

Around

THE MAGAZINE OF THE
BATON ROUGE BAR ASSOCIATION

No. 273, January 2013

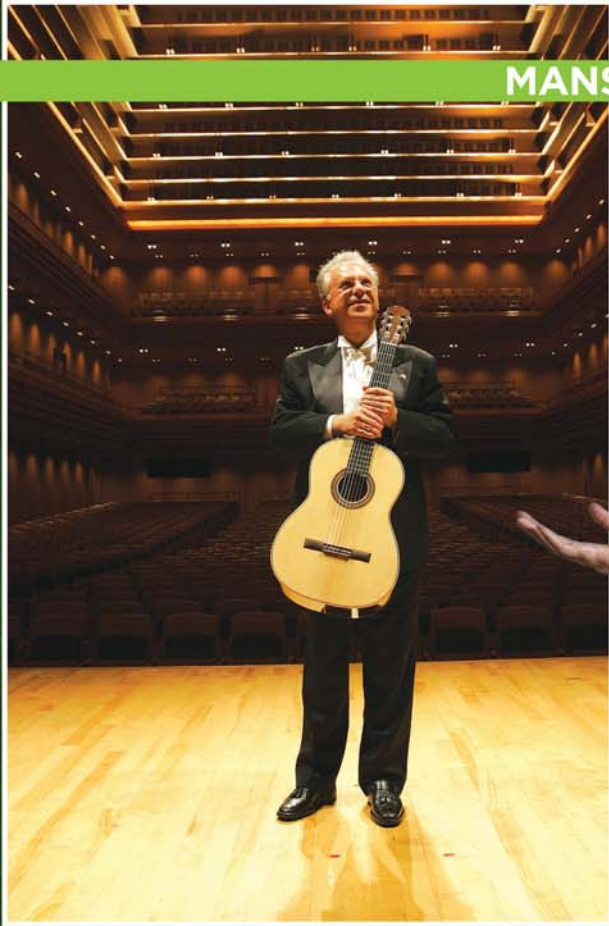
the Bar



Inside:
Administrative hearing
to revoke driving privileges
after a DWI arrest
Interview with Michael L. Tyler
In memoriam:
Huntington Odom

Bar Leaders 2013
Meet our new bar leaders, attend
the installation reception – Jan. 8

MANSHIP THEATRE 2012-2013 SEASON



Pepe Romero

JANUARY 5 8:00pm

Communicating the richness and beauty of the classical guitar to millions of people throughout the world, Pepe Romero has become an ambassador of classical music and of the classical guitar.

Philadanco

JANUARY 31 8:00pm

SCHOOL SHOW: FEB. 1

Improving the skills of emerging and professional dancers and choreographers in a nurturing environment while increasing the appreciation of dance across the nation and around the world, the Philadelphia Dance Company (PHILADANCO) presents the highest quality of professional dance performance. PHILADANCO is celebrated for its innovation, creativity and preservation of predominantly African-American traditions in dance.



The presentation of Philadanco was made possible by the MetLife Community Connections Fund of the New England Foundation for the Arts' National Dance Project. Major support for NDP is also provided by the Doris Duke Charitable Foundation with additional support from The Andrew W. Mellon Foundation.

Programming supported in part by a grant from South Arts in partnership with the National Endowment for the Arts and by the Louisiana Division of the Arts, Office of Cultural Development, Department of Culture, Recreation and Tourism and in cooperation with the Louisiana State Arts Council.



MetLife Foundation

FOR TICKETS: MANSHIPTHEATRE.ORG 225-344-0334

M MANSHIP THEATRE
AT THE SHAW CENTER FOR THE ARTS



THE ADVOCATE

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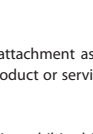
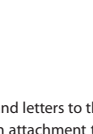
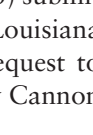
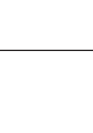
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The Baton Rouge Bar Association will be the beacon for the full spectrum of the legal profession by fostering professional courtesy; increasing the diversity of the bar and the participation of under-represented groups; maintaining a sound financial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

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board synopsis

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

BRBA & BRBF Board of Director meeting minutes: November

Nov. 13, 2012 – Board voted to (1) approve a change to the Family Law Section bylaws to allow its officers to serve two-year terms; (2) donate a 2013 Bench Bar Registration to the La. Bar Foundation for auction at its annual gala; (3) submit a grant request to IOLTA for \$60,000 and a request to Southeast Louisiana Legal Services for \$52,000 for pro bono; and (4) submit a grant request to IOLTA for \$25,000 for youth education. Board announced that Sherry Cannon is the first recipient of the YLS 50 Billable Hours Club Award.

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.

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

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letter from the president

BY MICHAEL S. WALSH

Your name, please

My wife, kids and office staff will tell you that I am terrible when it comes to remembering names. Countless times I've called my friends by their wrong name and have introduced longtime friends and acquaintances by the wrong name. Lucky for me, I've got just one son and I usually get his name right. Not necessarily true for my two daughters, whose names I have interchanged for years.



Michael S. Walsh

I'd rather you ask me the facts of a criminal case. I can remember the cops' names, the lying witnesses' names and where the weapon was dumped but, please, please don't ask me my secretary's husband's name.

I won't write what my wife thinks about my memory problems – dementia or Irish Alzheimer's (this is where you forget everything but the grudges), what my children think (*Dad, don't you remember that you said?*) or my doctor (*Mr. Walsh, you're almost 60 years old ... your memory failing is a process of aging*).

At the start of this year I confess my memory deficiency because the Baton Rouge Bar Association is going to have many great events this year and I hope to see all of our members at more than one event. I hope to see all my old friends and my new ones and to each I'm going to thrust my hand toward you and say, "My name is Mike Walsh." This will be my signal to you that I need help. Please accommodate me and just tell me your name. I will then say, "Oh, I know who you are!"

Please don't take offense; I'm just lousy with names. I've asked the Bar staff to get names tags with a font of about 80 point so I don't need my bifocals to read them. If I forget your name or call you by another name, please accept my apologies in advance. If my wife Marie is with me, please just tell her your name because later she is going to say to me, "You can't remember their name, can you?" I hate it when she does that to me.

The year 2013 promises to be a great one for the Baton Rouge Bar Association. We've got the annual Bench Bar Conference lined up in Orange Beach, Ala., at the Perdido Beach Resort Aug. 1-3. The planning for this year's Bench Bar is underway with Emily Grey and Danny McGlynn as our co-chairs. The summertime Bench Bar started in 2012 when Past President Gail S. Stephenson made the bold move to change Bench Bar to the summer to allow our members a chance to get to the beach (and the Flora-Bama) when the temps were not hovering in the low 40s and we could be sure those of you with school-age kids would attend. Please take a moment and put the dates in your calendar. Tell your family and plan on attending. This year's Bench Bar will a great time to get your CLE knocked out and have some mostly tax-deductible fun.

This month Chief U. S. District Judge Brian A. Jackson and U. S. District Judge James J. Brady of the U. S. District Court for the Middle District of Louisiana will host the swearing in ceremony of the new Baton Rouge Bar Association officers. By the time you read this you will have received the "save the date" email invitation for this event. I hope you'll join us at the Federal Courthouse for the swearing in ceremony Tuesday, Jan. 8, 2013, and the wine and cheese party that will follow. Bring your spouse or significant other, but make sure that you RSVP so we can get a good headcount. ■

installation ceremony & reception

New bar leaders to be sworn in at the U. S. District Court for the Middle District of La.

The BRBA will hold an Installation Ceremony & Reception at 5:30 p.m. **Tuesday, Jan. 8, 2013**, at the U. S. District Court for the Middle District of Louisiana, 777 Florida Street. Chief U. S. District Judge Brian A. Jackson and U. S. District Judge James J. Brady will preside over the ceremony, which will take place in Courtroom 1 on the third floor.

Michael S. Walsh will be sworn in as president of the Baton Rouge Bar Association for 2013. In addition, the 2013 BRBA officers and directors-at-large, Young Lawyers Section officers and YLS Council members will be installed as well as officers of the Family Law Section, the Public Law Practice Section and the Construction Law Section.

During the reception, Gail S. Stephenson will present

President's Awards to Otha "Curtis" Nelson Jr., Raymond "Skipper" Post, Wendy K. Shea and Jamie Hurst Watts. In addition, Jamie Hurst Watts will present the Judge Joseph Keogh Award to a member of the Young Lawyers Section.

BRBA members and guests who RSVP can attend the installation ceremony and reception for free. **However, only the first 120 RSVPs will be honored, so please register today! Space is limited.**

Please RSVP to H.R. Specialist Lisa Warm with the U. S. District Court for the Middle District of Louisiana by fax: (225)389-3542; by email: lisa_warm@lamd.uscourts.gov; or by phone (225)389-3541 by Friday, Jan. 4, 2013.

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Please complete this form and fax this entire page to H.R. Specialist Lisa Warm at the U. S. District Court for the MDLA (225) 389-3542, by 4:30 p.m. Friday, Jan. 4, 2013.

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

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RECEPTION — YES, register me for the **JANUARY INSTALLATION CEREMONY & RECEPTION** at the U. S. DISTRICT COURT FOR THE MIDDLE DISTRICT OF LOUISIANA, 777 Florida St., which will take place THURSDAY, JAN. 8, 2013, at no cost for BRBA members and guests. **Only the first 120 RSVPs will be honored. SPACE IS LIMITED.** The installation ceremony will begin at 5:30 p.m. in Courtroom 1 on the third floor. **An RSVP to Lisa Warm with the U. S. District Court for the Middle District of Louisiana is required by Friday, Jan. 4, 2013.**

tales from the bar side

BY VINCENT P. FORNIAS

Daughter Two, a resident of Ft. Lauderdale, forever brags about the discounts she gets from Priceline in renting vehicles when she travels. I am nothing if not a creature of habit, and have grown accustomed to the noncommittal flexibility of booking through other websites like Expedia, especially when it joined forces with AARP for even better deals. But when she said one time too many that I was crazy not to try Priceline, I decided to take William Shatner's dare and go for it. Voila! Talk about mixed emotions when my very first bid was accepted, assigning me a midsized Hertz vehicle.

Fast forward to rental pickup day at the Lauderdale airport. Our Southwest flight landed 10 minutes early and even after waiting at baggage claim I was at the Hertz line in record time. A half hour later I was at the counter, routinely brandishing my credit card, driver's license and confirmation number. *Click-click. Click-clickety-click.* I am then matter-of-factly informed by the Hertz clerk that my car is reserved for 3 p.m. I look blankly at him. It is 2:29 p.m. I respond with a one-word query. "So?"

At this point I enter Hertz/Priceline World. I am, of course, prepaid. They can set whatever creepy conditions they want on me. The "got-you-by-the-ying-yang" clause in the confirmation sheet provides, in pertinent part, "rental cars purchased through Priceline cannot be cancelled or changed and refunds are not allowed – even if the reservation is not used." And so he announces that they can rent me a car at what is now 2:31 p.m. – but it will cost me an extra day's rental charges, totaling 83 unprepaid dollars. There is no Plan B special line for early renters.

After about five minutes of venting to my spouse, who is painfully used to my travel venting, I shuffle off in abject humility to the back of the line for my very own Groundhog Day experience. For the next 20 minutes or so, mild paranoia sinks in. What *else* does Hertz/Priceline have in store for me? Is there a "special" fleet of Priceline rentals that come *without* steering wheels or brakes unless I pay an unprepaid amount? Will I arrive at the front of the line *too* soon? At 2:55 p.m. I am first in line. I am not prepared for this. I am not proud of this. I actually let a very suspicious-reacting elderly lady ahead of me in hopes of synchronizing my counter-arrival time. I mistimed my counter arrival by a full minute. There I

Priced to rent

am at the counter, and I ask the new counter person to synchronize our watches. It is now 3:02 p.m. *Click-click. Click-clickety-click.* No surprises so far. But then her cross examination commences, one leading question after another, all in an accent reminiscent of Cheech Marin: "Joo *do* wont fool eensurance, don't joo? Nooo? Whot eef joo get een an accident, mann? Whot eef a beeg ruck heets jour weendshield, mannn? Joo can handle that? Okaaaay mannnn. No problem."

Click-click. Click-clickety-click. "Okay. Should I sign joo op for the fool gas tank deal? Noooo? Where jooo going? Dee Keys? Mannnn, gas prices in dee Keys are at least two dollars more dan here at dee airport! Joo can't find a place too feel up near dee airport! Eef joo do, we gonna charge joo *beeeeg* time! Nooo? (looks at me derisively) Nooo problem, mannnn."

So we finally get the rental, steering wheel included, and just as we exit the airport someone behind us in a mid-nineties Chevy sits on his horn. Welcome to South Florida – the New York of the South.

During the week here, the Hertz/Priceline rental works just like any other rental vehicle, brakes and all. I did have one incident near Isla Morada when I backed up and somewhere a giant coral boulder arose from the oyster shell parking lot to strike my bumper. I could just hear the voice of the counter rental person ("I *tooold* jooo so, mannnn!"). Surveying the damage, there appeared to be a couple of slight scrape marks on the plastic Hertz/Priceline bumper, but these were subtle enough to give me hope of passing the Hertz/Priceline rental return police.

So in a few days we head back to the Lauderdale airport and hope for the best. Just as I see the entrance for the Hertz return lane, in darts ahead of me a balding mesomorph in a rental Ford convertible. Had I been a local, I would still be sitting on my working Hertz/Priceline rental horn. And now came The Moment of Rental Return Truth. We alight, and in a moment of unintended genius, the wife offers the return guy our remaining stash of homemade oatmeal and raisin cookies. He smiles and says they are his favorites. Seedy diversionary tactic? I prefer to think of it as *real* Southern hospitality – just enough to avoid bumper scrape busting *and* penalties for returning the wheels a full 50 minutes early. Take *that*, Shatner.

in memoriam

BY ED WALTERS & JOHN S. WHITE JR.

Huntington Odom – A reflection

When I walked into a courtroom for my very first time as a lawyer, my opponent was Mr. Odom. I forget what sort of mundane discovery skirmish we were there for, but what I will never forget is how Mr. Odom made me feel. He had never met me, but he treated me like a lawyer, like an equal. Before we had courses in “Professionalism,” he gave me one. He showed me firsthand how a lawyer is supposed to look, and act, in a courtroom. I thank him for that.

James Huntington Odom died at Southeast Louisiana War Veterans Home in Reserve, La., on Oct. 9, 2012. He was born in Baton Rouge on July 14, 1930, and graduated from Baton Rouge High School in 1947. Upon graduation from LSU, he was commissioned as an Infantry second lieutenant in the United States Army and was called to active duty in Japan and Korea. Upon graduation from LSU Law School in 1956, he and his lifelong friend, John S. White Jr., were asked by the out-going governor, Robert F. Kennon, to form a Baton Rouge law firm, Kennon, White & Odom, where they were later joined by Robert F. Kennon Jr. and Jay Dardenne.

I asked John White to write this article because, if any of you have ever dealt with Mr. White, you know what a humorous, acerbic and creative letter writer he can be. Well, he declined, characteristically by letter, stating, in part, “Quit dumping your work on me; I fear you may be getting lazy.” He enclosed a copy of the eulogy, which he delivered, and, living up to his criticism, I lazily reproduce below the salient parts of what Mr. White had to say about his friend:

He and I were born in Baton Rouge three days apart in July 1930. We have been friends since we were classmates at Dufrocq Elementary School. At Baton Rouge High, we were members of the same high school fraternity; took many of the same classes; and ran around together after school. We had great mutual friends we always enjoyed, some of whom are here today.

The Korean War started in 1950, when we were halfway through college. When we graduated from LSU in 1951, we were called to active duty in the Army a couple of months thereafter. In December 1951, Huntington made the very best decision of his life. He married Pat



James Huntington Odom (left) was photographed above with Cordell H. Haymon and Cyrus Greco at the December 2007 BRBA Past Presidents' Dinner, which was held at the Middleton Bar Center.

PHOTO BY PAMELA LABBE

Kleinpeter, a beautiful young lady who became a steadfast and devoted wife, mother, grandmother and friend. She has shared the joys and faced the sorrows of their family with grace, loyalty, responsibility, love and heroic courage. When they were married, Huntington and I already had orders to report to Seattle in early January for reassignment to Japan. Pat didn't see her new husband for a year and a half thereafter.

In Japan, we were assigned to different regiments. Huntington was sent to the big northern Japanese island of Hokkaido. It gets substantially colder up there than in the main island of Honshu, where I was sent to the boondocks in the foothills of the beautiful sacred mountain of Japan, Mount Fujiyama. In October, I was – let's say “rearranged” – while participating in an uphill attack against Chinese Communists. This required my being treated in medical facilities in Korea, Tokyo, Honolulu and San Antonio. Huntington remained in Korea. I don't think he was ever wounded there, but he had to endure the bitterly cold winter of 1952-53 facing the Chinese enemy and Mother Nature – both hostile forces.

We both entered LSU Law School in 1953. We usually sat next to each other in classes, and would always study for exams together. It was a stressful time for Huntington – some of it left over from the previous two years; some from the difficult nature of the instruction; and a lot from the death of his father, whom he had idolized.

Following our graduation from law school in 1956, outgoing Governor Robert F. Kennon asked Huntington

and me to join him in a new law firm in Baton Rouge. We enjoyed many years with him, and were later joined by Bob Kennon Jr. and Jay Dardenne.

This is not to say that we were entirely free from irritating each other. For example, the thermostat for air conditioning and heating of our office areas was located right outside my office, but some steps away from Huntington's. Perhaps remembering the two previous cold winters, Huntington always liked it warmer than I did, whether winter or summer. When he had set the thermostat and it became unbearable to me, I would step out and adjust it to a decent level. After a while, I could hear Huntington's footsteps in the hall, followed by a pause at the thermostat, and I knew he was readjusting it to an indecent level. I would soon take corrective action. This process continued throughout the day. Often, this resulted in each of us informing the other in pointed and undiplomatic language of what a selfish oaf he was. We were both right.

Such office stresses did not interfere with our social life. Mignonne and I have enjoyed many such activities with Huntington and Pat – as members of a Supper Club with other friends, which is over 50 years old; boating in the lakes and streams in the Odomes' boat; taking one-week vacation trips with them and other couples; and, of course, numerous parties. At some of these, we enjoyed

delicious seafood obtained courtesy of Hunt Odom for his parents and friends. Hunt has purchased so much from Tony's Seafood that the folks behind the counter think he is part of upper management, or maybe a stockholder, enabling him to get the most select crabs, shrimp and crawfish and boudin balls in Tony's stock.

I remember some years ago on Saturday mornings at Coffee Call we would frequently see Hunt and Hunter, then a small boy, apparently after their fill of beignets. Each would be covered from head to toe with powdered sugar. They looked like happy, but somewhat disoriented, Arctic explorers, groping through the snow, bent against the wind, trying to find the North Pole in a January blizzard. Happily, they have cleaned up nicely since.

With these personal experiences, I came to know a great deal about Huntington's life and character. Even as a young boy and man, he was probably the smoothest person I've known. His Natchez mother taught him refined behavior and tastes. This church and his father drove home his knowledge of right and wrong, although in doing so, his father may have inserted some profane expressions which the son never forgot.

Huntington was an extrovert, making and keeping friends easily. He was respectful to his elders, generous to his friends, responsible in his chores, and always dedicated to this church. He had a great rapport with young children.

He had a pleasant disposition, and was intelligent in decision. He was sympathetic with those who were ill and downcast; compassionate to those who grieved; and joyous with those who were joyous. His professional, civic and community service was legendary, in large measure reflecting his love of God and people. He retained many of those good qualities throughout his life.

Several days ago, Pat Odom expressed her feelings about Huntington's death. They reminded me of a comment by the Prime Minister in his radio address to the English people following the last illness of King George VI, father of the current Queen. Winston Churchill said something like, "At the end, death came as a friend." Pat recognizes that the same is true here. Huntington was my friend. I will miss him. And so will many of you.

He was a great man. I wish we could all be like him. I will try. ■

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bar news

BY ASHLEY SEALS

Opening of Court, Memorial and New Member Ceremony scheduled for Wednesday, Jan. 30

The BRBA will host its annual Opening of Court, Memorial and New Member Ceremony in the 11th floor courtroom of the 19th Judicial District Court Wednesday, Jan. 30, 2013, beginning at 8:30 a.m.

BRBA President Michael S. Walsh will welcome all guests, including any attending family members of BRBA members who have died in the last year, and new members of the BRBA.

Contact Ann K. Gregorie at 225-214-5563 or ann@brba.org with any questions.

Middle District of Louisiana holds November naturalization ceremony

A naturalization ceremony for the Middle District of Louisiana was held Thursday, Nov. 15, 2012, at the Russell B. Long Federal Building and United States Courthouse. A total of 38 new citizens were naturalized during the ceremony. Chief U. S. District Judge Brian A. Jackson, U. S. District Court for the Middle District of Louisiana, presided over the ceremony.

Stanley Crockett, District Adjudications Officer U.S. Citizenship and Immigration Services, introduced the candidates. Donald J. Cazayoux, United States Attorney, moved to admit the candidates. The oath of allegiance was administered by Clerk of Court Nick Lorio. Remarks were given by 2012 BRBA President Gail S. Stephenson and Fifth Circuit Court of Appeals Judge James Dennis.

Following the ceremony, a reception was held, which was organized by the BRBA. American flags and a DVD of the ceremony were given to the new citizens by the Bench Bar Fund of the Louisiana Middle District.



Chief U. S. District Judge Brian A. Jackson, 2012 BRBA President Gail S. Stephenson, Amena S. Askar and her young daughter, and Fifth Court of Appeals Judge James Dennis are photographed above. Askar was naturalized during the Nov. 15, 2012, ceremony.



In the photo above stands Gail S. Stephenson, Sherry Sanders, Roneeka Hill and Wendy Shea. Stephenson presented one of the BRBA's two scholarships to Sherry Sanders (second from left), a third-year law student attending Southern University Law Center, during the BRBA November Bar Luncheon Thursday, Nov. 8, 2012, at the Baton Rouge Marriott. Hill (standing third from the left) is a SULC law student who was presented with a scholarship on behalf of the Baton Rouge Association of Women Attorneys during the November Bar Luncheon.



Marlene Allgood presented a scholarship on behalf of the BRBA to Joshua Tyler Wood, a third-year law student attending the LSU Law Center during the Nov. 8, 2012, Bar Luncheon.



The Middleton Bar Center was selected to host the Wills for Heroes program in Baton Rouge, which was held Saturday, Oct. 27, 2012. BRBA members, including Michael Platte and Kevin Curry, volunteered to assist local heroes with estate law issues. The BRBF Pro Bono Project partners with the LSBA Young Lawyers Section to organize several Wills for Heroes programs in Baton Rouge each year.

PHOTO BY PAMELA LABBE

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The 2012 Young Lawyers Section Council gathered for a photo during the Cocktails with the Court reception, which was held on the 11th Floor of the 19th Judicial District Courthouse.

PHOTO BY PAMELA LABBE



BRBA 2012 President Gail S. Stephenson and YLS Chair Jamie Hurst Watts presented Sherry Cannon with the first 50 Billable Hour Award during the Thursday, Nov. 15, 2012, Cocktails with the Court reception.


PHOTO BY PAMELA LABBE

Young Lawyers Section holds social media CLE and Cocktails with the Court reception at 19th JDC

The Young Lawyers Section of the BRBA held Cocktails with the Court at the 19th Judicial District Court Thursday, Nov. 15, 2012. The reception recognized judges and law clerks in Baton Rouge and surrounding areas. BRBA President Gail S. Stephenson and YLS Chair Jamie Hurst Watts presented the first 50 Billable Hour Award to Sherry Cannon.

A CLE seminar titled “The Thicket of Social Media and Legal Professionalism” was held before the reception and was presented by Michael Rubin of McGlinchey Stafford. Both events were sponsored by Citizens Banks & Trust; DeCuir, Clark & Adams; Smith Shanklin; Tyler & Possa; and Walters, Papillion, Thomas, Cullens. Highland Porch catered the reception. Susan Kelley is the staff liaison to the Young Lawyers Section.

RCL Portrait Design to return in early February

If you missed having your portrait taken this summer for the BRBA website, you have a second chance the week of Feb. 4, 2013, when RCL Portrait Design returns to the Middleton Bar Center. Please call 1-800-580-5562 to make your appointment with RCL Portrait Design. 

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

GAIL'S GRAMMAR

Two words that are not related and yet are frequently confused are *forebear* and *forbear*. The former is a noun meaning “ancestor” and is sometimes incorrectly written *forebearer*. The latter is a verb meaning to refrain from, to tolerate, or to be patient with; its past tense is *forbore*. One way to remember which is which is that your *forebears* are those who came *before* you.

CORRECT EXAMPLES:

My *forebears* came from Ireland, England, France and Switzerland.

The kind creditor decided to *forbear* collection efforts during the Christmas season.

He *forbore* asking a question to which he did not know the answer.

Thanks to Art Vingiello for suggesting this topic. Send suggestions for future Gail's Grammar columns to Gail Stephenson at GStephenson@sulc.edu, or call Gail at 225-771-4900 (ext. 216).

Have you accepted a **pro bono** case lately?

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or Emily at 225-214-5558
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The administrative hearing to revoke driving privileges after an arrest for driving while intoxicated

BY NANCY J. GOODWIN, ESQ.

The Louisiana Tests for Suspected Drunken Drivers Law,¹ commonly called the “Implied Consent Law,” was enacted in 1972 as part of a comprehensive package of legislation aimed at enhancing safety on the roadways. The statute operates in conjunction with La. R.S. 14:98 (which makes operating a vehicle while intoxicated a criminal offense) and La. R.S. 32:414 (the general statutory authority for the suspension, revocation and cancellation of licenses by the Department of Public Safety and Corrections).

In addition to the criminal penalties associated with violation of La. R.S. 14:98, the Implied Consent Law provides that when a person is arrested for a drunk driving offense and either refuses to submit or voluntarily submits to a blood alcohol test and the result shows a blood alcohol level in excess of legal limits,² the arrestee’s driver’s license is seized and a temporary receipt of license is provided to the arrestee.³ The temporary receipt serves as notice to the arrestee that he has 15 days from the date of arrest to make a written request to the Department of Public Safety and Corrections (DPS) for an administrative hearing in accordance with La. R.S. 32:668.⁴

If no timely request is filed, the person’s driver’s license is suspended. If a timely request is filed, the suspension is held in abeyance, and the arrestee is entitled to contest the suspension at an administrative hearing.⁵

The administrative hearing

The administrative hearing is held by the Division of Administrative Law (DAL), a division of the Department of State Civil Service, before administrative law judges who are employed by the Director of the division.⁶ These administrative law judges have the authority to regulate the adjudicatory proceedings, issue decisions and orders, and exercise those powers vested in the presiding officer pursuant to the Administrative Procedure Act (LAPA).⁷ Adjudications and conferences may be conducted by telephone or video conference if the parties do not object.⁸

The Director of the DAL is an unclassified gubernatorial appointee (confirmed by the Senate) who serves a six-year term. The Director may be reappointed and confirmed for subsequent six-year terms without limitation.⁹ This gubernatorial appointee is the sole evaluator of the performance of the administrative law judges including their competence, productivity and demeanor, and sets the standards and procedures to be used for the evaluation.¹⁰

Any request for disqualification of an administrative law judge is decided by the Director.¹¹

Before November 2012, administrative hearings were held in-person in Baton Rouge, New Orleans, Thibodaux, Mandeville, Lafayette, Lake Charles, Alexandria, Monroe and Shreveport. On July 20, 2012, the DAL published a “Notice of Intent” to amend the administrative rules at LAC I: III Chapters 1-8 in accord with the LAPA. The stated intent of the proposed rules was to allow the DAL to close satellite offices and hearing locations in Monroe, Lake Charles, Mandeville, Shreveport and Lafayette and to comport with legislative changes made in the 2012 Regular Session of the Louisiana Legislature.¹²

Although the House and Governmental Affairs Committee of the Louisiana Legislature found two of these rules to be unacceptable,¹³ pursuant to La. R.S. 49:994(D) (4), the DAL may still schedule telephone hearings, but must hold the hearing in person should a party object to the telephone hearing.

The driver’s license: A privilege

A person’s right to drive a motor vehicle is in furtherance of the public interest, and the general public’s right to safety on the highways is superior to the individual’s privilege to use the highways. A license to operate a vehicle on the highways is a privilege and not a property right;¹⁴ however, once the license is issued, its continued possession may become essential in the pursuit of a livelihood. Therefore, the right-privilege distinction is immaterial to the question of whether due process must be afforded in a proceeding to revoke or suspend a driver’s license.¹⁵

The suspension of issued licenses thus involves state action that adjudicates important interests of the licensees. In such cases the licenses are not to be taken away without that procedural due process.¹⁶ This right to procedural due process is an application of the general proposition that relevant constitutional restraints limit state power to terminate an entitlement whether the entitlement is denominated a “right” or a “privilege.”¹⁷

The constitutional adequacy of the adjudicatory process

Procedural due process safeguards for administrative hearings are found in the LAPA, which incorporates the fundamental requirements of notice, hearing, and the right to respond and present evidence.¹⁸ The person whose license is at risk is entitled to a hearing on all issues of

fact and to conduct such cross-examination as may be required for a full and true disclosure of the facts.¹⁹ Cross-examination is a matter of right in both civil and criminal cases.²⁰

In recent years, two specific provisions have been included in the Implied Consent Law that supersede the LAPA and the Louisiana Evidence Code.²¹

In 2008, La. R.S. 32:666(B) was amended, removing the requirement that the report triggering the license suspension must be sworn before a notary public. The amended statute allows the law enforcement officer who prepares the report to certify that he has reasonable grounds to believe the arrested person was operating a motor vehicle while under the influence of alcoholic beverages. The form adopted by DPS provides that the facts relating to the traffic stop and sobriety testing are true to the best of the officer's "knowledge, information and belief."²² This language allows the officer to include facts that were not perceived by his own senses and were not actually observed by this officer, despite the fact that DPS as proponent of the evidence is charged with the burden of proving firsthand knowledge.²³

By 2012 Acts of the Louisiana Legislature No. 559, effective Aug. 1, 2012, La. R.S. 32:668(A) was amended to provide that "no law enforcement officer can be compelled to appear or testify at the administrative hearing following a DWI arrest."

Following these revisions the driver's license suspension is triggered by the submission of an unsworn report based on "knowledge, information and belief," and not the officer's first-hand knowledge,²⁴ and the preparer cannot be cross-examined to test the accuracy of the information on which the suspension is based. These revisions enhance the risk of erroneous deprivation²⁵ and call into question the constitutional adequacy of the adjudicatory process rendering the procedure vulnerable to a constitutional attack on the basis of denial of procedural due process.

The effective date of Act 559 was Aug. 1, 2012. The DAL applied the inability to subpoena law enforcement officers to administrative hearings scheduled after that date, rather than arrests occurring after that date. The first lawsuit filed contesting the constitutionality of Act 559 and the application of that Act to arrests occurring before Aug. 1, 2012, was filed in the 19th Judicial District Court on Oct. 9, 2011.²⁶

Hearsay evidence

All of the documents used in the administrative hearing to suspend a driver's license are hearsay.²⁷ An agency, in an adjudication, may admit and give probative effect to this evidence if it is deemed to possess "probative value commonly accepted by reasonable prudent men in the conduct of their affairs."²⁸ The administrative fact finder must examine the offered evidence and state the reasons the hearsay evidence is reliable and trustworthy, in order to

deem the evidence "competent." This determination must be made under the particular facts and circumstances of each individual case.²⁹ Factual findings must be supported by competent evidence and cannot be based solely on incompetent evidence.³⁰

If hearsay evidence is admitted without objection, it becomes substantive evidence and may be used by the trier of fact to the extent of any probative or persuasive power that it has.³¹

Appeal

Should the administrative hearing result in an affirmation of the action to suspend the driver's license, this ruling may be appealed pursuant to La. R.S. 32:414.³² If the decision rendered through the administrative process results in the recall of the action to suspend, this is final as to DPS.³³

The person whose license is suspended, cancelled or revoked has a right to file an application for judicial review in the district court of the parish in which the applicant resides. The appeal does not stay enforcement of the agency decision.³⁴ This hearing is a trial *de novo*.³⁵ The district court is not restricted to a review of the findings of the administrative hearing.³⁶ The hearing is a civil action amenable to the rules of procedure and proof for such actions.³⁷ At this hearing, DPS bears the burden of proving the legal basis to place the driver under arrest and to invoke the serious action of suspension of his license to drive.³⁸ ■

¹ La. R.S. 32:661 *et seq.*

² For drivers holding Class E licenses, the blood alcohol limit is 0.08g percent when the driver is over 21 years of age and 0.02g percent when the driver is under 21 years of age. The holder of a Class A commercial driver's license (CDL) whose blood alcohol limit exceeds 0.04g percent may be disqualified from driving commercial vehicles for one year. La. R.S. 32:414.2 and C.F.R. § 383.51; *See also, Austin v. DPS*, No. 46,654-CA (La. App. 2nd Cir. 11/2/11); 77 So.3d 474.

³ La. R.S. 32:667A(1).

⁴ La. R.S. 32:667A(2).

⁵ The quasi-criminal nature of the DWI license suspension hearing was recognized in *Neely v. State*, 308 So.2d 880, 883 (La. App. 2nd Cir.1975). *But see, State v. Page*, 332 So.2d 427 (La.1976) (The proceeding to revoke a driver's license is a civil matter.)

⁶ La. R.S. 49:991; 49:992(C); 49:994.

⁷ La. R.S. 49:956.

⁸ La. R.S. 49:994(D)(4).

⁹ La. R.S. 49:995.

¹⁰ La. R.S. 49:997.

¹¹ La. R.S. 49:999.

¹² Louisiana Register Vol. 38, No. 07, July 20, 2012, pg. 1756.

¹³ Proposed Rules §505 and §507 provided that the hearings could be conducted by telephone or electronically unless prohibited by law; required good cause to be shown to change a telephone hearing to an in-person hearing; and required evidence to be submitted three days before the hearing.

¹⁴ *Hughes v. Dept. of Public Safety*, 79 So.2d 129 (La. App. 1st Cir.

1955); *see also*, 60 C.J.S. Motor Vehicles § 159 (1969); 7 Am.Jur.2d Automobiles and Highway Traffic §§ 6, 12 (1963).

¹⁵ *Love v. Dixon*, 431 U.S. 105 (1977); *Smith v. DPS*, 254 So.2d 515 (La. App. 4th Cir. 1971).

¹⁶ *Id.* (citing *La. Const. Art. I §2*).

¹⁷ *Bell v. Burson*, 402 U.S. 535, 539 (1971).

¹⁸ La. R.S. 49:950 *et seq.*; *Harrison v. State*, 298 So.2d 312 (La. App. 4th Cir. 1974). (A citizen who is subject to such deprivation must be given adequate notice of the proposed deprivation and be afforded an opportunity to oppose the action at a hearing before the right may be withdrawn.)

¹⁹ La. R.S. 49:955(C).

²⁰ La. C.E. art. 611.

²¹ *Flynn v. State*, 608 So.2d 994, 996 n. 4 (La.1992). (Where specific provisions already exist and are inconsistent with the provisions of the LAPA, the specific rules apply.)

²² Acts 2008, No. 240, § 1, effective Aug. 15, 2008. The printed form designated "Certification of Arrest" adopted by DPS after this amendment includes the following statement, "This is to certify by signature below that the above information is true and correct to the best of my knowledge, information and belief."

²³ La. C.E. art. 602; McCormick on Evidence §10 (4th ed. 1992).

²⁴ A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. La. C.E. Art. 602. (*emphasis added*)

²⁵ *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (The constitutional adequacy of an adjudicatory process in which there is a deprivation of property is governed by the tripartite balancing test. The factors to be considered are: (1) [T]he private interest that will be affected by the official action; (2) the risk of an erroneous deprivation of such interest

through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

²⁶ *Department of Public Safety and Corrections v. Bryant J. Pinell*, Docket No. 616102 D, 19th Judicial District Court, Parish of East Baton Rouge.

²⁷ "'Hearsay' is a statement, other than one made by the declarant while testifying at the present trial or hearing, offered in evidence to prove the truth of the matter asserted." La. C.E. art. 801(C).

²⁸ La. R.S. 49:956(1).

²⁹ *Chaisson v. Cajun Bag & Supply Co.* 97-1225, pp. 9-14 (La. 3/4/98); 708 So.2d 375, 381-383; *Spreadbury v. State Dept. of Public Safety*, 99-0233 (La. App. 1st Cir. 11/5/99), 745 So.2d 1204.

³⁰ *Brouillette v. State*, 589 So.2d 529 (La. App. 1st Cir. 1991); *Superior Bar & Grill, Inc. v. State*, 655 So.2d 468, 470 (La. App. 1st Cir. 1995).

³¹ *State v. Boutte*, 384 So. 2d 773, 776 (La. 1980), citing McCormick on Evidence, § 54, p. 125 (Cleary Edition 1972); 2 Wharton's Criminal Evidence, Charles Torcia (ed.) 1972, § 273, p. 22; 79 A.L.R.2d 890-975.

³² La. R.S. 32:668(c).

³³ La. R.S. 49:992(B)(3); § 49:964(A).

³⁴ La. R.S. 49:964(C).

³⁵ *Flynn v. State*, 608 So. 2d 994; *Guillot v. State*, 380 So.2d 1250, 1254 (La. App. 3rd Cir.), *writ denied*, 384 So.2d 795 (La. 1980); *State*, 311 So.2d 20, 23 (La. App. 2d Cir. 1975).

³⁶ *Jaubert v. DPS*, 323 So.2d 212, 214 (La. App. 4th Cir 1975), citing La. R.S. § 32:414, 32:668, and 49:964.

³⁷ *Meyer v. State*, 312 So.2d 289 (La. 1975)

³⁸ *See Smith*, 254 So.2d at 518.

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president's awards

BY GAIL S. STEPHENSON

This month's cover photo depicts the 2013 Baton Rouge bar leaders. The leaders wouldn't be able to accomplish much, however, were it not for the scores of people who work behind the scenes and just get things done. One of the privileges of the outgoing president is to recognize people who have gone above and beyond the call of duty to support the bar. These are people who, as BRBA Youth Education Coordinator Donna Buuck put it, "don't do it for the credit, but just have the heart for it." My President's Awards go to:



Otha "Curtis" Nelson Jr., who has worked with Teen Court since it began. He attends Teen Court sessions, leads the training sessions, which last all day on Saturday four times a year and keeps the materials updated;

Raymond "Skipper" Post, well known Baton Rouge architect, who has donated untold hours this year working with the 75th Anniversary Gift Committee to obtain the perfect gift to the City of Baton Rouge with the funds raised by our 2004 street party (see next month's *Around the Bar* for details on that gift);



Four selected to be honored at Jan. 8 installation ceremony



Wendy K. Shea, chair of the Junior Partners Academy Committee, who developed lesson plans for JPA sessions, participated in all the JPA events, organized a major JPA event at SULC and arranged for the Black Law Students Association to partner with the BRBF for JPA sessions at Southern University Lab School; and

Jamie Hurst Watts, whose tireless efforts made the 2011 and 2012 Opening of Court, Memorial & New Member Ceremony the best ever. Watts is the 2012 chair of the Young Lawyers Section.



Congratulations, and thank you for all you do! The President's Awards will be presented Jan. 8, 2013, at 5:30 p.m. at the Installation Ceremony and Reception at the Middle District Courthouse.

We invite everyone who wishes to attend to RSVP (*see the form on page 6 of this magazine*). ■

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Interview with Louis A. Martinet Legal Society President Michael L. Tyler BY VICTOR J. SUANE JR.

VITAL STATISTICS

Full Name: Michael L. Tyler

Age: 36

Employer: Louisiana Department of Justice, Office of the Attorney General

Position: Assistant Attorney General, Gaming Division

Born & Raised: Waukegan, Illinois

Education: University of Louisiana at Monroe, BBA Accounting;
Southern University Law Center, J.D.; DePaul University College of Law, LL.M. (Taxation);
Southern University, MBA Candidate

ATB: Tell us about your family.

MLT: I am married to Leticia C. Tyler, a division operations manager with Whitney Bank. We have no children at this time, but we do have two very spoiled dogs, Mila and Mandy. My parents are Helen Tyler and Therman Woods. They are both originally from the state of Alabama. I have two brothers – Anthony, who lives in South Carolina and Marcus, who lives in Minnesota.

ATB: What brought you to law school?

MLT: I decided I wanted to be a lawyer during my accounting internship in Montreal, Canada. I was brought to Montreal to help with the preparation of expatriate taxes at Ernst & Young, LP. The work became very boring after a while, so I took it upon myself to walk through the office and see what else Ernst & Young had to offer. Fortunately, I was able to speak with one of Ernst & Young's in-house counsel, who opened my mind up to all of the wonderful things that they were required to do within the office. Needless to say, those things did not seem to be as boring as preparing tax returns. From that

point forward, I decided that I wanted to veer away from boring tax work and move more towards the interesting aspects of legal work. In the end, I guess I shifted back towards tax work; go figure.

ATB: Tell us a little about your practice.

MLT: I represent the Louisiana Gaming Control Board, Louisiana Office of State Police and the Department of Revenue, Office of Charitable Gaming in various gaming matters. In particular, I assist with the regulation of the various casino, video poker and charitable gaming enterprises around the state. In this capacity, I do a lot of compliance work with respect to ensuring that the various licensees and permittees are operating within the established regulatory framework, and I adjudicate cases against those licensees and permittees that violate the law. I did not ever think that I would be working within the gaming industry. In fact, when I was offered the opportunity to interview for the position I thought it was more so pertaining to wildlife and fisheries. However, once I was educated on the various aspects of the job, I gladly accepted the position. October 2013 will give me six years in this position.

ATB: What is the best career advice you have received?

MLT: The best general advice I have received applies to my legal career, and that is to never allow a dollar to trump the relationships that I have established with people who have always been loyal to me.

ATB: You are the current President of the Louis A. Martinet Legal Society. What would you like readers to know about the Martinet Society?

MLT: Our goal is to continue to live up to the organization's mission. We shall always work to fight injustice and barriers to access, regardless of who the perpetrator may be. Over the past few years we have taken a strong interest in ensuring that the citizens of this area are receiving access to legal advice. Events such as Expungement Day, our Successions Workshop, and our monthly pro bono legal seminars have allowed us to make tremendous strides towards filling the void some of the local community previously experienced with respect to access to legal knowledge. We feel that our current collaboration with Southeast Louisiana Legal Services will allow Martinet to service those citizens living in high risk areas who otherwise

would not be able to receive legal advice or legal access.

ATB: Any accomplishments you would like to highlight?

MLT: For two years straight our Martinet chapter was recognized by the National Bar Association for being its Outstanding Affiliate Chapter of the Year. Also, we were recently recognized by Councilwoman Tara Wicker for the work the organization has rendered in and throughout Baton Rouge. Personally, the most notable thing for me was being elected President of the Greater Baton Rouge Chapter of the Louis A. Martinet Legal Society, Inc. The election by my peers was very humbling.

ATB: Tell us about your work with other legal associations.

MLT: I was recently elected Assistant Director for Region V of the National Bar Association. I am also a member of the Baton Rouge Bar Association.

ATB: The Martinet Society recently held its annual Scholarship and Awards Gala. Can you tell us about it?

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MLT: The Awards and Scholarship Gala is our signature event and fundraiser. This past gala we gave away \$4,000 in scholarships and presented awards to those persons, law firms, and judges whose support stood out over this past year. The event was held outside at the Galvez Plaza on North Street. The City of Baton Rouge was great in providing us with everything we needed in order to make the night a success. I would like to send out a big thank you to all of the companies and law firms that sponsored and supported the gala. My goal is to make the 2013 Awards and Scholarship Gala one that the legal community will never forget, including increasing the number of scholarships awarded by the organization.

ATB: Having so much going on in the legal arena, do you have time for anything away from the law?

MLT: I am a huge football fan, so I definitely make time for that during the fall. I am a follower and supporter of all things ULM (University of Louisiana – Monroe), so many nights you will find me in front of my laptop watching ULM athletic events or posting on ULM sports-themed message boards. Other than that, I try to find as much time as possible to spend with my wife and to keep

in touch with my family back in Illinois.

ATB: What is something you would like to share that people might not know about you?

MLT: I am the first person in my family to graduate from college, let alone to become an attorney. I never wanted to do as much schooling as I did. I decided to not pursue a career as a dentist because of the number of years of school that were required. A bachelor's degree, J.D. and LL.M. later, I guess you can say I did not do my math too well regarding that career choice change. I strive every day to do positive things that will make my parents proud of their son and my wife proud of her husband.

ATB: Any closing remarks for our readers?

MLT: I would just like to thank my fellow Martinet board members for all of their hard work and dedication. In addition, I hope that I have been able to live up to the high standards that the past presidents of Martinet have set. Lastly, I would definitely like to thank Attorney General James D. "Buddy" Caldwell for all of the support he has provided during my time as president of Martinet. ■

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."

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SECOND ANNUAL PRO BONO CLE PALOOZA

JAN. 9, 2013 • LSU PAUL M. HEBERT LAW CENTER

CALL 225-344-4803 OR FILL OUT THE FORM BELOW AND FAX THIS PAGE TO 225-344-4805 TO REGISTER

Make your New Year's Resolution to start the new year off right with Pro Bono!

The Baton Rouge Bar Foundation, with generous support from the LSU Paul M. Hebert Law Center, proudly presents the Second Annual Pro Bono CLE Palooza. Select the sessions that interest you! Earn up to 4.0 CLE hours for FREE when you agree to accept a pro bono case between Jan. 1 and June 30, 2013. Attorneys not wishing to accept a pro bono case between Jan. 1 and June 30, 2013, may attend at a cost of \$200.

REGISTRATION — 12:30 - 1 p.m.

SESSION 1:

1:00 - 3:00 p.m. **PLEASE SELECT ONE OF THE FOLLOWING THREE SEMINARS**

- Family Law – Nuts & Bolts of 103 Divorces**
— Speakers: Wendy L. Edwards, Jennifer Hull and Judge Lisa Woodruff-White
- Consumer / Collections and Landlord / Tenant Issues**
— Speakers: Garth Ridge and Judge Laura Davis
- Bankruptcy Nuts & Bolts**
— Speakers: David Hansen, Brandon Hudson and U.S. Bankruptcy Judge Douglas Dodd

SESSION 2:

3:15 - 4:15 p.m. **PLEASE SELECT ONE OF THE FOLLOWING THREE SEMINARS**

- Basics of Foreclosure Defense** — Speaker: Stephen Reed
- Adoption Basics for the Pro Bono Attorney** — Speaker: Jeffrey Wittenbrink
- Best Practices for Family Court Curators** — Speakers: Linda Law Clark and Garth Ridge

GENERAL CLOSING SESSION

4:30 - 5:30 p.m. **Professionalism: Don't Believe the Headlines** — Speaker: William N. King

NETWORKING RECEPTION Sponsored by LSU Paul M. Hebert Law Center

5:30 - 6:30 p.m. Honoring BRBF Pro Bono Project Century Club award recipients *(Please let us know if you plan to attend this reception.)*

Bar Roll No. _____ Email _____

Name _____ Firm _____

Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____

Please indicate your payment preference below:

____ Yes, I will accept a pro bono case between Jan. 1, 2013, and June 30, 2013.

____ No, I prefer NOT to accept a pro bono case between Jan. 1, 2013, and June 30, 2013.
Please charge my credit card \$200 for the cost of the seminar.

Registration deadline: Jan. 4, 2013. Please fax the completed form to 225-344-4805;
mail it to BRBA, 544 Main Street, Baton Rouge, LA 70801; or register online at www.BRBA.org.

If paying by credit card, please include the following:

Name on credit card _____ Type of card: (circle one): MC VISA AmExp Discover

Card Number: _____ Exp. Date: _____ Security code: _____

West's Jury Verdicts - Baton Rouge

Venue/Case Type	Major Injury	Trial Type	Result
East Baton Rouge Parish			
Animals	Laceration on upper lip; surgery	Jury	\$30,466
Elder & Vulnerable Adult	Death; decubitus ulcers	Jury	Defense
Negligence	Toe infection; surgery	Bench	\$11,060
Vehicle Negligence	Lower back, neck	Jury	\$35,800
Vehicle Negligence	Lumbar spine strain/sprain; headaches	Jury	Defense

West's Case of the Month

Nail Salon Patron Receives \$11K for Injuries Allegedly Caused by Pedicure

Chambers v. Tony's Nails Inc.

TYPE OF CASE:

Negligence-Other
Insurance • Commercial Policy

SPECIFIC LIABILITY: Nail technician at nail salon cut patron's foot while performing a pedicure, resulting in injuries to the patron

GENERAL INJURY: Toe infection, requiring surgery; medical expenses

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

DOCKET/FILE NUMBER: 593,224

VERDICT: Plaintiff, \$11,060.00

VERDICT DATE: March 5, 2012

JUDGE: Wilson Fields

ATTORNEYS:

Plaintiff: Craig J. Fontenot, Williamson, Fontenot & Campbell, Baton Rouge

Defendants: Anne Marie P. Muller, Law Offices of Harold G. Toscano, Baton Rouge

TRIAL TYPE: Bench

BREAKDOWN OF AWARD:

\$10,000.00 to plaintiff for general damages

\$1,060.00 to plaintiff for medical specials

SUMMARY OF FACTS:

Briana Chambers said she was a patron at Tony's Nails Inc. salon, located on Florida Boulevard in Baton Rouge, La., May 1, 2010. Chambers reportedly received a manicure and pedicure at the salon in preparation for her attending her senior prom that evening.

While a nail technician was performing her pedicure, she allegedly cut Chambers' foot while using nail tweezers. Chambers said following her salon visit, her toe became infected and she was required to undergo surgery.

Chambers filed a petition for damages against Tony's Nails Inc. in the Nineteenth Judicial District Court for the Parish of East Baton Rouge in August 2010. The plaintiff asserted her toe injuries were caused by the salon's negligence.

Specifically, the plaintiff argued the defendant had created a hazardous condition by allegedly using unclean and/or unsanitary instruments; moreover, Chambers argued the salon had failed to properly train all personnel in sterilization techniques.

The plaintiff sought damages for her personal injuries, medical expenses, pain and suffering, mental anguish, emotional distress, loss of life enjoyment and disability.

Court documents indicated Vien V. Bui Inc., d/b/a Tony's Nails, and its reported commercial policy insurance provider, Allstate Insurance Company, were subsequently added as defendants in the lawsuit.

The defendants admitted Chambers had been a patron at the salon; however, they generally denied the plaintiff's allegations and denied liability. They asserted if the salon was found to be negligent in the matter, any award received by the plaintiff must be reduced due to her contributory and/or comparative negligence.

The defendants also disputed the degree, nature, extent and causation of the plaintiff's alleged injuries and damages.

The matter proceeded to a bench trial with Judge Wilson Fields presiding in February 2012. In a final judgment signed March 5, 2012, Judge Fields entered judgment in the plaintiff's favor against the defendants.

The court awarded Chambers \$1,060 in medical specials and \$10,000 in general damages. Judge Fields also cast the defendants with legal interest from the date of judicial demand, as well as court costs and expert witness fees.

CASE CITE:

West's J.V. La. Rep., Vol. 8, Iss. 1, p. 6 (2012); 2012 WL 2515330

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foundation footnotes

PRO BONO PROJECT & TEEN COURT REPORTS FOR NOVEMBER

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.

PRO BONO PROJECT REPORT

Thanks to all of our Pro Bono Project volunteers for their contributions during November.

The Thirst for Justice solo practitioner volunteers were **Byron Kantrow**, **Alexis Luker**, **Glenn Marcel**, **Judge Melvin Shortess (Ret.)** and **Jimmy Zito**. Thirst for Justice volunteers practicing with a firm were **Elizabeth Adams**, **Thomas Gildersleeve**, **Jonathan Moore**, **Addie Prewitt**, **Michelle Marney**, **Mac Womack**, **Taylor, Porter, Brooks & Phillips**; and **Scott Levy**, **Adams and Reese**.

The Ask-A-Lawyer volunteers were **Jim Austin**, **Adams and Reese**; **Terry Bonnie**; **John Hopewell**; **Christopher Shows**, **Pierce & Shows**; **Jane Thomas** and **Emily Ziober**.

The Self Help Resource Center attorney volunteers were **Samantha Ackers**; **Roy Bergeron**, **Alex Velazquez**, **Phelps Dunbar**; **Terry Bonnie**; **Tracy Morganti**, **Adams and Reese**; **Ashley Scott**; and our partners at **Southeast Louisiana Legal Services**.

Students volunteering with our outreach clinics include **Brooke Burnham**, **Taryn Branson**, **Adrian Carter**, **Cara Davis**, **Loreal Jackson**, **Joaquin Johnson**, **Jennifer Kennedy**, **Chris Lacombe**, **Sharee McCall**, **Jeremiah Sams**, **Southern University Law Center**; and **Graham Arnold**, **Denise Farrior**, **Alic'a Oliver**, **Chris Sidebottom**, **Drew Thagard**, **LSU Paul M. Hebert Law Center**.

The following volunteers accepted pro bono cases during November: **Samantha Ackers**; **John Andrishok**, **Breazeale, Sachse & Wilson**; **Joseph Ballard**, **Entergy**; **Jeffery Barbin**, **Phelps Dunbar**; **Diona Bautista**; **Ryan Brown**, **Roedel, Parsons, Koch, Blache, Balhoff & McCollister**; **Victor Brubaker**, **Treadway Morris**; **Amy Counce**; **Dean Esposito**, **The Law Firm of Ezim & Associates**; **Erika Green**; **Joanna Hynes**; **Jonathan Jacobs**; **Melanie Jones**; **La'Gretta Lazard**; **Virginia Listach**, **Southern University Law Center**; **Victor Loras**, **Carleton Loras**; **Joseph Lotwick**; **Michelle Marney**, **Taylor Porter**; **Eric R. Miller**, **The Kullman Firm**; **Sherrye Palmer**; **C. James Rothkamm**; **Loren Shanklin**, **Smith Shanklin Law Firm**; **Rolando Urbina**; **Aub Ward**, **Naquin & Ward**; **Paul West**, **Baker, Donelson**; **Anita White**; **Sirena Wilson**, **Murray & Murray**; and **Kathleen Wilson**.

The Pro Bono Project would like to thank **Scoop Murray** of **Murray Printing** in Natchez, Miss., for his generous donation to the BRBF made in December. Mr. Murray is the father of BRBA member and Pro Bono Project volunteer **Zelma Frederick** of **McGlinchey Stafford, PLLC**.



TEEN COURT REPORT

Raveen Hills, **Josh Melder**, **Deanne Murrey** and **Michael Nowlin** served as judges for the November hearings. **Adrian Carter**, **Southern University Law Center**, and **Autumn Warner**, **LSU Law Center**, served as jury monitors and teen attorney mentors. Teen Court offenders participated in workshops Nov. 20. **Adrian Carter** and **Ryan Hart**, **Southern University Law Center**, and **Cpl. Scott Shavers**, **City Constable's Office**, gave presentations on shoplifting prevention and chemical awareness.

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

JUNIOR PARTNERS ACADEMY

On Nov. 14, second- and third-grade Junior Partners Academy students participated in "The State versus Jack Robinson," an interactive play and mock trial. **Wendy Shea** served as the moderator and **Cynthia Reed** presided over the trial. **Robert Ray** portrayed a very animated Jack Robinson, defended zealously by **Mary Roper**. **Steve Carleton** presented a strong case for the state, by but a vote of 4-2, Jack was found not guilty! **Aimee Kaloyares** and **Lynn Smith Haynes** served as witnesses. **Sgt. Antonya Coleman-Crump** served as bailiff. ■

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 to assist with the program.

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





January 2013



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

Duty Court Schedule

		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

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

Calendar of Events

19TH JDC CIVIL COURT

Jan. 2-Jan. 11 Judge Kelley
Jan. 14-Jan. 25 Judge Hernandez
Jan. 28-Feb. 8 Judge Clark

19TH JDC CRIMINAL COURT***

Dec. 28-Jan. 4 Judge Anderson
Jan. 4-Jan. 11 Judge Erwin
Jan. 11-Jan. 18 Judge Jackson
Jan. 18-Jan. 25 Judge Daniel
Jan. 25-Feb. 1 Judge Moore

BATON ROUGE CITY COURT*

Dec. 31-Jan. 6 Judge Wall
Jan. 7-Jan. 13 Judge Alexander
Jan. 14-Jan. 20 Judge Ponder
Jan. 21-Jan. 27 Judge Davis
Jan. 28-Feb. 3 Judge Temple

FAMILY COURT**

Dec. 31-Jan. 4 Judge Baker
Jan. 7-Jan. 11 Judge Woodruff-White
Jan. 14-Jan. 18 Judge Day
Jan. 21-Jan. 25 Judge Lassalle
Jan. 28-Feb. 1 Judge Baker

JUVENILE COURT

Jan. 1 - Jan. 31 Judge Taylor-Johnson

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. 31
New Year's Eve

Tuesday, Jan. 1
New Year's Day

Monday, Jan. 21
Martin Luther King Jr. Day

Opening of Court, Memorial & New Member Ceremony



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Baton Rouge Bar Association
& 19th Judicial District Court

Classifieds

LAW OFFICE ON COURSEY BLVD., near Sherwood Forest Blvd. seeking solo practitioner to rent and/or share common expenses of class A attorney office with adjoining separate legal assistant's office. Amenities include internet, telephone, security systems; copier, fax, library; use of conference rooms, reception area, kitchen, 3 bathrooms; fully furnished with ample parking. Call (225) 295-4809.

WRITE A SUBSTANTIVE LEGAL ARTICLE; GET PUBLISHED; AND EARN CLE CREDIT: Believe it or not, you can earn CLE credit for having your legal writing published in scholarly journals. And *Around the Bar* magazine is considered a scholarly legal journal. For more information, email: pamela@brba.org.

SAVE THE DATE: ESI Fundamentals Issues and Rulings CLE Seminar

Coming in Spring 2013

For more info., contact Ann K. Gregorie at 225-214-5563 or ann@brba.org

Ongoing: Every Wednesday & Thursday, 3-5 p.m., Thirst for Justice takes place at St. Vincent de Paul.

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

1
2
3

Office Closed – New Year's Day

Thirst for Justice – CLOSED

Self Help Resource Center – CLOSED;

Thirst for Justice – CLOSED;

YLS Council meeting, 12 p.m.;

Swearing In Ceremony for Commissioner Nicole Robinson, 2 p.m., 19th JDC, Courtroom 10C

4

CLE – Effective Use of Courtroom Technology in the Middle District Bankruptcy Court, Courtroom 222, 707 Florida St., 12-2 p.m.

Bench Bar Conference photo shoot for *Around the Bar* magazine, 1stCo. Studios at the Mall of Cortana, 12 p.m.

8

January Installation Ceremony & Reception, 5:30 p.m., U. S. District Court for the Middle District of Louisiana, 777 Florida St. **[RSVP to Lisa Warm]**

9

Pro Bono Palooza CLE, LSU Law School, earn up to 4 hours of CLE credit (see form on page 20);

Thirst for Justice – CLOSED

14

Teen Court Hearing, EBR Parish Juvenile Court, 8333 Veterans Memorial Blvd.

16

Pro Bono Committee meeting, 12 p.m.

17

Annual City & Council of Juvenile and Family Court Judges meeting

18

Annual City & Council of Juvenile and Family Court Judges meeting;

LSBA Mid-year meeting – Marriott Convention Center, New Orleans

19

LSBA Mid-year meeting – Marriott Convention Center, New Orleans

21

Office Closed – Martin Luther King Jr. Day

23

Teen Court Committee meeting, 12 p.m.

25

Volunteer Committee CLE seminar, Registration: 1 p.m., CLE begins: 1:30 p.m., 3.0 credit hours

28

CLE Committee meeting, 12 p.m.;

Teen Court Hearing, EBR Parish Juvenile Court, 8333 Veterans Memorial Blvd.

30

Opening of Court, Memorial & New Member Ceremony, 19th Judicial District Court, 11th Floor, 8:30 a.m.;

Bench Bar Conference Committee meeting, 12 p.m.

Baton Rouge Bar Association
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Baton Rouge, LA 70821

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