LOUISIANA BAR
JOURNAL

April/May 2005 Volume 52, Number 6

Municipal Relationships

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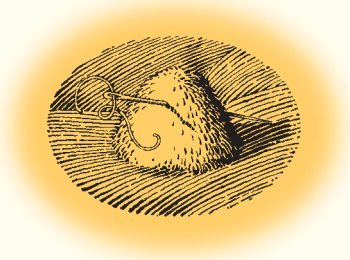

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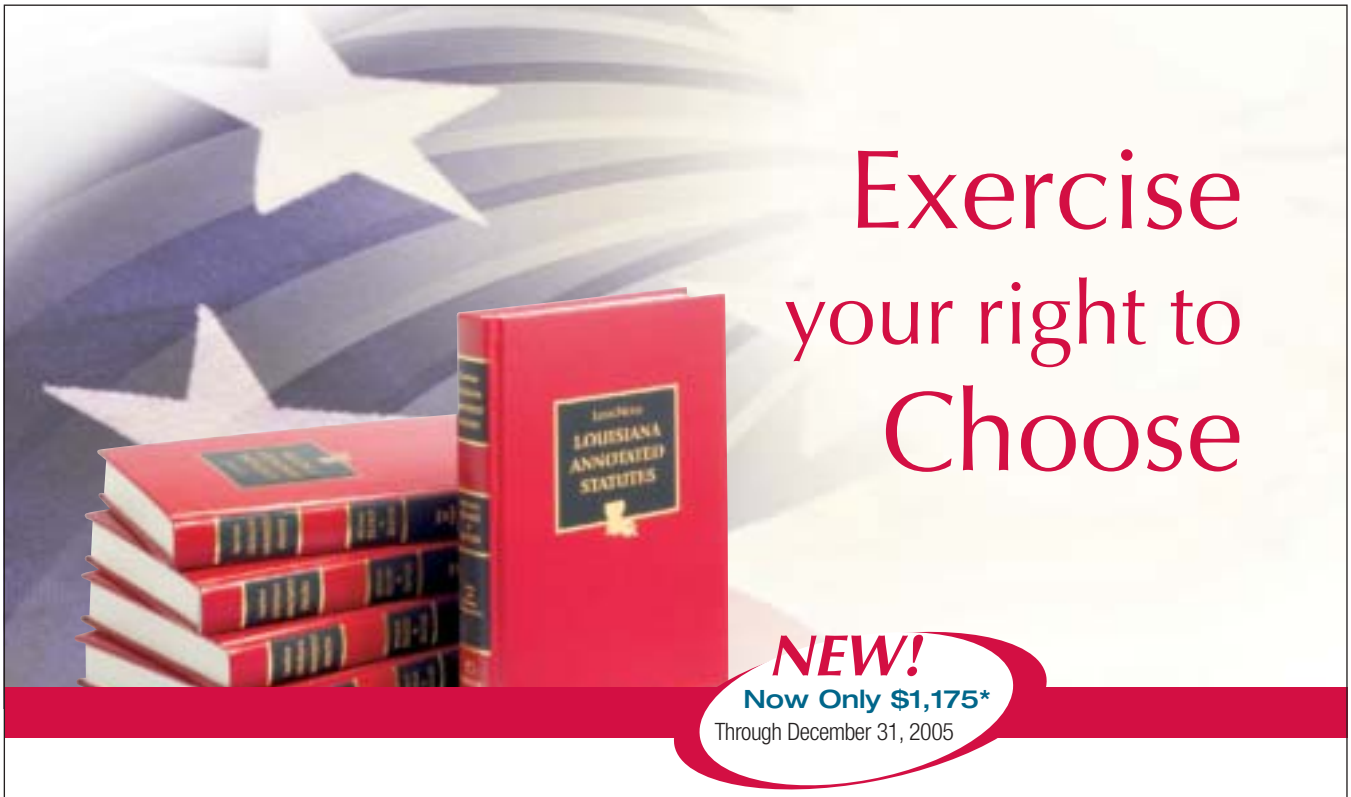

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President's MESSAGE

THE BIG PICTURE: THE RULE OF LAW

By Michael W. McKay

This is, for better or for worse, my last President's Message. These messages are a mixed blessing for me: a chore for Sunday afternoon when you would rather be doing something else, as well as a wonderful opportunity to speak to the Bar about things I consider important to lawyers. I have greatly appreciated your comments about the content of the messages and am always amazed by how many people actually read them.

Being Bar president pretty much forces one to focus on the big picture regarding our profession and its place in our society. My experiences in meeting lawyers from other parts of the world who are struggling to build a civil society based on the Rule of Law have particularly made me appreciate the importance of the Rule of Law and of our role as guardians of that Rule. I have written and spoken about it before but it bears repeating, "Without a strong and vibrant Rule of Law, our way of life will cease to exist." The reason is simple. Without the Rule of Law, Might (economic and/or political power) makes Right. Without the Rule of Law, our free society devolves into one where only the powerful survive. It truly is one of the principle bases of a civil society.

Those experiences also made me realize that we American lawyers do not sufficiently value our role as guardians of the Rule of Law and tend to take the Rule of Law for granted. As a practitioner, I was always too busy trying to represent my clients, earn a living and raise my family to worry about abstract concepts such as the Rule of Law and my role in it. It wasn't that I did not know about the Rule and believe it was a good thing. I suppose I simply assumed some other lawyers would look after it and tend to the lawyers' role as guardians. I feel confident that most lawyers (even those who have taken the time to read this message) are in the same boat. As understandable as that attitude is, we all make a huge mistake when we ignore our role as guardians of the Rule of Law.

We Americans are not immune to the passions and prejudices seen elsewhere in the world. However, we have so far sought mostly to deal with our conflicts in a court of law. Brown v. Board of Education, 347 U.S. 4863 (1954), a little over 50 years ago, and Bush v. Gore, 531 U.S. 98 (2000), five years ago, are classic examples of very controversial and difficult issues being peacefully addressed in the court system under the Rule of Law.

Make no mistake. Today, the Rule of Law is under attack by powerful economic and political interests who do not want to be subjected to either governmental regulation or scrutiny of their actions by a judge or jury. I do not particularly ascribe any evil motive to those who seek to limit access to courts. They are acting in what they believe to be their self-interest. And, they are probably correct in that belief for the short term.

However, when entities attack the system as being defective by use of bogus fact situations (*i.e.,* the plaintiff who injured himself by using a lawnmower as a hedge clipper)[1] as examples of why access to the courts should be limited, they improperly weaken public faith in the system and unfairly strike at the Rule of Law. When these entities attack the contingency fee (shedding crocodile tears because the plaintiff doesn't receive enough of his or her recovery), they are really seeking to limit suits by taking away the poor man's "key to the courthouse." Other examples abound.

We, as the guardians of the Rule of Law, cannot allow these attacks to succeed. In essence, we have to protect the long-term interests of us all, even those who seek to weaken the Rule of Law to serve their short-term self-interest.[2] Certainly there are problems with our justice system. Frivolous suits are filed. Some contingency fees are too high and unwarranted for the work done and the risk taken. Other problems exist as well. For the most part, the system today can address these issues. To the extent that it does not, we must truthfully address those cases and seek solutions supportive of the Rule of Law.

We Americans are not immune to the passions and prejudices seen elsewhere in the world. However, we have so far sought mostly to deal with our conflicts in a court of law. *Brown v. Board of Education*, 347 U.S. 4863 (1954), a little over 50 years ago, and *Bush v. Gore*, 531 U.S. 98 (2000), five years ago, are classic examples of very controversial and difficult issues being peacefully addressed in the court system under the Rule of Law. Although many people vehemently disliked the results in each of those cases and questioned the motives of the individual judges, the country abided by the results and the Rule of Law prevailed. My point is simply that without a strong Rule of Law and the public belief in it, public reaction to controversial rulings, such as those, will more likely become violent and disrup-

tive. The greater the disruption in the public belief of Rule of Law, the greater the potential for destruction of our way of life.

It is not difficult to defend the Rule of Law. In fact, every time a lawyer ethically and competently represents a client, the Rule of Law is strengthened because it encourages reliance upon and belief in the legal system. However, in the face of the current attacks, we must do more. It could be as simple as responding to unfair comments about a judge or ignorant comments about the law and the way the law works. These occur all of the time in our presence. It could be getting involved in bar committees that promote public understanding of the legal system. It could be any number of things. What is unacceptable is doing nothing.

My hope is that all lawyers will learn to value and understand their role as a guardian of the Rule of Law. We often forget the importance of what we do in the day-to-day struggle to practice law. I believe that as a result of this, we do not value our role as greatly as we should. My exhortation to you is to find a role to positively defend, uphold and promote the Rule of Law that suits you. I cannot tell you how important it is. It truly is our patriotic duty. Ultimately, our very way of life depends upon it.

FOOTNOTES

1. Turley, Jonathan, "Legal Myths: Hardly the Whole Truth," USA Today, 11A (January 31, 2005).

2. In fact, many of these folks have the most (property) to lose should the Rule of Law fail.

LETTERS

OUR REPUTATION DOES MATTER

In Response to President's Message: Our Reputation Does Matter

The reputation of lawyers *is* critical to our society even more so than to ourselves and our practices. (President's Message, Volume 52, Number 4, December 2004/January 2005 *Louisiana Bar Journal*.) So what's the problem? In some cases, I believe that it is a lack of *honor*. Just think of the lawyer jokes: "Duhe, Cheatham and Howe, LLP" comes to mind. If we practiced by this simple code of honor, this community would be heralded for integrity:

I will not lie, cheat or steal.

We are no doubt zealous advocates for clients; we would be foolish not to be considering we align our financial well-being with that service. But we are encouraged by our present "code" to put service to clients above our duty to the court and the ends of justice. Accordingly, our job in the public's eyes is to get them more or, in other cases, allow them to keep more than they are entitled to under the law. That sounds to a layman an awful lot like lying, cheating and stealing in the name of zealous representation. Good luck changing that reputation without changing our jobs.

As lawyers, are we prevented from exemplifying the integrity of this simple code that is of a higher order than our system of law, or are we tethered to our present reputation by shortcomings of the law and the subjugation of ourselves and our clients to it? All I know is, if it only takes one person to make a change in society, there is enormous potential for change when an entire association of "learned professionals" leads by example with integrity and honor as its code.

Matthew D. McConnell
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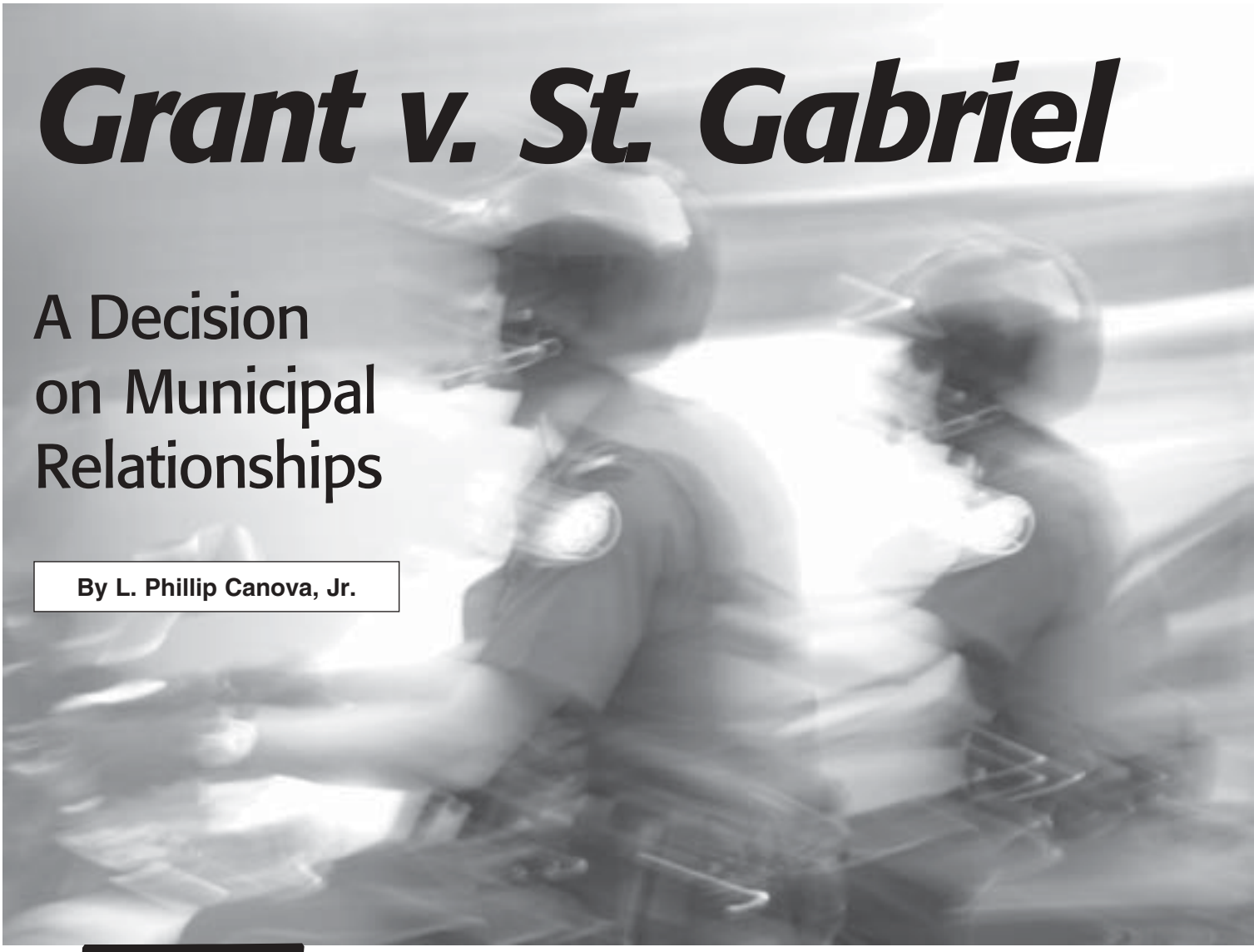
Grant v. St. Gabriel

A Decision on Municipal Relationships



By L. Phillip Canova, Jr.

The relationship between the mayor, city council and chief of police of any given municipality can often be tenuous. This is particularly true regarding the employment and discipline of police department employees in Lawrason Act municipalities. The Louisiana Supreme Court recently addressed the employment relationship between the mayor, city council and chief of police in *Grant v. St. Gabriel*.[1] The Supreme Court rejected previous decisions of the 1st and 3rd Circuit Courts of Appeal.[2] *Grant* should provide the framework for a better understanding of the chief of police's relationship and obligation to the municipality's governing authority for the employment and discipline of police department employees.

Municipal Employment

In Lawrason municipalities, La. R.S. 33:423 establishes the obligations, responsibilities and powers of the chief of police, mayor and city council regarding the employment and discipline of police officers. The chief of police, in addition to the general duty to provide law enforcement for the municipality, is empowered to recommend the appointment of officers, promotion of police officers, disciplinary action against officers and the termination of officers.[3] After receiving the recommendation from the chief of police, the mayor and city council are empowered to determine what action to take regarding the police department employee.[4]

The United States Supreme Court in 1985 determined that municipal employees have a "property interest" in their employment.[5] The United States Supreme Court ruled that before terminating a municipal employee, due process requires notice and a hearing for the municipal employee to present

his side of the dispute.[6] Therefore, federal law protects municipal employees from termination at the whim of the municipality, whether it is by the mayor, city council or chief of police.

The United States Supreme Court recently explained in *Gilbert v. Homar*[7] that due process is "not a technical conception with fixed content unrelated to time, place and circumstances."[8] The due process provided to a municipal employee is balanced on three factors: the private interest affected, the risk of "erroneous deprivation of such interest"[9] and the municipality's interest.[10] The court, though continuing to recognize the municipal employee's property interest in his continued employment, authorizes a municipality to terminate a municipal employee "for cause," pursuant to procedures consistent with the facts and circumstances of each case.[11]

La. R.S. 40:2405(A)(1) now states:

> Notwithstanding any other provision of law to the contrary, any person who begins employment as a peace officer in Louisiana subsequent to January 1, 1986, must successfully complete a certified training program approved by the council and successfully pass a council approved comprehensive examination within one calendar year from the date of initial employment. Any person who fails to comply with this requirement shall be prohibited from exercising the authority of a peace officer; however, such persons shall not be prohibited from performing administrative duties.

Act 108 of the 1998 First Extra Session of the Louisiana Legislature amended La. R.S. 40:2405 by rewriting the second sentence of the above provision. Prior to this amendment, the sentence had read: "Failure to comply with this requirement will be grounds for the council to seek an injunction prohibiting such an individual from exercising the authority of a peace officer."[12]

Thus, Louisiana law now expressly prohibits a person from performing the duties of a peace officer without obtaining Police Officer Standards and Training (POST) certification within one year from the date of his employment. The Louisiana Legislature no longer requires the municipality to seek an injunction, through the Louisiana Council on Peace Officer Standards and Training, to prevent the officer from performing peace officer duties for the municipality.[13]

The Louisiana Supreme Court's decision in Grant has finally recognized the mayor and city council's ultimate power to hire, discipline and terminate police department personnel. The chief of police's recommendation, though always due consideration and weight, is not mandatory authority for the mayor and city council.

Jurisprudence Prior to *Grant*

Previous decisions of the 1st and 3rd Circuit Courts of Appeal had required the mayor and city council to follow whatever recommendation was made by the chief of police regarding employment matters. These decisions did not allow the mayor and city council to deviate from the chief of police's recommendation.

In *Thibodeaux v. Hernandez*,[14] a police officer in the town of Duson failed to complete the mandated POST requirements. The mayor and town council sought to terminate the police officer. However, the chief of police did not recommend termination. The 3d Circuit Court of Appeal held that the mayor and town council could not terminate the police officer without the recommendation of the chief of police to do so.[15]

In *Lee v. Grimmer*,[16] the chief of police recommended the suspension of his police officer in connection with a disciplinary hearing with the mayor and town council. However, the mayor and town council voted to terminate the employment of the police officer. Following the 3rd Circuit Court of Appeal, the 1st Circuit Court of Appeal held that the mayor and city council could only terminate a police officer with the express recommendation of the chief of police.[17]

Grant v. St. Gabriel

In *Grant v. St. Gabriel*,[18] the plaintiff was a police officer for the St. Gabriel Police Department. The plaintiff did not complete his POST requirements within one year from the date of his employment. At a city council meeting to discuss disciplinary action against the plaintiff on this issue, the chief of police recommended that the plaintiff be assigned to an administrative position. The mayor and city council rejected the chief of police's recommendation and, by unanimous vote, terminated the plaintiff's employment with the St. Gabriel Police Department.

The district court and the 1st Circuit Court of Appeal held that the mayor and city council could not terminate the plaintiff without the recommendation to terminate from the chief of police.[19] On writs, the Louisiana Supreme Court reversed the district court and 1st Circuit and held that the mayor and city council have the authority to reject the recommendation of the chief of police on employment and disciplinary matters.[20]

Initially, the Supreme Court held that POST requirements are mandated by the Louisiana Legislature.[21] The newly hired police officer has one year to comply with POST requirements. The Supreme Court held that though a police officer may be assigned administrative duties if he or she fails to satisfy POST requirements within one year, the police officer "is also not guaranteed such a position for his failure to qualify."[22]

Addressing La. R.S. 33:423, the Supreme Court recognized that:

> it is mandatory that the chief of police make a recommendation to the mayor or Board of Aldermen for the "appointment of police personnel, for the promotion of officers, to effect disciplinary action, and for dismissal of police personnel."[23]

The Supreme Court defined recommendation as referring "to an action which is advisory in nature rather than one having any binding effect."[24]

In rejecting *Lee v. Grimmer*[25] and *Thibodeaux v. Hernandez*,[26] the court recognized that these holdings "would mandate that the municipality merely 'rubberstamp' all employment decisions made by the police chief."[27] This would make the requirement to recommend employment actions by the chief of police a "useless step to be taken by both the chief of police and the municipality."[28] Any employment actions taken against police department personnel require a recommendation from the chief of police but a "municipality need not adopt such recommendation and may, after the recommendation, take its own action as relates to the peace officer training and certification requirements set forth in La. Rev. Stat. 40:2405."[29]

Issues Not Addressed in *Grant v. St. Gabriel*

The Louisiana Supreme Court's decision in *Grant* has established the mayor and city council's authority to hire, discipline and terminate municipal police employees. However, there are other issues that can hinder or impede the mayor and city council from exercising this power.

An issue that will inevitably be faced by the mayor and city council is the chief of police's failure to make a recommendation for disciplinary action. La. R.S. 33:423 and the Supreme Court's statements in *Grant* clearly mandate a recommendation by the chief of police as a condition precedent for mayor and city council action. Without the chief of police's recommendation, the mayor and city council are forced to enforce disciplinary action on a police department employee by resorting to the courts.

The mayor and city council can file a suit seeking a writ of mandamus against the chief of police.[30] "[U]pon the filing of a petition for a writ of mandamus, the court shall order the issuance of an alternative writ directing the defendant to perform the act demanded or to show cause to the contrary."[31]

The writ of mandamus would seek a court order commanding the chief of police to make a recommendation to the mayor and city council for disciplinary action against the police department employee. The Louisiana Supreme Court alludes to the chief of police's duty to make a recommendation to the mayor and city council in *Grant*.[32] Based on this dictum, the chief of police's obligation to submit a recommendation to the mayor and city council should be considered a ministerial duty, which would provide relief pursuant to a writ of mandamus.

An issue that was raised in *Grant*, but not addressed by the court, was the police officers' terms and conditions of employment with a Louisiana municipality. It is well established that the relationship between employer/employee is in the nature of mutual reciprocal obligations.[33] The employment contract has been described as a "lease of labor."[34] It is a synallagmatic contract based on mutual consent by which the employee gives to the employer his labor services at a fixed price.[35] Though the jurisprudence recites that there are two types of employment contracts (limited-duration contract and terminable-at-will contract), this does not precisely describe the relationship of public employees and their public employers.[36]

In the case of municipal employment, the United States Supreme Court has recognized that the municipal employee has a "property interest" in his/her employment. Termination of a municipal employee must be based on "just cause."[37] Though a municipal employee has a "property interest" in his/her employment, there is still implied in the employment relationship the terms and conditions of employment which the municipal employee must satisfy.[38] For example, since 1998, the Louisiana Legislature has mandated that continued employment as a "peace officer" requires the peace officer to:

> successfully pass a council approved comprehensive examination within one calendar year from the date of initial employment. Any person who fails to comply with this requirement shall be prohibited from exercising the authority of a peace officer . . . .[39]

The implied condition to continued employment as a law enforcement officer in the state of Louisiana is to become POST-certified. The term to fulfill this condition is one year from the date of employment. It is a reasonable inference, under the law, that the employment contract between the municipality and the

police officer is dissolved upon his failure to satisfy a term of employment.[40] In addition, under *Loudermill*, since the police officer did not comply with a condition of employment, by becoming POST-certified within one year from the date of his employment, a municipality has determined cause to dissolve the employment agreement.[41]

The Louisiana Supreme Court's decision in *Grant* has finally recognized the mayor and city council's ultimate power to hire, discipline and terminate police department personnel. The chief of police's recommendation, though always due consideration and weight, is not mandatory authority for the mayor and city council. Hopefully, mayors, city councils and chiefs of police will recognize their concomitant powers, duties and obligations regarding police department personnel. In doing so, their relationship would be more harmonious and conducive to providing effective, efficient law enforcement services to their community.

FOOTNOTES

1. 2003-2021 (La. 4/14/04), 870 So.2d 1011.
2. Lee v. Grimmer, 99-2196 (La. App. 1 Cir. 2000), 775 So.2d 1223; Thibodeaux v. Hernandez, 97-602 (La. App. 3 Cir., 1997), 702 So.2d 1157.
3. La. R.S. 33:423.
4. *Id.*
5. Cleveland Board of Education v. Loudermill, 105 S.Ct. 1487 (1985).
6. *Id.* at 1493-1494.
7. 117 S.Ct. 1807 (1997).
8. *Id*. at 1812.
9. *Id*.
10. *Id*.
11. *Id*. at 1814.
12. La. R.S. 40:2405. *See also,* Thibodeaux v. Hernandez, *supra* note 2.
13. *Id*.
14. Thibodeaux v. Hernandez, *supra* note 2.
15. *Id.* at 1159.
16. Lee v. Grimmer, *supra* note 2.
17. *Id*. at 1226.
18. Grant v. St. Gabriel, *supra* note 1.
19. Grant v. St. Gabriel, 2002-2098 (La. App. 1 Cir. 2003), 858 So.2d 542.
20. Grant v. St. Gabriel, *supra* note 1.
21. *Id*. at 1015.
22. *Id*. at 1016.
23. *Id*., quoting La. R.S. 33:423.
24. *Id*.
25. Lee v. Grimmer, *supra* note 2.
26. Thibodeaux v. Hernandez, *supra* note 2.
27. Grant v. St. Gabriel, *supra* note 1 at 1017.
28. *Id.*
29. *Id.*
30. La. C.C.P. art. 3865.
31. *Id*.
32. Grant v. St. Gabriel, *supra* note 1 at 1016-1017.
33. La. Civ.C. art. 1756; La. Civ.C. art. 1908; Carney v. Liberty Mut. Ins. Co., 277 So.2d 175 (La. App. 3 Cir. 1973); Avery v. Commercial Union Ins. Co., 91-538, 92-838 (La. App. 3 Cir. 1993), 621 So.2d 184.
34. La. Civ.C. art. 2745.
35. Hawthorn, Waymout & Carroll v. Johnson, 611 So.2d 645 (La. App. 1 Cir. 1992).
36. Brodhead v. Board of Trustees for State Colleges and Universities, 588 So.2d 748 (La. App. 1 Cir.), *writ denied,* 590 So.2d 597 (La. 1992); Hughes v. Muckelroy, 97-0618 (La. App. 1 Cir. 9/23/97), 700 So.2d 995, 998-999.
37. Cleveland Board of Education v. Loudermill, *supra* note 5; Bishop v. Wood, 96 S.Ct. 2074 (1976); Gilbert v. Homar, *supra* note 7.
38. La. Civ.C. art. 1768; La. Civ.C. art 1777.
39. La. R. S. 40:2405(A).
40. La. Civ.C. arts. 2013, 2016.
41. Cleveland Board of Education v. Loudermill, *supra* note 5.

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Between State-Law Doctrines Limiting the Liability of State and Local Governmental Entities and Federal Law on Standing

By Frederic Theodore Le Clercq and Ambrose V. McCall

Lawyers practicing in the field of municipal liability often encounter the fault lines between recent federal court opinions that may expand the liability of state and local governmental entities and state legislative provisions that limit liability for specified acts of elected officials, appointed board members, office holders, employees and even volunteers. Any practitioner in this area should become familiar with these conflicting authorities, which arise from the debate in society at large over who should bear the responsibility for unauthorized (and even duly authorized) actions by state and local governmental entities.

Given the decreasing number of voters who participate in our democratic elections, the courts have increasingly become the focal point for determining whether local and state governmental defendants are liable for tort claims. As a result, it is increasingly the courts that determine whether policies enacted by state or local governmental entities satisfy or trump the policies contained in federal law such as the U.S. Constitution, congressionally enacted statutes and regulations promulgated by federal government agencies.

Louisiana Limitations on the Liability of Local Governmental Entities

Scope of Liability Limitation

The Louisiana law limiting the liability of the State for actions of specified government officials bars imposing liability upon the State based on the alleged actions of designated officials performed within the scope and course of their official duties. There is no bar, however, to imposing personal liability on the officials themselves. La. R.S. 42:1441(A), (B). Such officials, however, may be entitled to indemnification under La. R.S. 13:5108.2 or other governing laws.

Monetary Limitation on Liability

In all suits for personal injury or wrongful death of any one person, the total amount any one person can recover, including all derivative claims (such as survival and loss of consortium claims, under La. R.S. 13:5106(D)(4)), exclusive of property damages, medical care and related benefits and loss of earnings and loss of future earnings (and loss of support and future support in wrongful death claims), is limited to $500,000. La. R.S. 13:5106(B)(1),(2).

Once a political subdivision is found liable for damages for personal injury or wrongful death, a court must determine the amount of general damages exclusive of medical care, related benefits, loss of earnings and/or support, loss of future earnings and/or support. The court must then calculate the amount of the cited four items through the date of the judgment, and determine whether the claimant requires future medical care and related benefits. La. R.S. 13:5106(C).

The Expanding Vista of the Standing Doctrine as Construed by Federal Courts

In contrast to efforts by the state governments to limit their potential exposure, federal courts have recently broadened the number of parties that can file suit against state and local governmental entities, as well as the theories that are available for such claims.

***Save Our Valley v. Central Puget Sound Regional Transit Authority*, 335 F.3d 932 (9 Cir. 2003).**

The *Save Our Valley* opinion provides an update and brief history of the continuing debate among the federal courts of appeal regarding whether individuals can use 42 U.S.C. § 1983 to sue governmental entities to enforce federal regulations. The defendant, Central Puget Sound Regional Transit Authority (CPSRTA), proposed a rail line extending 21 miles from Seattle to the city's airport. The plans detailed elevated tracks and underground tracks as the rail line traveled through several neighborhoods in Seattle. One exception was Rainier Valley. There, 4.6 miles of the track were designed to run at street level through the predominately minority neighborhood located in Rainier Valley. *Id.* at 934.

A neighborhood organization known as Save Our Valley asserted that the proposed plan violated a U.S. Department of Transportation regulation, 49 CFR 21.5(b)(2). This regulation forbids any entity that receives funding from the federal government (which included CPSRTA) from pursuing projects that impose a disproportionate burden on racial minorities, even if there is no proof or evidence that the entity had any intent to discriminate. Plaintiff further argued that § 1983 provided it with a right to sue CPSRTA to enforce the "disparate impact" regulation. *Id.* at 934-35.

The 9th Circuit panel ruled unanimously that § 1983 was not available to Save Our Valley. However, the panel split 2-1 over the rationale to support its holding. Judge Ronald M. Gould, one of the two majority judges, stressed ". . . that agency regulations cannot independently create rights enforceable through § 1983." *Id.* at 939. Judge Gould emphasized that the 3rd, 4th and 11th Circuits had reached the same conclusion based primarily on language in U.S. Supreme Court decisions implying that only Congress could establish such rights. However, Judge Gould also acknowledged that the D.C. Circuit in 1985 and the 6th Circuit in 1994 held that regulations authorized by Congress but written and implemented by administrative agencies could be "laws" encompassed by the enforcement provisions of § 1983. *Id.*

Judge Gould indicated he thought that the position of the D.C. and 6th Circuits was invalidated by two subsequent U.S. Supreme Court opinions, *Alexander v. Sandoval*, 532 U.S. 275 (2001), and *Gonzaga Univ. v. Doe,* 536 U.S. 273 (2002). *Id.* at 937-939. These opinions indicate that questions about what rights a party may enforce through § 1983 are best gleaned by examining opinions of the U.S. Supreme Court containing discussions of whether particular statutes authorizing regulations also impliedly create private rights of action to enforce those regulations according to Judge Gould. Judge Gould believed that, under these opinions, private rights of action and rights that a party may enforce through § 1983 are created only when Congress specifically intends to create such rights. *Id.* Thus, a "disparate impact" regulation that may have been encompassed within the Department of Transportation's authority as noted by Congress, but which was not specifically intended by Congress, could not pass muster. *Id.* at 943-944.

Judge Marsha S. Berzon partially dissented. Judge Berzon agreed that Save Our Valley did not have the right to pursue a remedy under § 1983, but because the regulation at issue has "an aggregate focus" and lacks any direct reference to the people ultimately benefitting from the regulation. *Id.* at 961-964. She also asserted that there was no basis to find a general prohibition against § 1983 enforcement of regulations. *Id.* at 960. In the view of Judge Berzon, Judge Gould improperly interpreted Supreme Court cases addressing the issue of whether specific rights were created (including private rights of action) with inquiries about remedies. According to Judge Berzon, the real issue is whether § 1983 offers a remedy for an already existing regulatory right. *Id.* at 961-964.

At the moment, however, it would appear that local governmental entities should expect more § 1983 lawsuits contending that they have violated federal regulations that may not have previously received much attention. Moreover, while federal courts may hold that federal regulations do not create a private right of action for damages under § 1983, claims for injunctive relief by public citizen groups (including requests for awards of attorney's fees and costs) may survive legal challenges.

***Webster v. Fulton County, Ga.*, 283 F.3d 1254 (11 Cir. 2002).**

The 11th Circuit held in *Webster* that a pre-existing contractual relationship between an independent contractor and a

governmental entity was not a necessary element of a disappointed bidder's race-based retaliation claim under 42 U.S.C. § 1981. *Id*. at 1256.

The *Webster* court concisely explained its ruling as follows:

> [A]n independent contractor, such as WGT, states a claim for violation of Section 1981 when that contractor – a contractor that is qualified to do the work upon which it bids – alleges that a governmental entity refused to award a contract to the contractor in retaliation for the contractor's filing of a lawsuit charging the governmental entity with a custom or policy of disparate-treatment racial discrimination that was applied against the contractor in violation of Section 1981. Thus, because WGT alleged such a claim, we conclude that WGT stated a valid Section 1981 retaliation claim, as enforced by Section 1983.

Id. at 1257.

***Chaffin v. Kansas State Fair Board*, 348 F.3d 850 (10 Cir. 2003).**

In *Chaffin*, a group of disabled attendees, all of whom relied on wheelchairs for mobility, sued the Kansas State Fair alleging they were denied adequate access to restrooms, parking and other facilities. *Id*. at 854. The plaintiffs urged that the fair failed to comply with the federal Americans with Disabilities Act and accessibility guidelines promulgated under the ADA. *Id*. at 853-854.

State and local governmental agencies should expect an increasing number, variety and type of claims while the federal and state courts sort out the application of the various standing doctrines and governmental immunities and limitations on liability.

The defendants argued that the U.S. Supreme Court's 2001 ruling in *Sandoval*, 532 U.S. 275, barred the plaintiffs from asserting a private right to enforce ADA regulations, thereby barring the plaintiffs' lawsuit. *Id*. at 856-858. The defendants also argued that the accessibility guidelines prescribed conduct that the ADA itself does not require. Because the plaintiffs had "access" to the fair ground, they were not "denied the benefits of" the fair, according to the defendants. *Id*. at 857.

The court of appeals rejected defendants' argument on the basis of prior cases requiring public entities to provide disabled individuals with "*meaningful* access" to their programs and services. *Id*. Moreover, the *Chaffin* court explained that in *Sandoval*, the U.S. Supreme Court confirmed that the regulations at issue (banning intentional discrimination) fell within the scope of the private right of action to enforce the statute. *Chaffin*, 348 F.3d at 858. The *Chaffin* court stressed that the same principle applied to the fair, meaning that the disputed regulations merely detailed how to implement the statutory rights created by § 12132 of the ADA. *Id*. The *Chaffin* court further stressed that when enacting the ADA, Congress sought to ban a wide, comprehensive type of discrimination, extending beyond discrimination motivated by a hostile, discriminatory purpose. *Id*. at 858-59.

***Covington v. Jefferson County*, 358 F.3d 626 (9th Cir. 2004).**

Finally, the most recent development indicates that the expansion of the standing doctrine will continue.

In *Covington*, the 9th Circuit held that a group of plaintiffs have standing to bring their Resource Conservation and Recovery Act and Clean Air Act claims against the defendant county operating a dump site. The court specifically held that the evidence concerning leakage of chlorofluorocarbons sustained their standing to bring Clean Air Act claims. The plaintiffs additionally complained to the defendant county about the dump site but were allegedly ignored. Moreover, the plaintiffs asserted that the defendant county did not prohibit the dumping of or the cleanup of the chlorofluorocarbons leaking from the old refrigerators at the dump site. Interestingly, the plaintiffs' personal injury claims were based on the asserted degradation of the ozone layer above them due to the release of chlorofluorocarbons.

The 9th Circuit, in its majority opinion, adopted the position that the evidence of

the leakage of the chlorofluorocarbons satisfied the need to show an injury in fact because the leakage had increased the risk of harm to the plaintiff's property. However, the same author for the majority opinion wrote a concurring opinion on standing focusing on the theories contained in *FEC v. Akins*, 54 U.S. 11 (1998). In the concurring opinion, that judge wrote:

> (T)he Supreme Court's precedent may be read to support a general rule of standing along these lines. If the injury is not concrete, there is no injury in fact even if the injury is particularized; and if the injury is concrete and particularized, there is injury in fact even if the injury is widespread.

Covington, 358 F.3d at 651.

Conclusion

Advocates for or against immunizing or limiting the liability of governmental entities must consider the various aforementioned doctrines, statutes, regulations and case law from the applicable jurisdiction when strategizing the filings of their claims and defenses. Moreover, while the authorities cited herein may support the contention that the federal courts are unduly expanding the types of claims that plaintiffs can bring against state and local governmental entities, the Louisiana state courts are on the same trail.

For example, Louisiana state courts have imposed liability on state governmental agencies for failing to appropriately inform, and thereby protect, the public based upon mandated or available information. *See Miller v. Martin*, 2002-0670 (La. 1/28/03), 838 So.2d 761 (holding that the Department of Social Services was vicariously responsible for the abuse of a child by foster parents); *Gregor v. Argenot*, 2002-1138 (La. 07/14/2003), 851 So.2d 959 (holding that the Department of Health and Hospitals was liable for failing to enforce the Sanitary Code requiring the warning of dangers consumers could encounter when eating raw oysters and holding the Louisiana Department of Health and Hospitals responsible for failing to require the posting of the warning at the "point of sale," the restaurant table); *Grayson v. State ex rel. Department of Health*, 2001-0720 (La. App. 4 Cir. 12/30/02), 837 So.2d 87, *writ denied*, 2003-0300 (La. 09/26/03), 854 So.2d 368 (holding that the Louisiana Department of Health and Hospitals was responsible for failing to require the posting of warnings as to the dangers of eating raw oysters).

Given these developments in the law, state and local governmental agencies should expect an increasing number, variety and type of claims while the federal and state courts sort out the application of the various standing doctrines and governmental immunities and limitations on liability.

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Copyright Registration Practice for the Non-Copyright Attorney

By Elise M. Stubbe

"The Congress shall have Power . . . To Promote the Progress of . . . useful Arts, by securing for limited Times to Authors . . . the exclusive Right to their respective Writings . . . ." [1]

In the age of the Internet and digital copy technology, it's not surprising that more and more authors, artists, musicians and songwriters, among others, are seeking to obtain copyright registration of their works. And it also should not come as a surprise that one of your current or future clients could soon present you with their work and ask you to register it with the Copyright Office. What do you do? Before you run to the library and feverishly flip through copyright law treatises, consider this article that offers a basic overview of copyright registration and the issues you need to consider before proceeding.

What is a Copyright?

A copyright is a bundle of exclusive rights given to an author for a limited time that are designed to protect his "original work of authorship [that is] fixed in any tangible medium of expression now known or later developed" from infringing uses by others.[2] However, the current Copyright Law is a far cry from the first statutory copyright, the Statute of Anne circa 1710, which merely contemplated protection of the right to copy a particular work (literally a "copyright").[3] Today's Copyright Law, as modified in 1976, encompasses rights far greater than just the right to make a copy of a work. Rather, today's law allows for no less than six exclusive rights that belong to each artist. To be protected, however, the work must be an "original work of authorship" or a work

created by the author on his own that has some "minimal degree" of creativity.[4] There can never be copyright protection for an idea, concept, discovery, system, process, procedure, principle or discovery.[5] Similarly, words and short phrases like names, titles and slogans[6] or utilitarian elements are not protectible.[7]

Once an original work of authorship has been fixed in a tangible form, it is automatically protected against infringement for a certain period of time and is vested with numerous exclusive rights.[8] Works of authorship include literary works; musical works (including words); dramatic works (including music); pantomimes and choreographic works; pictorial, graphic and sculptural works; motion pictures and other audiovisual works; sound recordings; and architectural works.[9] The exclusive rights granted to a copyright owner include the right to reproduce the work, prepare derivative works based upon the work, distribute copies of the work to the public, perform the work publicly and to display the work publicly.[10]

Why Should an Author Register His Work and How Do I Register It?

While protection for a work inures from the moment of fixation, registration of a work is required before an author can bring an infringement action in court.[11] Thus, in order to enforce the exclusive rights that come with the creation of a work in court, an author must register the work with the Copyright Office. However, before diving into the registration process, you must obtain a few answers from your client to some important questions.

First, did one or several people help the author create the work? If so, they would probably be considered co-authors and must either give your client an assignment of their rights or your client must share the ownership of the copyright with the other authors. Second, was one of the other authors the spouse of your client? If so, the copyright is considered community property under Louisiana law and any profits derived from it are subject to division in the event of divorce.[12] Third, is the author or one of the authors a minor? The Copyright Law does not prohibit minors from registering or owning copyrights. Rather, it defers to state law regarding the property of minors.[13] In Louisiana, a minor's income derived from his own "labor and industry" is considered his property and is not subject to the parental usufruct.[14]

Another important question is whether the work was a "work made for hire" because this affects the term of the registration as well as the ownership. The Copyright Act defines a work made for hire as a "work prepared by an employee within the scope of his or her employment." A second category of works defined by the Act as works made for hire are works that are commissioned or requested by a hiring party for use as a contribution to a collective work, as part of a motion picture or other audiovisual work, as a supplementary work, as a translation, a compilation, instructional text, a test, an answer to a test or an atlas. Here, the parties must have a written agreement that the work is to be considered a work made for hire.[15] If the work is a work made for hire, then the copyright belongs to the employer or commissioning party, not the employee or commissioned party.

For independent contractors who are commissioned to do work that is not one of the nine types enumerated in Section 101, the Supreme Court set forth several factors, based upon agency law, to use when determining whether the independent contractor is an employee working in the scope of his employment such that the work would be considered a work made for hire and, thus, belong to the hiring party.[16] Specifically, the court looks to "the hiring party's right to control the manner and means by which the product is accomplished, the skill required," the instrumentalities' and tools' source, the work location, the length of the parties' relationship, how the hired party is paid, the tax treatment of the hired party, and the provision of employee benefits, among other things.[17]

You also should ask your client whether the work is anonymous or pseudonymous as this affects the registration term.[18] Another question to ask is whether the work has been published and, if so, when.[19] The Copyright Act defines "publication" as the distribution of copies or phonorecords, in the case of sound recordings, to the public by sale or other transfer of ownership, as well as rental, lease or lending.[20] Public performance or display of work does not constitute publication for purposes of the Copyright Act. Finally, you should enquire as to whether this current work is a derivative work of another pre-existing work. If it is a derivative work of someone else's work, your client should have obtained permission from the other person before preparing the derivative work, and certainly before registering the derivative work.

Once you have answered these questions, it is time to complete the application. All forms are available at *www.copyright.gov* and can be "filled in" in PDF form. You also can save these forms as PDF files on your computer and amend them later. Each category of works of authorship has its own long form and short form. The long form is used when the work involved has multiple authors, it is a work made for hire, or it is a derivative work. The short form is used when there is one author, it is not a work made for hire and it is a non-derivative work. If you are an authorized representative of your client, you can sign the application for them. If not, you should have the client sign the application.

It is also relatively inexpensive to seek a copyright registration as the fee for an application is only $30. Since the fee is so low, however, it is Murphy's Law that the wait for the registration is inversely long. Currently, the Copyright Office is dealing with a seven- to eight-month delay, if not more, in registrations. In situations where you are contemplating litigation against an infringer and you have not registered the copyright, which is a pre-requisite to any infringement action, you can seek expedited service. Be aware that the same Murphy's Law applies that since the wait is now so short, the fee is inversely high:

expedited service costs $580 per registration. But, with expedited service, a staffer personally walks your application from each department and the registration should be complete within 10-15 business days.

Finally, you must include a "deposit" copy or copies of the work with the application.[21] For unpublished works, you must include one complete copy of the work or phonorecord.[22] If the work has been published already, you must include two copies of the "best edition" of the work.[23] A "best edition" of the work is circularly defined as the edition "which the Library of Congress determines to be most suitable for its purposes."[24] However, the rules of the Copyright Office clarify that the "best edition" of the work is the edition of the highest quality.[25]

Duration of Copyright Registration

Congratulations! You have successfully registered your client's copyright, but now they want to know how long it will last. The answer to this question depends upon what type of authorship is involved as well as when it was created. For a work created by a single author on or after Jan. 1, 1978, regardless of whether

the work was published, the copyright term consists of the author's life plus 70 years after his death.[26] For joint works prepared by two or more authors that is not a work made for hire, the copyright will last for a term of the life of the last living author plus 70 years after his death.[27] Anonymous and pseudonymous works are treated differently since the authors, and thus their dates of death, are not known. Instead, the Act sets terms of 95 years from the year of first publication or a term of 120 years from the year of its creation, whichever expires first.[28] Works created and published before Jan. 1, 1978 (the effective date of the 1976 Copyright Act) are subject to a much more confusing analysis that should only be undertaken by an attorney who regularly practices in the field of copyright law.

Conclusion

Copyright registration can be an intimidating topic but, with some careful research and thought, you too can provide your clients with this invaluable service.

FOOTNOTES

1. U.S. Const. art. I, § 8, Clause 8.
2. 17 U.S.C. § 102(a).
3. James E. Hawes & Bernard C. Dietz, Copyright Registration Practice § 1.1 (2d Ed. 2002).
4. Feist Publications, Inc. v. Rural Telephone Service Company, Inc., 499 U.S. 340, 346 (1985).
5. 17 U.S.C. § 102(b). Patent protection, rather than copyright protection, is appropriate for these types of works.
6. 37 C.F.R. § 202.1 (2002). Trademark law may apply to these words or phrases if they are used to identify the source of goods or services.
7. *See* Mazer v. Stein, 347 U.S. 201 (1954).
8. 17 U.S.C. § 102(a). Contrary to popular belief, registration of the work with the Copyright Office is not required for protection.
9. 17 U.S.C. § 102(a).
10. 17 U.S.C. § 106.
11. 17 U.S.C. §§ 411, 412.
12. *See* Rodrigue v. Rodrigue, 218 F.3d 432, 435 (5 Cir. 2000); [The court held that George Rodrigue, the creator of the famous "Blue Dog" pictures, retained the exclusive managerial control over the copyright, but the profits of the copyright are community property and, thus,

must be shared with his wife, Veronica Rodrigue, during the marriage and in indivision after their divorce.]

13. *See* Copyright Office, *Circular 1: Copyright Basics*, 2 (2002), available at*: www.copyright.gov/circs/.* The Copyright Office publishes a series of circulars with helpful, general information about a wide range of topics and are worth checking out.

14. La. Civ.C. art. 226.

15. 17 U.S.C. § 101. In contrast, no agreement vesting ownership in the employer is required where the work is created by an employee in the scope of his or her employment.

16. Community for Creative Non-Violence v. Reid, 490 U.S. 730 (1989). *See also* 17 U.S.C. § 201(b).

17. Reid, 490 U.S. at 751-52.

18. See *infra*, "Duration of Copyright Registration."

19. This question is important because once the work is published, your client can start using a notice of copyright on it. 17 U.S.C. § 401(a). Notice must consist of three elements: the symbol © (or the word "Copyright" or "Copr."); the year of first publication; and the name of owner of the copyright. 17 U.S.C. § 401(b). For phonorecords, instead of using the ©, you should use℗. 17 U.S.C. § 402(b)(1). Publication also affects the depository requirement, discussed later in this article.

20. 17 U.S.C. § 101.

21. 17 U.S.C. § 408. You should take note that §407 is a *mandatory* archival depository requirement for published works regardless of whether you intend on seeking registration. Thus, works that are published must be deposited with the Library of Congress within three months of publication. However, works submitted for archival purposes under § 407 frequently satisfy the § 408 deposit requirement for registration.

22. 17 U.S.C. § 408(b)(1).

23. 17 U.S.C. § 408(b)(2).

24. 17 U.S.C. § 101.

25. 37 C.F.R. § 202.19(b)(1)(iii) (2002).

26. 17 U.S.C. § 302(a). In 1998, Congress passed the Sonny Bono Copyright Extension Term Act (CETA) that extended the term after the author's death from 50 years to 70 years, among other changes. Eric Eldred, a publisher, challenged the law before the U.S. Supreme Court. The court held that the CETA was a valid exercise of Congress' authority under the Commerce Clause and brought the U.S. in line with other nation's copyright terms. *Eldred v. Ashcroft*, 537 U.S. 186, 204-05 (2003).

27. 17 U.S.C. § 302(b).

28. 17 U.S.C. § 302(c).

ABOUT THE AUTHOR

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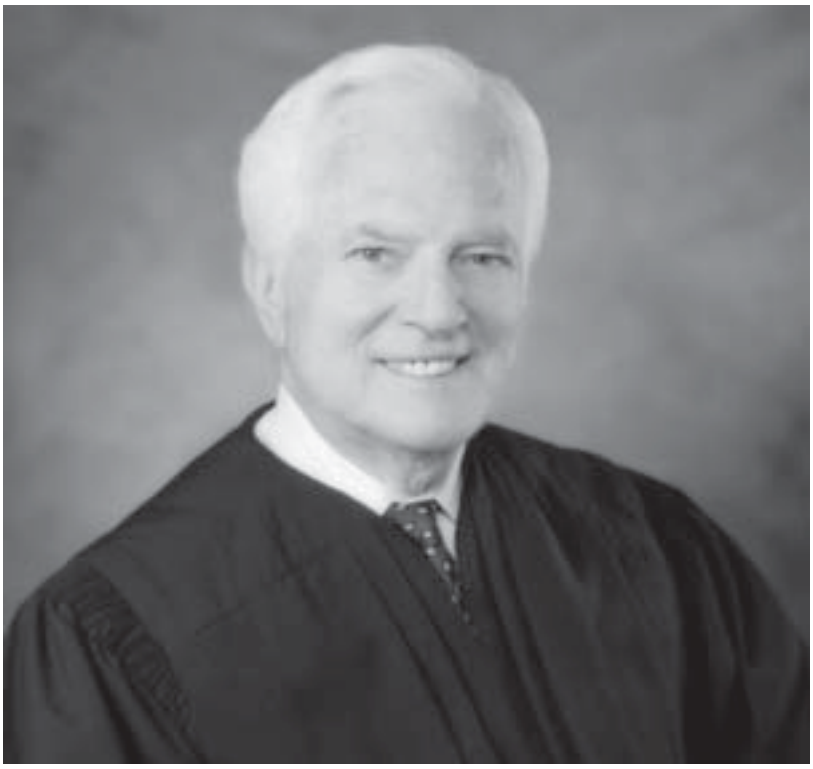

Chief Justice Pascal F. Calogero, Jr.

". . . A friend to many — an enemy to none — he tolerates no prejudice in himself and treats all with equal justice. He is, in many ways the embodiment of the best that is in all of us, and a reflection of the high ideals of the people of this state."

— Hon. Moon Landrieu
Induction Ceremony of Pascal Calogero as Chief Justice of the Louisiana Supreme Court, April 9, 1990, 564 So.2d LXV, et seq.

Chief Justice Pascal F. Calogero, Jr.: A Man and His Work

By Roger A. Stetter

On April 9, 2005, Chief Justice Pascal F. Calogero, Jr. commemorated his 15th anniversary as chief justice of the Louisiana Supreme Court, a tenure which ranks as the fourth longest tenure as chief justice in the history of the court. The Louisiana Bar Journal extends its congratulations and best wishes to Chief Justice Calogero.

This article tells the story of how Pascal Calogero made his journey as the son of a New Orleans police officer to become the chief justice of the Louisiana Supreme Court.

Early Life and Education

Pascal Calogero, Jr. was born in New Orleans in November 1931. His father was a New Orleans police officer and the son of an Italian immigrant merchant seaman. His mother, Louise Moore, was an Irish-German American, and the daughter of a longshoreman who grew up in the Irish Channel and worked on the New Orleans waterfront. Pascal was their third child.

At his 1990 induction as chief justice of the Louisiana Supreme Court, Pascal remarked: "When I think of my mother and father, both of whom are now deceased, I think of love and discipline." Pascal then thanked many of the attendees for helping him become a successful lawyer and judge, including his 7th grade teacher, who he said, "taught me to love school and to grow intellectually."

Pascal attended St. Aloysius High School (now Brother Martin) where be became sports editor of the school paper and won a full academic scholarship to Loyola University. All the while, beginning at about age 13, Pascal worked at many jobs, from newspaper boy for the old *New Orleans Item,* to shoe salesman on Canal Street, and banana handler on the Desire Street wharf.

He also became an infielder on his high school baseball team which won the city and state championships in 1949 and played in a national baseball tournament in Johnstown, Pennsylvania. It was on that baseball trip that Pascal cemented his friendship with Moon Landrieu, another kid who liked baseball and would later become Pascal's law partner.

It should come as no surprise that one of Pascal's favorite boyhood heroes was Joe DiMaggio, one of the greatest baseball players of all time. Like DiMaggio, the son of an Italian immigrant fisherman who did not know how to read and barely earned enough money to support his family, Pascal Calogero would rise to the top of his profession through discipline and hard work.

Pascal's mother had two sisters who both worked as bookkeepers for Coca-Cola and urged their nephew to become an accountant. But his father wanted Pascal to become a lawyer and he chose that path instead. After completing pre-legal studies at Loyola, Pascal attended Loyola Law School, where he served as president of the *Law Review* and graduated first in his class of 1954.

After graduation from law school, Pascal served as a second lieutenant military police officer, as a first lieutenant, and as a captain in the Judge Advocate General Corps in Washington, D.C., including service in the Pentagon. He then returned to New Orleans to marry and raise a family, which would eventually grow to 10 children: Debbie Calogero Applebaum, and David, Pascal III, Elizabeth, Thomas, Michael, Stephen, Gerald, Katie and Chrissy Calogero. Sons David, Thomas, Michael and Gerald followed in Pascal's footsteps and are attorneys, as is his wife Leslie M. Langhetee.

In 1956, Pascal served for a year as a law clerk to the judges of the Civil District Court for the Parish of Orleans. Many of the state and city courts — including the Supreme Court, the Court of Appeal and the Civil District Court – were then housed in the magnificent Beaux Arts building on 400 Royal Street which, after a 46-year hiatus, has once again become home to the Supreme Court and the 4th Circuit Court of Appeal — largely through the efforts of Chief Justice Calogero.

Law Practice

In 1957, Moon Landrieu asked Pascal to become his law partner. A few months later, they were joined by another top-notch Loyola Law grad and boyhood friend, Charles Kronlage, who was also a young athlete. His father worked on the riverfront.

These three men shared a common heritage. Their parents, who came of age during the Great Depression, had to defer their goals and aspirations, but not their dreams, for the success of their sons.

It is difficult for those of us who began our careers working in large firms with big corporate clients to imagine what it was like for Landrieu, Calogero and Kronlage when they started their law firm in 1957. They chipped in $300 each and rented a $50 a month walk-up office on Broad near Washington. They did not have a secretary or a receptionist, did their own typing, and took in "anything that walked through the door." Before it became a significant client, Tac Amusement, which leased jukeboxes and pinball machines to bars and restaurants, used the firm's lawyers to notarize liquor license applications at one dollar per signature. According to Mayor Landrieu, they were grateful to get the work.

In time, and with the help of family and friends, the firm developed a good book of business, including domestic relations, personal injury, criminal and maritime work. It also moved to a larger office around the corner and above Joe Maselli's Liquor Store, and built out the space with carpenters from Pascal's family and a plentiful supply of cold beer. But these three young lawyers did not have mentors to teach them the ropes. They learned by doing and eventually became one of the premier small law firms in New Orleans.

Landrieu, Calogero and Kronlage never had a written partnership agreement. They practiced law for 17 years on a handshake, split the profits evenly, and never had a serious conflict in all the years they were together. Charles Kronlage described his years of law practice with Pascal and Moon as "a beautiful time in my life."

In 1970, Moon Landrieu was elected mayor of New Orleans on a progressive platform, thus becoming one of the youngest mayors in the city's history. Two years later, in 1972, Pascal Calogero won election to the Louisiana Supreme Court in his first run for judicial office. It was a hotly contested election that included a court of appeal judge, William V. Redmann, a former state bar president and 1972 Rex, Leon Sarpy, and a respected civil rights lawyer, Revius Ortique, who would later become the first African-American elected for service on the Supreme Court. Their experience in being elected to high office could be likened to players winning MVP awards in their first season of Major League baseball. They succeeded by courting the votes of all New Orleanians — white and black, rich or poor — and outperforming their rivals.

The voters would elect Pascal to serve on the Supreme Court three more times, entrusting him with the position of chief justice since 1990. His current term expires in December 2008, at which time he will become the longest serving justice in our state's history.

Mr. Justice Calogero

From the moment he went on the Supreme Court bench more than 30 years ago, Justice Calogero showed he was meant to be a judge and that he loved the work of deciding cases. His first majority opinion, G*riffis v. Travelers Insurance Co*., 273 So.2d 523 (La. 1973), involved a drunken prisoner who set the mattress in

his jail cell on fire and sued the City of Many, Louisiana, and its general liability insurer, for his injuries. The undisputed facts demonstrated that the prisoner had control of his physical and mental faculties and that he set fire to his mattress because the jailer refused to release him from his cell. Justice Calogero wrote that although a police officer owes a duty to an intoxicated prisoner to keep him safe and protect him from injury not attributable to his own willful act, "[h]e is not an insurer of the safety of the prisoner merely because the prisoner is intoxicated." *Id.* at 526.

Later in the 1973 term of court, Justice Calogero wrote a majority opinion striking down a municipal ordinance that prohibited firemen in the City of Crowley from engaging in any outside employment. *City of Crowley Firemen v. City of Crowley*, 280 So.2d 897 (La. 1093). The uncontradicted evidence in the record disclosed that outside employment by employees of the Crowley fire department had been a common practice since the beginning of the department, and that the firemen could easily do outside work without compromising the performance of their fire-fighting duties. Justice Calogero explained that the ordinance "operates as a direct infringement upon one of the basic individual freedoms, the right to work," and that arbitrary and unreasonable exercises of the police power violated due process. *Id.* at 902.

These early cases are emblematic of our great Chief Justice, Pascal Calogero, who, over the ensuing years, never wrote an opinion without considering the case from every angle, and always decided cases based strictly upon the facts and a reasoned application of the law.

Upon becoming chief justice in 1990, Justice Calogero became more than a judge with the responsibility for deciding cases. He also became the chief spokesman for the court, the manager of its operations, and the chief administrative officer of the judicial branch of the State of Louisiana. Despite an increasing caseload and a huge administrative burden, Pascal has done more than anyone to improve the judicial process and enhance the reputation of the legal profession in Louisiana during his years as chief justice.

As the father of 10 children, Chief Justice Calogero has taken a special interest in protecting children by improving our state's juvenile justice system. Speaking to a joint session of the Louisiana Legislature in 2001, he said that we must continue to strive toward a juvenile system which determines to focus on the needs of children and increase the likelihood that they will lead useful and productive lives:

> "[A] reformed juvenile justice system that is not blind but knowledgeable in its application of services and sanctions, a system that is tough but not mindless, and a system whose cost effectiveness can be measured accurately and whose expectations are firmly and unrelentingly in favor of the rehabilitation of children."

Pascal Calogero has also led a court that has played a dramatic and decisive role in many other vital areas of the law, including:

- Revamping the disciplinary system as applied to lawyers and judges to ensure that citizens' complaints are acted upon swiftly and that corrupt or unethical practices are not tolerated;
- Creating a statewide Indigent Defender Board with appropriate funding from the Legislature so that no one charged with a serious offense is forced to stand trial without the benefit of competent counsel and the expert services necessary to mount an effective defense;
- Being an ardent spokesman against gender discrimination so that women attorneys have the same opportunities as men for professional advancement and achievement of their career goals; and
- Promulgating Codes of Professionalism for Lawyers and Judges that serve as constant reminders that civility in all of our actions as professionals is equally, if not more, important than winning cases or moving case dockets.

Conclusion

No talk about Pascal Calogero would be complete without saying a few words about his judicial demeanor. No judge in Louisiana has done more than Chief Justice Calogero to earn the affection and respect of his colleagues, and the admiration of every branch of the bar. His unfailing courtesy, kindness and patience have endeared the Chief Justice to every person who has been privileged to know him. He is a remarkable man who loves to accomplish things, large and small, but cares little for the limelight or receiving credit for his labors. In her wonderful memoir, *Washington Through A Purple Veil* (1994), our beloved former Congresswoman and Ambassador to the Vatican, Hon. Lindy Boggs, writes that one can accomplish just about anything by doing the job and letting someone else take the credit. Pascal Calogero and Lindy Boggs share goals in common and do not require public kudos or recognition. They act selflessly to promote the common good.

Asked to describe Pascal's greatest achievement, Moon Landrieu said: "He never lost his sense of justice and compassion for the underdog. He remains the same guy he was when we practiced law together over 30 years ago." In other words, Pascal never wanted to be anyone other than himself. And by being true to himself, he has become the hero of his own life and a blessing to us all.

ABOUT THE AUTHOR

Roger A. Stetter, a graduate of Cornell and UVA Law School, is a trial lawyer in New Orleans, a member of The American Law Institute, and a former member of the LSU Law Center faculty with several books in print, including Louisiana Civil Appellate Procedure, In Our Own Words: Reflections on Professionalism in the Law *and* Louisiana Environmental Compliance. *(Ste. 1219, 228 St. Charles Ave., New Orleans, LA 70130)*

It's Time to Book a Listing in 'Who's Who in ADR 2005'

Get your listing on the Web for an extra $25!

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Arbitrators and Mediators:
***The October 2005 Louisiana Bar Journal is focusing on* YOU!**

The special Arbitrators and Mediators Directory will feature brief articles and photographs of arbitrators and mediators (**INDIVIDUALS ONLY**).

The articles should be **150 words MAXIMUM**. Please provide your address, phone, fax, e-mail address and Web site information at the end of the listing (not part of the word count).

Submit either original photos or digital photos. Digital photos should be submitted separately from the article, in either .tif, .eps or .jpg format (the order of preference). DO NOT submit digital photographs embedded in word processing programs; send the photograph as a separate file.

Fees and deadlines are as follows:

	By June 30	By July 29
Directory Only	**$100**	**$125**
Directory/Web	**$125**	**$150**

Articles and photographs must be for individuals only. No group articles or group photographs will be used. But, as an **ADDED BONUS**, firms which have three or more arbitrators/mediators purchasing individual listings will receive a free **firm** listing in the section. (Firms are responsible for submitting the additional information, 150 words maximum.)

If you would like to repeat a prior listing and photo, you may send us a photocopy of that listing along with your check; please provide the year the listing appeared. (Digital photos appearing in ADR directories are archived back to 2000.)

To reserve space in the directory, mail your article, disk, photo and check to: **Arbitrators & Mediators Directory, 601 St. Charles Ave., New Orleans, La. 70130**.

Articles and photos may be e-mailed to **dlabranche@lsba.org**, and checks should be mailed or hand-delivered.

If you require more information, please contact: **Darlene M. LaBranche, (504)619-0112 or (800)421-5722, ext. 112.**

Sample of the Individual Listings

Jane Smith
XYZ Arbitration Services, Inc.

Jane Smith has been affiliated with XYZ Arbitration Services, Inc. for five years, handling dispute resolution mainly for the insurance industry. Smith received a BS degree in political science in 1982 from Tulane University and her JD degree in 1987 from Louisiana State University Paul M. Hebert Law Center. Prior to joining XYZ, she was in private practice. Smith believes her professional experience is well suited to the field of arbitration. "This growing trend, to arbitrate rather than litigate, will be beneficial to the legal profession and the burgeoning court system," Smith said.

5555 W. Main St., New Orleans, La. 70130
(504)555-XXXX • fax (504)555-XXXX
E-mail: jsmith@net.com • Web site: www.xyz.com

Your photo

LSBA 50-, 60- and 70-Year Members Recognized at Midyear Meeting

Louisiana State Bar Association (LSBA) members who reached half a century and beyond in their professional careers were honored during the LSBA's Midyear Meeting in January in Baton Rouge. Certificates were presented to the members by LSBA President Michael W. McKay and Louisiana Supreme Court Associate Justice Catherine D. Kimball.

50-Year Members

The honorees (listed with their home towns) received their law degrees in 1955:

Oliver F. Bradford, Jr., Covington, Loyola University Law School.

Ralph Brewer, Baton Rouge, Louisiana State University Paul M. Hebert Law Center.

Hon. Marcus A. Broussard, Jr., Abbeville, Loyola University Law School.

William D. Brown III, Monroe, Louisiana State University Paul M. Hebert Law Center.

June B. Cahn, New Orleans, Tulane Law School.

William E. Crawford, Baton Rouge, Louisiana State University Paul M. Hebert Law Center.

Samuel R. Exnicios, New Orleans, Loyola University Law School.

Norman C. Francis, New Orleans, Loyola University Law School.

Hon. Marvin F. Gahagan, Natchitoches, Louisiana State University Paul M. Hebert Law Center.

Charles M. Gremillion, Bunkie, Loyola University Law School.

George W. Healy III, New Orleans, Tulane Law School.

John E. Jackson, Jr., Kenner, Tulane Law School.

50-year honorees attending the reception were, front row from left, J. Peyton Parker, Jr., Geraldine B. Weaver, Jean W. Pucheu, Victor A. Sachse III, Hon. Marvin F. Gahagan and Roy M. Lilly, Jr. Second row from left, William E. Crawford, Hon. John L. Olivier, Charles M. Gremillion, H. Lee Leonard and Hon. Norbert C. Rayford. Third row from left, Ronald C. Martin, William E. Logan, Jr. and Daniel R. Sartor, Jr. Back row from left, Frank J. Varela and Ralph Brewer. Photo by Randy Bergeron.

Walter R. Krousel, Jr., Baton Rouge, Louisiana State University Paul M. Hebert Law Center.

H. Lee Leonard, Lafayette, Louisiana State University Paul M. Hebert Law Center.

Roy M. Lilly, Jr., Gibsland, Louisiana State University Paul M. Hebert Law Center.

William E. Logan, Jr., Lafayette, Loyola University Law School.

James P. Madison, Bastrop, Louisiana State University Paul M. Hebert Law Center.

Ronald C. Martin, Natchitoches, Louisiana State University Paul M. Hebert Law Center.

Cas B. Moss, Winnfield, Louisiana

50-year honoree George W. Healy III, center, with Louisiana Supreme Court Associate Justice Catherine D. Kimball and Louisiana State Bar Association President Michael W. McKay. Photo by Randy Bergeron.

G. Frank Purvis, Jr., left, and Hon. Alwine M. Ragland were recognized for reaching the 70-year milestone in their legal careers. Photo by Randy Bergeron.

State University Paul M. Hebert Law Center.

Hon. John L. Olivier, Sunset, Loyola University Law School.

Robert E. Palmer, Ponchatoula, Louisiana State University Paul M. Hebert Law Center.

J. Peyton Parker, Jr., Baton Rouge, Louisiana State University Paul M. Hebert Law Center.

Jean W. Pucheu, Ville Platte, Louisiana State University Paul M. Hebert Law Center.

Hon. Norbert C. Rayford, Baton Rouge, Southern University Law Center.

Victor A. Sachse III, Baton Rouge, Louisiana State University Paul M. Hebert Law Center.

Daniel R. Sartor, Jr., Monroe, Tulane Law School.

Harold L. Savoie, Lafayette, Loyola University Law School.

H. Dan Sawyer, Shreveport, Tulane Law School.

Robert G. Schleier, Kilgore, Texas, University of Texas.

Robert S. Schultis, Metairie, Loyola University Law School.

Guy W. Smith, New Orleans, Louisiana State University Paul M. Hebert Law Center.

Frank J. Varela, New Orleans, Loyola University Law School.

Kazuo Watanabe, Bellevue, Wash., Tulane Law School.

Geraldine B. Weaver, Baton Rouge, Louisiana State University Paul M. Hebert Law Center.

Lawrence D. Wiedemann, New Orleans, Tulane Law School.

60-Year Members

The honorees (listed with their home towns) received their law degrees in 1945:

Booker N. Hargis, Alexandria, Louisiana State University Paul M. Hebert Law Center.

Katherine B. Jeter, Shreveport, Tulane Law School.

John F. Meyer, New Orleans, Tulane Law School.

Hon. Dorothy D. Wolbrette, New Orleans, Tulane Law School.

Victor P. Yuja, Miami, Fla., Loyola University Law School.

70-Year Members

The honorees (listed with their home towns) received their law degrees in 1935:

Peter G. Charbonnet, Jr., New Orleans, Loyola University Law School.

Elton A. Darsey, Houma, Loyola University Law School.

Girard J. Fernandez, New Orleans, Tulane Law School.

Benjamin M. Goodman, Diamondhead, Tulane Law School.

G. Frank Purvis, Jr., New Orleans, Louisiana State University Paul M. Hebert Law Center.

Hon. Alwine M. Ragland, Tallulah, Tulane Law School.

James A. Van Hook, Sr., Shreveport, Tulane Law School.

Applications Being Accepted for Bankruptcy Law Certification

The Louisiana Board of Legal Specialization (LBLS) has announced that applications for 2006 certification in both Business Bankruptcy Law and Consumer Bankruptcy Law will be accepted through September.

Both certifications may be simultaneously applied for with the LBLS and the American Board of Certification, the testing agency. Information concerning the American Board of Certification will be provided with the LBLS application form(s).

If you meet the minimum five-year, full-time practice requirement and are interested in applying, fax or mail the following information to:

Catherine S. Zulli, Executive Director
Louisiana Board of Legal Specialization
601 St. Charles Ave., New Orleans, La. 70130-3404
Fax (504)528-9154

PLEASE PRINT OR TYPE

Name _____

Address _____

City/State/Zip _____

_____

Please check either or both:

____ Business Bankruptcy Law

____ Consumer Bankruptcy Law

Supreme Court Changes Rules 5.5 and 8.5, Adopts New "In-House Counsel" Rule

Louisiana Supreme Court Chief Justice Pascal F. Calogero, Jr. announced the promulgation of changes to Rules 5.5 and 8.5 of the Louisiana Rules of Professional Conduct, as well as the adoption of a new "in-house counsel" rule. The Louisiana Rules of Professional Conduct regulate the ethical conduct of lawyers. The changes to the Rules of Professional Conduct, which were recommended by the Louisiana State Bar Association and its Multijurisdictional Practice Committee:

- provide limited exceptions to the unauthorized practice of law prohibitions in recognition of the realities of modern day law practices;
- clarify which state's rules apply when a lawyer's conduct crosses jurisdictional boundaries;
- clarify the lawyer disciplinary authority of the Supreme Court of Louisiana; and
- allow lawyers admitted in other jurisdictions to provide certain legal services exclusively to their employer, provided these lawyers obtain a limited license pursuant to the new in-house counsel rule.

The in-house counsel rule establishes a process for nonadmitted lawyers who are employed by corporate or associational clients to receive a limited license to allow them to perform legal work for their employers. However, the rule does not allow in-house counsel to make appearances in court as lawyers.

The rule changes become effective on April 1st. However, lawyers who are subject to the in-house counsel rule will have until July 1st to submit their applications.

In-house lawyers who are governed by the new in-house counsel rule should contact Denise Leeper, Administrator of the Committee on Bar Admissions, in order to obtain an application and related materials.

Lawyers Helping LAWYERS

By Carol M. Rider | OVERVIEW: DO NOT CALL, DO NOT FAX (PART 1)

Watch out! Here are some serious laws that will impact you as an attorney representing any kind of business owner or company. Imagine getting a frantic call from your client who tells you that the FCC or the FTC is fining her thousands of dollars for making illegal unsolicited calls, or for sending a fax or an e-mail in violation of federal and/or state law – laws that your client thinks you should have told her about? Would you know how to respond? One way to prevent this scary scenario from happening is to stay abreast of the latest laws that regulate calls, faxes and e-mails made by your client to his prospective or current customers.[1] Those laws are: the Telephone Consumer Protection Act of 1991 (TCPA), found at 47 U.S.C.A. 227, and related regulations at 47 C.F.R. § 64.1200, *et. seq.* (both of which regulate telemarketing calls and faxes), and the CAN-SPAM Act of 2003, found at 15 U.S.C.A. § 7701, *et. seq.*, and related regulations at 16 C.F.R. 316, *et. seq.* (both of which regulate e-mail transmissions).

(Part 1 of this article will deal with phone calls and fax transmissions; Part 2, to be published in the August/September 2005 Louisiana Bar Journal, will handle e-mail transmissions.)

Telephone Solicitations

The TCPA was enacted in 1991 to control unwanted telemarketing calls. Specifically, the TCPA prohibits interstate and intrastate "telephone solicitation" calls to a *residence* before 8 a.m. or after 9 p.m. (determined by the recipient's location), or to any residential number, including a cell phone number, listed in the National Do Not Call Registry (National Registry), which was established in 2003. A "telephone solicitation" is basically a telephone call that acts as an advertisement. There are some exceptions, however. The term "telephone solicitation" does not include:

- calls or messages made with the receiver's *prior express permission*;
- calls or messages made by or on behalf of a tax-exempt, nonprofit organization;
- calls or messages made to friends or family; and
- calls or messages from a person or organization with which the receiver has an *established business relationship (EBR)*.

An EBR exists if the purchase or transaction has been made within an 18-month period of time. A company may call for up to *18* months after the consumer's last purchase, delivery or payment, *unless* the consumer asks the company not to call again. In that case, the company must honor this request, or else be subject to a fine of up to $11,000!

An EBR exists if a consumer makes an inquiry or submits an application to a company, and the company calls within *three* months of that inquiry or application. Once again, if the consumer makes a specific request to that company not to call, the company may not call, even if it has an established business relationship with the consumer. A consumer whose number is not on the National Registry can still prohibit individual sellers and telemarketers from calling by asking to be put on the company's own list.

Business-to-business calls are also exempt.[2]

Also, effective Jan. 1, 2005,[3] telemarketers will have to "scrub" their contact lists against the National Registry every 31 days, rather than every three months, which had been the case since the National Registry was established in 2003.[4] The federal rules also prohibit the blocking of caller ID information and provide restrictions on the use of automatic dialing machines. Although federal rules pre-empt all less restrictive state do-not-call rules, states can have more restrictive do-not-call laws governing intrastate telemarketing.[5] In summary, make sure you alert your business clients about these telephone solicitation laws and recommend a company-specific do-not- call list be developed and scrubbed against the National Registry every 31 days. The penalties can be from $500 to $11,000 per violation. The FTC, FCC and state attorney general can enforce the law, and damages can be awarded in a private action.

Unsolicited Fax Advertisements

Under the TCPA, "unsolicited advertisements" sent via facsimile machine are regulated. This fax prohibition has been in existence since 1991, but it wasn't until the National Registry was adopted in 2003 that consumer advocates focused on the faxing laws and wanted regulators to crack down on abusive faxing practices. An "*unsolicited advertisement*" is defined as "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person *without that person's prior express [written] invitation or permission*. [Emphasis added]"[6] Here are some of the rules governing "consent to fax:"

Only an *authorized person* may grant written permission to send a fax advertisement to that person's company.

The signed, written consent statement must include the *specific fax number(s)* to which the ad may be sent. A signed

LAWYERS continued next page

consent form that does not list the correct fax number or is given by a person without company authority is void.

Consent may be *revoked* by *any* means that puts the sender on notice.

If *any part* of a fax is "unsolicited commercial advertisement," then the whole fax is tainted.

Under a 2003 rule amending 47 C.F.R. 64.1200(a)(3)(i), there are *no* exceptions to sending fax transmissions as there are for telephone solicitations, *unless* prior written consent is obtained. It does not matter if the recipient and sender have an established business relationship. However, this amendment's original effective date was Dec. 31, 2004, but it was delayed until July 1, 2005.[7] Essentially, *until July 1, 2005*, a fax ad can be sent to a recipient who has given prior written consent, or to a recipient with whom the sender has an EBR *without* the application of the 18-month EBR limitation (for purchases and transactions) and the three-month EBR limitation (for applications and inquiries). This delay comes on the heels of a proposed House and Senate bill entitled "The Junk Fax Prevention Act of 2004."[8] This bill (now SN 2603) is now engrossed in the Senate.[9] The bill mirrors current law by banning unsolicited faxes but makes an explicit exception for companies that have "established business relationships" with consumers or other businesses. Needless to say, telemarketing lobbyists are pushing for the enactment of that bill, but all companies are affected by this legislation.

The fax law covers faxes sent through a *fax server*, a personal computer and a conventional fax machine.

As in the TCPA governing telephone solicitations, federal law *pre-empts* less restrictive state law.[10]

So what does all this mean? If your client's business does a substantial amount of faxing, whether to prospective or current customers, the business needs to know what steps to take before faxing an advertisement. First, your client must understand what constitutes an "unsolicited advertisement." Mainly, it's anything asking for new business for money. If your client isn't sure if the material he intends to fax falls within that definition, a conservative approach would be to obtain the written consent to fax first. In summary:

If the fax is an unsolicited advertisement being sent between now and July 1, 2005 to an *existing* customer, no prior written consent is needed, and there is no three-month (for inquiry or application) or 18-month (based on last purchase, delivery or payment) time limit imposed on the existing business relationship. It is recommended, however, that your client obtain an authorized written consent to fax form with the appropriate fax number listed before July 1, 2005, for faxing that may take place thereafter. Until July 1, 2005, the consent to fax form can be faxed to the *existing* customer. It also can be mailed or sent as an e-mail attachment (provided certain requirements are met, discussed in Part 2).

If the fax is an unsolicited advertisement being sent between now and July 1, 2005 to a *prospective* customer, authorized written consent *must* be obtained before sending that fax. The consent to fax form cannot be faxed to a *prospective* customer. It can only be mailed or sent as an e-mail attachment (provided certain requirements are met). It must contain the correct fax number and be signed by an authorized person.

If the fax is an unsolicited advertisement being sent *after* July 1, 2005 to an *existing* or *prospective* client, authorized written consent *must* be obtained before sending that fax. The consent to fax form *cannot* be faxed, but *only* mailed or sent as an e-mail attachment, and must contain the correct fax number and be signed by an authorized person.

Regardless of when the fax is sent (before or after July 1, 2005) or to whom it is being sent (existing or prospective customer), the business or entity on whose behalf the fax is being sent must:

- *identify* itself in the top or bottom margin of each page or on the first page of the fax message; and
- include its *telephone number and the date and time* the fax is sent.

What are the penalties for violating the TCPA as it relates to unsolicited fax advertisements? Under this law, recipients can collect damages of at least $500 per junk fax. Willful or knowing violations can bring treble damages. Recipients also can get court injunctions to prevent additional violations of the law. The laws regulating faxes are to be taken very seriously, as noted in the cases against Fax.com. In January 2004, the Federal Communications Commission fined Fax.com $5,379,000 for sending junk faxes. The FCC found 489 separate violations and imposed the maximum permissible forfeiture of $11,000 for each of these violations in light of the fact that "Fax.com's primary business activity itself constitutes a massive on-going violation" of the TCPA.[11]

FOOTNOTES

1. This article is produced for informational purposes only and does not constitute legal advice. Independent research and analysis is recommended. Transmission or receipt of this article does not create a lawyer-client relationship.

2. Please refer to the TCPA at 47 U.S.C.A. 227 for more exceptions.

3. FCC Order released Sept. 21, 2004.

4. See *http://www.ftc.gov/bcp/conline/pubs/alerts/dncbizalrt.htm* and *www.fcc.gov/cgb/donotcall/* for more information.

5. The Louisiana Telephone Solicitation Relief Act of 2001, R.S. 45:844.11, *et. seq.,* is more restrictive than the Federal TCPA in its "EBR" exception time period, *i.e.*, six-month contact period as opposed to federal's 18-month contact period. Louisiana has also adopted the National Do Not Call Registry, which can be accessed at *www.telemarketing. donotcall.gov*.

6. 47 U.S.C.A.§227(a)(4).

7. 69 FR 62816-01, 2004 WL 2398914 (F.R.), by Order adopted Sept. 15, 2004, released Oct. 1, 2004 and reported Oct. 28, 2004.

8. 2003 CONG US HR 4600, 108thCongress, 2d Session, (Report No. 108-593) To amend section 227 of the Communications Act of 1934 to clarify the prohibition on junk fax transmissions. (July 9, 2004), reported in House, Proposed Action: Amended.

9. 2003 CONG US S 2603, 108th Congress, 2d Session (Dec. 8, 2004), engrossed in Senate, Proposed Action: Amended.

10. La. R.S. § 51:1745, *et. seq.* Louisiana fax laws allow for EBR exception and "follow-up" exception, but since they are less restrictive than federal, assume the TCPA would pre-empt, and therefore not allow these exceptions after July 1, 2005.

11. *http://www.fcc.gov/eb/News_Releases/DOC-242654A1.html*. Action by the Commission on Dec. 31, 2003, by Order of Forfeiture (FCC 03-336). Chairman Powell, Commissioners Abernathy, Copps, Martin, and Adelstein.

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PRO BONO

By Rebecca K. Knight | RULE 6.1 . . . 50 IS NOT THE LIMIT!

Have you done any pro bono work yet this year? Did you know that in January 2004, the Louisiana Supreme Court amended the Louisiana Rules of Professional Conduct, Rule 6.1, Voluntary Pro Bono Publico Service, to set an aspirational goal of 50 hours of pro bono publico legal services per attorney per year? This is basically in line with American Bar Association Model Rule of Professional Conduct 6.1 (2002) that recommends that all lawyers provide a minimum of 50 hours of pro bono services annually.

Each year, many attorneys in Louisiana meet or exceed this 50-hour goal. This goal averages to only about one hour a week. In providing these few hours to some of Louisiana's poorest citizens, attorneys receive much more than the monetary value of these hours; they are paid in gratitude and the knowledge that they have improved their client's situation.

H. Clay Walker, an associate with the firm Walker, Tooke & Lyons in Shreveport who contributed approximately 230 pro bono hours last year, said: "Depending on the complexity of the case, I find that if I carry two to three pro bono cases at all times, I can balance the community's pro bono needs and my practice."

Specifically, what legal services will fulfill this aspirational goal? According to Rule 6.1, the lawyer should:

> provide a substantial majority of the 50 hours of legal services without fee or expectation of fee to: (1) persons of limited means or (2) charitable, religious, civic, community, governmental and educational organizations in matters which are designed primarily to address the needs of persons of limited means . . . .

In the words of Ruth Moore, executive director of the Northwest Louisiana Pro Bono Project, "A client who simply does not pay his bill, or performing legal work for the symphony or some other civic legal group that does not address the needs of the poor really does not fall under this definition of pro bono. You have to begin with the idea that you'll be working free for someone who can't afford it, and understand that what you think of as a simple case may in fact be a life-changing matter for your client."

Attorneys who provide pro bono legal services often find the personal involvement in the legal problems of the disadvantaged to be one of the most rewarding experiences of their career.

Pro bono volunteer attorney Mark C. Surprenant, a partner with the law firm of Adams and Reese in New Orleans who contributed more than 50 hours of pro bono services in 2004, said, "Pro bono legal work is very rewarding in that it affords me an opportunity to use my God-given legal talents and abilities to reach out in a very meaningful way to those less fortunate in our community. To truly make a difference in the life of your client, you have to recognize at the front end that a genuine and sincere commitment to your pro bono client does not end when you hit a certain number of hours spent on the matter, but when you reach that point where you know you have provided your client with that same excellence you expect of yourself in regard to all your clients, no matter what their financial means."

Providing pro bono legal services to those who cannot otherwise obtain legal representation, and doing so with the same dedication and commitment to excellence with which we serve our paying clients, allows lawyers the opportunity to serve the community in a way that only we can.

To become a pro bono volunteer, simply visit the pro bono resources located at *www.lsba.org/atj*. The need is virtually unlimited, so give freely. Remember, *attorneys hold the key to pro bono* — and 50 is not the limit!

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Administrative Law

Free Copies

A title company representative was told by the Bienville Parish clerk of court that he would not be allowed to use hand-held scanners to copy official documents, and then threatened with forcible ejection from the clerk's office if he persisted. The clerk claimed that the Louisiana Public Records Act prohibited copying by scanner. The title company's petition for declaratory judgment contending that scanning public documents is not prohibited by law was dismissed by the trial court.

In *First Commerce Title Company v. Martin*, 38,903 (La. App. 2 Cir. 11/17/04), 887 So.2d 716, the appeal court reversed, holding that La. R.S. 44:32C(1)(c), which prohibits the "placement of mechanical reproduction" equipment within the clerk of court's office, does not prohibit the use of hand-held scanners because they are not placed or installed as the statute contemplates. The court stated that had the law prohibited the "use" of any equipment, there would have been a different result, noting that the original 1995 bill concerning this law included "use" but that the final version, the one at issue, did not. Thus, the tension between two competing interests — the public's right to free access to public records and the custodian's duty to preserve and protect those public records — was resolved in favor of public access.

Finally, the court awarded the title company attorney fees, which, although clearly justified by the Louisiana Public Records Act in this (and other) cases, is unusual in these types of cases.

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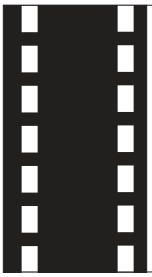

Art, Entertainment and Sports Law

Federal Tax Law Breathes New Life into U.S. Independent Film Industry

American independent filmmakers are waving the U.S. flag again, rather than running away to foreign countries with film and television productions. The slowdown in runaway production occurred on Oct. 22, 2004, when President Bush signed the American Jobs Creation Act (Act) into law, Public Law No. 108-357 (H.R. 4520). After two years in the making, this far-reaching tax cut legislation was passed in the House by 280-141, and by 69-17 in the Senate as part of Title 26, United States Code (IRS Code).

Many of the provisions in the Act affect multinational corporations, American manufacturers, energy companies and agriculture. The Act's lesser-known but significant Section 181 also dramatically affects the film industry, and investor and producer clients of entertainment and tax attorneys and investment advisors.

Section 181 and the Film Industry

Subject to certain other tax provisions, the significance of Section 181 of the Act to the taxpayer is the deductibility from income of investments made in qualified film or television productions in the United States. Thus, clients with investment dollars who seek legal advice on this legislation could invest in films with some of Uncle Sam's money as well as their own.

While reducing risk for investors, the Act simultaneously makes available an equity pool for film and television producers. Similar results occurred after tax-shelter legislation was passed in foreign jurisdictions as Canada, the United Kingdom, Ireland and Australia. Today, New York, Illinois, Hawaii, New Mexico and Arizona among others have joined Louisiana in offering state incentives as well.

Qualified Film and Television Productions

The Act applies only to certain films and television productions that are "qualified," *i.e.*, which meet the following criteria:

▶ The production is property described in Section 168(f)(3) of the IRS Code as a motion picture film or video tape. New media, including increasingly popular digital filmmaking, are not specifically addressed.

▶ The aggregate costs of the production may not exceed $15 million; however, the budget increases to $20 million where a significant amount of costs are expended in areas qualifying for designation as low-income communities under Section 45D, or distressed counties (parishes) or isolated areas of distress by the Delta Regional Authority established in Title 7, United States Code. The higher budgetary level may apply to certain areas within Louisiana, thus generating wider choices in films for investors.

▶ Of the total compensation of the production, 75 percent must be "qualified compensation," *i.e.*, compensation paid for services on a production in the United States to actors, directors, producers and other relevant production personnel, excluding compensation in the form of participation and residual payments.

▶ Any qualified production for television applies only to the first 44 episodes of a series. Television producers aim for a production goal of at least 100 episodes, the minimum required for syndication of the program. The first 44 equates to nearly two years of production, based on the standard 26 episodes per year.

Under the Act, films do not meet the criteria for qualified productions if they include sexually explicit conduct relating to certain IRS reporting.

Deduction of Investment

A taxpayer may elect to treat the cost of any qualified production as an expense not chargeable to a capital account. In such a case, the cost shall be allowed as a deduction. However, with respect to the basis of any qualified film or television production, no other depreciation or amortization deductible is available.

Furthermore, certain other rules may apply, relating to the maximum aggregate amortizable basis and allocation of the dollar limitation.

Effective Date

The Act provides that any production beginning after Oct. 22, 2004, the date of the enactment, is eligible to become a qualified production. The other criteria must also be fulfilled in order to so qualify.

Productions that commence after Dec. 31, 2008, are ineligible to qualify, although

Art continued on page 465

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the definition of "commence" is not stipulated. Whether commencement means expending the first costs on the production, pre-production, principal photography or any other point in the process is unclear. Regardless of the starting point, the eligibility period allows only about 20 remaining months to raise equity, develop qualified projects and commence production.

Economic Effects of the Act

The Act has already curbed the flight of millions of dollars of American productions to countries with incentives exceeding those offered in the United States. It is anticipated that billions in U.S. equity could be poured into films in the United States, as opposed to other types of investment, due to the Act.

A very important effect of the Act is the simultaneous maximization of the tax benefits to investors and the creation of an equity pool for motion picture and television producers. The Act is also causing an increase in the number of film and television industry jobs here in the U.S. Because qualification requires that 75 percent of the compensation be paid in the United States to cast, creative production personnel and technical crew, many filmmakers are shooting at home rather than traveling to distant shores to access incentives.

From Louisiana's perspective, marrying the state tax credits with the federal tax incentives can not only lure out-of-state producers but also build the indigenous industry. The Jobs Creation Act could be just the ticket to new American independent cinema.

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Bill of Rights

"Sniff" by Drug-Detection Dog? Search?

Illinois v. Caballes, 125 S.Ct. 834 (2005).

In a 6-2 decision (Justice Rehnquist taking no part in the decision), the U.S. Supreme Court held that a "dog sniff" conducted during a concededly lawful traffic stop that reveals no information other than the location of a substance that no individual has a right to possess does not violate the Fourth Amendment.

An Illinois state trooper (Gillette) stopped Caballes on an interstate highway for speeding. When Gillette radioed the dispatcher to report the stop, a second state trooper (Graham) overhead the transmission and drove to the scene with his drug-detection dog. When Graham arrived, Caballes was in the back of Gillette's police car and Gillette was writing a warning ticket. While Gillette was writing the warning ticket, Graham walked his dog around Caballes' car, and the dog indicated an alert at the trunk. The officers searched Caballes' trunk based on the dog's alert and found marijuana. The entire incident lasted approximately 10 minutes. Caballes was arrested and subsequently convicted of "a narcotics offense" (as the U.S. Supreme Court put it), sentenced to 12 years in prison and fined $256,136. Caballes' motion to suppress the evidence was denied by the trial judge, who ruled that the officers had not unnecessarily prolonged the stop, and that the dog alert was sufficiently reliable to provide probable cause to conduct the search. The state appeals court affirmed, but the Illinois Supreme Court reversed, concluding that, because the dog sniff

was performed without any "specific and articulable facts" to suggest drug activity, the use of the dog "unjustifiably enlarged the scope of a routine traffic stop into a drug investigation."

The U.S. Supreme Court granted certiorari, according to the majority, on the "narrow" question of: "[w]hether the Fourth Amendment requires reasonable, articulable suspicion to justify using a drug-detection dog to sniff a vehicle during a legitimate traffic stop." Justice Stevens, writing for the majority, asserts that (contrary to the reasoning of the Illinois Supreme Court), in the majority's view, conducting a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner, unless the dog sniff itself infringed respondent's constitutionally protected interest in privacy. Official conduct that does not compromise any legitimate interest in privacy is not a search subject to the Fourth Amendment. The court notes that "respondent does not suggest that an erroneous alert, in and of itself, reveals any legitimate private information." Further, "[i]n this case, the dog sniff was performed on the exterior of respondent's car while he was lawfully seized for a traffic violation. Any intrusion on respondent's privacy expectations does not rise to the level of a constitutionally cognizable infringement."

Justice Souter (with whom Justice Ginsburg joined) dissenting, stated he would hold that using the dog for the purposes of determining the presence of marijuana in the car's trunk was a search unauthorized as an incident of the speeding stop and unjustified on any other ground. Justice Souter also calls into question the wisdom of following *U.S. v. Place*, 103 S.Ct. 2367 (1983), which characterized sniffs by a drug-detection dog as *sui generis* under the Fourth Amendment, and thus, not constituting a search. Stating that "[t]he infallible dog, however, is a creature of legal fiction," Justice Souter cites several cases where such dogs have been unreliable or had indicated "false positives" in a significant percentage of instances, as well as a study cited by Illinois in this case (purporting to show reliability of the dogs), which showed that dogs in artificial testing situations indicated false positives anywhere from 12.5 percent to 60 percent of the time. Justice Souter notes that even in *Place* itself, the government had independent grounds to suspect that the luggage in question contained contraband before the dog sniff was employed.

Justice Ginsburg (joined by Justice Souter), dissenting, writes that the investigation into a matter beyond the subject of the traffic stop and lacking "specific and articulable facts" supporting the dog sniff impermissibly broadened the scope of the investigation under *Terry v. Ohio*, 88 S.Ct. 1868 (1968).

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Criminal Law

Sentencing Guidelines Unconstitutional, Make Guidelines "Advisory"

With *Blakely v. Washington*, 124 S.Ct. 2531 (2004), decided June 24, 2004, the United States Supreme Court declared that the Washington State sentencing guidelines were unconstitutional. Relying on *Apprendi v. New Jersey,* 120 S.Ct. 2348 (2000), the court extended *Apprendi*'s rule that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt," by holding that the "statutory maximum" for *Apprendi* purposes is "the maximum sentence a judge may impose *solely on the basis of the facts reflected in the jury verdict or admitted by the defendant*." (*Blakely* at 2537, emphasis in original).

The dissents in *Blakely* feared that the rationale would be extended to the United States Sentencing Guidelines and bring confusion and uncertainty to a sentencing system that had been in effect for 20 years. Those fears were confirmed with the decision in *United States v. Booker*, 125 S.Ct. 738 (2005), decided Jan. 12, 2005, which confirmed that the rationale of *Blakely* applied to the United States Sentencing Guidelines and that the practice of using "relevant conduct" to enhance a sentence beyond what was shown in the indictment, stipulated facts of a plea agreement or jury verdict form was in fact unconstitutional.

Under the Sentencing Guidelines, the judge considers the presentence report of the probation officer, including hearsay, uncharged conduct, conduct not proved at trial or admitted by the defendant, and even under some circumstances, dismissed charges. The use of this "relevant conduct" can result in an

increased offense level and additional time to serve. Some types of crime are more likely to generate enhancements for relevant conduct, such as conspiracies and drug cases, in which the relative roles in the offense can increase the offense level (for managerial or supervisory roles) or where drugs are seized but not charged in the indictment, but are still included in the "net weight" calculation for determining the base offense level.

United States v. Booker is actually two opinions, the first being the substantive opinion, in which Justice Stephens holds that the Guidelines are unconstitutional and violate the Sixth Amendment as explained in *Apprendi* and *Blakely*. Although the government put forth a number of arguments to try to distinguish the Washington State Statutory Guidelines from the Sentencing Commission's Guidelines, the first majority found these unavailing and declared the *Apprendi/Blakely* rule applies to the Guidelines.

The second opinion, authored by Justice Breyer, held that to apply the requirement of proof beyond a reasonable doubt and jury findings to the facts that serve to enhance a Guidelines sentence would destroy the Guidelines as a practical matter. In order to best preserve the perceived congressional intent in enacting the Guidelines, the second majority opinion excised two portions of the statutory framework — the first made the Guidelines mandatory to sentencing in the district courts (18 U.S.C. § 3553(b)(1)), and the second made the appellate standard of review incorporate an evaluation of how well the sentence complied with the Guidelines (18 U.S.C. § 3742(e)).

The remaining statutory framework, and the declaration of the second majority opinion, is that the Guidelines have been rendered advisory, as one of several factors that must be considered in imposing a sentence under 18 U.S.C. § 3553. Although the appellate standard of review was excised, the court found an implied standard of "unreasonableness."

The second opinion likewise notes that the combined holding must be applied to all cases on direct review and those for which the sentence has not become final. Where there is an obvious Sixth Amendment violation, the court suggests a plain-error test to determine if resentencing is necessary. Where there is no obvious Sixth Amendment violation, a harmless-error test should suffice.

The Guidelines are now advisory, but must be considered in calculating a sentence. Because there is no specified range of punishment for a given act, the judge is free to consider any facts that he or she finds relevant, even though a jury has not determined those facts beyond a reasonable doubt.

For new cases or for those defendants who have not been sentenced, the defendants should anticipate a presentence report with a complete set of Guidelines

calculations. Unlike previous sentencings, the attorney for the defendant can argue for leniency, not bound by the Guidelines, or try to argue for special circumstances previously forbidden by the Guidelines. For instance, USSG 5K2.20 provides for a possible downward departure for "aberrant behavior" for a first-time offender — except for a serious drug offense.

Those defendants who have been sentenced, but who retain some appeal right (either as a result of trial or reservation of appeal rights in a plea agreement), may raise a *Booker* issue with the court of appeals. For cases in which the sentence is final, but that are not outside their one-year deadline for filing under 18 U.S.C. § 2255, there may be the possibility of filing for post-conviction relief. Older cases may well be time-barred, though an argument may be made that the change to the status of the Guidelines is a "watershed" change in criminal procedure so as to provide an exception to the general rule of non-retroactivity under *Teague v. Lane*, 109 S.Ct. 1060 (1989).

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Environmental Law

Louisiana Supreme Court

Terrebonne Parish School Bd. v. Castex Energy, Inc., 04-0968 (La. 1/19/05), ____ So.2d ____.

Plaintiff landowner filed suit against lessee and successor lessee of an oil and gas lease for restoration of the surface of the land leased. The dredging of the canals associated with the oil and gas activities resulted in the lost of 27.74 acres of coastal wetlands. The oil and mineral lease granted by the plaintiff in 1963 to Shell Oil Co. allowed for the dredging of canals and did not contain any provision relative to restoration to pre-lease conditions upon the cessation of its operations. The trial court entered a judgment for the plaintiff and found the defendants solidarily liable under the lease for the restoration of the property "to a condition as near as practicable to its pre-lease condition." The court ordered defendants to place $1.1 million into the registry of the court and appointed a Special Master to oversee the funds. On appeal, the 1st Circuit affirmed the trial court and confirmed a duty under Louisiana Mineral Code article 122 to restore the surface of the leased land to its pre-lease condition by backfilling the canals. The 1st Circuit relied on Louisiana Civil Code articles 2710, 2719 and 2720, upon which Mineral Code article 122 had its genesis, to impose upon a mineral lessee an implied obligation to restore the surface to its pre-lease condition even in the absence of an express lease provision. Furthermore, looking to *Corbello v. Iowa Production*, 02-0826 (La. 02/25/03), 850 So.2d 686, 694, the 1st Circuit held that the fair market value of the land did not limit the defendants' duty to restore. The Louisiana Supreme Court granted writs and held that:

- lessees owed no duty to restore surface of coastal marshland to pre-lease condition and backfill canals; and
- in the absence of an express lease provision, Mineral Code article 122, which obligates a mineral lessee to act as a reasonably prudent operator, does not impose an implied duty to restore the surface to its original, pre-lease condition absent proof that the lessee under the lease exercised his lease rights unreasonably or excessively.

The Supreme Court opined that should the state, in recognition of the inherent value of Louisiana's coastal wetlands, wish to impose an obligation upon all mineral lessees to undertake restoration, the state would need to pursue legislation to expressly do so. The court acknowledged its hesitancy to impose its authority to order "piecemeal restoration" of the coast, considering the superior knowledge of relevant environmental concerns that state agencies and experts possess.

Louisiana Criminal Enforcement

United States v. The Sewer Company, Inc., No. 04:CR178 (M.D. La. 11/22/04).

The U.S. attorney's office for the Middle District of Louisiana has successfully pursued criminal charges under the Clean Water Act for knowing violations of the water-discharge provisions. The charges stemmed from the plant's failure to test wastewater discharges, file discharge monitoring reports or report

exceedances as required by its permit. The charges were brought against the corporate entity as well as the plant's operator. The Sewer Company, Inc. pleaded guilty Nov. 22, 2004, in the U.S. District Court for the Middle District of Louisiana to felony charges of discharging pollutants from sewage treatment plants in residential subdivisions in Livingston Parish into Amite River. The company agreed to pay $250,000 in fines and $14,000 in community restitution. The plant operator also pled guilty to negligent illegal discharge of pollutants, a misdemeanor, and agreed to pay $25,000 in fines and $2,500 in restitution.

Margone, L.L.C. v. Addison Res., Inc., 04-0070 (La. App. 3 Cir. 12/15/04), ____ So.2d ____.

The plaintiff, Margone, is the current lessee of the land upon which historical waste releases had occurred. Margone was organized by ExxonMobile and Unocal, the leaders in evaluating the site for cleanup, for the purposes of cleanup of the site. Margone conducted an investigation and identified several additional companies that it believed had contributed waste to the site. However, a number of these companies refused to voluntarily take part in the site's cleanup. The Louisiana Department of Natural Resources (DNR) was approved as the lead agency to oversee the site's cleanup, and Margone partially cleaned up the site. However, in 2001, the DNR issued a compliance order to complete the cleanup. Following the issuance of the order, Margone sued several defendants, alleging that each is partially responsible for the hazardous waste deposited at the site and, consequently, is partially responsible for the cost of cleaning it up. Margone's suit alleged causes of action in tort and contribution under the Hazardous Waste Control Law. Defendants filed various exceptions, including no cause of action, no right of action, prescription and prematurity, which the trial court denied.

Under the Hazardous Waste Control Law (HWCL), if a person voluntarily cleans up a hazardous waste site before the LDEQ demands remediation, that person may sue other allegedly responsible parties for remediation costs, as long as the LDEQ approved the remediation plan. Margone argues that the cleanup plan approved by the DNR's Office of Conservation is the equivalent of an "approved plan" under the statute. The court sided with the plaintiff and found that a claim under the HWCL had been made. Furthermore, the 3rd Circuit held that failure by Margone to make the statutorily required written demand on the company prior to initiation of suit under the HWCL did not render the suit premature. However, the court did not find a right of action for tortious conduct, nor did the court find that Margone could seek contribution under Louisiana Civil Code article

1804, which governs the liability of solidary obligors between themselves. Margone's only viable claim is under the HWCL, which provides for contribution within its own statutory scheme.

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Family Law

Divorce

Marcotte v. Marcotte, 04-0293 (La. App. 3 Cir. 11/10/04), 886 So.2d 671.

The court of appeal reversed the trial court's finding that Mr. Marcotte committed adultery, finding instead that although the evidence indicated that he may have been having a relationship, that, coupled with conflicting testimony by him and his alleged partner, was not sufficient to meet the burden of proof.

Final Spousal Support

Cason v. Cason, 38,974 (La. App. 2 Cir. 10/27/04), 886 So.2d 628.

A consent judgment agreeing to permanent periodic spousal support until the recipient remarries, dies or enters into open concubinage is not against public policy.

Custody

In re: J.A.B., 04-1160 (La. App. 1 Cir. 9/17/04), 884 So.2d 678, *writ denied*, 04-2963 (La. 12/14/04), 888 So.2d 848.

The court of appeal affirmed the trial court's resolution of this res nova issue, finding that the biological father's consent judgment to waive visitation with his child for two years and not pay child support during that time was not "just cause" to excuse his failure to visit or communicate with the child for six months for purposes of a stepparent adoption under Louisiana Children's Code article 1245. Although he reserved his rights to joint custody during that two-year period, this reservation did not extend to prevent an adoption. The court also found that the adoption was in the child's best interest.

Lebo v. Lebo, 04-0444 (La. App. 1 Cir. 6/25/04), 886 So.2d 491.

There was no authority for Mr. Lebo, who was the domiciliary parent, to name his wife the child's guardian and to give his authority to her under a power of attorney after he was called to military duty in Afghanistan. The child's mother could not obtain a change of custody or authority under a civil warrant or writ of habeas corpus. The court remanded the matter for a temporary custody hearing under Louisiana Civil Code article 134.

Community Property

Noel v. Noel, 04-0105 (La. App. 4 Cir. 9/8/04), 884 So.2d 615.

After Mr. Noel's parents won the lottery, they created the Noel Family Partnership to collect and distribute the yearly payments to the senior Noels and all of their children as equal partners. Because the interest in the proceeds was given to Mr. Noel gratuitously by his parents, and he had done nothing to acquire the winning ticket, the payments to him after the termination of the community were his separate property.

Gauthier v. Gauthier, 04-0198 (La. App. 3 Cir. 11/10/04), 886 So.2d 681.

The trial court's refusal to allow Mr. Gauthier to file his descriptive list seven months after his 90-day period to file his list had elapsed was not an abuse of discretion because he failed to show good cause why he should have been given a further extension. The trial court's refusal to consider his list, which contained reimbursement claims in his favor, was not grounds for a new trial because once the trial court accepted Ms. Gauthier's list, he could not traverse it. The trial court also did not err in partitioning the community based on her list at the hearing. Once he was not allowed to traverse, and she requested a partition, the trial court was capable of issuing a judgment on the partition.

Philmon v. Philmon, 04-673 (La. App. 3 Cir. 11/10/04), 886 So.2d 1222.

Ms. Philmon was not entitled to rent from Mr. Philmon for his use of the matrimonial domicile from the time he moved in, after she had obtained an order for her own use and occupancy but later moved out. She could be entitled to rent only after demanding occupancy and being refused. He was entitled to reimbursement for the house notes he paid after he moved in. The trial court erred in appointing its own appraiser after trial and in using that value without allowing the parties to cross-examine the appraiser. The court of appeal

valued the home based on the average of the parties' two appraisals that had been admitted, less the cost of improvements from the higher, later appraisal.

Millet v. Millet, 04-0406 (La. App. 5 Cir. 10/26/04), 888 So.2d 291.

The fact that the Cocodrie camp received by Ms. Millet in the parties' partition agreement was destroyed by a hurricane between the time of the agreement and the signing of the judgment did not lead to lesion so as to nullify the partition because she had to have been aware of the possibility of such damage to the camp given its location.

Paternity

Mouret v. Godeaux, 04-0496 (La. App. 3 Cir. 11/10/04), 886 So.2d 1217.

Louisiana Civil Code article 191's two-year period for a father to file an avowal action is pre-emptive. Mr. Mouret's action was filed two years after the child's birth, and the mother did not mislead him regarding his paternity; thus, his right ceased to exist and he had no cause of action.

Dennis v. Stewart, 04-0405 (La. App. 5 Cir. 10/12/04), 887 So.2d 539.

Even though Mr. Dennis informally acknowledged several children born out of marriage, they could not be recognized by law as his heirs because he never formally acknowledged them under law and because they never timely filed a filiation action.

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®™© Intellectual Property Law

Fair-Use Defense Available Even If Confusion Likely

The United States Supreme Court recently resolved an issue that has split the circuits and commentators: Is the defense of fair use of a trademark available in an action for trademark infringement only if the alleged infringer can show its use of mark will not cause a likelihood of confusion? *KP Permanent Make-Up, Inc. v. Lasting Impression I, Inc.*, 125 S.Ct. 542 (2004).

KP Permanent Make-Up, Inc. and Lasting Impression I, Inc. use the terms "micro color" and "micro colors" in the mar-

keting and selling of permanent make-up. In 1992, Lasting registered a trademark that contained the words "Micro Colors." In 1999, this registration became incontestable. Thereafter, Lasting demanded that KP stop using the term "microcolor" in its advertising. In response, KP sued Lasting in the Central District of California, seeking a declaratory judgment that its use of the term "microcolor" did not infringe on Lasting's trademark rights. Without inquiring whether KP's use of the term "microcolor" was likely to cause confusion, the district court entered summary judgment in favor of KP based on KP's affirmative defense of fair use, finding that KP acted fairly and in good faith because it used "microcolor" only to describe its goods and not as a mark. Further, KP had been continuously using the term since a date before Lasting adopted its mark. The 9th Circuit Court of Appeals reversed, holding that the district court erred by addressing the fair-use defense without delving into the issue of possible confusion about the origin of KP's goods. The 9th Circuit did not address the burden of proof but appeared to have required KP to show absence of consumer confusion.

The Supreme Court granted certiorari to consider whether a party raising the statutory affirmative defense of fair use to a claim of trademark infringement, 15 U.S.C. § 1115(b)(4), has a burden to negate any likelihood that the practice complained of will confuse consumers about the origin of the goods or services affected. The court held that it does not. In making its ruling, the court reasoned that although § 1115(b) makes an incontestable registration "conclusive evidence of . . . the registrant's exclusive right to use the . . . mark," the burden of proving infringement is on the party charging infringement, even when relying on an incontestable registration. "Infringement" as defined in § 1114 is the actual use of a mark is likely to produce confusion in the minds of consumers about the origin of the goods or services in question.

The court analyzed the text of the Lanham Act, 15 U.S.C. § 1051, noting that Congress used the language "likely to cause confusion, or to cause mistake, or to deceive" in § 1114 to describe the requirement that a mark holder must show a likelihood of consumer confusion to recover for trademark infringement, but provided a defense in § 1115(b)(4) if a descriptive mark was "used fairly," not as a mark, but to describe goods or services. The court rejected Lasting's argument that the term "used fairly" in § 1115(b)(4) was an oblique incorporation of the likelihood-of-confusion test as developed in the common law of unfair competition, stating that the common law of unfair competition tolerated some degree of confusion from the similar use of descriptive words to truthfully describe a product, even if the similar use caused the public to mistake the origin or ownership of the product.

As part of its rejection of Lasting's arguments, the court also examined the typical course of litigation in an infringement action: if a plaintiff succeeds in making out a prima facie case of infringement, including the element of likelihood of consumer confusion, the defendant may offer evidence rebutting the plaintiff's evidence on this element, raise an affirmative defense to bar relief even if the prima facie case is sound, or do both. The court noted that the typical course of litigation reveals the incoherence of placing on the defendant the burden of negating confusion. The court stated that it would "make no sense" to give the defendant a defense of showing affirmatively that the plaintiff cannot succeed in proving some element (like confusion). All the defendant has to do is to leave the fact-finder unpersuaded that the plaintiff has carried its own burden: "A defendant has no need of a Court's true belief when agnosticism will do." The court stated:

> "[I]t defies logic to argue that a defense may not be asserted in the only situation where it even becomes relevant." . . . Nor would it

make sense to provide an affirmative defense of no confusion plus good faith, when merely rebutting the plaintiff's case on confusion would entitle the defendant to judgment, good faith or not.

In conclusion, the court held that a plaintiff claiming infringement of an incontestable mark must show likelihood of consumer confusion as part of its prima facie case and that the defendant has no independent burden to negate any likelihood of confusion in raising the affirmative defense that a term is used descriptively, not as a mark, fairly and in good faith.

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International Law

Chinese Textiles: Safeguards

The Court of International Trade in *U.S. Association of Importers of Textiles and Apparel v. United States*, 350 F.Supp.2d 1342 (Ct. Int'l Trade 2004), issued a preliminary injunction against the Committee for the Implementation of Textile Agreements (CITA), enjoining CITA from accepting, considering or taking any action on requests for safeguard measures that are based on the "threat" of market disruption from the importation of Chinese textiles and textile products. CITA, an interagency committee composed of representatives of the Office of the U.S. Trade Representative, the Department of Commerce, the Department of Labor, the Department of State and the Department of the Treasury, is responsible for the supervision of textile trade agreements. CITA issued the "China Textile Safeguard Regulations," 68 Fed. Reg. 27787 (2003), pursuant to the terms of China's accession to the World Trade Organization, which authorized the United States to "impose temporary textile-specific safeguard measures on Chinese imports of textile and apparel products under certain circumstances."

CITA's Federal Register notice concerning the procedures for requesting a textile-specific safeguard addressed only claims that Chinese textile or apparel products are, "due to market disruption," threatening "to impede the orderly development of trade in like or directly competitive products." CITA concluded in the

"Notice of Procedures" that it considered its action exempt from the Administrative Procedure Act (APA) under the foreign affairs exception.

The court, in enjoining CITA from taking any action on threat-based requests of market disruption, as opposed to those based on claims of actual market disruption, took note of the impact on the plaintiffs of CITA's acceptance of threat-based requests, the question of whether the issuance of the regulations was beyond CITA's delegated authority and the fact that the acceptance of requests based only on the threat of market disruption may violate CITA's regulations and the APA.

Antidumping and Zeroing

The Court of Appeals for the Federal Circuit in *Corus Stall BV v. Dep't of Commerce*, 395 F.3d 1343 (Fed. Cir. 2005), held that the Department of Commerce's "zeroing" methodology for calculating the weighted-average dumping margin for imports pursuant to 19 U.S.C. 1677 (35) is permissible in administrative investigations. "Zeroing" is the practice of assigning a zero value to "sales of merchandise that were sold at nondumped prices" when determining the aggregate dumping margin.

Corus attempted to draw a distinction between administrative investigations and administrative reviews, which according to the court was essential to its case as the court has previously upheld Commerce's zeroing methodology in administrative reviews. *See Timken Co. v. United States*, 354 F.3d 1334 (Fed. Cir. 2004). The court acknowledged the distinction but stated that the rationale of the *Timken* decision controlled.

The panel also quickly dispensed with the producer's argument that Commerce's interpretation of the statute was contrary to the language of the WTO's Antidumping Agreement, as well as WTO Appellate Body decisions. The court held that "the foreign policy implications of a dumping determination" warranted deference to the political branches of government.

Calculation of Time Periods: CIT Rule 6(a)

The Court of Appeals for the Federal Circuit in *United States v. Inn Foods, Inc.*, 383 F.3d 1319 (Fed. Cir. 2004), reversed a decision of the Court of International Trade and held that Court of International Trade Rule 6(a) determines the method of calculating the period of a waiver of a statute of limitation, "absent evidence that the parties intended otherwise." The court noted that statutes of limitations and waivers of limitation periods frequently indicate the date on which the time period begins to run, but often fail to specify the date on which the limitation period or the waiver ends. Stating that the "anniversary method" and the "calendar-year method" were both reasonable methods, the court concluded that resort to CIT Rule 6(a) provides a means to avoid the confusion that arises in distinguishing between the event that triggers the beginning of a time period and the day on which the counting begins.

The government brought suit against Inn Foods on Dec. 14, 2001, alleging a violation of 19 U.S.C. § 1592. Inn Foods executed a number of waivers of the limitation period, the final two-year waiver stating, in part, that the defendant waived the statute of limitation "for a period of TWO YEARS, commencing on December 14, 1999." Inn Foods' motion to dismiss argued that the waiver period expired on Dec. 13, 2001, a day prior to the date on which the government filed its complaint. CIT Rule 6(a) provides that "[i]n computing any period of time . . . the day of the act, event, or default from which the designated period of time begins to run shall not be included . . . ."

CBP Reconciliation

U.S. Customs and Border Protection (CBP) published a General Notice in the Federal Register, 70 Fed. Reg. 1730 (2005), advising importers that it was changing the time period for filing a Reconciliation entry pursuant to the Automated Commercial System (ACS) Reconciliation prototype. The new time period is "from no later than 15 months to no later than 21 months after the date the Importer declares its intent to file the Reconciliation."

Reconciliation is a process by which an importer may "flag" an entry summary because of a lack of information concerning the entry's value, classification, value

Notice to Family Law Section Membership

PLEASE TAKE NOTICE that a general membership meeting of the Family Law Section will be held on Friday, May 13, 2005 at 8 a.m. at the Holiday Inn Select hotel/conference center in Baton Rouge, La. At the membership meeting, the following proposals will be made:

1. To amend the section bylaws to fix the date and location of future membership meetings to coincide with the annual Family Law Seminar conducted by the Paul M. Hebert Law Center in Baton Rouge, La., commencing in 2005. In the event that such a seminar is not conducted by the Law Center, then the annual meeting shall be scheduled in September of each year, on a date and at a time and place to be fixed by the Council;
2. Election of chair, vice chair, secretary and treasurer for the section;
3. To amend the section bylaws to increase the Family Law Council members by two (2) Council seats so that the Family Law Council shall consist of nine (9) voting members in addition to the four (4) officers;
4. Election of nine (9) council members, in the event the bylaws are amended, or the election of the Council per the bylaws should the amendment fail.

aspect of a heading 9802, Harmonized Tariff Schedule of the United States, entry or a post-entry claim for benefits pursuant to the North American Free Trade Agreement or the U.S.-Chile Free Trade Agreement. The importer may then supply CBP, at a later date, with the previously unavailable information. The modification to the reconciliation prototype became effective on Feb. 9, 2005.

The views expressed do not necessarily represent the views of U.S. Customs and Border Protection or the United States government.

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Professional Liability

Are Blood Donors Patients?

Delcambre v. Blood Sys., Inc., 04-0561 (La. 1/19/05), ____ So.2d ____.

Delcambre went to a blood bank for the sole purpose of gratuitously donating blood. During the procedure, one of the blood bank's employees injured Delcambre's right arm. Delcambre filed a lawsuit, to which the blood bank excepted on the grounds of prematurity, as no medical review panel had been requested.

The Supreme Court reviewed recent cases dealing with actions covered by the Act and determined that Delcambre was not a "patient" who was receiving "health care or professional services" at the time he was injured. Delcambre was not directed by any health-care provider to go to the lab for tests for any medical condition for which he required treatment, nor was he confined to any health-care facility. Therefore:

> policy dictates strict construction of the MMA against coverage because the Act is special legislation in derogation of the general rights of tort victims . . . . Our finding that Delcambre is not a "patient" pursuant to the Act, and therefore his claims do not constitute "malpractice" as defined in the Act, is consistent with this policy of strict construction of the Act against coverage.

Is a Fall in a Hospital Room Covered by the Act?

Taylor v. Christus Health Southwestern La., 04-0627 (La. App. 3 Cir. 11/10/04), 886 So.2d 696.

Mr. Taylor was recuperating from surgery in his hospital room. He told a nurse's aide that he was going to take a shower, and she responded that she would soon return with someone to assist him. When no one came, Mr. Taylor showered on his own. When he exited the shower, he slipped and fell.

Mr. Taylor filed a lawsuit alleging failure to monitor him properly and failure to equip the hospital room with a bath mat. The hospital filed an exception of prematurity, following which the petition was amended to remove the allegation of negligence concerning the failure adequately to monitor Mr. Taylor, and then again amended to reassert that same allegation of negligence. The trial court overruled the defendant's exception of prematurity.

The appellate court found that the alleged failure of the hospital staff to monitor or to assist a post-surgical patient, as well as the allegation of negligence concerning the absence of a bath mat (failure properly to equip the room), were actions and omissions that "must be analyzed under the Medical Malpractice (Act)."

Is a Corpse a Patient?

Gayden v. Tenet Healthsystem Mem'l Medical Ctr., Inc., 04-0807 (La. App. 4 Cir. 12/15/04), ____ So.2d ____.

A patient died shortly after being admitted to Memorial Hospital. His survivors alleged that by the time the funeral home employees arrived at the hospital the following day, his body had reached an advanced stage of decomposition. They filed a lawsuit and alleged that the accelerated postmortem changes were caused by the hospital's negligence in failing to refrigerate properly and to preserve the body, thus preventing them from conducting an open casket wake.

Memorial filed an exception of prematurity because the case had not first been submitted to a medical review panel. The trial court granted the exception.

On appeal, the hospital contended that its actions were covered by the Act because it had a continuing duty to provide "proper treatment" even after the death of the patient. The survivors contended that after death one is no longer a "patient" or "natural person" as contemplated by the Act. The appellate court agreed with the plaintiffs and reversed, finding that a strict construction of the Act did not allow the definitions of "patient" and "malpractice" to encompass negligent acts toward a deceased person.

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Taxation

Borrowing to Pay Estate Taxes and Deducting the Interest

The leading case authorizing the interest deduction where the interest is fixed and cannot be changed is *Estate of Cecil Graegin v. Comm'r*, 56 T.C.M. 387 (1988). An illustration of how the time-value-of-money benefit of the interest deduction can be substantial is set forth in *Klein v. Hughes*, 2004 WL 838198 (Cal. App. 1 Dist. 2004)(unpublished), which involved a plan by the estate to pay its estate taxes through a loan. The decedent died in May 2000 with an estate in excess of $300 million. The federal estate tax return showed estate taxes of more than $200 million. The trial court approved the loan. The appeals court approved the trial court determination. The opinion described the plan as follows:

> This appeal concerns instructions the trustees sought from the probate court regarding a proposed loan transaction. In a verified petition, the trustees [of a trust holding a substantial portion of the assets included in the gross estate] stated the Hughes estate had substantial tax liability but, due to the nature of the trust's investments, did not have sufficient liquid assets to pay this liability. Most of the trust's investments were in limited liability companies from which the trust had no power to compel cash distributions, and the trust's interests were subject to stringent restrictions on transfer. However, the trustees had reached a settlement with the IRS regarding the estate tax liability. The trustees agreed the trust would

borrow $49 million from a third party, using a zero coupon loan transaction, to pay its federal and state estate tax liabilities. The loan would carry an interest rate of 8.75 percent, with all unpaid principal and interest due on December 31, 2027. Aside from a $10 million payment due September 9, 2005, no interim interest payments would be required for the loan. Prepayment of the loan was prohibited [a requirement for an IRC Sec. 2053 deduction], and it was therefore determined that the trust would incur a total of approximately $309 million in deductible interest expense by the due date of the loan. Because a provision of the Internal Revenue Code (Int. Rev. Code § 2053) would permit a current estate tax deduction for all interest payable throughout the term of the 25-year loan, with no present-value discount of this sum, the trustees calculated this financing arrangement would reduce the trust's liability for estate tax by more than $166.5 million.

. . . .

Absent any loan transaction, the trust owed $212,460,485 in estate taxes, due immediately. However, by using Internal Revenue Code section 2053 to deduct the full amount of interest paid on a $49 million loan, the trust could successfully reduce its estate taxes to $45,931,555, for a savings of $166,528,930 in estate taxes paid to the IRS. Subtracting the present value of profits Zacadia [the lender] would obtain from the interest rate spread (approximately $3.6 million) and the present value of income tax HIP [a company owned by the trust] would have to pay on phantom income it would incur in the transaction (just over $49 million), the trustees calculated the trust would gain a net savings of $113,716,912 by entering the Zacadia transaction.

The estate was able to take an immediate deduction for the full amount of interest payable over the term of the loan. *Klein* indicates the desirability of negotiating with the IRS over the payment of estate taxes in unusual cases. The result achieved by the estate was remarkable.

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Trusts, Estate, Probate and Immovable Property Law

Enforceability of "As-Is" Clauses

In *Williston v. Noland*, 03-2590 (La. App. 1 Cir. 10/29/04), 888 So.2d 950, the plaintiffs purchased property from the Nolands and thereafter filed suit against the Nolands for reduction in the purchase price based on the existence of redhibitory defects that had not been disclosed to them. Specifically, the plaintiffs alleged structural damage and termite infestation. The trial court dismissed the plaintiffs' claim based on a handwritten clause in the purchase agreement that stated: "Buyer accepts house in present condition."

In Louisiana, a seller warrants that the thing sold is free of redhibitory defects and reasonably fit for its intended purpose. La. Civ.C. arts. 2475, 2476, 2520. For a waiver of this implied warranty to be effective, courts have required that the waiver:

- must be written in clear and unambiguous terms;
- must be contained in the sale or mortgage document; and
- must be brought to the attention of the buyer.

The *Williston* court held that the mere fact that a sale is confected "as is" does not create a waiver of all warranties, and if the act of sale fails to provide a waiver of express and implied warranties, including the warranty of fitness for a particular purpose and the warranty against redhibitory defects, then such waiver is not sufficiently clear and the vendor will remain responsible for the implied warranty that the thing is fit for its intended purpose. Interestingly, the court noted that the sale documents at issue did not provide that the sale was either "as is" or that the property was accepted in its "present condition."

"Assignment" vs. "Donation"

In *Doré Energy Corporation v. Massari*, 04-0659 (La. App. 3 Cir. 2004), 887 So.2d 691, the 3rd Circuit addressed whether a restriction on assignments contained in a hunting lease was violated by an inter vivos donation. When the defendant-lessee donated the lease to another party (Pratt), the plaintiff-lessor filed suit to cancel the lease on the grounds that the donation violated the provision of the lease that prohibited assigning or subletting the lease. The trial court granted plaintiff's motion for summary judgment and canceled the lease.

The defendants asserted, however, that the terms "assignment" and "donation" were distinguishable terms in that donations are gratuitous and assignments are onerous. The court stated that the case revolved around the technical issue of whether the term "assignment" included a donation. Citing Professor Litvinoff's analysis of assignment and subrogation, the court reasoned that the defining characteristic of an assignment was its status as an onerous transaction. A donation, however, is defined by the fact that it is gratuitous. The court quoted Louisiana Civil Code article 1467, which provides that "property can neither be acquired nor disposed of gratuitously, unless by donations *inter vivos* or *mortis causa*." In further support of its conclusion, the court noted that the terms "sale" and "assigned" are used interchangeably in Civil Code article 2652 dealing with the sale of litigious rights and that the articles addressing "assignment" appear in Title VII (SALES), not in Title II (DONATIONS). The court reversed the motion for summary judgment and held that the redactors recognized the two to be different forms of conveyance and that

"the code treats the two concepts as separate and distinct modes of transferring ownership."

Right of Passage Over Neighboring Property

In *Thibodaux v. Tilton*, 03-2220 (La. App. 1 Cir. 10/22/04), 888 So.2d 920, the plaintiff and his co-owner sought the recognition of a servitude over of passage after purchasing an enclosed six-acre parcel. The defendant and his wife owned 125 acres of land that fronted on the disputed passageway. In December 1992, Mr. Tilton *separately* purchased an additional six acres of property adjacent to the 125-acre tract and subsequently sold the six-acre tract to the plaintiff.

The plaintiffs sought a summary judgment recognizing a right of passage along the road pursuant to Louisiana Civil Code article 694 (or, alternatively, pursuant to article 689). Article 694 provides that when in the case of a partition or voluntary alienation of property, the alienated property becomes enclosed, passage shall be furnished gratuitously by the owner of the land on which the passage was previously exercised, even if it is not the shortest route. Article 689, however, simply provides that the owner of an estate that has no access to a public road may claim a right of passage over neighboring property to the nearest public road, subject to his obligation to indemnify his neighbor for any damage.

The court conceded that the six-acre parcel became enclosed upon the sale by Mr. Tilton to Thibodaux. Mr. Tilton, however, was not the sole owner of the adjacent 125 acres, which he jointly owned with his wife. Thus, Mr. Tilton was the sole owner of the enclosed tract, but maintained only a partial interest in the adjacent tract. Mr. Tilton's sale of the separately owned six-acre tract did not create a situation in which the owner of an estate voluntarily alienated a part of the estate pursuant to article 694 since Mrs. Tilton was not party to the sale. The 1st Circuit therefore reversed the trial court's decision, finding that Mr. Tilton owed a right of passage to Thibodaux under article 694. The court did, however, recognize that the plaintiffs' six-acre tract was enclosed and therefore recognized in favor of plaintiffs a right of passage over neighboring property to the nearest public road under article 689.

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CHAIR'S MESSAGE

Farewell Address

By D. Beau Sylvester, Jr.

D. Beau Sylvester, Jr.

It has been a great honor for me to serve as chair of the Young Lawyers Section for the Louisiana State Bar Association (LSBA). I am compelled to thank a number of people who helped me through this year.

With the encouragement of Rusty Stutes, Stacy Auzenne, Jennifer Gary, Ron Ward and Dona Renegar, all of whom served terms on the Young Lawyers Council, I chose to run and was elected to serve as an officer for this section. For the past six years, I have served on the Young Lawyers Council and learned much about the purpose and achievements of our section. I was proud to serve under the leadership of past chairs, Rusty Stutes, Ann Birdsong, Jennifer Gary, Stacy Auzenne and Monique Svenson. All of these chairs performed on a minimal budget with the help and vision of the LSBA staff. To these friends and leaders of our association and section, I thank you, both personally and on behalf of our membership.

To the current Young Lawyers Council, I thank you for the service that you have generously given this year. To my law partner, Randy Tannehill, and my secretary, Tracy Briley, I thank you for the opportunity and sacrifice that has allowed me to serve as chair. And above all to my wife, Laura, thanks for sharing my commitments to the LSBA and the Young Lawyers Section at a time when the commitments at home and work are already abundant.

This year, under the guidance of committee chairs, and with volunteers and the support of the LSBA staff, our section has achieved dazzling success in each and every endeavor. This year, council members Chris Peters and Michael Street organized and ran our High School Mock Trial Competition that culminated with Baton Rouge High winning the state competition held in Alexandria in March. Shannan Hicks chaired our High School Essay Competition which drew nearly 400 entries this year. Our council placed an emphasis on increasing the participation in the essay contest and the awards that were provided to the winners. I am glad to report that, due largely to Shannan's efforts, our goals were achieved. Our section has enjoyed success and appreciation from the American Bar Association due to the efforts of Beth Abramson, Stacy Auzenne and Mark Morice. These individuals traveled to ABA events and provided excellent representation of our section. Through the leadership of Kiana Aaron Mitchell, Val Bargas and Dona Renegar, we provided CLE opportunities that were specifically designed for members of our section. Finally, thanks to the efforts of Shawn Lindsay, Mark Morice and Beth Abramson, we offered a mock trial competition for our four law schools and a workshop for law students designed to improve interview and job search skills. As you can see, it has been a busy year.

I want to thank Dona Renegar and Mark Morice for providing great ideas and assistance as chair-elect and secretary, respectively, of our council. The YLS will continue to have wonderful leadership for years to come. I want to thank Mike McKay and Frank Neuner for all the support they have given the YLS from the leadership of the LSBA.

I encourage all members to learn more about our section and its programs and to get involved with us. The only way the Young Lawyers Section can address the needs of its members is through the continued volunteer service of outstanding lawyers like those mentioned above. I have been honored to serve this section and hope our council has met your expectations.

JUDICIAL Notes

By Robert Gunn, Louisiana Supreme Court

NEW JUDGE. . . APPOINTMENTS

New Judge

Sidney H. Cates IV, 52, was elected to Division C, Orleans Parish Civil District Court. He earned his undergraduate degree from Loyola University in New Orleans in 1975, graduating with *cum laude* honors, and his JD degree from Loyola University Law School in 1976, also graduating with honors. A University Fellow of Loyola, he is a former member of the Louisiana State Bar Association's Minority Involvement Committee, past chair of the Civil Service Commission for the City of New Orleans and past president of the board of directors of the New Orleans Legal Assistance Corp. He is a member of both the National and Louisiana Council of Juvenile and Family Court Judges, the City of New Orleans Domestic Violence Advisory Committee, the New Orleans Bar Association 2005 Bench Bar Planning Committee, the Louisiana Judicial Council 2005 Planning Committee and the Greater New Orleans Louis A. Martinet Legal Society. He is the father of two children.

Sidney H. Cates IV

Appointments

Orida Broussard Edwards, Phillip M. Lynch, Jr. and Robert G. Pugh, Jr. were reappointed, by order of the Louisiana Supreme Court, to the Mandatory Continuing Legal Education Committee for terms of office concluding on Dec. 31, 2007.

James R. Dagate, Michael S. Walsh, Charles C. Beard and Martin Louis Chehotsky have been appointed, by order of the Louisiana Supreme Court, to the Louisiana Attorney Disciplinary Board for terms of office concluding Dec. 31, 2007.

Death

Retired 32nd Judicial District Court Judge Wilmore J. Broussard, Jr., 81, died Jan. 10. A graduate of Louisiana State University Paul M. Hebert Law Center, he served as a U.S. Army Air Force pilot in World War II. He served from 1960-72 as district attorney for Terrebonne and Lafourche parishes and from 1974-90 as a district court judge. Active in a number of civic groups and organizations, he was a former commander of the American Legion in Houma and a member of the Knights of Columbus and Veterans of Foreign Wars.

FYI

By order of the Louisiana Supreme Court, Rule XXXV, Section 3 (6), (7) and (10) of the Rules of the Louisiana Supreme Court were amended and an amended complaint form was appended to this rule change and was approved for use by the Louisiana Judicial Campaign Oversight Committee.

By order of the Louisiana Supreme Court and considering the recommendations of the Advisory Committee to the Supreme Court for Revision of the Code of Judicial Conduct, Canon 2A, Canon 3A(8), Canon 7B(1)(a) and (d) of the Louisiana Code of Judicial Conduct were amended, and Canon 3A(10) of the Louisiana Code of Judicial Conduct was enacted.

PEOPLE

LAWYERS ON THE MOVE

Adams and Reese, L.L.P., announces the election of five attorneys to partnership: **Gregory D. Frost**, **Melissa S. LaBauve**, **Thomas E. Gottsegen**, **Stefini Weckwerth Salles** and **Robert L. Wollfarth, Jr.** The firm also announces that **Charles A. Cerise, Jr.** has been named partner in charge of the New Orleans office. **John M. Duck** has been elected chair and **Edwin C. Laizer** has been elected a member, respectively, of the firm's Executive Committee. **Robin B. Cheatham** has been named Transactions and Corporate Advisory Services Practice Group leader.

AmSouth Bank announces the addition of Patrick M. Kingsmill as vice president and personal trust manager of the bank's south Louisiana market.

Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., announces that **William H. Howard III** has joined the firm as a shareholder, **Alissa J. Allison** has joined the firm as of counsel and **Matthew A. Woolf** and **Rebecca E. Fenton** have joined the firm as associates, all in the New Orleans office.

Barrasso Usdin Kupperman Freeman & Sarver, L.L.C., announces that **Neely S. Griffith** and **Michael J. Haskell** have joined the firm as associates.

Christovich & Kearney, L.L.P., announces that R. Kevin Hamilton has joined the firm as an associate.

Courtenay, Hunter & Fontana, L.L.P., announces that Maurice E. Bostick has joined the firm as a partner and Carin J. Dorman has joined the firm as an associate.

Deutsch, Kerrigan & Stiles, L.L.P., announces five new partners in its New Orleans office: Jennifer E. Adams, Beverly A. Aloisio, Jamie H. Baglio, John B. Esnard III and Anne B. Rappold.

Dayne M. Freeman, Troy D. Jackson and Victor E. Mukete II announce the opening of their firm, Freeman, Jackson, Mukete, L.L.C., located in the Roumain Building, Ste. 505, 343 Third St., Baton Rouge, LA 70801.

Gainsburgh, Benjamin, David, Meunier & Warshauer, L.L.C., announces that Tracey L. Rannals and Todd R. Slack have become members of the firm.

Galloway, Johnson, Tompkins, Burr and Smith announces that Jason F. Giles, Frank A. Romeu, Jr., Dominique R. Bright-Wheeler, Cara L. Raymond, Martha J. Maher and Tiffany A. Mann have joined the firm as associates in the New Orleans

M. Nan Alessandra

Alissa J. Allison

Norman E. Anseman III

Phillip J. Antis, Jr.

Christopher B. Bailey

L. Etienne Balart

Donna M. Bossier

Kim M. Boyle

Timothy P. Brechtel

Susan E. Burkenstock

Camala E. Capodice

Charles A. Cerise, Jr.

office. Sara Z. Wood has joined the firm as an associate in the Mandeville office.

Gordon, Arata, McCollam, Duplantis & Eagan, L.L.P., announces that **Phillip J. Antis, Jr.**, **Nina W. English**, **Sara E. Mouledoux** and **Suzy K. Scalise** have joined the firm as associates, all in the New Orleans office. **Christopher B. Bailey** has joined the firm as an associate in the Lafayette office.

Lambert J. Hassinger, Jr. has established the Hassinger Law Firm, P.L.L.C., located at Ste. 1810, 1515 Poydras St., New Orleans, LA 70112.

Irwin Fritchie Urquhart & Moore, L.L.C., announces that **Monique M. Garsaud** has become a member of the firm and **Camala E. Capodice** and **McDonald G. Provosty** have joined the firm as associates.

Jones Walker announces that six lawyers have been elected to partnership: **Norman E. Anseman III**, **L. Etienne Balart**, **Timothy P. Brechtel**, **Genevieve M. Hartel** and **Miriam W. Henry**, all in the New Orleans office, and **David M. Kerth** in the Baton Rouge office.

Allan Kanner & Associates, P.L.L.C., announces that Elizabeth B. Cowen has become a member of the firm.

Lamar Advertising Co. announces that **Wendi B. Loup** has joined the company as assistant general counsel at its corporate office in Baton Rouge.

LeBoeuf, Lamb, Greene & MacRae announces that John C. LaMaster has joined the firm as a partner, resident in the London, England office.

Louisiana Attorney General Charles C. Foti, Jr. announces the addition of several personnel to the Department of Justice: Lance S. Guest, New Orleans; and William P. Bryan III, Gol Sheikhivigeh Hannaman, Christopher B. Hebert, Gail C. Holland, Kenneth L. Roche III, Ryan M. Seidemann and Uma M. Subramanian, all in Baton Rouge.

McCranie, Sistrunk, Anzelmo, Hardy, Maxwell & McDaniel has named **James C. Rather, Jr.** as a director of the firm.

McGlinchey Stafford announces the naming of new members Jon Ann H. Giblin, Ronnie L. Johnson and Jean-Paul Perrault in the Baton Rouge office. Also, Brandon A. Politz, James D. Seymour, Jr. and Jonathan G. Wilbourn have joined the firm as associates in the Baton Rouge office.

Peoples Health Network announces that **Donna M. Bossier** has joined the health plan administrator as general counsel.


Robin B. Cheatham


Pride J. Doran


John M. Duck


Nina W. English


Rebecca E. Fenton


Gino R. Forté


Gregory D. Frost


Monique M. Garsaud


Kathleen C. Gasparian


Thomas E. Gottsegen


Neely S. Griffith


Genevieve M. Hartel


Michael J. Haskell


Miriam W. Henry


William H. Howard III


David M. Kerth

S.W. Plauché III and George C. Plauché announce the formation of Plauché & Plauché, L.L.C., located at Ste. 104, 1018 Harding St., P.O. Drawer 52806 (70505), Lafayette, LA 70503.

Seale & Ross, A.P.L.C., announces that Steven L. McKneely has become a partner in the firm.

Sieberth & Patty, L.L.C., announces the relocation of its offices to 4703 Bluebonnet Blvd., Baton Rouge, LA 70809.

The Stephens Law Firm, L.L.P., announces that **Gino R. Forté** has become associated with the firm in its Covington, La., office.

Stone Pigman Walther Wittmann, L.L.C., announces that **Andrew D. Mendez** has become a member of the firm.

Taylor, Porter, Brooks and Phillips, L.L.P., announces that **Tracy Averett Morganti** and **John Allain Viator** have become partners in the firm. Also, Edward J. Laperouse II, Jason M. DeCuir, Edward D. Hughes and Thomas D. Gildersleeve have joined the firm as associates.

Taylor, Wellons, Politz & Duhe, A.P.L.C., announces that B. Scott Cowart has become a partner and Daryl J. Daigle, Adam P. Massey, Jackie A. Romero, Brent M. Steier and Aaron Lawler have joined the firm as associates.

Vinson & Elkins, L.L.P., announces that Caroline B. Blitzer has been elected to partnership in the Houston office.

David Ware & Associates announces that **Kathleen C. Gasparian** has become associated with the firm.

Watkins Ludlam Winter & Stennis, P.A., announces that Jodi Anthony Moscona has joined the firm as a shareholder in the New Orleans office.

Gregory F. Williams, Sr., **Pride J. Doran** and **Jermaine D. Williams** announce the formation of Williams Doran & Williams, P.L.L.C., located at 1313 Lafayette St., Lafayette, LA 70501 (P.O. Box 3687).

NEWSMAKERS

Deutsch, Kerrigan & Stiles, L.L.P., attorneys Georgia K. Thomas and Jennifer E. Adams will serve as 2005 program director and community outreach director, respectively, in the Association of Women Attorneys.

Monique M. Edwards has been appointed by Gov. Kathleen B. Blanco to serve as executive counsel to the secretary of the Department of Natural Resources.


Melissa S. LaBauve


Edwin C. Laizer


Wendi B. Loup


Andrew D. Mendez


Mandy K. Mendoza


Tracy Averett Morganti


Sara E. Mouledoux


McDonald G. Provosty


James C. Rather, Jr.


Stefini Weckwerth Salles


Suzy K. Scalise


John Allain Viator


Gregory F. Williams, Sr.


Jermaine D. Williams


Robert L. Wollfarth, Jr.


Matthew A. Woolf

Elkins, P.L.C., announces that **Susan E. Burkenstock** and **Mandy K. Mendoza** have become certified as tax law specialists by the Louisiana Board of Legal Specialization.

Louisiana Attorney General Charles C. Foti, Jr. announces that Assistant Attorney General Harry P. Fontenot, Jr. has been elected potentate of Habibi Shrine Center in Lake Charles. Also, Assistant Attorney General David E. Marquette was inducted into the Quintuple Century Club of the Baton Rouge Bar Foundation Pro Bono Project for donating 500 or more hours of free legal service.

Warren A. Perrin, of Perrin, Landry, deLaunay, Dartez & Ouellet in Lafayette, was reappointed by Gov. Kathleen B. Blanco as president of CODOFIL, the Council for the Development of French in Louisiana.

Phelps Dunbar, L.L.P., partners **M. Nan Alessandra** and **Kim M. Boyle** received the 2004 Strategic Partner of the Year Award on behalf of the firm's client RPM Pizza, L.L.C./dba, Domino's Pizza.

People Deadlines & Notes

Note the following deadlines for submitting People announcements (and photos) in future issues of the *Louisiana Bar Journal*:

Publication	Deadline
Aug./Sept. 2005	June 3, 2005
Oct./Nov. 2005	Aug. 4, 2005
Dec. 2005/Jan. 2006	Oct. 4, 2005

Announcements are published free of charge to members of the Louisiana State Bar Association. *Only the names of Louisiana State Bar Association members are published.*

LSBA members may publish photos with their announcements at a cost of **$50 per photo**. Firms submitting multiple photos for publication must remit $50 for each photo.

Payment for photos must be submitted when the announcement is submitted (adhering to the submission deadlines above). All photos must be paid for prior to publication.

Send announcements, photos and photo payments (checks payable to Louisiana State Bar Association) to:

Publications Coordinator
Darlene M. LaBranche
Louisiana Bar Journal
601 St. Charles Ave.
New Orleans, LA 70130

Call (504)619-0112 or (800)421-5722, ext. 112

CLE Sponsor Acknowledged

The LSBA would like to thank the sponsor of the following CLE seminar:

March 18, 2005
Appellate Law Seminar
Lowes Hotel, New Orleans
Sponsored by West

Alcohol and Drug Abuse Hotline

Director William R. Leary 1(866)354-9334
Ste. 4-A, 5789 Hwy. 311, Houma, LA 70360

Area	Committee Contact	Phone
Alexandria	Stephen E. Everett	(318)640-1824, (318)443-6312
Baton Rouge	Steven Adams	(225)753-1365, (225)924-1510
	David E. Cooley	(225)751-7927, (225)753-3407
	John A. Gutierrez	(225)715-5438, (225)744-3555
Houma	Bill Leary	(985)851-0611, (985)868-4826
Lafayette	Alfred "Smitty" Landry	(337)364-5408, (337)364-7626
	Thomas E. Guilbeau	(337)232-7240
	James Lambert	(337)233-8695, (337)235-1825
Lake Charles	Thomas M. Bergstedt	(337)433-3004, (337)558-5032
	Nanette H. Cagney	(337)437-3884, (337)477-3986
Monroe	Robert A. Lee	(318)387-3872, (318)388-4472
New Orleans	Craig Caesar	(504)596-2774
	Deborah Faust	(504)486-4411, (504)833-8500
	Donald Massey	(504)585-0290
	William A. Porteous	(504)581-3838, (504)897-6642
	Dian Tooley	(504)861-5682, (504)831-1838
Shreveport	Bill Allison	(318)221-0300, (318)865-6367
	Ed Blewer	(318)227-7712, (318)865-6812
	Steve Thomas	(318)872-6250

The Lawyers Assistance Program, Inc. provides confidential assistance with problems such as alcoholism, substance abuse, mental health issues, gambling and all other addictions.

REPORT BY DISCIPLINARY COUNSEL

Public matters are reported to protect the public, inform the profession and deter misconduct. Reporting date Feb. 3, 2005.

Decisions

Wendell Gerard Armant, New Orleans, (2004-B-2232) **License revoked, permanently prohibited from being readmitted to the practice of law, and ordered to provide complete accounting and make full restitution to his victims**, ordered by the court on Nov. 19, 2004. JUDGMENT FINAL and EFFECTIVE on Dec. 3, 2004. *Gist:* Engaging in numerous instances of neglect of legal matters; failure to communicate with clients; failure to promptly remit funds to clients and third-party medical providers; failure to protect clients' interest upon termination; failure to refund unearned fees; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; failure to cooperate with the ODC; mishandling of client and third-party funds; conversion of client funds; and engaging in the unauthorized practice of law while on interim suspension.

Lewis B. Blanche, Baton Rouge, (2005-OB-0116) **Transfer to disability inactive status** ordered by the court on Jan. 26, 2005. JUDGMENT FINAL and EFFECTIVE on Jan. 26, 2005.

J. Michael Bordelon, Covington, (2004-B-0759) **Sixty-day suspension** ordered by the court on Jan. 7, 2005. JUDGMENT FINAL and EFFECTIVE on Jan. 21, 2005. *Gist*: Knowingly making a false statement of material fact in connection with a disciplinary matter; and violating the Rules of Professional Conduct.

John B. Comish, Baton Rouge, (2004-B-1453) **Three-year suspension with all but one year and one day deferred, with conditions**, ordered by the court on Dec. 13, 2004. JUDGMENT FINAL and EFFECTIVE on Dec. 27, 2004. *Gist:* Failure to provide competent representation to a client; failure to act with reasonable diligence and promptness in representing a client; failure to communicate with client; failure to supervise non-lawyer assistants; assisting a person who is not a member of the bar in the performance of an activity that constitutes the unauthorized practice of law; and engaging in conduct prejudicial to the administration of justice.

Curtis J. Coney, Jr., New Orleans, (2004-B-2603) **Permanent disbarment** ordered by the court on Jan. 7, 2005. JUDGMENT FINAL and EFFECTIVE on Jan. 21, 2005. *Gist*: Accepting a referral from any person whom the lawyer knows has engaged in solicitation relating to the referred matter; improper solicitation of professional employment by a lawyer or through others acting at his request or on his behalf; giving items of value to a person for recommending the lawyer's services; violating the Rules of Professional Conduct; and the commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer.

Miles Davidson, Jr., Tulsa, Okla., (2004-OB-2646) **Permanent resignation** ordered by the court on Nov. 22, 2004. JUDGMENT FINAL and EFFECTIVE on Nov. 22, 2004.

Kerri F. Dunn, Corona, Calif., (2004-OB-2855) **Interim suspension** ordered by the court on Dec. 8, 2004. JUDGMENT FINAL and EFFECTIVE on Dec. 8, 2004.

Joseph C. Kosarek, Abbeville, (2004-OB-2967) **Permanent resignation in lieu of discipline** ordered by the court on Jan. 11, 2005. JUDGMENT FINAL and EFFECTIVE on Jan. 11, 2005. *Gist*: Conversion of client and third-party funds.

Antoine Z. Laurent, Slidell, (2004-B-2750) **Revocation of probation in which previously deferred six-month suspension imposed in *In Re: Laurent,* 02-2163 (La. 1/14/03), 835 So.2d 430, be made executory immediately, followed by two-year probation period upon reinstatement, subject to conditions**, ordered by the court on Nov. 17, 2004. JUDGMENT FINAL and EFFECTIVE on Nov. 17, 2004. *Gist:* Failure to comply with conditions of probation; and failure to cooperate with a disciplinary investigation of a complaint filed during the probation period.

Lawrence A. Mann, New Orleans, (2004-B-1850) **Permanent disbarment** ordered by the court on Nov. 8, 2004. JUDGMENT FINAL and EFFECTIVE on Nov. 22, 2004. *Gist*: Violating the Rules of Professional Conduct; commission of a criminal act reflecting adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Michael E. Mathieu, Houma, (2005-OB-0092) **Transfer to disability inactive status** ordered by the court on Jan. 26, 2005. JUDGMENT FINAL and EFFECTIVE on Jan. 26, 2005.

Gasper J. Schiro, New Orleans, (2004-B-1647) **Suspension for one year, with six months deferred, subject to unsupervised probation for one year**, ordered by the court on Nov. 15, 2004. JUDGMENT FINAL and EFFECTIVE on Jan. 14, 2005, the date rehearing was denied. *Gist:* Failure to provide competent representation; failure to adequately communicate with his client regarding the status of the case; and failure to act with diligence during the representation, taking only sporadic actions during the nearly 20 years when the case was pending.

Kent Anthony Smith, Marrero, (2004-B-1918) **Suspension for one year, fully deferred, subject to one year of supervised probation with conditions**, ordered by the court on Nov. 15, 2004. JUDGMENT FINAL and EFFECTIVE on Nov. 29, 2004. *Gist:* Failure to list himself as the attorney of record, thereby limiting the scope of his representation without his client's consent; failure to adequately explain the fee arrangement; and failure to cooperate with a disciplinary investigation.

Ann Bucaro Steinhardt, New Orleans, (2004-B-0011) **Suspended from the practice of law for a period of three years, with two years deferred followed by probation with special conditions**, ordered by the court on Sept. 9, 2004. Application for rehearing denied. JUDGMENT FINAL and EFFECTIVE on Oct. 29, 2004. *Gist:* Failing to cooperate with the Office of Disciplinary Counsel's investigation and failing to self report a misdemeanor conviction for the possession of marijuana.

Byrlyne Van Dyke, Lake Charles, (2004-OB-2874) **Transfer to disability inactive status** ordered by the court on Dec. 8, 2004. JUDGMENT FINAL and EFFECTIVE on Dec. 8, 2004.

Scott G. Yarnell, New Iberia, (2003-OB-2906) **Revocation of conditional admission** ordered by the court on Dec. 13, 2004. JUDGMENT FINAL and EFFECTIVE on Dec. 27, 2004. *Gist*: Failure to comply with terms of his conditional admission.

William Yarno, Jr., Cottonport and Lafayette, (2004-B-2722) **One-year-and-one-day suspension, with all but six months deferred**, ordered by the court on Dec. 10, 2004. JUDGMENT FINAL and EFFECTIVE on Dec. 10, 2004. *Gist:* Failure to communicate with clients; neglect of clients' legal matters; abandoning clients; failure to return clients' files; misrepresentations during settlement negotiations; making false statements under oath; and failure to cooperate with the Office of Disciplinary Counsel.

Admonitions (private sanctions, often with notice to complainants, etc.) issued since the last report for misconduct involving:

	No. of Violations
Failure to act with reasonable diligence	1
Failure to keep a client reasonably informed about the status of a matter	1
Charging an unreasonable fee	1
Conflict of interest	1
TOTAL INDIVIDUALS ADMONISHED	**2**

DISCIPLINARY REPORT: UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

The following is a verbatim report of the matters acted upon by the United States District Court for the Eastern District of Louisiana, pursuant to its Disciplinary Rules. This information is published at the request of that court, which is solely responsible for the accuracy of its content. This report is as of Feb. 1, 2005.

Respondent	Disposition	Date Filed	Docket No.
Glenda Ann Spears	Interim suspension.	12/16/04	04-2873 A
Brenda W. Waltzer	Retroactive two-year suspension.	10/22/04	04-3045 N
Rebecca Young	Transferred to disability inactive.	12/23/04	04-2872 T
Martin E. Regan, Jr.	Retroactive six months' deferred suspension, six months' probation.	10/29/04	04-3166 F
Nicholas Pizzolatto, Jr.	Retroactive six months' deferred suspension, two years' probation.	10/1/04	04-2875 R
Anthony M. Bertucci	Retroactive disability inactive.	10/14/04	04-3044 B
Leroy J. Laiche, Jr.	Retroactive 90-day suspension.	10/29/04	04-3169 K
Lloyd J. LeBlanc, Jr.	Retroactive one-year suspension, all but 30 days deferred.	10/28/04	04-3168 S
Mitchell Herzog	Reinstatement.	1/18/05	98-1546 N
Curlkin Atkins	Retroactive three years, one year deferred suspension with one-year probation.	1/18/05	04-2876 C
Louis A. Gerdes, Jr.	Reinstatement.	1/18/05	04-1144 N
Donald A. Hoffman	Retroactive three-month suspension.	10/29/04	04-3167 J
Ann B. Steinhardt	Retroactive three-year suspension.	10/29/04	04-3170 I
James Perdigao	Suspension.	10/1/04	04-2874 K

CLASSIFIED

Review past ads at LSBA.org/classifieds

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Standard classified advertising in our regular typeface and format may now be placed in the ***Louisiana Bar Journal*** and on the LSBA Web site, *LSBA.org/classifieds*. All requests for classified notices must be submitted in writing and are subject to approval. Copy must be typewritten and payment must accompany request. Our low rates for placement in both are as follows:

RATES

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DEADLINE
For the August issue of the Journal, all classified notices must be received with payment by June 17, 2005. Check and ad copy should be sent to:
LOUISIANA BAR JOURNAL
Classified Notices
601 St. Charles Avenue
New Orleans, LA 70130

RESPONSES
To respond to a box number, please address your envelope to:
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c/o Louisiana State Bar Association
601 St. Charles Avenue
New Orleans, LA 70130

POSITIONS OFFERED

Growing Lafayette defense firm seeks full-time associate attorney with two or more years of experience in insurance defense. Strong academic credentials and writing skills required. Salary will be competitive and will depend on experience and qualifications. Please send résumé in confidence to Associate Attorney Position, C-Box 172.

Established and growing New Orleans law firm seeks one full-time attorney with a minimum of two years' experience in general casualty and/or insurance defense. Candidate should have excellent academic credentials, strong writing and communication skills and be self-motivated and hardworking. All applications are considered confidential. Forward résumé and writing sample to: Paula Wellons, c/o Taylor, Wellons, Politz & Duhe, A.P.L.C., Ste. 1900, 1515 Poydras St., New Orleans, LA 70112. Phone: (504)525-9888, fax (504)525-9899, e-mail Pwellons@TWPDLaw.com.

The law firm of Daigle, Scofield, Rivera & Crawford in Lafayette, La., seeks attorney with one-five years' experience. Excellent opportunity for individual who is seeking considerable hands-on experience, is an accomplished writer and is self-motivated. Prior admiralty, insurance defense, commercial auto/trucking, energy and trial experience is a plus, but not required. Salary commensurate with experience. Mail confidential résumé to: Attorney Position, P.O. Box 3667, Lafayette, LA 70502.

The law firm of Guglielmo, Lopez, Tuttle, Hunter & Jarrell in Opelousas seeks an attorney with two or more years of experience in handling workers' compensation matters, excellent opportunity for self-motivated individual. Salary is commensurate with experience. Please mail confidential résumé to P.O. Drawer 1329, Opelousas, LA 70571-1329 or fax to (337)942-4521.

Metairie defense firm seeks associate attorney with five-10 years' litigation experience. Superior academic background and class ranking required. This partnership-track position offers an excellent salary and benefits package. Please send résumé, law school transcript and writing sample to: Hiring Committee, 3421 N. Causeway Blvd., 9th Flr., Metairie, LA 70002, fax to (504)849-3043 or e-mail rventura@blue williams.com.

Houston publicly traded oil and gas company seeking Louisiana licensed attorney (additional Texas license a plus) with three-five years' oil and gas experience to join its Legal Department. Candidates also should have excellent academic credentials, superior writing skills and be self-motivated, hardworking and a team player. Candidates must possess some background in oil and gas exploration and production, including exploration agreements, joint venture and operating agreements, leases, assignments, lease maintenance and marketing agreements. Excellent benefits and salary commensurate with experience and qualifications. Please send résumés to C-Box 174.

Prominent Lafayette business-oriented law firm seeks two-five year associates. Candidates must have excellent writing, computer research and organizational skills, as well as strong academic credentials. Successful candidates will handle a broad range of commercial litigation and transactional matters. Salary competitive with Baton Rouge or New Orleans firms. All responses held in strict confidence. C-Box 175.

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Legal research/writing. Top of spring 1967 class, LSU; LLM, Yale, 1968. Writings include briefs, memoranda and pleadings at courts of all levels, plus law review articles. Experience includes both general civil practice and major litigation. Statewide e-mail service. References upon request. William T. Tête, (504)891-6064.

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New Orleans CBD, 612 Gravier St., between St. Charles and Camp St. Individual offices and secretarial spaces are available in this recently renovated building. Includes receptionist, digital telephone system with voice mail, copier, fax, wireless Internet, conference room and much more. Walking distance to court. Call Michelle Whitaker at (504)525-5553 for additional information.

Suite of offices available (5) in prestigious downtown building, tastefully renovated. 829 Baronne St. Excellent referral system among lawyers. Includes secretarial space, receptionist, telephones, voice mail, two conference rooms, kitchen, library with CD-ROM, office equipment and parking. Walking distance of CDC, USDC and many fine restaurants. Call Cliff Cardone or Lisa Perrin at (504)581-1394.

CBD litigation firm, Poydras Center class A building has one-four offices each with secretarial space for sublet, use of all facilities, conference room, receptionist, phones, copy, fax, kitchen, security, fantastic city and river view from 21st floor, ability to work on firm's cases at hourly rate. Call attorney Lew Kahn at (504)648-1850.

FOR RENT WEST MONROE

West Monroe law office. Three years old. 1,800 square feet with private covered owner parking for two vehicles. As new, with floored upstairs file storage. Located close to the courthouse and post office. Ready to move into! Contact Dean Hart, Sr. at (318)323-0209.

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Waterfront townhome for sale. Waterfront living with emphasis on "living." Your own boat slip at your back door. Walking distance to Pontchartrain Yacht Club. Available September 2005. 307 Jackson Ave., Mandeville. Three-story townhome with three bedrooms, 3.5 baths, balcony and sundeck on water. Total relaxation! Contact Kathy Kraak Martin, (985)626-4544 or (504)289-7070.

La. R.S.; C.C. Pro; Children's Code; Criminal Code and Constitution (complete set of green books) including all pocket parts through 2004. Price $850 or best offer. Call (504)368-2700.

NOTICE

Blake G. Williams, Sr. has applied for readmission to the Louisiana State Bar Association. Individuals concurring in or opposing the application may file his/her concurrence or opposition with the Louisiana Attorney Disciplinary Board, Ste. 310, 2800 Veterans Memorial Blvd., Metairie, LA 70002, within 30 days from the date of this publication.

INDEX TO ADVERTISERS

Hot Off the Press!

Louisiana Professional Responsibility Law and Practice 2004

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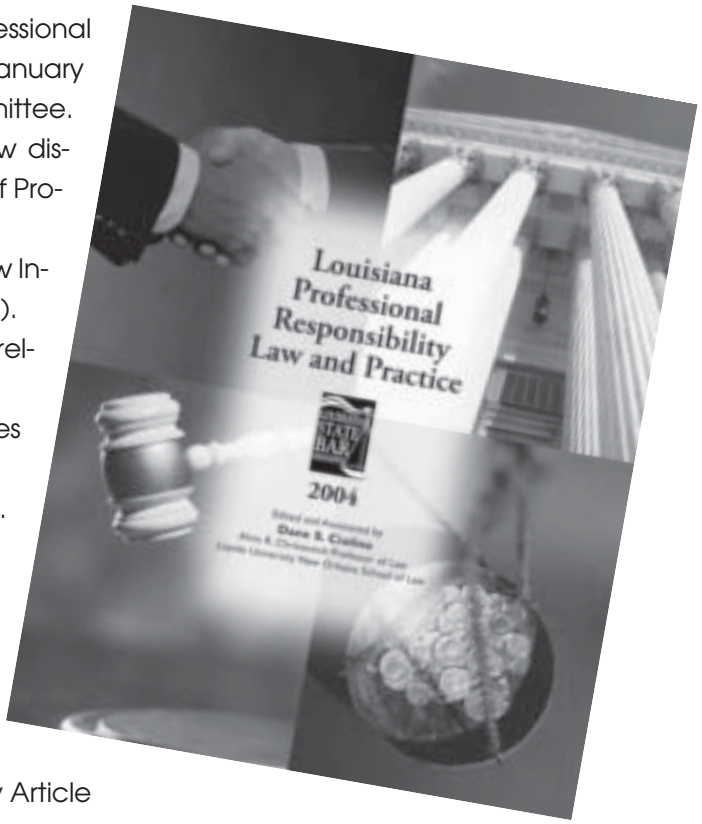

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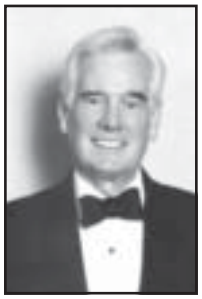
LOUISIANA BAR FOUNDATION

LBF Honors Distinguished Judge, Attorneys, Professor at Fellows Dinner

Hon. Nancy Amato Konrad

Louis D. Curet



Julian R. Murray, Jr.

Prof. Paul R. Baier

The Louisiana Bar Foundation (LBF) honored the 2004 Distinguished Jurist Hon. Nancy Amato Konrad, the 2004 Distinguished Attorneys Louis D. Curet and Julian R. Murray, Jr., and the 2004 Distinguished Professor Paul R. Baier on April 15 at its 19th annual Fellows Dinner at the Ritz-Carlton Hotel in New Orleans. The honorees were selected by the LBF's board of directors for their many contributions to the legal profession and their communities.

Fellows from across the state joined the honorees and the LBF in celebrating 20 years of working to enhance the legal community and increase access to the justice system. The festivities began with cocktails in honor of the Fellows Class of 2004. In addition, the Fellows Class of 1985 was recognized as 20-year members supporting the LBF's work and devoting volunteer hours through the years.

Hon. Nancy Amato Konrad 2004 Distinguished Jurist

Hon. Nancy Amato Konrad is the senior judge of Jefferson Parish Juvenile Court, Section C. A graduate of Loyola University and Loyola University Law School, Judge Konrad began her private practice of law in 1965. In 1980, she was elected Juvenile Court judge in Jefferson Parish Juvenile Court, Section C. She has the distinction of being the first female judge in the history of Jefferson Parish. Judge Konrad is recognized for her contributions to the Louisiana juvenile justice system. In 1984, she was one of two Louisiana court judges selected by the Louisiana Supreme Court to pilot a Program for Citizen Review of Foster Care. In 1985, she served as the chair of the Juvenile Judges' Benchbook Project that organized and published all existing substantive and procedural juvenile law into a one-volume desk reference book for judges exercising juvenile court jurisdiction. She was the chair of the Children's Code Project, a project that compiled and rewrote all substantive and procedural laws affecting juvenile court jurisdiction. This comprehensive Code was passed into law at the 1991 regular session of the Legislature.

She was the co-lead judge of the Louisiana Task Force for Foster Care Reform, 1984. She served as chair of the Children's Cabinet Advisory Board and served as a representative for both the Louisiana Council of Family and Juvenile Court Judges and for the Louisiana Supreme Court on the Louisiana Children's Cabinet. In 2002, she and Judge Ernestine S. Gray in Orleans Parish Juvenile Court were selected by the Louisiana Supreme Court to pilot a mediation program dealing with dependency cases. This project is now focusing on developing the programming and funding to implement the project in other courts throughout the state. Judge Konrad also has been involved in working toward the full implementation of the Juvenile Justice Reform Initiative envisioned by Chief Justice Pascal F. Calogero, Jr. in his 2001 State of the Judiciary Address to the joint session of the House and Senate of the Louisiana Legislature.

Judge Konrad is the 1993 recipient of the Loyola University Adjutor Hominum Award, 1999 Judge Richard Ware Award, the 1999 FINS Award, the 1999 Champion for Children's Award, the 2000 Public Elected Official of the Year awarded by the Louisiana Chapter of the National Association of Social Workers and the 2003 Judge of the Year Award by the Louisiana CASA.

She is a member of the Louisiana State Bar Association (LSBA), Loyola Law School Visiting Committee, Jefferson Parish Bar Association, Phi Alpha Delta Legal Fraternity, National Council of Juvenile and Family Court Judges, Louisiana Council of Juvenile and Family Court Judges (current treasurer, president in 1988-89), American Judges Association, National Association of Women Judges, Louisiana Law Institute Children's Code Revision Committee and Louisiana Association of Elected Women.

Louis D. Curet 2004 Distinguished Attorney

Louis D. Curet is a graduate of Louisiana State University and its Paul M. Hebert Law Center. While at LSU, he served as justice on Honor Court; Stu-

dent Council; president of College of Arts & Sciences; president of Omicron Delta Kappa, National Leadership Fraternity; listed in Who's Who Among Students in American Colleges and Universities; and named a Distinguished Military Graduate, LSU ROTC. He served two years active duty with the Judge Advocate General's Department, United States Air Force.

Curet began his law practice in 1950. He is admitted to practice before all courts in Louisiana and the U.S. Supreme Court. He is a member of D'Amico & Curet law firm. He is a former Fellow in the American College of Trust and Estate Counsel; served as president of the Baton Rouge Bar Association, 1972-73; and is a former member of the board of the Baton Rouge Speech and Hearing Foundation. He is a member of the Louisiana Supreme Court Historical Society; a member and former director of the Baton Rouge Foundation for Historical Louisiana; a board member of Our Lady of the Lake Foundation; and a board member of the Mary Bird Perkins Cancer Center Foundation. He served as co-chair of the 2004 Capital Campaign Drive for Mary Bird Perkins Cancer Center, a drive that raised more than $2 million.

He is the first president of Friends of French Studies at LSU and now serves as treasurer. He was inducted into the LSU Alumni Hall of Distinction in 2002. He is a member of Sigma Chi Alumni Association and Phi Delta Phi International Legal Fraternity

Julian R. Murray, Jr.
2004 Distinguished Attorney

Julian R. Murray, Jr. received his JD degree from Tulane Law School in 1964. He is admitted to practice before all federal and state courts in Louisiana and is a member of the bar of the United States Supreme Court and the 5th, 6th and 11th U.S. Circuit Courts of Appeals. He was an assistant district attorney for Orleans Parish from 1966-68 and was supervisor of the Fraud Section. He was then appointed as an assistant United States attorney for the Eastern District of Louisiana, was promoted to chief of the Criminal Division and served for two years as the first assistant U.S. attorney. He also served as the chief prosecutor of the Organized Crime Unit in the Louisiana State Attorney General's Office.

He is engaged in all types of litigation including white-collar criminal defense work, business litigation and personal injury cases. He also serves as an adjunct law professor at Tulane Law School and, for the last 22 years, has been the director of Tulane's Trial Advocacy Program. He is the recipient of the Monte M. Lemann Distinguished Teaching Award for outstanding service to the law school. He serves on the White Collar Crime Committee of the ABA and is past president of the New Orleans Chapter of the Federal Bar Association. He also was the founder and first president of the Louisiana Association of Criminal Defense Lawyers.

Murray co-authored the textbooks *Louisiana Criminal Trial Practice* and *Louisiana Criminal Law Formulary*. He was awarded fellowship in the International Society of Barristers and the American Board of Criminal Lawyers, and is listed in *Who's Who in American Law* and the *Best Lawyers in America*. He is a member of the Louisiana Landmarks Society and the Louisiana Supreme Court Historical Society. In 2003, he was selected by the readers of *Gambit* as one of the top three attorneys in the metropolitan area.

Professor Paul R. Baier
2004 Distinguished Professor

Paul R. Baier is the George M. Armstrong, Jr. Professor of Law at Louisiana State University Paul M. Hebert Law Center and is a member of the Louisiana State Bar Association. He has taught constitutional law for more than 30 years at LSU Law Center; for the past seven years, he has taught a course he created in LSU's Honors College, "The Constitution and American Civilization."

Professor Baier is a graduate of the University of Cincinnati and Harvard Law School, where he was editor of *Harvard Legal Commentary*. In 1975-76, he worked inside the United States Supreme Court as a judicial fellow, where he scripted, narrated and appears in the first film ever made inside the court, featuring Chief Justice Warren E. Burger and Justices Tom Clark and Lewis Powell.

He served as executive director of the Louisiana Commission on the Bicentennial of the U.S. Constitution, 1987-91. His article, "The Court and Its Critics," published in the American Bar Association Journal (vol. 78, 1992) sounded his voice on the national stage of constitutional scholars. He is the editor of the *Memoirs of Justice Hugo L. Black and Elizabeth Black*, published by Random House (1986), and of *Lions Under the Throne: The Edward Douglass White Lectures of Chief Justices Warren E. Burger and William H. Rehnquist*, published by the Louisiana Bar Foundation (1995).

Professor Baier was the LBF's first Scholar-in-Residence, 1990-92, and editorial chair of the *Report of the Louisiana Bar Foundation Conclave on Legal Education and Professional Develop-*

ment (1995). He has taught courses on constitutional interpretation with Justice Harry A. Blackmun at Aix-en Provence, France, and Berlin, Germany, and for Tulane Law School with Justice Antonin Scalia in Siena, Italy. Professor Baier arranged a symposium, "The Bill of Rights and Judicial Balance: A Tribute to Lewis F. Powell, Jr.," which brought Justice Powell and Harvard Law School Dean Erwin N. Griswold to New Orleans to inaugurate the Bill of Rights Section of the LSBA. Baier is a published playwright — "Father Chief Justice: Edward Douglass White and the Constitution," sponsored by the LBF — which played most recently at Louisiana's Old State Capitol. He is the author of more than 35 books, contributions to books, and teaching materials, and more than 35 published legal articles. He has rendered more than 15 appellate arguments in civil rights cases from the Montana Supreme Court to the Bar of the Supreme Court of the United States as special assistant Louisiana attorney general. The Silver Anniversary Edition of Professor Baier's little book, *The Pocket Constitutionalist*, with a foreword by Justice John L. Weimer of the Louisiana Supreme Court, was published by Claitor's in 2003. "By the Light of Reason," Act IV of his play, will be published in the next issue of the Loyola Journal of Public Interest Law.

LBF Welcomes New Fellows

The Louisiana Bar Foundation welcomes the following new Fellows:

William Blake Bennett ..... New Orleans
Bradford H. Felder ..... Lafayette
Karleen J. Green ..... Baton Rouge
Gus David Oppermann V ..... Houston, TX
Neil D. Sweeney ..... Baton Rouge

Oral History Profile: **Sam D'Amico**

The Louisiana Bar Foundation (LBF) actively works to preserve Louisiana's significant legal history through its Oral History Program. This program, under the direction of LBF's Education Committee, is chaired by Hon. Sylvia R. Cooks.

The LBF's most recent oral history honors Sam D'Amico who reminisced about his childhood in Pointe Coupee Parish, his move to Baton Rouge after high school, and his attendance at Louisiana State University. D'Amico also shared memories about his graduation from LSU Law School and his search for his first job. Claiming that the doldrums of the "Great Depression" still lingered and jobs were scarce, D'Amico recalled his move to St. Francisville, La. where he found "free business" at Louisiana's State Penitentiary at Angola. In the early 1940s, D'Amico moved back to Baton Rouge and established his current practice.

Practicing many types of law, D'Amico discussed several of his most significant cases and clients, including one that involved a member of Angola's infamous Red Hat Gang. Throughout his career, he served on the Professional Responsibility Committee and Ethics Advisory Committee, and has received the Tate Award. In 1998, the LBF presented D'Amico with the Distinguished Attorney award.

The Oral History Program exists to broaden and preserve the history, culture and flavor of Louisiana law. This program, which films, edits and produces the oral histories of Louisiana's retiring judges, bar leaders and other legal personalities, began in 1999.

For more information about the Oral History Program, visit the LBF Web site at *www.raisingthebar.org.*

LSBA CLE 2005 Calendar

CLE for New Admittees
April 18, 2005
LSU, McKernan Auditorium
Baton Rouge

Depositions & Professionalism
April 22, 2005
Marriott Hotel
New Orleans

Jazz Festival
April 29, 2005
Marriott Hotel
New Orleans

Summer School for Lawyers
June 5-8, 2005
Sandestin Beach Resort
Destin, Fla.

Ethics & Professionalism Summer Re-Run
June 22, 2005
New Orleans

For more information, visit our Web site at LSBA.org or contact Annette C. Buras or Vanessa A. Duplessis at (504)566-1600 or (800)421-5722.

John E. Ortego, third from left, accepted the Outstanding Small Law Firm Award from Jim M. Dill of The Dill Firm, winner of the 2004 Outstanding Small Law Firm Award, during the Champions of Justice breakfast. With them are Timothy A. Maragos, left, and Susan Holliday.

Auxiliary Awards

Stephanie Levenson, left, president of the Law League of Louisiana and immediate past president of the Jefferson Bar Association Auxiliary, is the recipient of the Volunteer of the Year Award. Presenting the award is Edie Villarrubia, Jefferson Bar Auxiliary president, at the Jefferson Bar Association installation.

Pat M. Franz, Jefferson Bar Association immediate past president, received the Volunteer of the Year Award from Mary Ann Sherry, left, Jefferson Bar Association Auxiliary program chair, at the Jefferson Bar Association installation.

LOCAL AND SPECIALTY BARS

Lafayette Parish Bar Foundation, Acadiana Legal Services Host Breakfast of Champions

The Lafayette Parish Bar Foundation (LPBF) and Acadiana Legal Services Corp. hosted the annual Champions of Justice breakfast on Jan. 26 at the City Club at River Ranch. Leaders of the legal community were recognized for their financial or professional contributions to the indigent members of Lafayette Parish.

Eight Lafayette attorneys were honored on behalf of the LPBF's pro bono project, Lafayette Volunteer Lawyers. Recipients of the 2005 Outstanding Attorney Award are Richard D. Mere, Judith R. Kennedy, Gregory A. Koury, Charles K. Hutchens, Donald H. Knecht, Jr., Robert L. Odinet, Elizabeth A. Dugal and Mike Wooderson. Additionally, the law firm of Laborde & Neuner was presented with the Large Law Firm Award and John Ortego & Associates with the Small Law Firm Award.

Cliffe E. Laborde III, left, and Frank X. Neuner, Jr. of Laborde & Neuner, recipient of the Outstanding Large Law Firm Award.

The event also recognized Lafayette law firms and individuals who provided financial support to the Lafayette Outreach for Civil Justice (LOCJ) Campaign. Frank X. Neuner, Jr., of Laborde & Neuner, and Richard C. Broussard, of Broussard & David, were recognized for their contributions in the creation of the LOCJ campaign.

Attending the Champions of Justice breakfast were, from left, 2004 Lafayette Outreach for Civil Justice Campaign Chairs Richard C. Broussard and Frank X. Neuner, Jr. with Jerry Prejean of Iberiabank, 2005 Lafayette Outreach for Civil Justice Campaign Chair John E. "Jack" McElligott, Jr., Don Begnaud of Begnaud Manufacturing and guest Sen. Nick Gautreaux.

Lafayette Volunteer Lawyers Outstanding Individual Attorney Award recipients are, back row from left, Robert L. Odinet, Mike Wooderson, Charles K. Hutchens and Richard D. Mere. Front row from left, Judith R. Kennedy, Gregory A. Koury and Elizabeth A. Dugal.

Attending the Champions of Justice breakfast were, from left, Richard C. Broussard of Broussard & David, 2004 chair of the Lafayette Outreach for Civil Justice Campaign; Frank X. Neuner, Jr. of Laborde & Neuner, 2004 chair of the Lafayette Outreach for Civil Justice Campaign and president-elect of the Louisiana State Bar Association; Susan Holliday, executive director of the Lafayette Parish Bar Association; John E. "Jack" McElligott, Jr. of Davidson, Meaux, Sonnier & McElligott, 2005 chair of the Lafayette Outreach for Civil Justice Campaign; Joseph R. Oelkers III of Acadiana Legal Services Corp., Lafayette Parish Bar Association president; Joseph C. Giglio, Jr. of Liskow & Lewis, chair of the Lafayette Parish Bar Foundation; and Dona K. Renegar of Jeansonne & Remondet, chair-elect of the Louisiana State Bar Association Young Lawyers Section.

Lafayette Outreach for Civil Justice Campaign Lead Gift Donors who contributed $1,000 or more are, back row from left, John W. Kolwe (Perret Doise); Joe C. Giglio, Jr. (Liskow & Lewis); Glen Edwards (Davidson, Meaux, Sonnier & McElligott); Gary McGoffin (Durio, McGoffin, Stagg & Ackermann); Blake R. David (Broussard & David); David J. Calogero (Breaud & Lemoine); Jim M. Dill (The Dill Firm); Paul J. Hebert (Ottinger Hebert, L.L.C.); and Jack Paul Showers (attorney at law). Front row from left, Jonathan L. Woods (Preis, Kraft & Roy); Thomas Juneau, Jr. (Juneau Law Firm); Dona K. Renegar (Jeansonne & Remondet); Jay Suire (The Glenn Armentor Law Corporation); Joel E. Gooch (Allen & Gooch); Ben L. Mayeaux (Laborde & Neuner); Victor J. Versaggi (Domengeaux, Wright, Roy & Edwards); Lawrence L. Lewis III (Onebane Law Firm); and John N. Chappuis (Voorhies & Labbe).

2005 chairs of the Lafayette Outreach for Civil Justice Campaign are, from left, Glenn J. Armentor of the Glenn Armentor Law Corporation and John E. "Jack" McElligott, Jr. of Davidson, Meaux, Sonnier & McElligott.

Lafayette Outreach for Civil Justice Campaign Announces New Chairs

The Lafayette Outreach for Civil Justice Campaign is now in its second year of a three-year annual fund-raising campaign to benefit Lafayette Volunteer Lawyers and Acadiana Legal Services Corp. Nearly $275,000 in pledges have been received from members of the Lafayette bar and these funds will help provide free civil legal assistance for the neediest in the Lafayette community.

In 2005, the Lafayette Outreach for Civil Justice Campaign will be chaired by Glenn J. Armentor of the Glenn Armentor Law Corporation and John E. "Jack" McElligott, Jr. of Davidson, Meaux, Sonnier and McElligott. They are both past presidents of the Lafayette Parish Bar Association.

The second-year goal for the campaign is "universal giving," which, when achieved, will mean that every attorney in Lafayette will contribute to the LOCJ campaign. The successful implementation of universal giving will have two direct impacts on the community. The first is that the neediest members of the community will benefit from the campaign by receiving access to justice that they would otherwise not be able to obtain. Second, Armentor and McElligott believe that if every attorney in Lafayette contributes to the campaign, it will have a positive impact on the image of lawyers in the community.

"Our image as lawyers is broken. There is no greater repair than giving access for legal services to the poor. We have an opportunity to change the image of lawyers universally in our society with this program," Armentor said.

Universal giving, McElligott said, "is a noble concept to benefit the Lafayette Outreach for Civil Justice Campaign. As lawyers we realize how our profession benefits the community. Unfortunately, we do not get the credit we deserve. I challenge each of us to participate in universal giving so that together we can help not only improve our image but, more importantly, benefit our fellow citizens."

Lafayette Parish Bar Association President Joseph R. Oelkers III, left, with L. Clay Burgess, host for the LPBA holiday social.

Lafayette Parish Bar Sponsors Holiday Social

The Law Offices of L. Clayton Burgess was the setting for the Lafayette Parish Bar Association holiday social. Members of the Lafayette legal community, including attorneys and judges, attended the event.

Scott F. Higgins, from left, Elena Arcos Pecoraro, Blake Monrose, Tiffany B. Thornton and Kenny L. Oliver were among the many attorneys attending the Lafayette Parish Bar Association's annual holiday social.

Johnson Elected New Shreveport Bar Association President

Tommy J. Johnson, a partner in the Shreveport law firm of Tyler & Johnson, officially took over duties as president of the Shreveport Bar Association (SBA) on Jan. 1, succeeding 2004 President Allison A. Jones.

Tommy J. Johnson

Johnson received his BS degree from Louisiana Tech University in 1971 and his JD degree from Louisiana State University Paul M. Hebert Law Center in 1975. He served as an assistant Louisiana attorney general from 1975-76, then as a Caddo Parish assistant district attorney from 1977-78. He has served as a Caddo Parish assistant district attorney from 1982 to the present. He is a member of the Louisiana Trial Lawyers Association (served from 1987-89 on its Board of Governors) and the American Trial Lawyers Association. He is an active member of the SBA, serving as vice president in 2003 and president-elect in 2004.

Serving with Johnson on the 2005 Executive Council are President-Elect John M. Frazier, Vice President Marty Stroud, Secretary-Treasurer Steven E. Soileau, Secretary-Treasurer Elect (who will serve as the 2005 treasurer for the Krewe of Justinian) Kitty Estopinal, and council members at-large Julia E. Blewer, Billy J. Guin, Jr., Sarah A. Kirkpatrick and James C. McMichael, Jr.

Blewer Receives Shreveport Bar 2004 Professionalism Award

Edwin L. Blewer, Jr. is the recipient of the 2004 Shreveport Bar Association (SBA) Professionalism Award.

Since 1999, this award has been presented annually to an SBA attorney member "who best exemplifies the high ideals and standards set forth by the Louisiana Bar Association's Rules of Professional Conduct, as well as the aspirational goals for attorney conduct adopted by the Shreveport Bar Association." Past recipients of this award have been Frank M. Walker, Jr., Kenneth Rigby, Justice Pike Hall, Jr., Judge Henry A. Politz, Harry R. Nelson and Roland J. Achee.

Edwin L. Blewer, Jr., left, is the recipient of the 2004 Shreveport Bar Association Professionalism Award. Presenting the award is Professionalism Chair Billy R. Casey.

Blewer is a 1956 *cum laude* graduate of Louisiana State University and received his JD degree from LSU Paul M. Hebert Law Center in 1958, where he received the designation of Order of the Coif. Upon graduation from law school, he began his practice of law with the Shreveport firm of Cook, Yancey, King & Galloway, where he still remains of counsel.

Throughout his career as a practicing attorney, Blewer believed in and demonstrated service to his community, his profession and his colleagues. He has worked on numerous committees of the Shreveport Bar Association, serving as president in 1988 and as 2003 chair of the Memorial & Recognition Committee.

Active in lawyer assistance work since the early 1980s, he was one of the original members and has served as chair of the Louisiana State Bar Association Committee on Alcohol and Drug Abuse and its associated Lawyers' Assistance Program. On the national level, he has been active in the American Bar Association's Commission on Lawyer Assistance Programs, serving as its chair from 1998-2001.

Involved in community affairs as well, Blewer has served as a member and chair of the Louisiana Commission on Addictive Diseases, as a board member and president of the Northwest Louisiana Council on Alcoholism and Drug Abuse, and is on the Board of Governors of the Louisiana Association for Compulsive Gambling.

Shreveport Bar Association's Recent Developments Seminar Gains National Exposure

About 250 attorneys and judges from Louisiana and east Texas attended the recent two-day "Recent Developments by the Judiciary" continuing legal education seminar, sponsored by the Shreveport Bar Association (SBA) at the Hollywood Casino Hotel. The seminar was spotlighted in a recent issue of *Bar Leader* magazine, a publication that covers news and issues of interest to elected officers and staff members at state, local and special-focus bar associations.

Jean T. Drew, from left, Judge R. Harmon Drew, Jr. and Judge John C. Campbell added some humor to the professionalism session at the Shreveport Bar Association's "Recent Developments by the Judiciary" seminar.

Lawrence W. "Larry" Pettiette, from left, Judge D. Milton Moore III and Judge Scott J. Crichton presented a panel discussion on Louisiana Civil Procedure and Evidence at the Shreveport Bar Association's "Recent Developments by the Judiciary" seminar.

The article was entitled "Combining Learning and Entertainment: The New CLE" and dealt with new and interesting ways to deliver CLE programs. The SBA-sponsored "Recent Developments by the Judiciary" seminar was one of four CLE programs across the nation recognized for its uniqueness (riverboat casino location). The other three programs mentioned were two cruise boat seminars sponsored by the Nassau County (New York) Bar Association and the Tarrant County (Texas) Bar Association, and the Toledo, Ohio Bar Association that presents lawyers and professional actors in situational skits.

At the SBA seminar, all topics were presented by members of the city, state and federal judiciary.

Heading up the seminar planning committee was Vicki C. Warner, 2004 chair of the SBA Continuing Legal Education Committee. Judge Scott J. Crichton, SBA judicial liaison, helped coordinate the speakers and topics, and SBA Executive Director Patti Guin was in charge of advertising and production.

SBA Honors Veterans at Recognition Luncheon

The Shreveport Bar Association (SBA) honored all of its association members, living and deceased, who served or are currently serving in the military at a special Veterans Recognition Luncheon at the Petroleum Club in November 2004. Guest speaker for the luncheon was Col. John A. Mantooth of the United States Army Reserve. Other program highlights included a Color Guard made up of cadets from the Louisiana National Guard Youth Challenge Program and a special armed forces musical tribute sung by students from Caddo Magnet High School. The program ended with a rendition of TAPS played by a Caddo Magnet trumpeter.

Col. James W. Hill III, SBA Military Affairs chair, headed the program planning committee, which included Col. Homer T. "Ted" Cox, Col. (Ret.) S.P. Davis, Judge Bill Kelly, CSM (Ret.) Charles C. Grubb, Daniel "Dan" C. Scarborough IV, Legal Assistant Brittney Matlock and SBA Executive Director Patti Guin.

Has the Practice of Law Changed Since 1948? Shreveport IOC Program Compares Differences

Team No. 3 of the the Harry V. Booth and Judge Henry A. Politz American Inn of Court in Shreveport, headed by team Judge Charles B. Peatross, presented a program recently utilizing the experiences of six lawyers whose combined practice of law totals 312 years. Roy S. Payne served as moderator, and Gerard F. Thomas, Jr. of Natchitoches (admitted 1948), Robert G. Pugh (1949), Kenneth Rigby (1951), Arthur R. Carmody, Jr. (1952), Jo-

Members of the Booth/Politz American Inn of Court panel were, front row from left, Gerard F. Thomas, Jr., Robert G. Pugh and Arthur R. Carmody, Jr. Back row from left, Kenneth Rigby, Judge Charles B. Peatross, Joseph C. LeSage, Jr., Roy S. Payne and Donald R. Miller.

seph C. LeSage, Jr. (1952) and Donald R. Miller (1960), all of Shreveport, comprised the panel of attorneys participating in the program.

Beginning with their admittance into private practice, the group talked about the many changes that have taken place over the years, including local rules and customs, the social aspect of the "old motion hour" at Caddo District Court, the transition of carbon copies manually typed to high-tech digitalization and electronics, and the almost non-existent number of female and African-American attorneys in the early years compared to today's almost even ratio of male/female attorney population.

SBA Hosts Area Law Student Holiday Reception

A large turnout of Shreveport Bar Association (SBA) members and area law students attended the first holiday reception for area law students, held on Dec. 19, 2004 at the home of SBA member and wife, Joel L. and Karen Pearce. Approximately 25 law school students from LSU, Southern, Tulane and Loyola mingled with area attorneys and judges.

Shreveport Law Week Project to Help Local Military Families

By Chris Slatten
Law Week Committee Chair

The Shreveport Bar Association (SBA) Law Week Committee's 2005 community project is to help the families of local National Guardsmen who have been called to active duty in Iraq. The committee members would appreciate donations.

Approximately 500 soldiers from the 1st Battalion 156th Armor Unit, headquartered at Fort Humbug on Youree Drive, have been stationed in Iraq for the last several months. They are not scheduled to return home until fall 2005, at the earliest. They are routinely facing dangerous situations. Sgt. Craig Nelson and Lt. Chris Barnett have been killed, and more than 30 soldiers from the unit have been wounded.

The soldiers' family members, including about 175 children, are left at home, where many of them face financial and emotional stress. The members of the SBA can help relieve the stresses experienced by the families by donating toward the purchase of international calling cards, supplies for the unit's food bank, gift certificates to the theater and local restaurants for the children, and other items requested by the Family Readiness Group.

The Family Readiness Group reports that the requests for phone cards have increased sharply with the escalation in the number of casualties. Many soldiers, due to lack of funds, go several days without calling home, which leaves family and loved ones worried. A 550-unit phone card costs approximately $40. Donations of any size are welcomed.

Donations may be made payable to the Shreveport Bar Foundation, a 501(c)(3) charitable organization. The Foundation's address is P.O. Box 2122, Shreveport, LA 71166-2122. *Please note on the contribution that it is intended for the Law Week project.*

For more information, call Chris Slatten, (318)676-3265; Allison Duncan, (318)676-3055; or Patti Guin, (318)222-3643).

The SBA and the Law Week project have already earned a Rose of the Week award from Chuck Fellers during an airing of "Dateline Shreveport."

A family affair at the Shreveport holiday reception: from left, Louisiana State University Paul M. Hebert Law Center student Chris Victory, Louisiana Supreme Court Justice Jeffrey P. Victory, 1st Judicial District Court Judge Robert P. Waddell and Southern University Law Center student Erin Waddell.

We Want Your News!

Deadline for news items in the August/September 2005 Louisiana Bar Journal is Friday, June 3. E-mail your news items and photos to dlabranche@lsba.org or mail to: Publications Coordinator Darlene M. LaBranche, Louisiana State Bar Association, 601 St. Charles Ave., New Orleans, LA 70130.

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Lucid INTERVALS

By Vincent P. Fornias

TOO MUCH INFORMATION

It is not often that I run across a lawyer who arguably has less of a life than I do. Ted Mitchell, Esq. and his recent communication to this writer are *res ipsa* of his own terribly life-challenged status.

Apparently Ted was intrigued when I unleashed a barrage of Do-Not-Try-This-At-Home mediation lingo at a recent CLE presentation on ADR tactics that he attended in yet another moment without a perceptible life. Specifically, I had quoted a line from *My Cousin Vinny* about getting "down to the lick log." Soon thereafter I received a missive from Ted that is probably the closest I can come to claiming a fan letter. Attached were various primary and secondary sources for the use of the above term, which he described as "an interesting time-filler." Ted, there is medication for this.

One reference was from the scintillating ABA Business Law Section "Deal Points" publication subtitled "The Newsletter of the Negotiated Acquisitions Committee." (Parteee Time!!!) Therein, something called the Asset Acquisitions Task Force (which I suppose is how one goes about covering one's assets) replied to "those of you who continue to question the meaning of the term 'lick log'" (*e.g.*, a room full of Teds) by citing the Random House Historical Dictionary of American Slang, which defines the term as "a gathering place; point of contention or decision." Though relating countless references back to 1851, Random House hit the nail on the head in quoting former Texas Gov. Anne Richards, who in 1992 campaigned for Bill Clinton as a fighter "when it really gets down to the lick log." No tacky White House intern references necessary, please. This is a family journal.

Then there was the titillating Texas Business Law Legislative Update for 2003 that described as "the lick log" as a burgeoning debate over the Texas Legislature's approval of a controversial appropriations bill. Does it get any better than this?

The *coup de grace* was nine (9) pages (Chapter XII) from something called "Our Southern Highlanders — The Mountain Dialect," which Ted noted he was including in his packet to me verbatim "for (my) reading pleasure." After poring through every word of every page (an exercise similar on the excitement equivalent to Franciscan monks' redaction of ancient Biblical manuscripts, but with far fewer divine bonus points), there was a single solitary sentence in this entire mish-mash of etymological detritus that even mentioned the phrase that started this entire discussion ("lick-log denotes a notched lag used for salting cattle.")

Yes, I know what you are thinking. I am playing with fire: So Ted — what's a "lag"? Brace yourselves.

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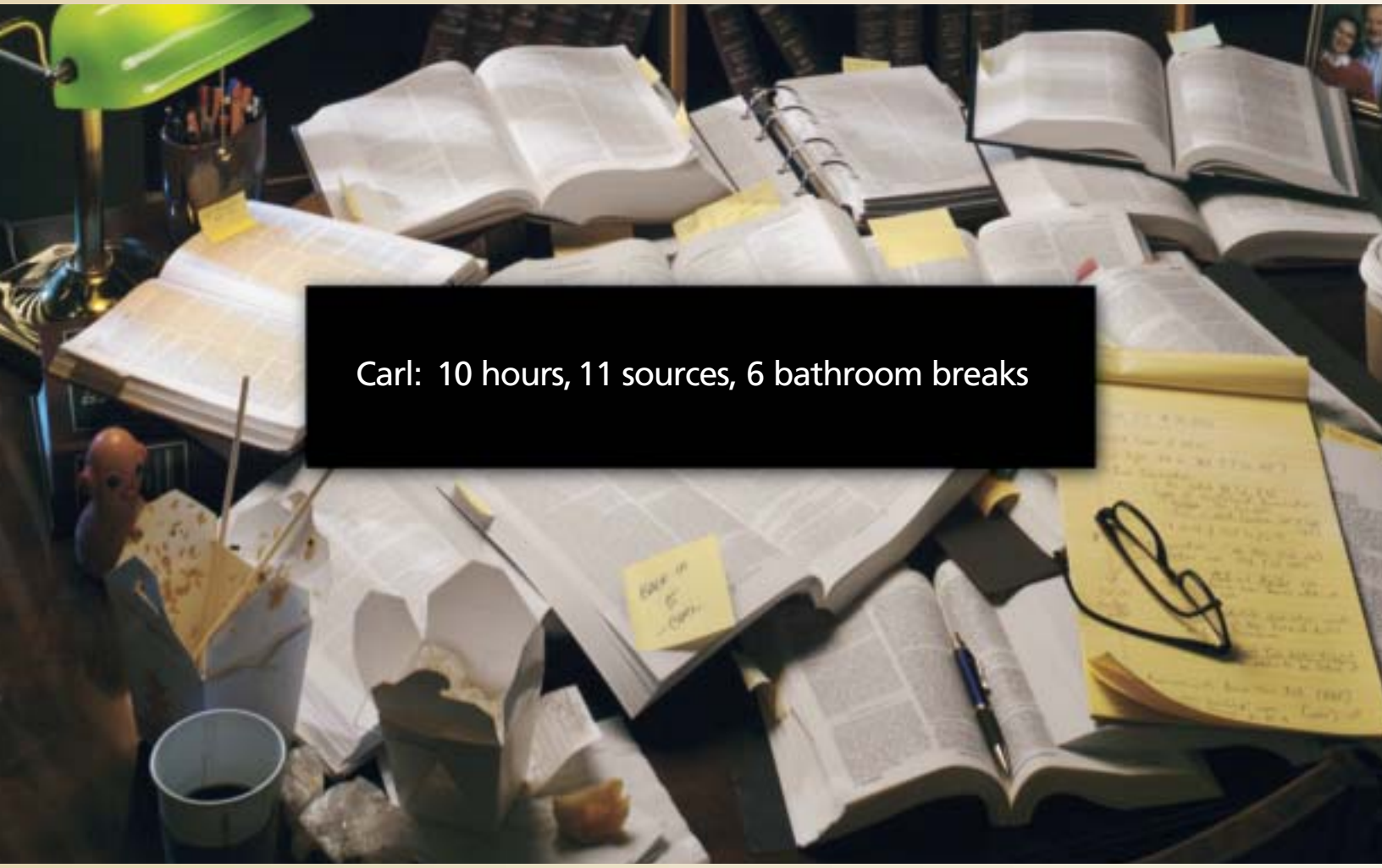

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