation. Further, the Louisiana Supreme Court has yet to rule on intentional or negligent claims of spoliation.

Many Louisiana appellate court decisions recognize only intentional spoliation as a viable claim,¹³ upholding the common law notion of spoliation, which equates the destruction of evidence with the purpose of disadvantaging the other party at trial.¹⁴ However, some courts have recognized negligent spoliation as an actionable claim, noting the economic harm that spoliation causes a litigant regardless of the spoliating party's intent.¹⁵ Usually disagreements between appellate courts are dubbed "circuit splits," but the split between the Louisiana appellate courts over negligent spoliation is more divisive than neat lines dividing the circuits. Specifically, in the Louisiana Fifth Circuit Court of Appeal, two decisions were rendered on the same day regarding spoliation; one found only intentional spoliation as actionable, while the other found negligent spoliation was actionable.¹⁶

Louisiana appellate courts have recognized that the uncertainty of spoliation law needs to be addressed by the Louisiana Supreme Court: "The Louisiana Supreme Court has yet to address the potential tort right of spoliation stemming from negligence principles, including its requirements and the remedy for this cause of action; the issue is certainly ripe for consideration."¹⁷ This ambiguity in Louisiana law has even caused Louisiana's federal courts to make *Erie* guesses as to what the Louisiana Supreme Court would decide if it undertook the matter.¹⁸ Unfortunately, litigants and attorneys do not have the same latitude to play a guessing game as do the federal courts.

Louisiana lower courts and attorneys require guidance from the Louisiana Supreme Court on the viability of a tort spoliation claim and the adverse presumption of spoliation. Currently, the law is in a state of flux and the predictability is lacking.■

¹See *Smith v. Super. Ct.*, 198 Cal. Rptr. 829 (Cal. Ct. App. 1984); *Velasco v. Commercial Building Maintenance Co.*, 215 Cal. Rptr. 504, 506 (Cal. Ct. App. 1985). The creation of the tort is explained in Danielle Borel, *The Land of Oz: Spoliation of Evidence in Louisiana*, 74 La. L. Rev. 507, 509-511 (Winter 2014).

²See *McCleary v. Terrebonne Parish Consol. Gov't*, 09-2208, 09/30/10 WL 3822225, at *1-2 (La. App. 1 Cir. 09/30/2010) (plaintiffs sought damages for spoliation as a separate tort action but the court discussed the adverse presumption).

³93-1983 (La. App. 1 Cir. 11/10/94), 646 So. 2d 1019.

⁴11-0941, 2011 WL 6916523, at *18 (La. App. 1 Cir. 12/29/11).

⁵See *BancorpSouth Bank v. Klempeter Trace, L.L.C.*, 13-1396 (La. App. 1 Cir. 10/1/14), 2014 WL 4925698, __ So. 3d __.

⁶*Guillory v. Dillard's Dep't Store, Inc.*, 00-190 (La. App. 3 Cir. 10/11/00), 777 So. 2d 1, 4.

⁷See *Jackson v. Home Depot, Inc.*, 04-1653 (La. App. 1 Cir. 6/10/05), 906 So. 2d 721; *McCleary v. Terrebonne Parish Consol. Gov't*, 09-2208, 2010 WL 3822225 (La. App. 1 Cir. 09/10/10); *Guillory*, 777 So. 2d 1; *McCool v. Beauregard Mem'l Hosp.*, 01-1670 (La. App. 3 Cir. 4/3/02), 814 So. 2d 116.

⁸09-0044 (La. App. 3 Cir. 05/06/09), 10 So. 3d 1279, 1280.

⁹See *Aymond v. Am. Nat. Prop. & Cas. Co.*, 48,615 (La. App. 2 Cir. 11/20/13), 130 So. 3d 10, 14; *Hebert v. Richard*, 10-1417 (La. App. 3 Cir. 7/6/11), 72 So. 3d 892, 905; *Battenfield v. Wal-Mart Stores, Inc.*, No. 2011-1537, 2013 WL 880307, at *5 (W.D. La. 3/8/13).

¹⁰See Borel, *The Land of Oz*, *supra* note 1, at 531-39.

¹¹*Id.* at 536-537.

While an adverse presumption can be rebutted by explaining the circumstance surrounding the act, tort liability should not be absolved by a mere explanation of what led to the present damages. Louisiana jurisprudence has failed to clearly distinguish between a cause of action for the tort of spoliation and a request for an adverse presumption based on spoliation. Because the two remedies are entangled in courts' analyses, the courts consider defendants' explanations when faced with the tort of spoliation. While applying this "affirmative defense" to the tort of spoliation is incorrect, it is important for a practicing lawyer to be aware of the courts' actions.

¹² *Union Pump Co. v. Centrifugal Tech., Inc.*, No. 05-0287, 2009 WL 3015076, at *5 (W.D. La. 09/18/09).

¹³ See, e.g., *Randolph v. General Motors Corp.*, (La. App. 1 Cir. 1994), 646 So. 2d 1019, 1027.

¹⁴ *Kammerer v. Sewerage & Water Bd. of New Orleans*, 93-1232 (La. App. 4 Cir. 3/15/94), 633 So. 2d 1357, 1361 (Waltzer, J., concurring).

¹⁵ See *Carter v. Exide Corp.*, 27,358 (La. App. 2 Cir. 9/29/95), 661 So. 2d 698, 704; *Hong Pham v. Continco Int'l, Inc.*, 99-0945 (La. App. 5 Cir. 3/22/00), 759 So. 2d 880, 883.

¹⁶ Compare *Little v. Boston Scientific Corp.*, 08-0271 (La. App. 5 Cir. 01/13/09), 8 So. 3d 591, 601, with *Robertson v. Frank's Super Value Foods, Inc.*, 08-0592 (La. App. 5 Cir. 01/13/09), 7 So. 3d 669, 673-74.

¹⁷ See *Lewis v. Albertson's Inc.*, 41,234 (La. App. 2 Cir. 06/28/06), 935 So. 2d 771, 774-75.

¹⁸ See *Bertrand v. Fischer*, No. 09-0076, 2011 WL 6254091, at *2 (W.D. La. Dec. 14, 2011) ("The Louisiana Circuit courts are split as to whether or not the act of spoliation must be intentional. . . . Louisiana Supreme Court has not ruled on this issue, therefore federal courts must make an *Erie* guess to determine as best as it can what that court would decide.").

Care and feeding of your mediator

BY VINCENT P. FORNIAS

Congratulations on acquiring your very own mediator! We know you probably worked very hard to find him. Now that he or she is finally in your possession, please take a few minutes to familiarize yourself with his simple operating instructions to keep him healthy and happy, helping him to be everything you would ever need him to be!

(1) Avoid last-minute surprises—the classic “drive-by” issues. Do not appear at mediation with new and expensive information (such as recommended surgeries or life-care plans) that your opponent will not be able to realistically process and address. Remember that corporate defendants, and especially insurers, are slow, cynical and deliberate bureaucracies that operate and act upon timely submission of documentation. You can minimize this speed bump by simply reviewing your file a few weeks



before the mediation to be sure that something fundamental has not been overlooked in your submission to opposing counsel.

(2) Do your best to assure that authority figures will be present at mediation. Although more of an issue with corporate defendants than with personal injury plaintiffs, do not overlook the “favorite aunt” whose arbitrary non-legal advice over the phone, absent her investment and education in the actual give-and-take of a “live” mediation process, can wreck your chances of a consensus. There admittedly is also the complicated problem of insurance adjusters prohibited from traveling or with “set” authority. Half the battle in a mediation is one of perception—that all parties are on a level playing field, willing to listen, and subject to massaging of their pre-mediation positions. Unless your mediator can at



Lane Ewing
Former Asst. U.S. Attorney

Stan Lemelle
Former Criminal Chief,
U.S. Attorney

Don Cazayoux
Former U.S. Attorney

Cazayoux Ewing
LAW FIRM

White Collar Criminal Defense | Whistleblower Claims | Personal Injury

257 Maximilian Street, Baton Rouge
143 E. Main Street, New Roads
225.650.7400 | cazayouxewing.com

least communicate by phone with “The Wiz” in all caucus rooms, that perception of equality breaks down and dramatically impacts the chance of resolution.

(3) Many able mediators have a fairly hectic professional schedule that may keep them away from their desks for days at a time. If you are submitting something to be reviewed before the mediation, do not assume that your submission sent the day before the mediation will reach him in time to review it. He may be in out-of-town mediations several days running or that day’s mediation may have run late. If your goal is to have him be familiar with your submission, be sure to send it far enough in advance to give him the opportunity to review it. Online submissions help alleviate this problem, but do not assume that bulky online attachments are a substitute to the security blanket of having the actual photographs or medical records available at a moment’s notice when needed at the mediation.

(4) Once the mediation is scheduled, it is a very bad idea—no matter how trusting a relationship you might have with opposing counsel—to have unilateral communications with him concerning goals or expectations or authority. This rule carries over into post-mediation discussions

where the mediator is attempting to follow up toward a settlement. Remember that by choosing to mediate, you have delegated to your mediator the task of modifying expectations necessary to settle the case. Your *ex parte* discussions with your opponent may undermine much of what the mediator may be trying to do within the confidentiality of a mediation setting. The concept of “reactive devaluation” is real and crucial in this process. No matter how sincerely you share your limitations with your close associate who happens to represent your opposition, that information will be framed by him or his client as data coming from the opposition—and subject to further negotiation.

(5) Meet or confer with your client beforehand and impress upon him both the strengths and the weaknesses of your case. No case is perfect. This fact alone keeps mediators in business. Ask the client to be open-minded. A mediation is not about winning or losing. It is about getting done, not getting it won. On this one day in this dispute, it is not about confrontation. It is about collaboration.

(6) Do not place your mediator in the no-win position of having to negotiate the allocation of his fee at the start of mediation. He has learned through experience that

FORMER SOCIAL SECURITY JUDGE PETER J. LEMOINE

Social Security Disability Law

Offices in Alexandria, Baton Rouge, Cottonport

Adjunct Professor (1994-1997), Northwestern State University

MEMBER: American Bar Association, Louisiana State Bar Association, Baton Rouge Bar Association, Avoyelles Parish Bar Association, National Organization of Social Security Claimant Representatives, Legal Services for Purposes of Disability Committee (Louisiana State Bar Association).

PUBLISHED ARTICLES: “The Worn-Out Worker Rule Revisited,”
“Significant Work-Related Limitations of Function Under §12.05C,”
“Questionable Retirement and the Small Business Owner,”

“Crisis of Confidence: The Inadequacies of Vocational Evidence Presented at Social Security Disability Hearings.”

225-922-4551

this must be agreed upon at the start, so that he is not victimized by representations that the parties will discuss this issue at the conclusion, then have a party accuse the other of bad faith negotiating and refuse to pay a share of the fee. Surely you have “bigger picture” issues to address at your mediation than to get bogged down on who pays what for the process. Try if at all possible to agree before the morning of mediation.

(7) Take a few minutes the day before your mediation to reflect on what you really want to communicate in the opening joint mediation session. There are countless benefits to such a session, and it should almost never be completely waived, although it should be tailored to the specifics and needs of each case. Above all, do not undermine your mediator's mission by resorting to “scorched earth” personal attacks that challenge both your credibility and the ability of the mediator to help forge a collaborative atmosphere leading to consensus and closure. The very best opening presentations are those that highlight not only the advocate's preparation, but also a tacit acknowledgement that there may be another side to his client's story, maintaining a willingness to listen.



(8) Your mediator's effectiveness is dependent not nearly as much on his ability to digest data as it is on his skill in reacting to the individual dynamics of what is occurring in the various caucus rooms during a mediation. As your “weatherman” in the other rooms, he is attempting to navigate through a myriad of emotional or bureaucratic issues that may not be part of the “official” agenda, but can make or break productive discussions. Do not hamper his task by insisting on a step-by-step, “cookie-cutter” negotiation process if he has perceived that the dynamics in this particular mediation make that process a recipe for impasse and failure. If you cannot have faith in your mediator to gauge the temperature in the other rooms and guide you through what your best approach might be on this particular day—then you have chosen the wrong mediator.

(9) Be aware that appearances and perceptions are crucial in a mediation setting. Always be polite and conciliatory, but do not be overly affable with opposing counsel. You would be amazed at how normally objective clients will react emotionally to ostensibly harmless friendly exchanges in the context of a mediation. Also remember that sometimes private caucus rooms are far from soundproof. Your most



Everyone counts, every day. Jason MacMorran, CPA/ABV/CFF, CVA, is a Director in P&N's Consulting division. Jason has over 15 years' experience in serving a diverse array of clients in the areas of business valuation, forensic accounting and dispute resolution. Jason has been qualified as an expert to appear before federal and Louisiana state courts. And he is a leader in our profession, serving as both a member of the AICPA's National Valuation Committee and as faculty of the AICPA's Expert Witness Skills Workshop.

P&N's diverse team offers a full range of services for attorneys and their clients, including expert testimony, litigation support, business valuations, and settlement administration. Services for law firms include tax compliance and consulting, employee benefit plan audits, outsourced accounting, and technology, human resources and marketing consulting. Whether you need assistance with your cases or your firm, you can count on P&N.



A Professional Accounting Corporation

ACCOUNTING + CONSULTING + SETTLEMENT ADMINISTRATION + TAX SERVICES + TECHNOLOGY | 225.922.4600 | PNCPA.com

sincere presentation of conciliation and contrition in an opening joint session may be sabotaged when an opposing party walks down the hall and hears uproarious laughter (or worse!) behind your closed doors.

(10) All mediators to some degree expect gamesmanship and “puffery” from the parties. It is one thing, however, to play the negotiation game. It is another one entirely to make a confidential commitment to a mediator and later attempt to renege on it. Such a tactic hurts not only your credibility and professionalism but is devastating to the ability of any mediator to maintain the confidence of the parties.

(11) Too many parties assume that a case that does not settle on mediation day will just as easily settle with follow-up telephone or email discussions. Especially in multi-party mediations, there is no substitute for face-to-face contact between your mediator and the parties and for securing the benefit of that day's hard-earned momentum. Additionally, the reality of hectic professional schedules and the inability of a mediator to stop everything else in a telephone-tag exercise make such

an alternative both frustrating and inefficient. It is well worth postponing the pre-scheduled flight and staying a little longer to “get ’er done.”

(12) If you absolutely have to postpone or cancel a mediation (which sometimes is unavoidable), please remember that most mediators who mediate as their primary profession have reserved that day for weeks or months for your mediation only. It will be impossible for them to slot in a replacement mediation without at least several weeks' notice. As a professional courtesy you should diary the file weeks beforehand to be sure “all systems are go.” If something needs to be done before you can mediate, at least give your mediator a fighting chance to save his day. If you must cancel on the eve of mediation, do your best to reschedule with the same mediator whom you have just cost a day's wages.

(13) Lastly and above all else, please be sure to laugh passionately and uncontrollably at all pathetic attempts by your mediator to infuse lame or tacky humor to your mediation. If not, it can cost you dearly! ■



maps[®] Lien Resolution Services



Your **Expert** for Assistance & Advice Regarding the Following:
MEDICARE • MSAs • ERISA • MEDICARE ADVANTAGE PLANS (Part C Plans)
MEDICAID • STATE LAW LIENS PROVIDER CHARGES • CONSULTING

For direct contact
with our President &
Chief Compliance Officer:



ROGER LARUE
rlarue@maps-adr.com
504.453.1315 (cell)

New Orleans 800.443.7351 • Baton Rouge 866.769.4553 • www.maps-adr.com



Interview with 19th Judicial District Court Commissioner Nicole Robinson

BY DIANNE M. IRVINE

ATB: Tell me about your background.

NR: My dad is from Baton Rouge, and we lived there for a couple of years, but I grew up in Zachary and graduated from high school in 1992.

ATB: Where did you go to college?

NR: I went to college at LSU, and I graduated with a degree in international trade and finance with a minor in political science.

ATB: What interested you about going to law school and becoming a lawyer?

NR: I always knew I wanted to be a lawyer. I can't exactly give you that "aha moment." I grew up in the 1980s with *L.A. Law* and those shows that made it seem so glamorous. I always wanted to go to law school.

ATB: Tell me a little bit about your law school experience.

NR: I got into LSU Law School in 1997 and graduated in 2000. I can't really tell you where I thought my life was going to go after that. I really had no idea! I don't think law school and I were made for each other. I am not a confrontational person, not that you have to be to be an attorney. It's just not in my nature. But I stuck it out, and it taught me a lot about myself – that I could persevere in a tough situation and finish something. I also learned that you don't have to be first in your class to have a good life.

ATB: What did you do before becoming a commissioner?

NR: I have been, well, I won't say lucky, I have been blessed. I have fallen into jobs, or opportunities have presented themselves that have allowed me to go into fields of law that are more tailored to my personality. I really didn't know what I wanted to do or where I wanted to go. I really had no plans; I just wanted to work and learn.

My first job, Capital Area Legal Services, was a fantastic job for someone coming right out of law school.

I got involved through the BRBA with the Ask-A-Lawyer program and ended up meeting Kathy Underwood there. Kathy Underwood had a title company, so I learned to do title work there. They all thought that my personality and temperament were better suited to that type of work.

I was very fortunate there to work with Cindy Amedee, who went on to finish law school and, I believe, is now at Taylor Porter. She was a tremendous mentor to me, and taught me so much about the title business and how to work with clients.

While working with Kathy, I decided to go back and work in Zachary, my hometown, so I contacted Lonnie Myles, who had a law firm and a title company. He is also a city judge in Zachary, and he hired me to work there. Again, I was very fortunate and blessed to be able to work with him. He gave me a tremendous opportunity, and I owe a lot to Lonnie. Again, I have been very fortunate to be able to meet people along the way who have not only been good lawyers, but just incredible people, too. That's been more important to me than anything else.

Then, Judge Moore was elected to the bench in 2008. So I contacted soon-to-be Judge Moore and asked him if he would consider bringing me along with him, and he agreed. So I came here with him in April 2005, and that opportunity just changed my life. It was an amazing job. I was with him for about seven and one-half years.

Being able to work in this courthouse with these people is one of those life experiences that you go back and think that was a turning point in your life. Coming here was one of those moments.

One thing I do know that I learned from Judge Moore and all the judges here is that everybody deserves respect. Everybody deserves to be treated with respect and kindness, no matter where they have come from or what their walk of life is. This job has really reinforced that for me. Some of the greatest lessons I have learned I learned here, not just from a legal standpoint, but also from a humanitarian standpoint.

ATB: How did you become a commissioner?

NR: Rachel Morgan retired, and I started this job in January 2013, so I've been here two years. There are two of us [commissioners] here. Commissioner Lawrence has not been here much longer than I have, about six to eight months longer. We're both relatively newbies, but we both worked in the system before. After two years, I feel like I'm finally settling in.

ATB: What do you do as a commissioner? What is a typical work day like for you?

NR: That's a good question. You never really know. You can try to plan it as best you can. I can tell you about a typical week. You may have set on the calendar a couple

of hearings that may be post-conviction hearings or more than likely it could be a civil suit with a prisoner who has filed a complaint against the department.

This is the court of judicial review for adverse decisions that have been rendered by the Department [of Corrections] against prisoners. Most of the time what we see are time computation complaints where they [the prisoners] don't agree with their out date or their good time date, so they're asking us to review those dates. They could be disciplinary hearings where they have been convicted of anything from possession of drugs, contraband, aggravated disobedience—a wide variety of offenses where they may lose good time or what we call substantial right good time or property interest, lost property claims. Those are the types of complaints that we see. Our main job is the prisoners' lawsuits and the appeals they have against the Department. Commissioner Lawrence and I are the only two people in the state who handle these cases. It's a unique situation, so you can't just call up someone and say, "Hey, how do I handle this?"

If they are seeking monetary damages, or if it is a tort suit against the Department or an injury that may have occurred at whatever facility they are in, that's not something that we will hear. They have to file a tort suit or a claim in the parish where the facility is located. That has helped out tremendously that we don't have to hear those suits, since they come in quite often, and we have to screen them out.

Again, the civil suits are our main job, but we also review the executory process suits, that is, people who are being foreclosed on or are losing their cars. We also handle unopposed expungements that come in through City Court. If someone is trying to clear up their record, all the information is there and no one has a problem with it, we will review it and sign it to get it off. Also, we will stand in for the criminal judges from time to time.

My typical day is that I come in, and I will try to work down my files, but if I get a phone call, I may have to do something else for one of the judges. You have to be a workaholic. You have to be ready to step up to the plate whenever they call. It's not that often, but you are not always in a position where you can do what you want to do. It's just steady. My days are steady.

ATB: What are your biggest professional challenges and demands in this job?

NR: I think that it's just being able to juggle so many different duties and so many different files that you're working on. You learn how to juggle, how to put priority of certain files over others. Time management is a huge part of it, and that is a huge undertaking. It's just managing what you have to do. In a typical duty week, when you're on duty, you're on duty. When someone calls at two o'clock in the morning and they need a search warrant signed, you've got to be ready. You come in the next day, and you start

all over again. You try to stay on top of your own work as well. It's a challenge, but it's one that I'm enjoying.

ATB: What is most rewarding aspect of this position?

NR: The work is good. I'm lucky that 15 judges thought enough of me and of my abilities to be capable of doing this job. Never in my wildest dreams did I think this would happen to me—that I was going to be a law clerk and that I would be happy doing this. Each job teaches you something different, and each person that you meet teaches you something different. I've just turned 40, so I'm just a little bit reflective. It's not the notoriety, it's not that I am a commissioner; it's none of that. I'm still Nickie. That's what I want people to call me and how I want to be addressed. The responsibility that they've given me, that they have trusted me with, is a big deal. It means a lot to me, so I am grateful for that. It's a good job. I'm very fortunate.

ATB: What do you like least about your position?

NR: I like to try to plan as best I can, but you really can't. I can sit around all weekend and say that I want to get certain things accomplished in the upcoming week. You can, for the most part, but this is a very fluid job. You have to be ready to switch gears if someone calls and says that they need something. I think maybe the unpredictability of it. But that's not necessarily a bad thing because it keeps me on my toes. You never get complacent. You never are secure in your job. The fluidity of it is taxing sometimes for someone like me who likes to plan things out. I'm not a control freak, but I do like to plan things out. That sometimes is hard to adjust to, but it's not terrible.

ATB: What words of wisdom would you like to pass on to the readers of Around the Bar?

NR: We don't know what is going on with the person that comes into the courtroom and stands before us. We don't know the life that our clients have. Treat them with respect, treat each other with respect. I know the nature of the profession has changed, but it's still good. It attracts good people.

I talk to my dad about this all the time. I lived at home when I went to college. I didn't rack up massive college debt, so when I got out of school, I had options. I wasn't forced to take a job because I had to pay off student loans, so I am very blessed and very grateful to my parents that they gave me that opportunity. I was available to walk through those doors when they opened up. Again, I didn't know where I wanted to go or what I wanted to practice, so I was open to whatever came along.

I think people need to keep their options open. If you're one of those people who comes out of school knowing what you want to do, what you want to be when you're

age 30, 40 and 50, more power to you. I think that's fantastic. Maybe it will take a lot of stress out of your life, but you need to keep your options open.

You never know what opportunities are going to come your way, so don't shut something down just because you think it's not going to take you where you want to go. Keep your options open.

ATB: *What do you do in the few moments when you're not working?*

NR: I have two dogs. Anybody who knows me will tell you they run my life. I'm not ashamed to say so. My brother has five kids from the ages of almost four to 15,

and another one on the way. They're good kids, and I'm very fortunate to be able to spend as much time with them as I do. I have a big family, a good family.

I like my down time. I don't need to be on 24-7 and have activity after activity. I like to travel. I love music. I love theater. I am a bit of an introvert, so I'm OK by myself.

ATB: *Is there anything else you would like to add?*

NR: In this job, you're going to have rough times just as I did in law school. As my dad always says, "Life is about ups and downs." In your job, there are going to be highs and lows, but you just have to learn how to deal with it, stick with it and get through it. Every day is different in this job. The variety is great. It keeps your mind going. ■

THE Patterson RESOLUTION GROUP



W. Ross Foote • E. Phelps Gay • Michael A. Patterson • Michael W. McKay • Patrick S. Ottinger



Marta-Ann Schnabel has joined the Patterson Resolution Group. Her practice areas include professional liability, business and commercial litigation, construction disputes, insurance coverage, and casualty litigation. Her training as a mediator includes studies at the Straus Institute for Dispute Resolution, Pepperdine University. She is currently the Chair of the Louisiana Supreme Court's Judicial Oversight Committee and served as the first woman president of the Louisiana State Bar Association.



Thomas M. Hayes, III has also joined the Patterson Resolution Group. His practice has focused on product liability, redhibition, insurance coverage, industrial accidents, medical malpractice, lawyer's professional liability and professional responsibility, construction, architect and engineering liability, successions, real estate disputes, realtor issues, employment law, and worker's compensation. He has been designated as a Louisiana SuperLawyer in civil litigation and has been appointed Special Master by the Fourth and Eighth Judicial Districts.

Contact Mike Patterson at 866-367-8620 or visit the group's website at www.pattersonresolution.com for more information.

BATON ROUGE • NEW ORLEANS • LAFAYETTE • SHREVEPORT • MONROE



BURLAND & ASSOCIATES, INC. has been providing consulting and political affairs services since 1981. James S. "Jimmy" Burland, J.D. is licensed to practice law in the state of Louisiana and represents corporations, businesses and trade associations in the federal and Louisiana halls of government.

742 North 5th Street | Baton Rouge, LA 70802
(225) 767-7163 | info@burland.org
www.burland.org

foundation footnotes

PRO BONO & TEEN COURT REPORTS — FEBRUARY 2015

PRO BONO PROJECT REPORT

We would like to thank all of our Pro Bono Project volunteers for their contributions in February. The Ask-A-Lawyer volunteers were **Barbara Baier**, *Louisiana Public Defender Board*; **Christopher Meeks**; and **Emily Ziober**.

The Thirst for Justice volunteers were **Scott Gaspard**; **Hansel Harlan**; **Alexis Luker**; **Glenn Marcel**; **Cody Passman**, *Myler Disability*; **Allen Posey**; **Stephen Strohschein**, *McGlinchey Stafford*; and **James Zito**.

The Self Help Resource Center attorney volunteers were: **Joseph Ballard**, **Todd Manuel**, *Enterger*; **Ryan Brown**, *Roedel, Parsons*; **Sarah Campbell**, *Southeast Louisiana Legal Services*; **Stacey Johnson**, *Louisiana Dept. of Justice*; **Adekunle "John" Obebe**, *Bayou Law*; **Jennifer Prescott**, *deGravelles, Palmintier, Holthaus & Fruge*; and **Spencer Schoonenbeg**, *Mayhall Fondren Blaize*.

Accepting pro bono cases in February were **Donald Hodge**; **Rena Hester**, and **Darius Henderson**, *Louisiana Dept. of Justice*.

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; Family, District and City Court Filing Fees and the Baton Rouge Bar Foundation. The "Future Legal Eagles Law Club" is funded by a grant from the South Burbank Crime Prevention and Development District.


TEEN COURT REPORT

Yolanda Cezar, **Monica Vela-Vick** and **Tavares Walker** served as judges for the February Teen Court hearings. **Professor Paul Guidry**, *Baton Rouge Community College*, and law student **Dejean Cleggett**, *LSU Law Center*, served as jury monitors.

JUNIOR PARTNERS ACADEMY

On Feb. 25, **Steve Carleton**, **Gail Grover** and *Southern University Law Center* law student **Fran Gipson** gave Junior Partners Academy presentations to the second- and third-grade classes at Southern University Lab School.

LEGAL EAGLES LAW CLUB

SULC Maritime Law Society members and Professor **Wendy Shea** met with Future Legal Eagles Law Club members Feb. 19, 2015, at the Gardere Initiative. Law students **Daryl Causey**, **Peggy Evans**, **Williams Rogers**, and **Troy Parria**, presented an interactive program about vessels and navigable waters. 

Teen Court of Greater Baton Rouge is funded by the Louisiana Office of Juvenile Justice, the South Burbank Crime Prevention and Development District 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.



LSBA ENDORSED



Eligible Pro-op Members Will Receive:

- Advocacy services to help:
 - Explain your benefits
 - Provide cost comparisons
 - Locate a health provider
- Customized online benefits portal
- Compliance services required by new healthcare regulations

WANT TO CONFIRM YOUR **ELIGIBILITY**

Call 855-867-0057

or visit gilsbar.com/pro-op



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

Duty Court Schedule

19TH JDC CIVIL COURT

March 23-April 3 Judge Kelley
April 4-April 17 Judge Hernandez
April 20-May 1 Judge Clark

19TH JDC CRIMINAL COURT***

March 27-April 3 Judge Erwin
April 3-April 10 Judge Jackson
April 10-April 17 Judge Daniel
April 17-April 24 Judge Moore
April 24-May 1 Judge Higginbotham

BATON ROUGE CITY COURT*

March 30-April 5 Judge Ponder
April 6-April 12 Judge Prosser
April 13-April 19 Judge Temple
April 20-April 26 Judge Wall
April 27-May 3 Judge Alexander

FAMILY COURT**

April 1 Judge Woodruff-White
April 2 Judge Day
April 3 OFFICE CLOSED
April 6 Judge Greene
April 7 Judge Day
April 8 Judge Woodruff-White
April 9 Judge Day
April 10 Judge Greene
April 13 Judge Greene
April 14 Judge Baker
April 15 Judge Woodruff-White
April 16 Judge Day
April 17 Judge Woodruff-White
April 20 Judge Greene
April 21 Judge Baker
April 22 Judge Woodruff-White
April 23-24 Judge Day
April 27 Judge Greene
April 28 Judge Day
April 29 Judge Woodruff-White
April 30 Judge Day

JUVENILE COURT

April 1-April 30 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.*

April 2015

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



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

Calendar

COURT HOLIDAYS

Friday, April 3 Good Friday

Ongoing: Every Wednesday & Thursday, 3-5 p.m.,
Thirst for Justice takes place at St. Vincent de Paul.
(Closed April 2, 2015)

Ongoing: Every Tuesday & Thursday,
10 a.m.-2 p.m., Self Help Resource Center, 19th JDC.
(Closed April 2, 2015)

Classifieds

VOLUNTEERS NEEDED FOR LAW DAY!

Are you available to assist with the BRBF Law Day activities on Friday, May 1? If so, contact Donna at 225-214-5556 or donna@brba.org.

SUMMER YOUTH LEGAL INSTITUTE 2015: VOLUNTEERS NEEDED.

For the second consecutive year, the BRBF will host a summer program for teens who live in the Gardere community. If you are a legal professional who is interested in working with youth, please contact Lynn at 225-214-5564 or lynn@brba.org.

DOWNLOAD THE YLS NEW LAWYERS' SURVIVAL GUIDE (AVAILABLE ONLINE):

http://www.brba.org/Images/Forms%20and%20Applications/YLSguide2014_2015.pdf



Take a pro bono case today!

Contact Robin at 225-214-5561
or Emily at 225-214-5558.

- 1 Easter egg hunts, Univer. Terrace, 1 p.m.;
- 2 Law Day Committee meeting, 12 p.m.;
- 3 Bench Bar Conference meeting, 12 p.m.
- 6 Easter egg hunts, St. Francis Xavier, 10:30 a.m.;
- 6 Teen Court Committee meeting, 12 p.m.
- 6 Office Closed — Good Friday
- 6 Finance Committee, Kean Miller, Conference Room 7B, 9 a.m.
- 7 Executive Committee, Kean Miller, Conference Room 7B, 8 a.m.
- 9 Clock Unveiling Ceremony & Reception, Town Square at 19th JDC, 3:30 p.m.
- 13 Ask-A-Lawyer, Livingston Parish Council on Aging, 939 Government Dr., Denham Springs, La., 9:30 a.m.;
- 13 Teen Court Hearing, Juvenile Court, 8333 Veteran's Memorial Blvd., 5:30 p.m.
- 15 Ask-A-Lawyer, Catholic Charities, 9 a.m.;
- 15 Pro Bono Committee, 12 p.m.;
- 16 Board of Directors, 6 p.m., Mansurs
- 16 Annual Spring Judges' Conference;
- 16 Family Law Section Meeting & CLE, Sullivan's Steakhouse, 12-2 p.m.;
- 16 YLS Council meeting, 12 p.m.;
- 16 Future Legal Eagles law club, 5-6:30 p.m., 8435 Ned Ave.
- 17 Annual Spring Judges' Conference;
- 17 Recent Developments in Social Media and Professional Responsibility (Ethics) CLE seminar, 7:30 a.m.
- 18 Teen Court Training Session, 8333 Veteran's Memorial Blvd., 8:45 a.m.-3:15 p.m.;
- 21 Ask-A-Lawyer (Ascension), River City Branch Library, 9:30 a.m.
- 21 Ask-A-Lawyer (Ascension), Gonzales Senior Center, 526 South Irma Blvd., Gonzales, La., 9:30 a.m.
- 23 Teen Court Committee meeting, 12 p.m.;
- 24 YLS Sidebar, Justice Hughes, 12 p.m.
- 24 Law Expo Committee meeting, 12 p.m.;
- 24 Self Help Resource Cntr. Training & CLE at Family Court
- 27 Teen Court hearing, AFRC, 6-8 p.m.
- 29 Managing Client Expectations (Professionalism), Flemings, 4 p.m.
- 30 Ascension COA Senior Fair, Lamar Dixon Expo Center

Baton Rouge Bar Association
P.O. Box 2241
Baton Rouge, LA 70821

Return Service Requested

PRSR STD
U.S. POSTAGE PAID
BATON ROUGE, LA
PERMIT NO. 746

BENCH BAR CONFERENCE 2015

Point Clear, Ala. • Grand Hotel Marriott Resort, Golf Club & Spa • July 23 - 25

WHO'S WATCHING YOU?

From social media to the workplace to your own backyard, the Baton Rouge Bar Association Bench Bar Conference will explore our expectations of privacy in the digital age.

THE THEME OF THIS YEAR'S CONFERENCE IS:

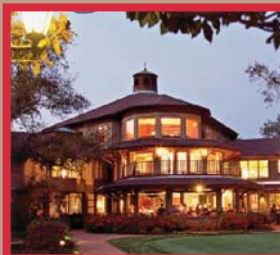
"PRIVACY PLEASE"

CONFERENCE SPONSORS

Champion Medical Center • Clayton, Frugé & Ward • DeCuir, Clark & Adams, L.L.P. • Committee to Elect Hillar Moore
Donohue, Patrick & Scott • FindLaw • Glusman, Broyles & Glusman
Dr. Michael J. Goff / Louisiana Health & Injury Centers • Jolie Pearl • Joubert Law Firm
Kantrow, Spaht, Weaver & Blitzer • Kean Miller • Keogh, Cox & Wilson
Law Offices of Ossie Brown • Louisiana State Bar Association • McGlinchey Stafford
The Paul R. Thompson Group at Morgan Stanley • Perry Dampf Dispute Solutions
Porteous, Hainkel & Johnson, LLP • Saunders & Chabert • Shows, Cali & Walsh, LLP
Steffes, Vingiello & McKenzie • Taylor Porter • Thomson Reuters • Total Care Injury and Pain Centers
Walters, Papillion, Thomas, Cullens, LLC • Whitehead Law Firm



Call Marriott Central Reservations
at 1-800-544-9933 or book
online at www.marriottgrand.com.
The hotel reservation room block
code (July 22-27) for BRBA
members is: **BTCBTCA**



- 12.5 hours of CLE
- Social events
- Interaction between
the bench and the bar

CONTACT ANN K. GREGORIE TO SPONSOR: 225-214-5563 OR ANN@BRBA.ORG