

# Around the Bar

THE MAGAZINE OF THE  
BATON ROUGE BAR ASSOCIATION

No. 272, December 2012



## Inside:

Reverse 404(B) evidence  
Interview with EBR DA  
Hillar Moore III  
Attorney spotlight:  
Zelma Frederick  
Belly Up recap

**Holiday Star Project**  
Making the holiday season  
brighter for local children



# CLE BY THE HOUR



## CLE BY THE HOUR 2012 AT THE CROWNE PLAZA HOTEL

**LOCATION:** Crowne Plaza Hotel, Baton Rouge, La. — 4728 Constitution Ave.

**REGULAR REGISTRATION:** \$45/hr. for BRBA members; \$60/hr. for non-members after 5 p.m., Monday, Nov. 19, 2012.  
**LATE REGISTRATION:** \$55/hr. for BRBA members; \$70/hr. for non-members beginning Dec. 5, 2012. "No Shows" will be billed. To be considered registered, both payment and registration must be received by the BRBA office. It is the policy of the BRBA CLE Committee that no refunds will be given for cancellations received within 48 hours prior to each seminar. Time is allowed for lunch on your own each day from 12:31 to 1:39 p.m. **Wireless access is available in the meeting room. Materials will be made available online in advance of the seminar. Register online at [www.BRBA.org](http://www.BRBA.org).**

\*Ethics; \*\*Professionalism, ~Law Office Management

### Please check your requested seminars.

#### Thursday, Dec. 6, 2012

TIME	CREDIT	TOPIC	PRESENTER
<input type="checkbox"/> 8-9 am	1.0	Medicare Set-Asides in Liability Cases	Karen D. Murphy
<input type="checkbox"/> 9:10-10:10 am	1.0	Personal Injury Cases from the Insurance Co. Perspective	Joel Murphy
<input type="checkbox"/> 10:20-11:20 am	1.0	Professionalism**	Judge Jay Zainey
<input type="checkbox"/> 11:30am-12:30 pm	1.0	ERISA: The Ins & Outs of Benefit Claims & Fiduciary Duties	Christopher G. Morris
<input type="checkbox"/> 1:40-2:40 pm	1.0	Lost Chance of Survival Actions Under La. Law	James D'Entremont
<input type="checkbox"/> 2:50-3:50 pm	1.0	Lost Profits/Forensic Accounting	Jason MacMorran
<input type="checkbox"/> 4:00-5:00 pm	1.0	Law Office Management: iPads for Lawyers~	Joe Mullenex
<input type="checkbox"/> 5:15-6:15 pm	1.0	Workers' Comp Update	Charles Davoli
<input type="checkbox"/> 6:20-7:20 pm	1.0	Speaking about the Unspeakable: Ethics of Complex Voir Dire*	Franz Borghardt
<input type="checkbox"/> 7:30-8:30 pm	1.0	Professionalism: Diversity Issues**	Deborah Love

**SPECIAL THANKS TO OUR COFFEE BREAK SPONSOR:**  
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#### Friday, Dec. 7, 2012

TIME	CREDIT	TOPIC	PRESENTER
<input type="checkbox"/> 8-9 am	1.0	Ethical Considerations in Real Estate Transactions*	Clay Tanner
<input type="checkbox"/> 9:10-10:10 am	1.0	Professionalism**	Judge John M. Guidry
<input type="checkbox"/> 10:20-11:20 am	1.0	Buying and Selling a Business	David S. Gunn
<input type="checkbox"/> 11:30am-12:30 pm	1.0	Criminal Law	Kurt Wall
<input type="checkbox"/> 1:40-2:40 pm	1.0	Social Security Disability: The View from the Trenches	Vijay Venkataraman
<input type="checkbox"/> 2:50-3:50 pm	1.0	Ethics: Conflicts of Interest*	Ryan M. McCabe
<input type="checkbox"/> 4:00-5:00 pm	1.0	Professionalism: Diversity Issues**	Lacrecia Cade

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#### Thursday, Dec. 13, 2012

TIME	CREDIT	TOPIC	PRESENTER
<input type="checkbox"/> 8-9 am	1.0	How Lease Provisions Impact Purchase Agreement Requirements	Randy Roussel
<input type="checkbox"/> 9:10-10:10 am	1.0	Successions	Joe Mengis
<input type="checkbox"/> 10:20-11:20 am	1.0	Ethical Considerations for Using Social Media in Litigation*	Aaron Chaisson
<input type="checkbox"/> 11:30am-12:30 pm	1.0	Professionalism: Diversity Issues**	Chauntis Jenkins & Todd Manuel
<input type="checkbox"/> 1:40-2:40 pm	1.0	Year-end Tax Planning	Ralph Stephens
<input type="checkbox"/> 2:50-3:50 pm	1.0	E-Discovery	Michael Richmond
<input type="checkbox"/> 4:00-5:00 pm	1.0	Update in Torts	Michael Palmintier

#### Friday, Dec. 14, 2012

TIME	CREDIT	TOPIC	PRESENTER
<input type="checkbox"/> 8-9 am	1.0	Business Valuation Update	Ed Tatum
<input type="checkbox"/> 9:10-10:10 am	1.0	Recent Developments in Employment Law	Betty Burke Uzee
<input type="checkbox"/> 10:20-11:20 am	1.0	Ethics*	Richard Lemmler
<input type="checkbox"/> 11:30am-12:30 pm	1.0	New Procedures in Adjudications before the Div. of Admin. Law	Ann Wise
<input type="checkbox"/> 1:40-2:40 pm	1.0	La. Gov. Ethics & the Rules of Professional Conduct*	Richard Sherburne Jr.
<input type="checkbox"/> 2:50-3:50 pm	1.0	Professionalism**	Kelly McNeil Legier
<input type="checkbox"/> 4:00-5:00 pm	1.0	Family Law	H. Michael Aaron

#### Thursday, Dec. 27, 2012

TIME	CREDIT	TOPIC	PRESENTER
<input type="checkbox"/> 8-9 am	1.0	La. District Court Rules: Recent Developments	Preston J. Castille Jr. & Karen Downs
<input type="checkbox"/> 9:10-10:10 am	1.0	Professionalism: What Would Atticus Do?*	Jeff Wittenbrink & Amy Counce
<input type="checkbox"/> 10:20-11:20 am	1.0	Federal Subpoenas & ESI	Dennis Blunt
<input type="checkbox"/> 11:30am-12:30 pm	1.0	State Subpoenas & Social Media	Laranda Walker
<input type="checkbox"/> 1:40-2:40 pm	1.0	Impact of Trial Technology	Robert Bettler
<input type="checkbox"/> 2:50-3:50 pm	1.0	Managing Your Practice: 60 Apps in 60 Minutes~	David Ogwyn
<input type="checkbox"/> 4:00-5:00 pm	1.0	Ethics of Multi-jurisdictional Practice*	Eric Miller

#### Friday, Dec. 28, 2012

TIME	CREDIT	TOPIC	PRESENTER
<input type="checkbox"/> 8:00-9:00 am	1.0	Ethics*	Victor Lorasos III
<input type="checkbox"/> 9:10-10:10 am	1.0	Current Trends & Issues in Adoptions	Todd Gaudin
<input type="checkbox"/> 10:20-11:20 am	1.0	Managing Banking Relationships~	Jim Schnieders
<input type="checkbox"/> 11:30am-12:30 pm	1.0	Oil & Gas 101	Keith B. Hall
<input type="checkbox"/> 1:40-2:40 pm	1.0	AG Opinion Process & the AG Process for Approving Contracts for Special Counsel	Richard L. McGimsey
<input type="checkbox"/> 2:50-3:50 pm	1.0	Public Records Law	Emalie Boyce
<input type="checkbox"/> 4:00-5:00 pm	1.0	Professionalism**	Eugene Groves

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## On the cover:

The cover photo features several 2012 Holiday Star Committee members, including (L to R) Susan Kelley (staff liaison); Brandi Cole; Ryan Brown (vice chair); Zelma Frederick (chair); and Laranda Moffett Walker (YLS Council representative).

In the photo, the Louisiana State Capitol Building is viewed through trees, which makes a great backdrop to promote the BRBF Holiday Star Project. Gift distribution day is scheduled Tuesday, Dec. 11, 2012.

Cover photography by Pamela Labbe.



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## board synopsis

BY ROBERT "BUBBY" BURNS JR. & GAIL S. STEPHENSON

### BRBA & BRBF Board of Director meeting minutes: October

Oct. 16, 2012 – Board voted (1) to provide up to \$1,000 of funding to Young Lawyer Section for Cocktails with the Court; (2) to present a gift to Justice Kimball when she speaks at the November bar luncheon; and (3) give a special commendation to the Belly Up with the Bar Committee for a job well done with the 2012 event.

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 2,000 words, typed and single-spaced. A Microsoft Word file should be e-mailed as an attachment to: [pamela@BRBA.org](mailto:pamela@BRBA.org).

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

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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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# letter from the president

BY GAIL S. STEPHENSON

## Never old hat

In 1968 I decided I was going to be President – with a capital “P” – after I portrayed Richard Nixon in the seventh grade mock presidential debate. (I lost to my best friend, who portrayed George Wallace.)

I decided that my best route to becoming President was to be a lawyer. That was a pretty heady ambition when no one in my family had ever graduated from college and my family had no money for my higher education. I was determined, however, and earned a scholarship to Northwestern State. I also dabbled in politics, attempting to pass out Dave Treen for Governor buttons in a town with only two registered Republicans.

My Presidential aspirations and desire to be involved in politics faded somewhere around the end of undergrad school, but the goal of becoming a lawyer had taken firm hold. I was admitted to LSU Law School and found that I loved the law. But every now and then I’d run into someone who knew me from high school or college and they’d ask, “I thought you were going to become President?”

Now I have an answer to those people – I **did** become president – of the Baton Rouge Bar Association. What an experience that has been! The BRBA is such a vibrant organization that being president has never become old hat – there have been new experiences at every turn.

As president of the BRBA, I’ve done things that my seventh grade self would have thought were every bit as exciting as being President with a capital “P.” I’ve been interviewed on the radio and on television. I welcomed members of the U.S. Army War College to Baton Rouge. I went to Chicago to accept an award from the ABA on behalf of the BRBA and, while in Chicago, stood on a Plexiglas ledge 103 stories up, looking at the street down below. I got up in front of a room full of people and sang “Shake Your Booty” with the band at the Bench Bar Conference. I welcomed new citizens at

two naturalization ceremonies. I modeled professional clothing at the Superwomen CLE. I had the privilege of presenting my mentor, retired Judge Melvin Shortess, with a well deserved award, and I presided at the luncheon where Justice Kimball gave her goodbye speech to the Baton Rouge Bar.

So it’s been a great year for me, and I think it’s been a pretty good year for the BRBA, too. Our membership has continued to grow; it now exceeds 2,600. We’re fiscally sound. My weather karma held up for everything but the softball tournament. We’ve continued and expanded our award-winning youth education initiatives, including adding another grade to the Junior Partners Academy and partnering with the Black Law Students Association at Southern University Law Center to bring the JPA to Southern Lab. And our new Self Help Resource Center at Family Court has helped more than 1,094 people.

In January I said I wanted to focus on two things in 2012: Encouraging members to maintain a healthy work/life balance, and the capital campaign to raise funds for our charitable arm, the Baton Rouge Bar Foundation. I hope my messages this year have made you think about work/life balance and you’ve taken steps to lower your stress levels. As for our capital campaign, our contributions to date aren’t as much as we’d hoped for, but the year is not over. You still have time to make a tax-deductible donation to the Baton Rouge Bar Foundation.

It’s been an honor and a privilege to wear the hat of president of the Baton Rouge Bar Association. My husband, Joe, has graciously shared me with both SULC and the BRBA this year. But in just a few weeks he’ll only have to share me with Southern as I assume what Preston J. Castille Jr. assures me is the greatest office ever – **Past President.** ■



Gail S. Stephenson



## letters

## Response to Guillot's rental constitutionality article

I understand that it must be difficult to find fresh topics of interest which are worthy of publication, month after month; however, I want to express my dismay that you would choose to print what appeared to be my opposing counsel's brief in support of his client's position in a matter currently on the docket of the 19th JDC ("To rent or not to rent, that is the constitutional question," [by] Grant J. Guillot, October 2012).

I won't go into all of the flaws in his often repeated and rejected constitutional arguments (my brief is available at [www.EBRClerkofCourt.org](http://www.EBRClerkofCourt.org), filled in suit no. C610,359), but surely my colleagues would agree that the Baton Rouge Bar Journal [*Around the Bar*], as a trade publication, should not be allowed to be used as a propaganda tool in pending litigation. It would be



very unfortunate if the journal's editorial integrity becomes compromised by enterprising litigants under the guise of a scholarly treatise. At the very least, Mr. Guillot's vested interest in the one-sided portrayal of the dispute should have been disclosed. Your readers, not to mention the residents of Baton Rouge, whom we represent in all of our enforcement actions for violation of validly adopted single-family-zoning ordinances, deserve better.

Maimuna D. Magee  
Assistant Parish Attorney  
Office of the Parish Attorney

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# tales from the bar side

BY VINCENT P. FORNIAS

Fitting for a month when the traditional "Twas the Night Before Christmas" is recited repeatedly, we present as our holiday gift to you a recent tale from our own 19th Judicial District Court that combines both rhyme and reason.

Apparently Gary Koederitz had filed suit arising out of a spider bite suffered by his client (Veronica) while she slept in premises allegedly in the care, custody and control of defendant (Emil). The latter was represented by Don Smith and insured for such claims by The Good Hands People. We know not David Forrester's role (other than our invaluable informant), but he was involved as well. The matter was assigned to Section 22, the Honorable Tim Kelley presiding.

Don went straight for the jugular, filing a dispositive motion for summary judgment on the basis that under our Civil Code, Emil was not in legal garde of the property at the time of the spider attack. Koederitz filed his standard opposing brief. At which point things got interesting.

Bypassing his boring old Allstate form file, Smith marshaled his little known resources as our very own bard

## Poetic justice

of the bar and filed the following reply brief:

### POOR EMIL

*As Veronica lay asleep at night  
did a creeping spider place a bite  
upon her rosy cheek so fair  
then why the scar within her hair?  
She claims the wound did inflame  
and in her suit seeks to blame  
her pain and grief on poor Emil  
who only shared the home until  
plaintiff's latest husband, Nat  
offered testimony saying that  
poor Emil had performed such tasks  
that it could not be truly asked  
if the court should not regard  
what he did as legal garde.  
That at the home Nat did peramble  
and in his affidavit did he ramble  
that he was able to determine  
the house infected with the vermin  
that on the face of his dear bride  
did the spider's wound thereon reside.  
But as the court said in King,  
custody or garde is not a thing  
that in more than one can vest  
when Renée's title excludes the rest.  
This Honorable Court should conclude  
that poor Emil did not intrude  
in any way that could factual  
render Emil and Renée consubstantial.*

Koederitz, ever the judicious advocate, could not sit by and allow even such valiant verse to go unopposed, and summoned the spirit of the late Johnny Cochran:

*I have your brief in reply,  
and of course it brings a sigh.  
Your arguments are in vain,  
since industrious Emil did maintain.  
Despite your fancy prose,  
to my client Allstate still owes,  
for when a spider does infect,  
the hapless plaintiff will collect.*

Obviously inspired by this litany of literary largesse, Judge Kelley provided the closing verse:

*I'm not a very bright judge,  
but this case isn't hard.  
When I look at the facts  
and the law involved,  
there simply was no garde.*

Summary judgment granted (exeunt). 

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# bar news

BY ASHLEY SEALS

## Belly Up with the Bar attracts record number of attendees, raises funds for youth ed programs

The 14th annual BRBF Belly Up with the Bar was held Sept. 28, 2012, at the Live Oak Arabian Stables. This year's chair was Brandon DeCuir and vice chair was Jennifer Racca. All proceeds were donated to the BRBF's youth education and community outreach programs.

Celebrity judges included Pam Bordelon of *The Advocate*; Jay Ducote of *225 Magazine*; Jim Shannon of WAFB-Channel 9; Michael Shingleton of WBRZ-Channel 2; Chris Roussell of St. Luke's Episcopal Church; Rudy Macklin of the Governor's Council on Physical Fitness and Sports and former Louisiana State University basketball player; and Kris Cusanza of WVLA-Channel 33.

Best Grub First Place went to Election Blues BBQ (Workers' Compensation team) for its barbeque sandwiches. Winning Best Grub Second Place was Kean Miller's team Wanted Dead or Alive for its brisket. The District Attorney's Team, "Gruel" and Unusual Punishment, prepared "legislative pork" and won Best Grub Third Place.

Winning Most Original and the People's Choice-Food First Place was Keogh Cox & Wilson's team Peelin' and Shakin' with KCW: A Black Tie Cajun BBQ. People's Choice-Food Second Place went to Southern University Law Center SBA for its Shrimp and Crab Bisque. People's Choice-Drink went to McGlinchey Stafford's team Hunger-y Games for its Nightlock Berry Cocktail.

Shows, Cali & Walsh won Best Sauce for its Shrimp and Grits Supreme. Best Sauce Second Place went to Dennis, Bates & Bullen for its Chinese Bandits with '58 sauce. Winning Best of Show was the Watson, Blanche, Wilson and Posner team, Saints & Sinners. Phelps Dunbar's team, Phelps Days ... Havana Nights, won Best Theme.

Winning Best Law School First Place was the Southern University Law Center Phi Alpha Delta & Federalist Society's team, Chattel Ranchers, for its High Country Chicken and Waffles. Winning Best Law School Second Place was LSU Law Center's Spicy Ginsburgers for its Spicy Red Pepper and Thyme Shrimp Soup.

The Parish Attorney's team, Honey Boo Hoo's, won the Committee Choice award for its Boo Nana Pudding. Southern University Law Center SBA won the Best Dessert award for its Bananas Foster Cream Pie with Caramel Rum Sauce. Worst Food was awarded to Treadway Morris's team for its Watermelon Salsa.

The 2012 Belly Up with the Bar Committee members included Ben Anderson, Bradley Bourgeois, Amanda Collura, Charles Davoli, LaKeisha Ford, Shelley Jourdan



Serving as Belly Up with the Bar judges for the 2012 event were (L to R) Chris Roussell, Michael Shingleton, Pam Bordelon, Jay Ducote, Kris Cusanza, Rudy Macklin and Jim Shannon.



Winning Best Grub First Place for its barbeque sandwiches for the 2012 Belly Up with the Bar cooking competition was the team of Election Blues BBQ. Matt Tierney, Joe Jolissaint and David Smith are photographed above.

Harrison, Kimberly Higginbotham, Andrea Knouse, Blake Leger, Justin Mannino, Julie McCall, Marcus Plaisance, Jamie Polozola, Alan Posner, Loren Shanklin and Victor Suane Jr.

Donna Buuck and R. Lynn Smith Haynes, committee staff liaisons, helped to coordinate the event. Ann K. Gregorie, executive director, and BRBA President Gail Stephenson were also at the event.

The BRBA would like to give special thanks to all our volunteers for helping make the 2012 Belly Up with the Bar event a success.

## GAIL'S GRAMMAR

Lawyers regularly use the word **allege**. Sometimes we use **allege** as a synonym for state, but more often we use it in our persuasive writing to imply skepticism. One must be careful with its use, however, so as not to sound ridiculous.

Take, for example, this statement: "She was **allegedly** left blind and paralyzed after she was hit by a drugstore truck in 2008." Blindness and paralysis are hard conditions to fake. You'll be a more believable writer if you save **allegedly** for use when skepticism is appropriate.

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).

PHOTO BY PAMELA LABBE

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The team from Keogh, Cox and Wilson won Most Original and People's Choice (Food) First Place with their Peelin' and Shakin' with KCW: A Black Tie Canjun BBQ. Photographed above are (L to R) Richard Wolff, Brent Cobb, Chris Jones and Reynolds Leblanc Jr.



PHOTO BY PAMELA LABBE

Shows, Cali & Walsh, LLP, won for Best Sauce. Pictured above are (L to R) Carrie Leblanc Jones, Amy L. McGinnis, Megan R. Stafford, Caroline Tomney Bond, Jeffrey K. Cody, Jacqueline B. Wilson and (front) Austin P. Clancey.



Smiling faces – Wick Cooper and his children, Connor and Madison at the 2012 Belly Up with the Bar.



Judge William Morvant and his wife, Rhonda, were in attendance.

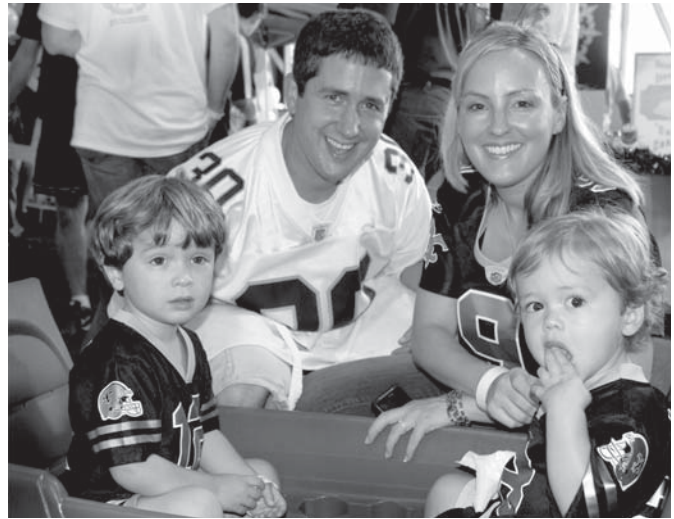


Charles Blaize won the charity auction during Belly Up with the Bar Friday, Sept. 28, 2012.



The 2012 Belly Up with the Bar Committee includes (L to R) Jennifer Racca (vice chair), Ben Anderson, Dixon McMakin, Andrea Knouse, Scotty Chabert, Jamie Polozola, Vic Suane Jr., Amanda Collura, Charles Davoli, Kimberly Higginbotham, Brandon DeCuir (chair) and Marcus Plaisance.

PHOTO BY PAMELA LABBE



Saints & Sinners was the theme of the Watson, Blanche, Wilson and Posner team. Photographed above are Kyle and Adrian Busekist with their sons, Lee (far left) and Patrick (far right).

PHOTO BY PAMELA LABBE



LSU Law Center Professor Paul Baier, Hany Zohdy and Barbara Baier had a fun time attending this year's Belly Up with the Bar event.



## Portrait ceremony held for the late Judge Tyson

On Oct. 5, 2012, the official portrait of the late Judge Ralph E. Tyson was presented at the Russell B. Long Federal Building and Courthouse. The presentation was sponsored by the Federal Bar Association Baton Rouge Chapter and the Baton Rouge Bar Association. Erin Wilder-Doomes, Federal Bar Association Baton Rouge Chapter President, conducted the welcome and led the Pledge of Allegiance. Kelsey Kornick Funes, also a member of the Federal Bar Association Baton Rouge Chapter, introduced the artist, Jane Emery, and presented the portrait. Also present was Baton Rouge Bar Association President-elect Michael S. Walsh, who oversaw the introduction of guests. Following the presentation a brief reception was held.

## SULC receives high marks in *The Princeton Review*

The Southern University Law Center was ranked number 1 in most faculty diversity, according to *The Princeton Review*. SULC was featured in its 2013 edition book as one of "The Best 168 Law Schools." The school also ranked second in "Most Chosen By Older Students" and third in "Best Environment for Minority Students."

Institutional information for SULC includes a 14:1 student-faculty ratio; four percent part-time faculty; 37 percent female faculty; 61 percent minority faculty; and 41 total faculty.

## LADN Louisiana Chapter is launched

The National Academy of Distinguished Neutrals announced the launch of its Louisiana Chapter. The chapter recognizes the state's leading ADR practitioners in Dispute Resolution. Six attorneys and former judges were inducted as charter members for 2012: David Sherman Cook, Glen Scott Love, Andrew McGlathery III, Bernard McLaughlin, Mimi Methvin and Lynne Stern.

## Admission to Federal Courts ceremony scheduled to be held Tuesday, Dec. 4

The BRBA and the Baton Rouge Chapter of the Federal Bar Association will host the Tuesday, Dec. 4, 2012, Admission to the Federal Courts Ceremony. Attendees can be admitted to the U.S. Middle, Eastern and Western District Courts and the U.S. Fifth Circuit Court of Appeals, plus be introduced to the Court and meet the judges of the Middle District of Louisiana.

Chief Judge Brian A. Jackson will preside over the Swearing In Ceremony, which will be held Dec. 4, at 5 p.m. in Courtroom 1 at the MDLA, Russell B. Long Federal Courthouse. There is no charge to attend the ceremony, but participants are responsible for the requisite fees for each court to which they seek admittance. Contact Ann K. Gregorie at 225-214-5563 for more information.



Todd Tyson, BRBA President-elect Michael Walsh and Federal Bar Association (Baton Rouge Chapter) Erin Wilder-Doomes were photographed (above) during the Oct. 5, 2012, reception following the portrait unveiling ceremony held for the late Judge Ralph E. Tyson.

PHOTO BY PAMELA LABBE



Judge James Brady, Erin Wilder-Doomes, Patricia Tyson and Judge Brian A. Jackson attended the reception following the ceremony.

PHOTO BY PAMELA LABBE



The family of the late Judge Ralph E. Tyson was present during the portrait unveiling ceremony at the Russell B. Long Federal Building and Courthouse, Middle District of Louisiana.

PHOTO BY PAMELA LABBE



Laranda Moffett Walker (above) and Dennis Blunt presented an Oct. 5, 2012, CLE seminar on social media and subpoenas at the Middleton Bar Center.

PHOTO BY PAMELA LABBE





The LSU Law Center recently honored several alumni with its 2012 Distinguished Alumnus of the Year and Distinguished Achievement awards. Pictured above (L to R) are C. Kris Kirkpatrick, Hon. Bonnie F. Jackson, W. Henson Moore III, LSU Chancellor Jack Weiss, Hon. Elizabeth Foote, R. Patrick Vance and (seated) William Morrison Meyers.

### Michael S. Walsh and John Pierre nominated to receive LSBA Crystal Gavel Awards

Two members of the Baton Rouge Bar Association were selected by the LSBA to receive Crystal Gavel Awards – Michael S. Walsh and John Pierre. Walsh, a partner with Lee & Walsh, is the BRBA president-elect. Pierre is a professor of law and the vice chancellor for Institutional Accountability and Evening Division at the Southern University Law Center. The award is given to lawyers and judges who have been an asset to the community.

### BRBA members honored by the LSU Law Center

The LSU Law Center honored W. Henson Moore III as the 2012 Distinguished Alumnus of the Year, and Hon. Elizabeth Foote, Hon. Bonnie F. Jackson, C. Kris Kirkpatrick, William Morrison Meyers and R. Patrick Vance for Distinguished Achievement at Nottoway Plantation in White Castle, La.

Two of the five recipients honored for Distinguished Achievement – Hon. Bonnie Foster Jackson and C. Kris Kirkpatrick – are BRBA members.

Judge Jackson graduated from the LSU Law Center in 1978 and has served as a Criminal Court Judge in the 19th Judicial District for almost 20 years. She is a frequent presenter at CLE programs and has served on the Governor's Task Force on Violent Crime, Supreme Court Task Force on Indigent Defense Funding, Louisiana Sentencing Commission, Criminal Bench Book Advisory Committee, the Louisiana Judiciary Commission and the Supreme Court Committee on Judicial Ethics.

Kirkpatrick, a founding partner of the Long Law Firm, graduated from the LSU Law Center in 1975. Kirkpatrick is actively involved in community service that benefits Baton Rouge, the state of Louisiana and the LSU Law Center. He also led the fundraising efforts for the renovations of the LSU Law Center's Centennial Plaza in 2006. ■

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## EFFECTIVE TRIAL STRATEGY: Using reverse 404(B) evidence to defend your client

BY ROBERT S. SAVAGE

When a defendant at trial proves that another person committed the crime, it can be one of the most stunning things to see in a courtroom. Nevertheless, introducing such evidence can be more rigorous than it may seem at first glance. Incriminating a third party requires the defense team to thoroughly investigate the case and to present a coherent case theory to the jury. In addition, it often requires the defense to present circumstantial evidence incriminating a third party. Yet the judge is not necessarily required to allow the introduction of such evidence merely because it is exculpatory. Attorneys may run into problems if they are unable to show independent relevance for the introduction of the evidence and a certain degree of trustworthiness prior to its admission, particularly if the probative value of the evidence is limited. After all, the defendant is on trial, not the third party. Article 404 of the Louisiana Code of Evidence makes the introduction of this type of evidence possible, albeit with a twist not directly contemplated by the plain language of the statute. Subsection (B) provides:

B. Other crimes, wrongs, or acts. (1) Except as provided in Article 412, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof

of motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or accident, provided that upon request by the accused, the prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding. (Emphasis added.)

This provision allows for the introduction of evidence implicating a third party, provided that the evidence is introduced for one of the purposes listed by the statute (e.g., the third party had a motive to commit the crime, the third party had the opportunity to commit the crime, etc.).<sup>1</sup> More commonly known as “*Prieur* evidence,” other-crimes evidence can be used in a variety of manners.<sup>2</sup> Extensive jurisprudence has discussed the State’s ability to use other-crimes evidence with respect to the defendant,<sup>3</sup> but few cases have touched on the defendant’s affirmative use of the rule. Instead, when faced with a defendant’s use of such evidence, Louisiana courts generally make little, if any, reference to article 404(B). The First Circuit in an obscenity prosecution allowed the defendant presenting an alibi defense to introduce evidence that another person committed similar actions two blocks away and only six months prior to the alleged criminal conduct.<sup>4</sup> The court allowed the testimony into evidence for the purpose of challenging the eyewitness testimony, noting that the evidence was relevant to the question of whether the eyewitness was correct.<sup>5</sup> Likewise, the Louisiana Supreme Court in *State v. Washington* reversed a denial of the defendant’s motion to sever, noting that the denial of the severance curtailed the defendant’s ability to present evidence of similar crimes that occurred after his arrest.<sup>6</sup> The issue has yet to be fully vetted in the appellate courts, and until then, it generally remains shrouded in the context of other procedural issues.

In the meantime, federal courts provide ample illustrations of the use of the rule. In fact, appellate judges have even adopted the phrase “reverse 404(b) evidence.”<sup>7</sup> In *United States v. McClure*, the U.S. Fifth Circuit held that the district court committed reversible error in excluding testimony regarding prior bad acts of a government informant, where the proffered evidence showed a systematic campaign of threats and intimidation against others.<sup>8</sup> The court cited Rule 404(B) of the Federal Rules of Evidence for support that the evidence in question would show a lack of criminal intent by a defendant, who claimed he was illegally coerced into the criminal conduct.<sup>9</sup> In the same vein, the Eleventh Circuit ruled that Rule 404(B) permits a defendant to introduce evidence concerning the criminal history of a non-testifying confidential informant, when the evidence was admitted



to show that the informant could have obtained the drugs from a source other than the defendant.<sup>10</sup> The case theory involved a claim that the confidential informant sought to avoid a lengthy prison sentence by planting drugs on the accused during a controlled purchase.<sup>11</sup>

Without question, the introduction of exculpatory evidence is intricately tied to the constitutional rights of the accused, particularly the right to present a defense enshrined in the Due Process Clause. The Fifth, Sixth and Fourteenth Amendments of the United States Constitution as well as Article I, Section 16 of the Louisiana Constitution generally allow for the introduction of evidence incriminating a third person when such evidence would establish a reasonable hypothesis of that person's guilt or reasonable doubt of the guilt of the defendant.<sup>12</sup> This rule encompasses any evidence relevant to an issue material to the case.<sup>13</sup> In addition, the Sixth Amendment guarantees the right to call witnesses favorable to the defendant.<sup>14</sup>

But a word of caution: judges will not allow anything into evidence simply because it may be probative under a reverse application of article 404(B). Like all evidence, it must meet the balancing test under article 403, which allows for the exclusion of otherwise relevant evidence if, "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, or waste of time."<sup>15</sup> Most veteran defense attorneys would acknowledge that this is the battleground for litigators. The Louisiana Supreme Court in *State v. Mosby*, acknowledged the accused's right to present a defense, but ultimately concluded that the probative value of two robberies by a slender black male against bank patrons within three months and in the same general area of the city was substantially outweighed by the considerations of article 403.<sup>16</sup> The court reasoned that the other crimes did not bear the characteristics of "signature" crimes and that investigators even showed the victim the other slender black male in a photo lineup without success before the victim later identified the defendant.<sup>17</sup>

The judicial application of article 403 must be scrutinized with extreme care. The evidence being presented is subject to a different standard, because it falls within the ambit of a constitutionally protected right. A defendant must be permitted to introduce crucial evidence in his defense that has substantial assurances of trustworthiness, even if the evidence is otherwise inadmissible under the local rules of evidence.<sup>18</sup> When prejudice to the prosecution is balanced against a defendant's constitutional right to present evidence in support of his defense, the balance should be weighed in favor of admissibility where the prejudice is minimal.<sup>19</sup> This added scrutiny, however, is subject to reasonable restrictions. Notwithstanding the defendant's assertion of the right to present a defense, the United States Supreme Court has upheld restrictions against the use of exculpatory polygraph evidence, citing

the legitimate interest of admitting only reliable evidence at trial.<sup>20</sup> This rationale conforms to the analysis first set forth in *Chambers*, which emphasizes the trustworthiness of the evidence.<sup>21</sup>

The third party implicated by reverse 404(B) evidence need not be a witness, nor must he be present at trial. Article 404(B) places no limits of that sort on the introduction of other-crimes evidence. When the third party is a witness, however, the defense must emphasize that the evidence is not for the purpose of impeaching the witness's credibility. The Code of Evidence restricts evidence of a witness' criminal history to the conviction only, but this restriction applies only if it is for impeachment.<sup>22</sup> On the other hand, an arrest not leading to a conviction may be admissible if it has independent grounds of relevance under article 404(B). Even more notable, the Code of Evidence prohibits an attack on a witness's credibility until after the witness has been sworn.<sup>23</sup> If the criminal history is used for other purposes under article 404(B), then the witness's criminal history can be brought up before the witness is sworn, including opening statements.<sup>24</sup>

An important practice note is evident in the procedural posture of the cases on point. Defense teams often raise the issue prior to the start of trial, as in *Mosby* by a motion to produce similar offenses.<sup>25</sup> Surprisingly, article 404(B) does not require the defendant to give any notice of his intent to use reverse 404(B) evidence.<sup>26</sup> That consideration should be weighed against the significant risk of not litigating the issue thoroughly in advance of trial. Due to the gravity of the outcome and the intensive fact-based analysis involved, it is advisable to thoroughly litigate the issue pre-trial by a motion in limine or other pre-trial motion. This course of action should provide ample opportunity to proffer the evidence and create a detailed record for the appellate courts.

Much can be written on the subject, especially as this area of the law has yet to be fully developed. In the meantime, the outcome of each case will inevitably involve intensive fact-based analysis. And with any evidentiary issue, the evidence must satisfy the other requirements of the Code of Evidence, including not running afoul of the hearsay rule.<sup>27</sup> Nevertheless, through diligent research and investigation, defense teams can continue to use article 404(B) to present their client's side of the story to the factfinder. ■

<sup>1</sup> The article does not limit the introduction of other-crimes evidence to evidence implicating a defendant. It simply provides that it may be used to prove the issue with respect to "a person." La. C.E. art. 404.

<sup>2</sup> *State v. Prieur*, 277 So.2d 126. (La. 2/19/73).

<sup>3</sup> See e.g. *State v. Lee*, 05-2098 (La. 1/16/08), 976 So.2d 109, *cert denied*, 129 S. Ct. 143 (2008). In order to admit *Prieur* evidence, the State must satisfy three elements: the other acts or crimes actually occurred and were committed by the defendant; the other acts demonstrate motive, intent, knowledge, identity, absence of mistake or accident; and the other acts show that the probative value of the evidence outweighs its prejudicial effect. *Id.* at 139.

<sup>4</sup> *State v. Patch*, 470 So.2d 585 (La. App. 1st Cir. 1985), *writ denied*, 475 So.2d 358 (La. 1985).

<sup>5</sup> *Id.* at 589.

<sup>6</sup> *State v. Washington*, 386 So.2d 1368, 1373 (La. 1980).

<sup>7</sup> See, e.g., *U.S. v. Hamilton*, 48 F.3d 149, 155 n.8 (5th Cir. 1995).

<sup>8</sup> *U.S. v. McClure*, 546 So.2d 670 (5th Cir. 1977).

<sup>9</sup> *Id.* at 672-73.

<sup>10</sup> *U.S. v. Stephens*, 365 F.3d 967 (11th Cir. 2004).

<sup>11</sup> *Id.* at 971.

<sup>12</sup> See *State v. Jenkins*, 134 La. 185, 63 So. 869 (La. 1913); U.S. Const. amend. V, VI, XIV; La. Const. art. 1, sec. 16.

<sup>13</sup> *State v. Webb*, 99-1366 (La. App. 1 Cir. 3/31/00), 764 So.2d 1008.

<sup>14</sup> See *Faretta v. California*, 818 95 S. Ct. 2525 (1975); U.S. Const. amend. VI, XIV.

<sup>15</sup> La. C.E. art. 403.

<sup>16</sup> *State v. Mosby*, 595 So. 2d 1135 (La. 1992).

<sup>17</sup> *Id.* at 1137.

<sup>18</sup> *Chambers v. Mississippi*, 93 S. Ct. 1038 (1973).

<sup>19</sup> *State v. Vaughn*, 431 So.2d 358 (La.

1983)(on rehearing).

<sup>20</sup> *U.S. v. Scheffer*, 118 S. Ct. 1261 (1998).

<sup>21</sup> *Chambers*, 93 S.Ct. 1038.

<sup>22</sup> La. C.E. art. 609.1.

<sup>23</sup> See *id.*

<sup>24</sup> *Accord*, La. C.E. arts. 404, 609.1.

<sup>25</sup> *Mosby*, 595 So.2d 1135.

<sup>26</sup> The express language of the article requires the State to give the defense notice of its intent to use other-crimes evidence; however, this requirement does not extend to defendants. "[T]he prosecution in a criminal case shall provide reasonable notice in advance of trial, of the nature of any such evidence it intends to introduce at trial for such purposes, or when it relates to conduct that constitutes an integral part of the act or transaction that is the subject of the present proceeding." La. C.E. art. 404(B).

<sup>27</sup> La. C.E. art. 802.



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## attorney spotlight

BY ASHLEY SEALS

## Interview with Holiday Star Chair Zelma Frederick

The youngest of five children and the only girl, Zelma Frederick learned at an early age how to take on anything and everything.

She grew up in Vidalia, La., with her four brothers and attended school in Natchez, Miss. Her mother was a homemaker and substitute teacher and her father owned, and still owns, a print shop.

"There was always something going on at our house at any given time. My brothers were very protective of me growing up, but they also always gave me a hard time about everything. We are still really close, and we have a great time when we all get together," Frederick said.

Frederick, an associate with McGlinchey Stafford, practices in the areas of commercial litigation, collections and bankruptcy.

One of her first jobs before becoming a lawyer was at a jewelry store in Natchez. She worked as an engraver and as a gift wrapper. "I learned to wrap presents with beautiful bows, which I now love to do and am a little obsessed with," Frederick said.

Frederick is the 2012 chair of the Holiday Star Committee. "I started [volunteering for the Holiday Star Project] by taking one star and helping with the wrapping of gifts, and at that time Jenn Chick was involved with the committee. I think Jenn suggested I join the committee, and from that point forward I have been on the committee and helping spearhead the project within our office," she said.

"I have always loved to read and analyze things. My grandfather was not a lawyer, but thought about going to law school at one point in his life. We were very close, and he is the person who turned the idea of going to law



Zelma Frederick

school into a real possibility when I was in high school and college," said Frederick.

She attended undergrad at Spring Hill in Mobile, Ala., and graduated in 2004 with a degree in English and a double minor in philosophy and women's studies. While there she was actively involved in Phi Mu sorority and worked at the Admissions Office and at a law firm.

She received her J.D. in 2007 from the Mississippi College School of Law in Jackson, Miss. There she completed all civil law classes, which focused on Louisiana law.

She is married to Jimmy Frederick. "We met a long, long time ago in Natchez and dated while I was in college and law school. We got engaged on a trip to Washington,

D.C., at Christmas during my second year of law school, and we got married the week after I finished law school," Frederick said.

The two recently had their first child, Nathan, in July. "We have enjoyed seeing Nate change and grow over the last few months, and we can't imagine our lives without him now," Frederick said.

She also adores her dog, Jax, a Cock-A-Poo mix. She and her husband adopted Jax on a whim a few years ago while participating in the BRBA's Volunteer Committee's project benefitting Yelp!, the animal welfare organization.

"It was the best decision we could have made (although I had to talk Jimmy into it) because Jax was house broken, hardly barks, and doesn't shed! He is the perfect dog for our family, and I can't believe someone else abandoned him," Frederick said.

Other organizations she is a member of include the Junior League of Baton Rouge, the Wex S. Malone American Inn of Court, the Louisiana State Bar Association, the Mississippi Bar Association and the Federal Bar Association.

During her free time, she enjoys crafts, tennis and baking. Right now taking care of her newborn is a handful, but she looks forward to playing tennis again in the near future. ■

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# Interview with East Baton Rouge Parish District Attorney Hillar Moore III

BY PAT GARRITY

*ATB: How have you enjoyed the new challenges as district attorney?*

HM: This is a real challenging job – it's real interesting. The pace is real hectic, but it's one that I find enjoyable, and it's a challenge.

*ATB: What has been the most surprising aspect of the job as district attorney?*

HM: Coming from running a small office with very few people to being involved in a big office dealing with personnel issues and policies and things like that has probably been the biggest challenge and is the most difficult part of the job. Just handling internal issues dealing with different rules and regulations and federal regulations – those were things that I really had no idea that I'd deal with as the DA. I thought this would just be dealing with crime and people, but it's also running a very large law office. It's a 150-person office, and there are insurance issues, health care, all things of that sort that are not what you really run for when you run for district attorney, but are still an important part of the job.

*ATB: When was the last time you actually made an appearance in court?*

HM: Probably when I was a defense lawyer. I've been in court and done a few things on the record, but I've learned from looking at other DA's in the past that the best thing the DA can do is probably stay out of the way of the professionals that I have working in my office. I have some talented employees, and they are the best at what they do. I just need to watch and give advice as I can.

*ATB: Do you miss going to court?*

HM: Every now and then I'll miss going to court, especially when watching a trial as a lawyer having to sit on his hands and not being able to get up and say anything or object. It's difficult to sit down and to shut up. So that's the hard part. The part I don't miss about being a lawyer is bouncing from court to court and from parish to parish or federal court to state court, or state court to city court or city court to administrative hearings. The pace is hectic now with all the differences in the courthouses and lack of parking. I can imagine how hard it is for a lawyer to come to court, then take care of clients and have to come back down to court. It's challenging and something I really don't miss.

*ATB: What is the biggest challenge facing the district attorney's office at this time?*

HM: That's easy – juveniles and preventing juveniles from becoming adult criminals. That is the single biggest problem for not only me as the DA, but the police, the sheriff, the court system and basically the entire Baton Rouge community. If we don't wake up real soon and deal with issues of education, truancy, drop-outs and teen pregnancy, we are heading down a really bad path. In my opinion, those issues have been ignored way too much for the last 40 or 50 years, and now we are realizing the problems that we have because of that lack of attention. It's one problem that we're not going to get out of quickly. We fight juveniles and young kids all day long. That's what we do. Our business is against the young kids and the young adults ages 15 to 23, or you can even go 13 to 23. Generally, in the heart of that is where we see the most violence, which is real disheartening. Every time we get called to a crime scene we can expect some youngster on either side of the equation – either a victim or a defendant. It's real frustrating and generally, when you look at these people, you can guess that they have either dropped out of school; have no high school education; have been through the juvenile system or possibly the adult system; do not have a stable family environment; have drug issues; or have mental health issues. That is generally what we see in most of our major cases.

*ATB: So, the vast majority of the people you are dealing with are 13 to 23?*

HM: Thirteen is a little low, but I recently saw in the newspaper where a 16-year-old, whose name was not given, was charged with and arrested for three murders. You've also seen in past cases where a 16-year-old was indicted for five or six murders. It is unfortunate that you have someone age 15 or 16 who can kill with impunity. Kids who kill, they don't have the filter mechanism you and I have; that is, when you and I were growing up, when you did something wrong, your parents spanked your hand quickly and told you that it was wrong. Or if you picked up a cigarette, your mom or dad would say that's wrong. Then if you did something worse – stole something – your mom would punish you for a significant period of time. So you knew the different levels and you got filters that were built into your brain that said, "Stop, these are the consequences," and so you knew if you did something wrong, you knew the consequences. These kids

know no consequence because they were never taught a consequence, and they don't even have these filters in place to even think about saying no. They can shoot and it doesn't matter where that bullet lands. It does not weigh on their conscience. It's a way of life.

*ATB: Are these crimes mainly drug related or gang related?*

HM: The vast majority of our cases in that regard are drug related. We do have some issues with gangs or groups that we're dealing with right now. We're trying to get our feet in quickly in that area. Other cities around the state are facing gang-related issues, like Shreveport and Lake Charles, New Orleans I'm sure. We have some groups, I'm not necessarily calling them a gang, that are in schools that we need to deal with now. We are addressing them now and hopefully we can influence them in a positive way.

*ATB: What is the solution to the juvenile and young adult violence?*

HM: The solution to the problem is real easy, but it's the most difficult one. It is having parents be a parent first. That's difficult to do when you only have one parent and sometimes that one parent is absent because they are either in jail, have mental health or drug issues themselves, or they just don't care. That's often the problem. There is a lack of male influence on a lot these young males, so they don't know how to act like a man because they've never seen a man act before. They are raised by women and taught by female teachers and have no male influence or male role model. That's a big problem. We need more male role models. We have to stop the truancy and the drop-out rate. Baton Rouge has the highest rate in the nation. We are making some significant strides right now, but again, if you don't have a parent or parents at home that will make you or encourage you to go to school, it's difficult to cut that bottom line number. The schools are well aware of it. We are at the brink of starting a truancy and family services center. We've been trying to do it for two and a half years where if a judge, teacher, or whoever can identify a truant or a kid who is in trouble and the parents are struggling, we have a one-stop shop where all of the various agencies can be found. They can go to one place for assistance with mental health issues, drug/alcohol issues or transportation issues. There would be one place where we could handle their problems.

The key is getting the people there. The services are going to be there to offer to them. It's going to be them having the desire to want to come. It's on a bus line so you'll be able to get to it. We have the services that can help these kids and their families. We are going to concentrate on one particular zip code and start there, because if we started with the entire city, it would be too cumbersome. We will start with the zip code that has the highest crime, truancy, and drop-out rate and try to make an impact on a few schools in that area. We have looked at maps of crime and delinquency, and when you put that map down and overlay it with the map of truancy and drop-outs, it coincides hand in glove. The areas with the highest truancy and drop-out rates have the highest crime rates. It is exactly the same throughout the city. The areas with the lowest truancy and drop-out rates have the lowest crime rates. They just go hand in hand.

*ATB: Because law enforcement and the district attorney's office has limited ability to provide male role models for these kids, what can the district attorney or law enforcement do once they actually show up in your system?*

HM: One of the best organizations I've seen is the Boy's Club and other organizations like that to provide male mentorship. They probably can use more help. But again, to me it's getting the kids or their parents in touch with

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sombody like that. Surely we are going to be able to do that, but the problem is the lack of desire and apathy on the part of people to actually want to go get the help. It's easier just to sit around and take the short cut, but there's no short cut to being successful. They have to have the desire to want the help. In general, if you wait until the kid is 13 or 14, it's way too late. We have found if we get to these kids from kindergarten through fourth grade, chances of success are drastically improved. There is a truancy assessment program that has been in place here for some time, which is highly successful. The program is only in 20 schools, and they are understaffed with only eight employees. They concentrate on grades K-4 and concentrate on the high risk kids in those schools to try to make a difference. The program is highly successful, but there are just not enough people to go around. We should have at least one child-welfare attendant agent in every school, but we don't. There are maybe 16 or 24 per 60 schools, and their work load is hundreds of cases each. It is difficult to make an impact when you are as overloaded as they are, but studies show that when you reach out and touch these kids, it makes a big difference. Actually, kindergarten through fourth grade is sometimes too late. The kids that we identify as at risk in that age group come from a home where there are no books, no one has read to them, and they start kindergarten having no idea about

reading or letters, or numbers. Most people who are going to read this article start from a young age reading to their children, showing them pictures, letters, colors and numbers. So that kid who is entering the system without any of that is already two to four years behind the kid who comes from a family who knows how to read. They are playing catch up their whole life. So actually getting the kids early on and reading to them is just such a big benefit that we don't really recognize. I see lots of folks that do come to the public schools and read. When you see older people that are retired reading to these kids, the kids' eyes light up – they're learning. Reading is just so important.

*ATB: You have come out with a program for potential death row cases – a contract for life. What is the contract for life?*

HM: That's a controversial issue for some people. Generally it's used in cases where someone is indicted and charged or convicted of first-degree murder, and the sentence is either reduced to a life sentence or they plead to a life sentence. I've been branded by some as anti-death penalty, but I am for the death penalty in the appropriate cases. However, it's a very difficult decision to make. The ones that we make where people are screaming for the

# 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: 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



death penalty are so obvious. But, in considering the death penalty, we're talking about a case that's going to last 15 to 20 years on appeal, not counting the time it's going to take to go to trial and go through all of the motions. So the case lasts for 25 years. The reader is going to think about their practice and having a case that goes on for that long. In our case, we're talking about pain and the continuing infliction of pain on victims and their families throughout the entire appellate process because there is never closure. In the contracts for life, when we do those, there is some sort of closure, as much as the family can have, and they can rest assured that what the defendant agreed to will be upheld. It gives a little more security to the agreement and hopefully some more closure to the family, and that's really why we designed that. We just try to make sure they we tie up all the loopholes that we can. It seems to work so far.

*ATB: Is this something that is also been used in other parts of the country?*

HM: I haven't seen it in any other parts of the country, but they may call it other things. I have had several DAs and others that have asked about it and called for our contracts, and apparently they are going to start to use those. So, I'm not sure; it's never been tested. We've searched on the Internet to see if there is any such thing, but we can't find any. The agreement is in writing and signed by all the parties and lawyers. The defendant agrees that he will plead guilty and accept a life sentence with no possible parole considerations, no making money on a book, no seeking a pardon board, that his representation by counsel was adequate, that he's gotten all the representation he wanted, and that there are no mental-health issues. A lot of things that later come up on appeal.

*ATB: Up to this point, has anyone attempted to challenge it?*

HM: No.

*ATB: How receptive have the defense lawyers been?*

HM: Obviously, they sign off on it. It's a two-way street. It's a contract. There are two sides to a contract. It's not unlike any other contract.

*ATB: How has the DA's office been affected by Mayor Holden's bond proposal not getting put before the voters?*

HM: I think that you'll eventually see some type of bond proposal, particularly for public safety law enforcement. If we can be included in whatever package the council proposes, if that's allowed, depending on what type of proposal they have, we will go along with them for our needs. If not, the DA has the ability to call his own special property-tax election. With our current needs, we would need another \$5,000,000 a year to operate because we are running out of reserves. All of the city-parish's offices are operating at a deficit. We have between six to eight employees that we are short that we cannot fill. We actually need more bodies to keep up with the amount of cases that we have. We can't expand as we need to provide better services for victims and do a better job with handling the significant number of violent crimes that we have. Our total budget is about \$11,000,000, of which \$2,000,000 comes straight from the federal government in just pass through for child support, as compared to Jefferson Parish, which operates on a \$17,000,000 budget. Baton Rouge is the biggest city in the state now, but we do not have quite as many assistant DAs as Jefferson Parish does and, given where we are post Katrina, we need to catch up to address it. ■

*Editor's note: Moore was recently honored by The Sunshine Foundation, which is an organization that was started by Justice Catherine "Kitty" Kimball and Shirley Porter and distributed hundreds of copies of the book You are Sunshine to kindergarten students statewide.*

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Attorneys are frequent lecturers on workers' compensation issues, members of the Louisiana Bar Associations Legal Services for Persons with Disability Committee, Baton Rouge Bar Association Workers' Compensation Section and the Governor's Executive Counsel involving workers' compensation issues.

Brad Price is the attorney responsible for the content of this advertisement.

## West's Jury Verdicts - Baton Rouge

Venue/Case Type	Major Injury	Trial Type	Result
<u>East Baton Rouge Parish</u>			
Medical Malpractice	Avascular necrosis; transitory phlebitis	Settlement	\$110,000
Premises Liability	Back, knee	Bench	Defense
Products Liability	Monetary damages	Bench	\$16,832
Vehicle Negligence	Back, neck, leg, knee, shoulder	Jury	\$20,000
Vehicle Negligence	Neck, back, shoulders, arms, hips, chest	Jury	Defense

### West's Case of the Month

#### Judge Awards Purchaser \$16.8K to End Dispute Over Allegedly Defective Vehicle

*Berard v. Kia Motors Am. Inc.*

##### TYPE OF CASE:

Products Liability • Motor Vehicles-Car/Truck  
Products Liability • Motor Vehicles-Other  
Contracts • Breach  
Contracts • Warranty  
Contracts • Warranty-Implied

**SPECIFIC LIABILITY:** Vehicle manufacturer and dealership produced and sold a defective vehicle to an individual

**GENERAL INJURY:** Monetary damages

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

**DOCKET/FILE NUMBER:** 536,238

**VERDICT:** Plaintiff, \$16,831.73

**VERDICT DATE:** Oct. 26, 2011

**JUDGE:** Wilson Fields

##### ATTORNEYS:

*Plaintiff:* Richard C. Dalton, Dalton Law Firm, Lafayette;  
Christopher L. Whittington, Baton Rouge  
*Defendant (Kia):* Gregory J. Schwab, Gregory J. Schwab LLC, Houma  
*Defendant (All Star):* Craig J. Fontenot, Baton Rouge

**TRIAL TYPE:** Bench

##### BREAKDOWN OF AWARD:

\$4,831.73 to plaintiff from defendant Kia Motors America Inc. for 25 percent reduction in the vehicle's purchase price  
\$12,000.00 to plaintiff from defendant Kia Motors America Inc. for attorney fees

##### SUMMARY OF FACTS:

Lester Berard reportedly purchased a 2004 Kia Optima automobile, apparently manufactured by Kia Motors America Inc. (Kia), for approximately \$22,677.15, Feb. 14, 2004, from All Star Chevrolet Inc. (All Star), doing

business as Kia of Baton Rouge.

Berard said the Optima was defective in materials and workmanship when delivered.

According to Berard, the vehicle was tendered for repairs on six separate occasions within the first year of ownership. Berard claimed he provided Kia and All Star with sufficient opportunities to repair the defective vehicle and requested that Kia and All Star replace the vehicle, refund his money or reduce the sales price. Kia and All Star allegedly refused.

Berard filed a lawsuit against Kia and All Star in the Nineteenth Judicial District Court for the Parish of East Baton Rouge. In his petition, the plaintiff brought claims against the defendants for redhibition, breach of contract, breach of implied and express warranties and negligent repairs.

The plaintiff sought the repurchase or a reduction in the purchase price of the Optima, and/or a judgment against the defendants for all damages and expenses sustained by him. Berard also requested recovery of his attorney fees and legal interest.

The defendants generally denied Berard's allegations. In its pretrial memorandum, All Star denied a defective product had been sold, and asserted the vehicle had only very minor issues that in no way stopped or impeded its use.

All Star further claimed Berard no longer owned the automobile in question; as a result, it asserted the only possible recovery was a price reduction.

In its posttrial memorandum, Kia argued the plaintiff had suffered no pecuniary losses; moreover, it claimed the vehicle in question was used for its intended purpose until Berard traded it in for a larger automobile.

A bench trial was held before Judge Wilson Fields in July 2011. In a judgment signed Oct. 26, 2011, Judge Fields found in favor of the plaintiff and against defendant Kia.

Judge Fields determined the sales price of the Optima was \$19,326.92, and awarded the plaintiff a 25 percent reduction in the purchase price, or \$4,831.73. The plaintiff also was awarded attorney fees in the amount of \$12,000, along with court costs and interest.

##### CASE CITE:

*West's J.V. La. Rep.*, Vol. 8, Iss. 3, p. 6 (2012); 2011 WL 8882845

# foundation footnotes

PRO BONO PROJECT & TEEN COURT REPORTS FOR OCTOBER

## PRO BONO PROJECT REPORT

Thanks to all volunteers for contributions made during national Celebrate Pro Bono Week and throughout October. The Thirst for Justice solo practitioner volunteers were Terry L. Bonnie, Scott Gaspard, Bryron Kantrow, Willie Maynor and Allen Posey. Thirst for Justice volunteers practicing with a firm were Bill Davis, Jon Ann Giblin, Christine Lipsey, Kristi Richard, Jamie Seymour, Amanda Stout, Katie Sumner and Brook Thibodaux, *McGlinchey Stafford*; Richard Easterling, *Adams and Reese*; and Erol King, *Baker Donelson Bearman Caldwell & Berkowitz*.

The Ask-A-Lawyer volunteers were Barbara Baier; Jennifer Dietz, *Preis & Gordon*; Todd Gaudin, *Kuehne, Foote & Gaudin*; Glenn Marcel; Danny Rester, *Adams and Reese*; and Emily Ziober.

The Self Help Resource Center attorney volunteers were Samantha Ackers; Roy Bergeron, *Phelps Dunbar*; Ryan Brown, *Roedel, Parsons, Koch, Blache, Balhoff & McCollister*; Victor Brubaker, *Treadway Morris Lawyers*; Nicholas Graphia, *Shelby Law Firm*; Judith Martin, *Franciscan Legal Services*; and our partners at *Southeast Louisiana Legal Services*.

Law students volunteering with our outreach clinics from *LSU Law Center* and *Southern University Law Center* were Lydia Adeosun, Kimona Berry, Taryn Branson, Rachel Chandler, Denise Farrior, Kiara Gradney, Jennifer Kennedy, Chris Lacombe, Sharee McCall, Nicole Morgan, Alic'a Oliver, Kristen Pride, Carmen Ryland, Jeremiah Sams, Brian Shinault, Chris Sidebottom, Keva Soil, Allison Tassin, Drew Thagard, Christina Villa, Chris Vitenas, Kirbie Watson and Chauntelle Wood.

Volunteers who accepted pro bono cases in October were: Denise Akers, *Akers & Wisbar*; Emily Andrews, Nancy Sue Gregorie, *Nancy Sue Gregorie, Attorney at Law*; Natasha Benoit; Lisa Leslie Boudreaux, Laurie Marien, Vincent Saffiotti, *Downs, Saffiotti & Boudreaux*; Michael Breau; Scott Gaspard; Lakeisha McKarry; Gary McKenzie, Arthur Vingiello, *Steffes, Vingiello & McKenzie*; Barrington Neil; Sherrye Palmer; Ashley Scott; Katie Shoenfelt, *Oscar L. Shoenfelt III, LLC*; Kimberly Spruill; Amanda Stout, *McGlinchey Stafford*; and Vijay Venkataraman.

Thanks to all Go Casual for Justice jeans day fundraising competition participants! Donating or participating firms were *Ackers & Wisbar*; BRBA staff; *Baker, Donelson, Bearman, Caldwell & Berkowitz*; *East Baton Rouge City Court*; *East Baton Rouge Parish Family Court*; Kean Miller; *Phelps Dunbar*; Taylor, Porter, Brooks & Phillips; *The Law Office of Terri P. Ricks, LLC*; and *Treadway Morris*.

*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.*

## TEEN COURT REPORT

Matthew Nowlin, Cynthia Reed and Tavares Walker volunteered for the October hearings. Jury monitor volunteers were Professor Paul Guidry, *Baton Rouge Community College*, and Adrian Carter, *Southern University Law Center*. The Oct. 22, 2012, hearing was held at Southern University Law Center. Chancellor Freddie Pitcher, Adrian Carter, Shawn Garner, Tiffany Ford and Yoursheka George talked to the Teen Court students about the challenges and rewards of attending law school.

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

## JUNIOR PARTNERS ACADEMY & LAWYERS IN THE CLASSROOM

Professor Wendy Shea, Ebony Morris (*Southern University Law Center Black Law Student Association member*) and LSU Law Center Public Interest Society members Megan Clark, David Greene, Hunter Hoaglund and Elli McKean gave interactive presentations to the second- and third-grade classes at Southern University Lab School Wednesday, Oct. 17, 2012. ■

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

## TEEN COURT OF GREATER BATON ROUGE

needs attorneys to volunteer  
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To find out more, contact Donna Buuck at 225-214-5556  
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## Duty Court Schedule

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

Dec. 3-Dec. 17 Judge Morvant  
Dec. 17-Jan. 2 Holiday Duty Schedule  
Call 225-389-4835 for duty schedule info.

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

Nov. 30-Dec. 2 Judge White  
Dec. 7-Dec. 14 Judge Marabella  
Dec. 15-Jan. 2 Holiday Duty Schedule

### BATON ROUGE CITY COURT\*

Nov. 26-Dec. 2 Judge Wall  
Dec. 3-Dec. 9 Judge Alexander  
Dec. 10-Dec. 16 Judge Ponder  
Dec. 17-Dec. 23 Judge Davis  
Dec. 24-Dec. 30 Judge Temple

### FAMILY COURT\*\*

Dec. 3-Dec. 7 Judge Baker  
Dec. 10-Dec. 14 Judge Woodruff-White  
Dec. 17-Dec. 21 Judge Day  
Dec. 24-Dec. 28 Judge Lassalle  
Dec. 31-Jan. 4 Judge Baker

### JUVENILE COURT

Dec. 1-Dec. 31 Judge Richey

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

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

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

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

### COURT HOLIDAYS

Monday, Dec. 24 Christmas Eve  
Tuesday, Dec. 25 Christmas Day  
Monday, Dec. 31 New Year's Eve  
Tuesday, Jan. 1 New Year's Day



# December 2012

						1
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23	24	25	26	27	28	29
30	31					



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

## Calendar of Events

## Classifieds

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**OPENING OF COURT, MEMORIAL & NEW MEMBER CEREMONY:**  
Wednesday, Jan. 30, 2013, 19th Judicial District Court, 11th Floor Courtroom. For more information, contact Ann K. Gregorie at 225-214-5563 or [ann@brba.org](mailto:ann@brba.org).

SAVE THE DATE:  
**PRO BONO CLE  
PALOOZA!!**

Jan. 9, 2013  
LSU LAW CENTER  
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225-344-4803

**Ongoing:** Every Wednesday & Thursday, 3-5 p.m., Thirst for Justice takes place at St. Vincent de Paul; **Will be closed Dec. 19 until January.**

**Ongoing:** Every Tuesday & Thursday, 10 a.m.-2 p.m., Self Help Resource Center, 19th JDC

- 1 Teen Court Training Session, EBR Juvenile Court, 9 a.m. - 3 p.m.
- 3 Teen Court Hearing, EBR Juvenile Court, 5:30 p.m.
- 4 Practicing Law in Baton Rouge, Federal Court Building, MDLA, 8:30 a.m.; Swearing In Ceremony - Federal Court Building, 5 p.m.
- 5 Operations & Finance meeting, 3:30 p.m.; Executive Committee meeting, 4 p.m.
- 6 CLE by the Hour, Crowne Plaza Hotel, 8 a.m. - 8:30 p.m.; Ask-A-Lawyer, 9-11:30 a.m., Delmont Service Center; FLS Christmas Party, starts at 5 p.m.
- 7 CLE by the Hour, Crowne Plaza Hotel, 8 a.m. - 5 p.m.; JPA Meeting, SU Lab School, 12 p.m. YLS Council Meeting, 1 p.m.
- 11 Holiday Star Project Gift Delivery, 9 a.m.; Board of Directors meeting, 5:30 p.m., Juban's
- 12 Pro Bono Committee meeting, 12 p.m.
- 13 CLE by the Hour, Crowne Plaza Hotel, 8 a.m. - 5 p.m.; Volunteer Committee meeting, 12 p.m.
- 14 CLE by the Hour, Crowne Plaza Hotel, 8 a.m. - 5 p.m.
- 17 CLE Committee meeting, 12 p.m.
- 19 Thirst for Justice: **CLOSED until January**
- 20 LRIS Committee meeting, 12 p.m.
- 24 Office Closed — Christmas Eve
- 25 Office Closed — Christmas Day; Self Help Resource Center: CLOSED
- 27 CLE by the Hour, Crowne Plaza Hotel, 8 a.m. - 5 p.m.
- 28 Self Help Resource Center: CLOSED
- 31 CLE by the Hour, Crowne Plaza Hotel, 8 a.m. - 5 p.m.
- Office Closed — New Year's Eve

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