Making every day count
Health care tax legislation
Attorney spotlight: L. T. “Bubba” Dupré
Another clear and present danger?

Teen Court of Greater Baton Rouge
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On the cover:

This month’s cover photo features attorney and law student volunteers of the Teen Court of Greater Baton Rouge program of the Baton Rouge Bar Foundation.

Photographed on the 4th floor River Terrace of the Shaw Center for the Arts building are (L to R, standing) Tavares Walker, Judge Darrell White (Ret.), Tomeka Gilbert, Weldon Hill II, Ben Chapman; (L to R, seated) Samantha R. Ackers, LaKeisha Gray, Trenisha Jackson and Barbara Baier. NOT PICTURED are Teen Court Coordinator Donna Buuck and Teen Court Assistant Coordinator R. Lynn S. Haynes.

Teen Court of Baton Rouge enters its fifth year as Around the Bar celebrates its 25th anniversary. The magazine was first published in September 1985.

Cover photography by Pamela Labbe.
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AROUND THE BAR supports participation of the membership in its production. We encourage the submission of articles and letters to the editor. Articles should be less than 1,800 words, typed and single-spaced. If possible, a Microsoft Word file should be e-mailed as an attachment to: pamela@BRBA.org.

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

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Great quotations stand the test of time. Everyone has heard, “It is better to keep silent and be thought a fool than to speak and remove all doubt.” This one comes to mind every time I begin writing one of these articles. But since I can’t leave this page blank, allow me to share some recent reflections.

Each day we should appreciate the distinct privilege we have to practice law. When clients trust us with a matter, we not only gain the advantage of additional experience, we – very humbly – live a part of their lives with them. Whether it be a suit for damages or a business dispute, it is a crisis for that person or organization. To guide that person along the best path is not only an opportunity, but a serious obligation.

“Only a fool learns from his own mistakes, a wise man from the mistakes of others.” As lawyers, we are paid to learn from others’ mistakes, or simply put, to be wise.

But wisdom doesn’t come without a learning curve. As Oscar Wilde put it, “Experience is the name we give to our mistakes.” Therefore, it is a huge gift from a client that allows us to live in his or her moment, to practice law with the facts of his or her case, and to then possess this gift for the benefit of all future clients.

We are doubly gifted as we cannot completely separate this experience from our personal lives. I would suspect the family law practitioner knows a lot of what to do — or what not to do — to be a good spouse, divorcée or parent.

Corporate lawyers learn much about creating and operating an effective business. It is no wonder we often see lawyers hired by corporations subsequently climb the corporate ladder. They bring their own experience plus that of every client they have assisted.

No, criminal defense lawyers do not learn how to be better criminals. Rather, we get to learn an enormous amount about psychology, toxicology, pharmacology, pathology, sociology and even neurology, or, in simple terms — human nature.

These were thoughts that came to mind after reading The Kings of Tort by Alan Lange and Tom Dawson. This is an astonishing book that recounts the investigation and prosecution of Dickie Scruggs and others. Mr. Scruggs handled asbestos class action cases and was then a lead attorney in the class action suits against the tobacco industry. He is said to have been, and perhaps still could be, a billionaire.

Alan Lange is a political analyst and Tom Dawson is the Assistant United States Attorney that led the prosecution of the case. These two present the very Southern and political backdrop of the story as well as a detailed chronology of the cases.

Lange and Watson will be our luncheon speakers Thursday, Nov. 4, 2010, at the Crowne Plaza. Please join us.

Some of you may personally know Mr. Scruggs or others discussed in the book. If you do, you know the end of the story, or at least, the end so far. This presentation should not be viewed as an opportunity to throw more stones, but the facts provide perhaps the most extreme example of a supremely talented attorney completely losing sight of this great privilege bestowed upon us.
Looking back

A while back I received an e-mail titled “Your Entire Childhood Memories in One E-mail.” Talk about an ambitious title! The attached presentation featured items such as S&H green stamps, metal ice cube trays, Falstaff beer and Ed Sullivan on Sunday nights. To most of you “young” lawyers out there, the lion’s share of the PowerPoint display would go largely unrecognized or at least underappreciated.

I have been informed that this is the 250th printing of this publication, a time to reflect upon and appreciate our past. And in borrowing on this ambitious e-mail theme, I sat back and thought about the many lawyers in our extraordinary Association who are no longer with us, but who through some wonderful stroke of fate crossed my own path over the last three-plus decades, each in his own way, leaving me an indelible example of lawyering in Baton Rouge. My personal PowerPoint of lawyers past would include:

The competitiveness of Jack Avant
The humor of Burt Garaway.
The quiet demeanor of Walton Barnes.
The courtroom demeanor of Walton Barnes.
The quick strength of Norbert Rayford.
The optimism of Judge Carlos Spaht.
The creativity of Bruce Macmurdo.
The integrity of Judge Harvey Posner.
The meticulous preparation of David Robinson.
The sense of fair play of Frank Middleton.
The generosity of David Hamilton.
The humility of Byron Kantrow, Sr.
The ingenious simplicity of Arthur Cobb.
The trial instincts of Roger Fritchie.
The balanced view of John Thibaut.
The people skills of Rodney Ryan.

There are doubtlessly scores of others just as deserving of my personal PowerPoint that have gone unmentioned. For that, I sincerely apologize. My simple wish for each and every “young” lawyer of our group, as we celebrate our 250th issue, is that you will one day come to treasure, as I have, the precious legacy, a venerable tapestry, of those no longer with us who made you a far better professional simply for having known them.
The Young Lawyers Section
Holiday Star Project

Sign up to sponsor a child. Please fill out the form below and fax it to the Bar office at (225) 344-4805. The Baton Rouge Bar Foundation is tax-exempt as a charitable organization by the Internal Revenue Service under section 501(c)(3) of the IRS Code.

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Questions? Please call Susan Kelley at (225) 214-5559.

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At the May 5, 2010, regular meeting of Young Lawyers Section Council of the Baton Rouge Bar Association, the council members voted unanimously to amend the by-laws of the Young Lawyers Section to change the age limit for membership.

Section 2.1 of the by-laws formerly provided that all lawyers 36 and under or who have been admitted to their first Bar for five years or less, and who pay any dues as set and assessed by the Board of the BRBA, may be a member of this Section. The Young Lawyers Section Council approved an amendment to Section 2.1 that extends eligibility for membership in the Section to all lawyers 39 and under or who have been admitted to their first Bar for five years or less, and who pay any dues as set and assessed by the Board of the BRBA. Likewise, Section 2.2 of the by-laws formerly provided for termination of membership automatically at the end of the calendar year within which a member attains 36 years of age or five years after admission to his or her first Bar, whichever last occurs.

The Young Lawyers Section Council approved an amendment to Section 2.2 to allow for automatic termination of membership at the end of the calendar year within which a member attains 39 years of age or five years after admission to his or her first Bar, whichever last occurs.

The revised age limit for membership in the BRBA Young Lawyers Section is consistent with the age limits for membership in the Young Lawyers Section of the LSBA and the Young Lawyers Division of the ABA.
L.T. “Bubba” Dupré witnessed nuclear weapons, northern lights, air shows with live munitions and 40-foot waves all before his 21st birthday.

Dupré, who grew up in small-town Opelousas, La., took the unconventional route to becoming a lawyer. He decided to sign up for the U.S. Navy immediately after completing high school. He described his experience abroad as “pretty cool stuff for a kid from St. Landry Parish who, before graduating high school, had never been north of Georgia.”

From 1988 to 1990, Dupré served active duty on an aircraft carrier with two Mediterranean deployments. While abroad, he met Pope John Paul II and shook the hand of a sitting president. During his two years in the Navy, Dupré saw most of Western Europe twice — making it the most exciting time of his life up to that point.

After his Navy discharge, Dupré attended LSU and graduated in May 1995 with a bachelor’s degree in secondary education social studies.

By August 1996, he had a teaching and coaching position at West Feliciana High School. Dupré coached baseball and football while teaching Civics, World Geography and U.S. History. He obtained a master’s degree in educational administration and supervision while employed there.

According to Dupré, being in the Navy not only taught him the discipline to excel in college, but it also gave him a multitude of experiences and exposed him to people from all walks of life, allowing him to bring life to his classes.

At the urging of his attorney friends and family members, Dupré entered law school at the age of 32. As the only son of a teacher and a nurse, Dupré had no idea how the law worked. However, he did possess what his friends and family described as “a sharp tongue, a big mouth, a hard head, a good heart and a fundamental distrust of authority.”

After Dupré graduated from the LSU Paul M. Hebert Law Center in 2004, he worked as a law clerk for a year under Judge James Genovese, familiarizing himself with the ins and outs of procedures and trial practice. Dupré mentioned that there were other very valuable and practical tools he learned, such as never upsetting court staff, even when they are wrong.

Following his year as law clerk, Dupré worked in various firms, government agencies and as a solo practitioner before to forming Perkins & Dupré, Attorneys and Counselors at Law, LLC, with Clayton Perkins in January 2008.

Dupré has been a member of the Baton Rouge Bar Association since 2005. He volunteers for Ask-A-Lawyer workshops and is a member of the LRIS Committee and the Lawyer Referral Panel. Even though he is an attorney now, Dupré still teaches. This fall, he is teaching catechism at St. John the Baptist Catholic Church.

Dupré spends his free time with his wife Stacey and daughters Anna and Amelia. They currently live in Zachary, La. Although he’s no longer in the Navy, he still finds time to travel. Dupré and his family go to the Gulf Coast every summer. He said, “If there’s a better life out there, I don’t know about it.”
Twelfth Annual
“Belly Up with the Bar” Entry Form
Cook-off & Brewfest
Event takes place Friday, Oct. 22, 2010

WHAT IS IT: The Twelfth Annual “Belly Up with the Bar” is a cook-off, brewfest and outdoor party with live music—sponsored by the Young Lawyers Section of the Baton Rouge Bar Association. Proceeds from this event will benefit the BRBF’s Youth Education Program. Team and individual entries are welcome. Judges will select winners in a variety of categories. Advance general admission tickets are $20 per adult, $15 per law student, $10 per child ages 7 to 12, and admittance is FREE for children ages 6 and under. Prices at the door are $25 per adult or law student, and $10 per child, so buy ‘em now!

WHEN & WHERE: The location is 6513 Perkins Rd., in the lot behind the law offices of Moore, Thompson, Lee & Broyles. The date is Friday, Oct. 22, 2010, 5 p.m. - until — mark your calendars NOW!

WHO CAN ENTER:
- Anyone who’s willing to cook and serve enough to feed/water our local bar
- The entry fee is the same as the general admission fee - $20 per team member
- Teams can consist of 1 to 5 members
- The entry fee gets you (1) in the door to try all the fabulous food and drinks, (2) all the beer you care to drink, and (3) the chance to show off your culinary talents

THINGS YOU’LL NEED TO BRING:
- Enough food to serve roughly 300 “sample size” portions
- Any cooking/heating/brewing equipment necessary to serve your entry
- A team of no more than 5 members
- A sign to indicate what you’re making and who’s on your team

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(CHECKS SHOULD BE MADE PAYABLE TO “BRBF - BELLY UP WITH THE BAR.” CREDIT CARD INFORMATION CAN BE PROVIDED BELOW.) Booths are assigned as forms and payment are received, so submit your form early!

TEAM NAME: __________________________________________
WHAT YOU’LL BE COOKING: __________________________________________
TEAM MEMBERS: CAPTAIN (1)
(1) __________________________________________
CONTACT NUMBER & E-MAIL:
(2) __________________________________________
(3) __________________________________________
(4) __________________________________________
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FOR “BELLY UP WITH THE BAR” TICKET INFORMATION, PLEASE CONTACT THE BRBA AT (225) 344-4803.
*If you are unable to participate or attend, but you wish to make a donation for the BRBF’s award-winning Youth Education Program, please make your check payable to the BRBF.

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Health care reform finally passed, but the result may not be what many of the reformers had envisioned. The avowed goal of universal coverage gave way to a political solution that changes insurance coverage through interaction of individuals, employers, the IRS and other government agencies. It is imperative for attorneys to understand the impact health care reform has on their own businesses as well as how it affects their clients.

The two reform acts, the Patient Protection and Affordable Care Act, signed March 23, 2010, and the Health Care and Education Affordability Reconciliation Act, signed March 30, 2010, combine for more than 2,000 pages of legislation, with more regulations and guidance to come.

These acts attempt to modify health care coverage through mandates, incentives, taxes and penalties. Health care reform is phased in over a period of time spanning 2010 through 2018. Due to the large quantity of changes to take effect, this article will address only those that take effect in 2010 and 2011; part II will discuss the changes that take effect in future years. Here are several changes that result from the signing of these two acts.

Small employer tax credit
Effective for the 2010 tax year, qualified small businesses may receive an income tax credit for amounts they pay for employee health coverage. “Qualified small businesses” are employers who have 25 or fewer full-time employees and whose employees have wages averaging no more than $50,000 per year. The amount of the credit differs based on the number of employees and their average wages. Employers could be eligible for up to 35 percent of non-elective contributions they make on behalf of their employees. The IRS has recently issued guidance to make it easier for small businesses to determine whether they are eligible for the new health insurance tax credit. Not-for-profit entities may be entitled to a 25 percent credit against their payroll taxes for their qualified employees.

CLASS Act
The Community Living Assistance Services and Support (CLASS) Act is a voluntary, federally administered long-term care insurance plan that will be effective at the beginning of next year. For those employed by an employer who chooses to participate, the employer will enroll employees automatically, with premiums handled through payroll deduction, like other benefits. Any employee may choose to opt out. The plan will pay a cash benefit of no less than $50 with the actual amount varying according to the individual’s ability to function. Those who require assistance for more than one activity of daily living (ADL), such as eating, toileting, bathing or dressing, will receive a greater benefit amount. Participants are required to pay premiums for five years and be actively at work for three of these years before they receive any benefits. Participants can expect their premium to be between $125 and $150 each month, and employers may pay some or all of this premium. There is no lifetime cap on the benefits.

Automatic enrollment
Effective March 23, 2010, employers with more than 200 full-time employees and who offer enrollment in one or more health benefit plans must automatically enroll new employees in one of the offered plans. New employees must be given notice of their enrollment, and they must be given the opportunity to opt out of coverage.

No more over-the-counter reimbursements
Beginning Jan. 1, 2011, over-the-counter medications will generally no longer be reimbursable from health reimbursement accounts (HRAs), health savings accounts (HSAs), medical savings accounts (MSAs) and flexible savings accounts (FSAs). A 20 percent tax may apply to improper reimbursements.

Simple cafeteria plans
“Simple cafeteria plans” will be available, beginning Jan. 1, 2011, to small employers having an average of 100 or fewer employees for the two preceding years. Employers who initially qualify can grow to up to 200 employees and still be eligible. Simple cafeteria plans are required to make a contribution to provide qualified benefits on behalf of each qualified employee in the amount of no less than two percent of the employee’s compensation for
An employer may choose to exclude from the plan (1) employees who are not yet 21 years of age, (2) employees who have less than one year of service with the employer or (3) employees who are covered under a collective bargaining agreement.

No more pre-existing condition exclusions

The Patient Protection and Affordable Care Act eliminates the pre-existing condition requirements imposed by health plans. Effective Sept. 23, 2010, children under age 19 with pre-existing conditions may not be denied access to their parents’ health insurance. This provision will apply to adults as well beginning in 2014.

W-2 reporting

Beginning in 2011, employers must disclose the aggregate cost of employer-provided health insurance coverage provided to employees annually on the employee’s W-2. This includes coverage under any group health plan, such as medical, prescription, dental and vision, but does not include any salary contributions to a flexible spending accounting (FSA) or health savings account (HSA). This is informational reporting only and does not increase taxable wages. These rules apply to 2010 W-2s.

Dependent coverage expanded

Effective for plan years beginning on or after Sept. 23, 2010, several changes must be included in any employer-based plan that is not a “grandfathered plan.” For example, plans will have to allow for coverage of an employee’s dependents up to age 26, even if they are married. “Children” can be defined as a son, daughter, adopted child, stepchild or eligible foster child. This provision is estimated to add coverage for 1,250,000 young adults, and as a result, health plans may start pricing per head.

Grandfathered plans

Those enrolled in a group health plan or have individual health coverage in existence as of March 23, 2010, are not required to change their coverage terms, except for a few mandated benefits. These plans are exempt from many of the provisions of new plans, such as coverage of preventive care, nondiscrimination rules, claims appeals procedures, transparency requirements, ensuring quality of care, fair health insurance premiums, prohibition on discrimination against providers and the requirement to provide essential benefits. It is also important to note that although the law does not require individuals to terminate their existing coverage, the law also does not prevent a group health plan or insurance coverage from dropping those grandfathered plans.
No more lifetime or annual coverage caps

Individual and group health insurers may no longer impose benefits caps. Lifetime limits on the dollar value of benefits for either participants or beneficiaries are now specifically prohibited. Annual limits on the dollar value of benefits for either participants or beneficiaries are also prohibited, with the exception of some reasonable restrictions for plan years prior to 2014.

Medicare Part D

Currently, Medicare Part D does not offer coverage for prescription drugs between $2,830 and $4,550. However, certain provisions are slowly closing the donut hole. For 2010, those incurring donut hole expenses will receive a $250 rebate. For 2011, there will be sliding coinsurance available for both generic and brand name prescriptions.

Codification of the economic substance doctrine

The “economic substance” doctrine is a common law doctrine that has developed over the years to deny tax benefits generated from transactions that do not result in a meaningful change to the taxpayer’s economic position other than the reduction in federal income tax. Prior to codification, there was a lack of uniformity among the circuits regarding the proper test to use when applying the economic substance doctrine. In an attempt to clear up this issue, newly enacted Section 7701(o)(1) of the Internal Revenue Code clarifies that the economic substance doctrine involves a two-part conjunctive analysis of: (1) the objective effects of the transaction on the taxpayer’s economic position and (2) the taxpayer’s subjective motives for engaging in the transaction. A 20 percent penalty applies to any transaction that is determined to lack economic substance.

If you haven’t already begun to see the effects of the Patient Protection and Affordable Care Act or the Health Care and Education Affordability Reconciliation Act, the next several years will bring several changes for individuals, employers and other organizations.

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THE NEXT AVAILABLE CLE SEMINAR IS:
Demonstrative Evidence Clinic
Friday, Oct. 29, 2010
8 a.m.-12 p.m. — Middleton Bar Center, 544 Main Street
1:30-3:30 p.m. — Location: Federal Court, 777 Florida Street

Check online for a more comprehensive list:
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Perhaps procedure is not the most thrilling topic in the law, but knowledge of the rules — particularly the rules relating to deadlines — is essential for an attorney to avoid trouble with the court and even malpractice. The most recent amendments to the Federal Rules of Civil Procedure went into effect Dec. 1, 2009, so many federal court practitioners are already familiar with at least some of the changes. The fundamental purpose of these amendments is to make every day count — whether it be a Tuesday, Sunday or Christmas day — regardless of the length of the time period at issue.

Understanding the new and improved Rule 6

Rule 6 of the Federal Rules of Civil Procedure provides the computation rules for any time period, whether it be under a federal rule, local rule, court order or statute, unless provided otherwise. F.R.C.P. 6(a). Under the amended Rule 6, a period stated in days continues to exclude the day of the event triggering the period, but counts “every day, including intermediate Saturdays, Sundays, and legal holidays.” The period continues to run until the end of the next business day. Under the prior version of Rule 6(a)(2), when a time period was less than 11 days, the court would only count “legal days” (i.e., not weekends and holidays). However, if the time period was 11 days or more, every day would be counted. As pointed out in the Advisory Committee notes, before the amendments, a 10-day period and a 14-day period that started on the same day usually ended on the same day, and it was possible that a 10-day period would end later than a 14-day period. In an attempt to create more uniformity and make a few other beneficial changes, the Judicial Conference proposed the amendments to the federal rules, which went into effect Dec. 1, 2009.

To accompany the changes in computation, many time periods provided in the federal rules have been increased. Generally speaking, rules that were governed by 10-day periods have been increased to 14-day periods, and 20-day periods have been extended to 21 days. Most rules that set out time periods of less than 30 days are now broken down into increments of 7, 14, 21 and 28 days, so that deadlines will typically fall on weekdays.

The amendments to Rule 6 have also somewhat clarified the rules for filing. Unless otherwise set out by a statute, local rule or court order, the last day to act for e-filing ends “at midnight in the court’s time zone.” When filing by any other means, the time ends when the clerk’s office is “scheduled to close.” The rule further provides that a deadline is extended to the next accessible day that is not a weekend or legal holiday when the clerk’s office is “inaccessible.” F.R.C.P. 6(a)(3). The prior version of Rule 6 allowed for an extension when “weather or other conditions” made the clerk’s office inaccessible. The removal of this wording provides the court more flexibility in determining what “inaccessible” means, which may include a day when the e-filing system is down.

State holidays, forward-counting and backward-counting

As part of the 2009 amendments, the definition of “legal holiday” was changed to include “for periods measured after an event, any other day declared a holiday by the state where the district court is located.” See Rule 6(a)(6). This rule distinguishes between forward-counted periods and backward-counted periods. If the period in question is a forward-counted period, state holidays are considered the same as federal holidays under the new rule. However, for a backward-counted period, a state holiday is NOT counted as a “legal holiday,” although a federal holiday would be. In other words, if you are counting back and land on a state holiday, the counting ends there, because that date is not excluded as a holiday; whereas for a federal holiday, you would keep counting.
back to the next business day before the holiday. At this point, you may be wondering — what is a backward-counted period? One example arises when a court order requires that a motion in limine be filed a certain number of days before the trial date, in which case, a state holiday would not be counted as a “legal holiday.”

New time periods

Many time periods were increased by these amendments, which essentially make up for the new counting rules and make the rules more consistent. The amendments also provided an opportunity to make a few other changes unrelated to computation. The following paragraphs include some of the more significant changes of which a federal court practitioner should be aware. Unless stated otherwise, where the current version of the rule provides for a 21-day period, the prior version provided for a 20-day period; and where the current version of the rule provides for a 14-day period, the prior version provided for a 10-day period.

Pleadings/service/motions. The time for filing a responsive pleading has been changed from 20 to 21 days. Other relevant time periods have been extended to 21 days, including (a) the period for serving an answer to a counterclaim or cross-claim, or to serve a reply to an answer when required and (b) the period for filing a motion to strike after service of a pleading. See Rule 12. Other time periods provided in Rule 12 have been extended from 10 to 14 days, including (a) the period for serving a responsive pleading after a motion has been denied or deferred to trial, or after a motion for a more definite statement has been granted and (b) the period for filing a third-party demand without leave of court as provided in F.R.C.P. 14(a).

The period for filing a first amended pleading without leave of court or without permission of opposing counsel in accordance with F.R.C.P. 15(a)(1) has been extended to 21 days after service of the initial pleadings — or when a responsive pleading is required, 21 days after service of a motion under Rule 12(b), (e) or (f), or after service of a responsive pleading — whichever is earlier. The time to respond to an amended pleading under Rule 15(a)(3) has been extended to 14 days. Also, Rule 13(f) has been repealed. This rule provided that parties could amend a pleading to add a counterclaim if the claim was previously omitted through “oversight, inadvertence, or excusable neglect or if justice so required.” As noted by the Advisory Committee, this rule was potentially redundant and misleading, as Rule 15 governs amendment of pleadings.

Under Rule 6(c)(1), a written motion and notice must now be served 14 days before the time specified for hearing, with exceptions. The pre-amendment rule gave attorneys more time to serve their motions — up to five days before the hearing. Also, Rule 6(c)(2) now provides that opposing affidavits to a motion must be served at least seven days before a hearing, unless the court permits service at another time and except as provided in Rule 59(c) — whereas pre-amendment, opposing affidavits could be served up to one day before the hearing. Further, under Rule 72, the period for seeking a district court’s review of rulings by a magistrate judge on non-dispositive and dispositive motions has been extended to 14 days.

Removal. In accordance with Rule 81, a defendant who has not answered in state court prior to removal now has 21 days after service of the initial pleading to respond — or seven days after the notice of removal (rather than the five accorded under the previous rule) — whichever is longer. After removal, any party entitled to a jury trial now has 14 days to request a jury trial.

Discovery. The 30-day time period in which a party must respond to interrogatories and requests for documents has not been changed. However, a few rules relating to different discovery methods have been amended. See Rules 27(a)(2), 32(a)(5)(A), and Rule 32(d)(3)(C).

Summary judgment. Under Rule 56, a party may now move for summary judgment at ANY TIME until 30 days after the close of all discovery. The old rule prohibited such motions until 20 days had passed since commencement of the action. Also, Rule 56 now explicitly provides that this uniform rule may be changed by a local rule or court order. A party opposing the motion “must file a response” within 21 days after a motion is served or a responsive pleading is due, whichever is later, and the moving party has 14 days after the response is served to file a reply.

Jury trials. Rule 38(b) was amended to provide that a party now has 14 days to request a jury trial after the last pleading directed to an issue triable by a jury has been served.

Posttrial. If during a trial, a party’s motion for judgment as a matter of law under Rule 50(a) is denied, the party may renew the motion after entry of judgment under Rule 50(b) within 28 days. The Advisory Committee

“THE FUNDAMENTAL PURPOSE OF THESE AMENDMENTS IS TO MAKE EVERY DAY COUNT — WHETHER IT BE A TUESDAY, SUNDAY OR CHRISTMAS DAY — REGARDLESS OF THE LENGTH OF THE TIME PERIOD AT ISSUE.”
notes indicate, and many attorneys would agree, that the 10-day period originally provided under this rule was inadequate. The time period in which a losing party may file a motion for new trial was also extended to 28 days, as was the time period for asking the court to amend or add to its findings of fact. Moreover, a district judge is also allowed 28 days to grant a new trial on its own or for reasons not in the motion. F.R.C.P. 59(d). Affidavits in support of a Rule 59 motion must be filed with the motion, but the time period for filing opposing affidavits has been extended to 14 days. F.R.C.P. 59(c). Also, the delay period for execution of a district court judgment has been extended to 14 days. See F.R.C.P. 62(a).

Other pertinent changes. The period for the life of a temporary restraining order, absent court extension or party agreement, has been extended from 10 to 14 days. Also, the minimum period for making an offer of judgment under Rule 68 is now 14 days, with the rule stating that the time is measured by counting back from the date the case is “set for trial,” instead of the date the trial “begins.”

Practical effects for the federal court practitioner

With the combination of making every day count and extending the time periods, the amendments have not significantly changed the length of time for federal court deadlines. The amendments have, however, achieved uniformity and certainly make counting deadlines more straightforward for attorneys. Further, the amendments corrected a few other deficiencies not related to computation, most significantly, increasing the time allowed for filing posttrial motions. It is easy enough to remember; when in federal court — make every day count — and of course, make sure you have an updated copy of the Federal Rules of Civil Procedure.

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A new clear and present danger:
Security, freedom and ordered liberty on the home front during the war against terrorism

BY BEAU JAMES BROCK

Does a lunatic in an asylum who espouses the overthrow of the United States invoke provisions of the Treason and Sedition Act or the Terrorism Act? Of course not, but the threat to our national security is now and continues to be one of practical, and not merely academic, debate. Regardless of the foreign policy rationalizations for failing to respond to Osama Bin Laden’s declaration of war against the United States prior to Sept. 11, we are faced with a de facto state of war, for more than a full decade now, that will require an ever vigilant and determined commitment in order to secure the domestic security of our land.

This commitment will involve the use of massive logistical resources and operational activities that some may decry as unconstitutional infringements of their liberty interests. Extremist elements have long existed in this country and are being given a voice through the media as never before in our history. The use of available technology to break through our opponents’ intelligence networks has been a vital instrument of victory in past wars and will be in this struggle we now face. But, where is the line marking appropriate federal action from unconstitutional restraint? This article will attempt to briefly illustrate the history of this constitutional issue and to discuss the inevitable legal crisis that domestic terrorism portends.

In times of war, Athens in ancient Greece, though a democracy, would elect a dictator or tyrant to handle its government. They thought this would streamline its functionality and would provide it with the best defense during times of struggle. The U.S. has never succumbed to that debasement of its political institutions to fight a war. However, in times past, the U.S. has severely limited the rights extended under our Constitution. In today’s global struggle, the continuing authorizations of Congress to support law enforcement agencies’ use of the Patriot Act of 2001, in part, eliminate some of the judicial requirements now in place. The judiciary remains as the constitutional check on the executive branch, and is the critical cornerstone in maintaining our republic’s foundation by limiting law enforcement’s authority to conduct wire taps, computer searches, and other electronic surveillance operations. Currently, such authorization is highly restricted, and judges have been highly suspect of these investigative measures. Further, even when authorization has been granted, courts have placed enormous restraints on their practical usages.

Statutory authorization for surveillance of persons engaged as agents of foreign powers within the U.S. is found in the Foreign Intelligence Surveillance Act (FISA). These agents are, in part, defined as any person who engages, or aids or abets any person to knowingly engage, in sabotage or international terrorism or activities that are in preparation thereof. There are provisions in FISA and under Title III that allow for warrantless electronic surveillance in emergency and limited situations. In the aftermath of Sept. 11, the use of these techniques will be allowed to track those engaged in foreign intelligence. However, determining perpetrators and their levels of involvement will not be an easy task. The Supreme Court has held that prior court approval is required before law enforcement can engage in domestic security surveillance. Domestic organizations are those composed of U.S. citizens that have no significant connection with a foreign power. The Court went on to outline the obvious dilemma we will legally face by saying, “No doubt there are cases where it will be difficult to distinguish between ‘domestic’ and ‘foreign’ unlawful activities directed against the Government of the United States where there is collaboration in varying degrees between domestic groups or organizations and agents or agencies of foreign powers.” How will a foreign intelligence exception to the Warrant Clause of the Fourth Amendment be carved out is yet an open Constitutional question as recently discussed in the 2001 reported case of United States v. Bin Laden. The information gathering on potential “sleepers” already within our borders has heightened the impact of this issue and emboldened law enforcement at all levels to request expanding warrantless surveillance authorization. Is this a time in our nation’s history to expand on the clear and present danger exception to the First Amendment into the area of the Fourth Amendment concerning international terrorism and aliens?

Any new statutes that target aliens for heightened surveillance levels and that reduce standards currently required to obtain judicial authorizations will eventually be subject to constitutional challenges. Aliens in this country are persons granted the protection of the Equal Protection Clause of our Constitution. The scrutiny given to statutes that classify aliens for specific limitations or obligations will ordinarily be “inherently suspect and
subject to close judicial scrutiny.” However, the Supreme Court has taken a relaxed scrutiny in reviewing some federal statutes that also may impact Congress’s ability to effectively conduct its foreign policy mission.

During World War I, the U.S. fought not only the Germans and their Central Powers coalition, but also against communists in our own country. These struggles to maintain our security developed the Supreme Court doctrine of clear and present danger. This was also a time of extremists and bomb-throwing radicals. They were indeed anarchists of the first magnitude intent upon burying our society’s capitalistic system. Today, we are confronted not by Muslims, but instead by pagan terrorists who, ever presently, pay homage to their false idol of anarchy. Their self-avowed aims are to destroy our economic, social, religious and political ways of life. In Schenck, Justice Oliver Wendell Holmes wrote, “When a nation is at war, many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be tolerated as long as men fight, and that no court could regard them as protected by any constitutional right.” To detect such activities and to properly guard against future acts of murder and mayhem, we must provide law enforcement the tools to do the job. This authority can be drafted by statute, regulation and Department of Justice protocol to closely tailor it to meet the challenges of international terrorism. Edmund Burke wrote that:

men have a right to do justice, as between their fellows. They have a right to the fruits of their industry and to the means of making their industry fruitful. Whatever each man can separately do, without trespassing upon others, he has a right to do for himself. Restraints on men, as well as their liberties, are to be reckoned among their rights. But as the liberties and the restrictions vary with times and circumstances, and admit of infinite modifications, they cannot be settled upon any abstract rule; and nothing so foolish as to discuss them upon that principle.

The logic of Schenck flows from this Burkian idea that all rights are subject to limitations and circumstances and cannot ever be considered as absolute. If they were, they would only serve to frustrate the spirit of individual freedom; in today’s context — the freedom from fear — the fear of the long shadow of chemical, biological and nuclear terror.

In this war, which will be the longest in our nation’s history, the U.S. will be working alongside those nations and groups who in the past may not have been

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Dr. Karl Roider35 of LSU during a lecture first explained to me the diplomatic maxim “Your enemy’s enemy is your friend.” In the past, American foreign policy in the Middle East and Central Asia has certainly capitalized on this principle in its coalition-building endeavors. It has always appeared to be a Herculean task to maintain the integrity of these alliances, of partners without traditional ties to America, most of whom have been fraught with hidden agendas of their own. Some will continue to fight as our ally, regardless of their sympathies for America and the West, simply for the cash or for the opportunity to “pacify border provinces.” We will also have to be willing to work with other states whose systems of government are not nearly as open and free as our own. We have historically been willing to do this. Most recently, one need only look to Saudi Arabia during both Gulf Wars. Our policy has been consistent with President Richard Nixon’s seventh commandment of statecraft, always carefully distinguish between friends who provide some human rights and enemies who deny all human rights.36

Property — no other right we possess as Americans is so primitive or closely guarded. Boundaries of our property rights are prescribed from our homes’ personal lots and expand to eventually encompass our national borders. In between, are layer upon layer of frontiers. Subdivisions, school districts, cities, states and our great country’s own identity finds expression in these frontiers. These frontiers are extended to possessions, embassies, our armed forces serving on bases and U.S. citizens traveling all around the globe. When one of these sovereign frontiers is violated by any identifiable group, the ire of all those affected is raised. In order to protect the rights of every man, we must recognize the needs of law enforcement to investigate and eradicate this new clear and present danger to freedom.37

As citizens in this country, we are profoundly influenced by the thoughts and beliefs of our forefathers. Paramount virtue in this country has always been placed upon the rights of property. It is protected in the Constitution. It is heralded in song. In iconic technicolor myths we have been indoctrinated about “Tara.” The soil of our youth marks us and our allegiances. On Sept. 11, terrorists invaded the hearts and minds of all Americans by attempting to strike our soil, our spirit and our sense of pride in the greatness and invincibility of our nation. This fantastic blunder has only served to fill us with a terrible resolve...again.38

1 18 U.S.C. § 2381 et seq.
2 18 U.S.C. § 2331 et seq.
4 See, infra, at note 7, Patriot Act § 401-405, in which Congress appropriated over $100 million dollars and greatly expanded the numbers of U.S. Border Patrol, Immigration and Nationalization Service
(INS), and the U.S. Customs Service agents and/or inspectors.

3 See Danger: Extremism, The Major Vehicles and Voices on America’s Far-Right Fringe (Anti-Defamation League 1996), for an informative source of home grown hate personas and groups whose missions are anti-Semitic, anti-American, anarchistic or all three.

4 See F.W. Winterbotham, The Ultra Secret (Dell 1984). It is through the use of these intelligence gathering methods and tools that lives will be saved and public confidence in our ability to defend ourselves will be restored.

5 For example, President Abraham Lincoln withdrew of habeas corpus protection during the War for Southern Independence.

6 The current Anti-Terrorism Bill, the U.S.A. Patriot Act of 2001 (Patriot Act), was signed into law Oct. 26, 2001. However, any law will be subject to future Constitutional challenges under the Fourth Amendment.

7 Patriot Act § 201, 209.

8 Patriot Act § 212.

9 Patriot Act § 207, 210, 216.


11 For example, agents are not to monitor even under Title III wires matters personal in nature and are to stop monitoring during other particularized portions of conversations. These restrictions, intended to prevent fishing expeditions by law enforcement, will also be the subject of proposed changes and extensions of authority sought in legislation. See also Patriot Act.

12 The full definition has been held not to be unconstitutionally vague.


15 See Patriot Act § 218 for recent amendment for when “a significant purpose” for law enforcement to conduct searches or surveillance is foreign intelligence.


17 Id. at 2131 note 8.

18 Id. at 310 note 8.

19 Id. at 2132.

20 126 F.Supp.2d 264, 271 (S.D.N.Y. 2000). This is the second Bin Laden case reported in 2001, and it provides an in depth legal discussion of the foreign intelligence exception. (Bin Laden II).

21 One of the chief defendants in Bin Laden II was an American citizen named El-Hage. Bin Laden II, supra, 126 F.Supp.2d at 269. See also, Patriot Act § 802-805, which add a new statutory guidance on “domestic terrorism” and its operatives within the United States. However, the spectre of Japanese-Americans who were interned en mass at the outbreak of World War II will haunt modern courts’ considerations of governmental treatment of Muslim-American citizens.

22 See Yick Wo v. Hopkins, 6 S.Ct. 1064 (1886).

23 Nyquist v. Mauclet, 97 S.Ct. 2120.

24 Id. at 2124, citing Mathees v. Diaz, 96 S.Ct. 1883 (1976). See also, Bin Laden II, 126 F.Supp.2d at 272.

25 The Communist party, or the Bolsheviks, who were fighting for control of Russia eventually succeeded in obtaining governmental control in October 1917. It then surrendered to Germany, allowing Germany to shift over a million troops to the western front to fight the Allies. The Russian Civil War would continue through 1921 with the United States actually sending troops at one point to aid the anti-communist forces.


27 See Patriot Act § 102, wherein Congress included a condemnation of persons who would discriminate against Arab and Muslim Americans unjustly.

28 39 S. Ct. at 249.

29 See Patriot Act § 213, wherein a uniform standard of “reasonable necessity” authorizing courts to delay the provision of required notice of the date of the execution of search warrant.

30 See Patriot Act § 214, which states the new limitations upon using pen registers and trap-and-trace devices. It states that investigations of U.S. citizens may not be conducted upon the basis of First Amendment protected activities.


32 Act of war is defined under Terrorism Chapter 113B, 18 U.S.C. § 2331, as “any act occurring in the course of – (A) declared war; (B) armed conflict, whether or not war has been declared, between two or more nations; or (C) armed conflict between military forces of any origin.”

33 Dr. Karl Roeder is the best teacher I ever had. He is an expert on European history with emphases on the Balkans and Germany. He also served several years as the Dean of the College of Arts and Sciences at LSU.

34 J. Humes, Nixon’s Ten Commandments of Statecraft, His Guiding Principles of Leadership and Negotiation, 133 (Scribner 1997).

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41 The Communist party, or the Bolsheviks, who were fighting for control of Russia eventually succeeded in obtaining governmental control in October 1917. It then surrendered to Germany, allowing Germany to shift over a million troops to the western front to fight the Allies. The Russian Civil War would continue
Teen Court program enters its fifth year

BY NHI DINH

Teen Court of Greater Baton Rouge has come a long way since its inception in September 2006. This voluntary diversion program, which is currently embarking on its fifth year, benefits the community and offers students a hands-on experience in the legal system, allowing attorneys and students to come together and utilize peer pressure as a positive force.

The program gives volunteers the opportunity to participate in various roles. Attorney volunteers serve as judge, jury monitor, teen attorney assistant, training session presenter or committee member. High school students participate as prosecuting or defense attorneys, bailiffs and jurors. Middle school students may participate as jurors or bailiffs.

Teen Court uses real-life cases, referred from the District Attorney’s Office, in which teen volunteers sentence their peers for minor misdemeanor offenses, such as shoplifting, school altercations or property damage. Sentences can include community service, participation in future Teen Court sessions, attending educational programs, writing essays and letters of apology and repaying the victim.

All defendants must complete six group sessions, covering topics such as triggers and crime, peer pressure and consequences. Graduate students from the LSU School of Social Work and the Counselor Education program provide the group sessions. All defendants and their parents must also participate in at least two parent/child communication workshops.

Prior to serving on a jury, defendants must complete either a three- or six-hour training session. The Teen Court program also offers community service learning projects. All aspects of the Teen Court program are restorative, emphasizing accountability, repair for harm done and competency development.

Below are quotes provided by Teen Court of Greater Baton Rouge volunteers about the program:

Otha “Curtis” Nelson Jr., Assistant District Attorney, 19th JDC—“Teen Court is my opportunity to directly give back to our Baton Rouge community. The time spent with the teen volunteers is so rewarding. I challenge all members of the Baton Rouge Bar to get involved in this worthy program. This is your chance to work with young people in a positive way.”

LaKeisha Gray, SULC law student—“Being able to help with Teen Court gives me the opportunity to give back and make a difference in the lives of others. I love seeing so many teens doing something positive with their time. I enjoy speaking with the youth concerning law school and their goals for life, and I think it’s an honor to be a role model for the youth.”

Dr. Carol Plummer, LSU School of Social Work—
“Teen Court has given my graduate students the opportunity to work with youth by educating them about life skills. This real-world experience teaches far more than the textbook about group dynamics, personalities, and youth development. It’s been a wonderful experience for my students for four full years!”

Charlotte Wittenbrink, Teen Court student volunteer—
“Teen Court has been a wonderful learning experience for me. It has really helped me to know and understand more about the laws in my state and the consequences for breaking those laws. Also, it has been an excellent way for me to gain confidence and public speaking skills while helping in my community. I feel I have made an impact in other people’s lives through this program.”

Shelbi White, Teen Court student volunteer—“I volunteer at Teen Court because it is exciting, fun, educational and interesting. I thought that it would be a great learning experience for me because when I move on to college, I want to major in law and become a lawyer! It’s great way to help in my community by meeting and helping teens my age get their lives together and to learn from their mistakes. I love the friendly and welcoming environment at Teen Court; it is as if we are a big family – always sharing laughs and wise words of advice with friends!”

Weldon J. Hill II of the Louisiana Department of Health & Hospitals chairs the Teen Court Committee. Donna Buuck is the Teen Court Coordinator and R. Lynn S. Haynes is the Assistant Teen Court Coordinator. To volunteer, please call 225-214-5556.
YLS annual Summer Sizzlin’ CLE hosted by BRBA

The BRBA Young Lawyers Section hosted its annual Summer Sizzlin’ CLE Friday, July 16, 2010, at the Middleton Bar Center.

The 8 a.m. to 12 p.m. seminar featured four speakers. Christine Lipsey of McGlinchey Stafford PLLC discussed legal ethics. Judge Suzan Ponder covered law practice in Baton Rouge City Court. Courtney Humphrey discussed the 19th JDC Duty Court. Judge Guy Holdridge covered professionalism. Young Lawyers Section Council Member Lyla DeBlieux and BRBA staff liaison of the YLS Susan Kelley coordinated this seminar.

BRBA CLE by the Hour program will offer six days of informative seminars in December

Attorneys who still need to complete their required CLE hours will have one last chance to do so in December at the BRBA’s CLE by the Hour program. This opportunity allows BRBA members and lawyers throughout the state to fulfill all their continuing education needs. A different seminar will be offered every hour on the hour. The event will be offered for six days in December from 8 a.m. to 5 p.m. Dec. 9, 10, 16, 17, 29 and 30. For more information, contact Margaret Johnson with the BRBA at 225-344-4803.

Ball Maul benefits BRBF, offers new Mulligan package

The BRBF will host its annual Ball Maul golf tournament at the newly reopened University Club Monday, Nov. 8, 2010.

Members of the Bar along with event sponsors will participate in the tournament in teams of four. Teams who sign up and pay before Oct. 1, 2010, will receive a registration discount. This year, there will be an optional Mulligan Package available for an additional $25 per person. The package will include one Mulligan, one Sandy, one Red Blast and one Poker Run.

Proceeds from the event will benefit the Baton Rouge Bar Foundation Pro Bono Project and Youth Education programs. Ball Maul’s premier sponsor this year is Louisiana Health & Injury Centers/Dr. Michael J. Goff.

Registration and lunch for the event

Presenting at the Nuts & Bolts series seminars on Estate Planning and Basic Probate this summer were Mark Callendar (right) and Joseph Prokop Jr. (left). Laurie Kadair Redman (not pictured) also served as a speaker.

Carla Humphrey (pictured far right) leads a discussion on the 19th Judicial District Court to attentive young lawyers at the July 16, 2010, YLS Summer Sizzlin’ CLE.

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will begin at 11 a.m. with a 12 p.m. shotgun start. There will be a reception and an awards ceremony following the tournament. For more information, contact Ann G. Scarle at 225-214-5563 or Margaret Johnson at 225-344-4803.

Volunteer Committee holds food drive Oct. 9

The Neighborhood Walmart at the corner of Lee Drive and Highland Road will be the location of the BRBA annual food drive Saturday, Oct. 9, from 9 a.m. to 2 p.m. For more information, contact Carole McGehee at 225-214-5557 or carole@brba.org.

Belly Up with the Bar to take place Friday, Oct. 22

The BRBF will host the 12th Annual Belly Up with the Bar at 5 p.m. Friday, Oct. 22, in the lot behind Moore, Thompson, Lee & Broyles LLC, 6513 Perkins Road. This YLS project is an outdoor party that features live music, a cook-off and a brewfest.

Advance general admission tickets are $20 per adult, $15 per law student, $10 per child ages seven to 12, and free for children ages six and under. Prices at the door are $25 per adult or law student and $10 per child. Proceeds from the event will benefit the BRBF’s Youth Education programs. Andrew Kolb of Baker, Donelson, Bearman, Caldwell & Berkowitz PC is the 2010 committee chair. For more information, contact Donna Buuck at 225-214-5556 or donna@brba.org.

Louis A. Martinet Legal Society receives award

The National Bar Association recognized the Baton Rouge Chapter of the Louis A. Martinet Legal Society as the National Affiliate of the Year. The award is given to one chapter in the nation that has promoted the aims and ideas of the organization through service and leadership. The award was presented at the NBA 85th Annual Convention & Exhibits held Aug. 9-13 at the Marriott Hotel in New Orleans. Bar member Alejandro Perkins of Hammonds & Sills, president of the society, accepted the award.

GAIL’S GRAMMAR

The prepositions between and among cannot be used interchangeably. Many people think between refers to a choice involving two things, while among refers to a choice involving more than two things. But that’s not entirely correct. Use between when talking about the relationship between individual items, groups, or people, even if there are more than two. Use among when talking collectively or with unspecified numbers when individual relationships are not emphasized. Think of the difference in walking between the trees and among the trees. With between, we visualize individual trees; with among we think of a forest.

EXAMPLES:

The injured party had to choose between filing suit, settling, or dropping the case. [three distinct choices]
He had to choose among several options. [options are not distinct choices]

Thanks to Pam Cardinal of Forrester & Dick for suggesting this topic. Send suggestions for future Gail’s Grammar columns to Gail Stephenson at GStephenson@sulc.edu, or call Gail at 225.771.4900 x 216.

more information, contact Donna Buuck at 225-214-5556 or donna@brba.org.

Holiday Star begins gift collection

The BRBA’s 19th Annual YLS Holiday Star Project has a goal of gifting about 1,000 underprivileged youth this year.

The School for the Visually Impaired will join the project as a new agency. All members are encouraged to donate gifts and brighten up a child’s winter holidays. Stars will be handed out by early November.

Katherine Green with the Louisiana Department of Justice is the 2010 chair of the committee. Corinne Blache of Roedel, Parsons, Koch, Blache, Balhoff & McCollister is the vice chair of the committee. For more information, contact staff liaison Susan Kelley at 225-214-5559 or susan@brba.org.
West’s Jury Verdicts - Baton Rouge

Venue/Case Type
East Baton Rouge Parish
Animals
Labor & Employment
Vehicle Negligence
Vehicle Negligence
Vehicle Negligence

Major Injury
Breast lacerations
Severed fingers
Back and neck
Head and neck
Back

Trial Type
Jury
Bench
Bench
Bench
Bench

Result
$23,721
$188,274
$50,000
$48,556
$35,264

West’s Case of the Month

Plaintiff 60% at Fault For Severing Fingers In Snow-Making Machine

*Muller v. Colony Ins. Co.*

**Type of Case:**
Labor & Employment • Work Place Injury
Negligence-Other

**Specific Liability:** Business owner's husband did not replace a guard or cover on a snow-making machine, causing the severance of two of the owner's fingers

**General Injury:** Severed fingers; medical expenses

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

**Docket/File Number:** 545,576

**Judgment:** Plaintiff, $188,273.53; reduced to $75,939.41 per fault apportionment

**Judgment Date:** Oct. 8, 2009

**Judge:** R. Michael Caldwell

**Attorneys:**

*Plaintiff:* William T. Lowrey Jr., Baton Rouge; Keith L. Richardson, Guglielmo, Marks, Schutte, Terhoeve & Love, Baton Rouge

*Defendant (Colony):* Paul D. Palermo and John M. Herke, Spyridon, Palermo & Dornan, Metairie

*Defendant (Muller):* Amos H. Davis, Amos H. Davis Attorney at Law, Baton Rouge

**Trial Type:** Bench

**Experts:**

*Plaintiff:* None mentioned

*Defendants:* None mentioned

*Unspecified:* Darryl W. Peterson, MD, orthopedic surgeon, Greater Baton Rouge Musculoskeletal Group, Baton Rouge; Lauren B. Rivet, LOTR, CHT, FAOTA, occupational therapist, Rivet Hand Rehabilitation Center, Baton Rouge

**Breakdown of Award:**

$140,000.00 to plaintiff from defendant Colony for general damages

$47,223.53 to plaintiff from defendant Colony for past medical expenses

**Summary of Facts:**

Janet Sue Muller reportedly was the sole proprietor of The Sno-mobile of Louisiana, a business providing artificial snow for social events. Sue said she enlisted the help of her husband, William Muller, to operate a snow-making machine at a contracted snow party Dec. 24, 2005, for refugees of Hurricane Katrina at Cabana Gardens Apartments in Baton Rouge, La. William reportedly adjusted the machine before operating it, removing a guard or cover to do so, without replacing it.

Sue said she was raking or pushing ice shaved by the machine and had approached the truck containing the machine when she slipped and attempted to steady herself. Her right hand entered the operating wheel portion of the machine, Sue said, and two of her fingers were severed.

Sue said her fingers were surgically reattached. She reportedly underwent other surgeries to partially reanimate her little finger, to relieve trigger-finger syndrome, and to treat overuse syndrome of her left hand.

Sue reportedly had a commercial general liability policy with Colony Insurance Co. in the name of “Sue Muller d/b/a The Sno-mobile of Louisiana.”

Sue filed a lawsuit against Colony and William in the Nineteenth Judicial District Court for the Parish of East Baton Rouge in July 2006. She claimed the cause of her injuries was William's negligence. The cover or guard was specifically designed to prevent objects from entering the rotary portions of the machine, Sue said.

Colony denied William was negligent or at fault and claimed Sue was solely or contributorily at fault in causing her injuries.

Judge Caldwell signed a judgment Oct. 8, 2009, in favor of Sue and against Colony. Judge Caldwell apportioned fault at 60 percent to Sue and 40 percent to William, awarded Sue $140,000 for general damages and $47,223.53 for past medical expenses, and reduced the award according to the fault apportionment, ordering Colony to pay Sue $56,000 for general damages and $18,889.41 for past medical expenses.

Judge Caldwell also ordered Colony to pay all court costs and $1,050 for expert witness fees.

**Case Cite:** West’s J.V. La. Rep., Vol. 5, Iss. 11, p. 7 (2010); 2009 WL 6409649

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BRBA Softball Tournament 2010 recap

BY ART VINGIELLO

BRBA Softball Tournament 2010, held at BREC Highland Road Park Aug. 20-21, was the 27th annual competition among law firms, government agencies and law schools with sufficient players, organizational skill, money and moxie to pull together a softball team for this brutal battle. Sure, it’s only a game, but tell that to the men and women battling with a heat index of 156 degrees, broken bones and bruised egos.

Veteran player and observer Luke Williamson estimated that more homers were hit over the Big Field fence this year than the total hit in the previous decade. There seemed to be a rash of dramatic walk-off home runs this year, including shots by Thomas Temple, Chris Hester and Mike Lutgring. Lutgring blasted a homer over the fence while wearing no shoes due to badly blistered bunions. Russell Woodard continued to play superbly, long after he had broken his hand. His underhanded outfield throws and one-handed batting finally clued opponents in to his problem.

LSU varsity baseball and softball teams continued to send more and more players to the tournament, including Dan Guillory, Michael Hollander, Jordan Faircloth and Henri Saunders. The use of controversial recruits in this tournament dates back to Judge “Brick” Wall’s sons playing for the champion Bomber teams of the early 1990s.

Professor Michelle Ghetti of the Southern University Law Center noticed that her team’s opponent, LSU Law Center, was fielding no professors, in violation of Tournament Rules. Having been forced to be on the field in past tournaments to fulfill this requirement, Professor Ghetti was especially sensitive to this rule. Fortunately, SULC didn’t need the forfeit, as it outscored LSU.

The upstart Long Firm beat The Usual Suspects in the final game on Friday night in a back-and-forth battle. That sent the Suspects into the brutal losers’ bracket on Saturday, where they ultimately succumbed to the sun. Arguably the best team in the tournament, the Suspects were knocked out by the DAs. The Long Firm, like the Suspects was a team of free agents and had a good mix of old (Wendell Clark), medium (Brian Cohn) and young.

Breazeale, Sachse and Wilson defeated the DAs’ team 13-8 in the final game to bring home its third championship in a row. The Marucci bat and Bruce Macmurdo Trophy bestowed on the winners/survivors again belonged to BS&W.

Bruce Parker, heart and soul of the DA’s team, praised his team and singled out Sonia Washington’s Golden Glove defense and Chris Hester’s all-around excellence as helping to carry their team.

Since 1990, the softball tournament has used the top-notch, experienced officiating crew of Chuck and Carl Soileau, Larry Lee and Nolan Guidry.

Special thanks go to Chris Jones and Luke Williamson, tournament directors, for herding the cats that are the managers of the participating teams. Their experience and preparation are invaluable to implementing rules among this irascible bunch.

We want to thank Kelly Balfour for picking up (and especially for bringing back) the Trinity Lutheran grill and trailer. Also, thanks to Don Luther of Angelwood Driving School for, once again, supplying free, delicious snowballs to cool the kids, spectators, volunteers, players and umpires.

In addition, thanks to Ann G. Scarle and the BRBA staff for hosting another well organized tournament. Year after year, the staff sweats it out for the benefit of the participants.
TEEN COURT REPORT—

Barbara Baier, Tomeka Gilbert and Tavares Walker served as judges for the July and August hearings. Treneisha Jackson, a student with Southern University Law School, served as a jury monitor.

Forty teens completed the Aug. 28, 2010, training session. Gail Grover, Curtis Nelson, Rachel Smith, Lindsay Watts and Jeff Wittenbrink conducted the day-long training session. Judge Darrell White (Ret.) performed the swearing-in ceremony.


Volunteers are needed to serve as judges for the Teen Court hearings and to assist with training sessions. If you are interested in volunteering, please contact Donna Buuck at 225-214-5556 or via e-mail to donna@brba.org.

Teen Court volunteers want you to know:

Mary E. Roper, Parish Attorney, EBR Parish Attorney’s Office — “For an attorney, Teen Court provides a chance to mentor teens who are interested in pursuing legal careers and an opportunity to make a difference in the lives of the teens who have found themselves in a troubled situation, which has caused them to be routed to this court for guidance from their peers. It is truly an amazing program.”

Briana Bell, Teen Court Student Volunteer—“I participate in Teen Court because I like giving my peers second chances. The program is a constant reminder of the consequences that follow the choices we make.”

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

**19TH JDC CIVIL COURT**

Sept. 27-Oct. 8  
Oct. 11-Oct. 22  
Oct. 25-Nov. 5  

**19TH JDC CRIMINAL COURT***

Sept. 24-Oct. 1  
Oct. 1-Oct. 8  
Oct. 8-Oct. 15  
Oct. 22-Oct. 29  
Oct. 29-Nov. 5  

**BATON ROUGE CITY COURT**

Sept. 27-Oct. 3  
Oct. 4-Oct. 10  
Oct. 11-Oct. 17  
Oct. 18-Oct. 24  
Oct. 25-Oct. 31  

**FAMILY COURT**

Sept. 27-Oct. 1  
Oct. 4-Oct. 8  
Oct. 11-Oct. 15  
Oct. 18-Oct. 24  
Oct. 25-Oct. 29  

**JUVENILE COURT**

Oct. 1-Oct. 31  

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

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

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

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

**COURT HOLIDAYS**

Monday, Oct. 11  
Columbus Day  

Classifieds

**DOWNTOWN SPACE AVAILABLE**

201 Napoleon St., near courthouse, area for support staff, off-street parking, conference room, copier, phone, fax, Internet, etc. Some overflow work available. Call Scott Gegenheimer: 225-346-8722.

**ATTORNEYS/JUDGES WHO BELIEVE**

they have problems with alcohol and/or drugs are welcome to attend meetings with other similarly situated attorneys/judges held on Thursdays at Samuel’s Diner, 6721 Exchequer Drive and on Tuesdays on the third floor at 355 North Blvd. Both meetings are dutch treat and are from noon to 1 p.m. Strict anonymity is observed outside these 12-Step Meetings.

**PRACTICE YOUR GOLF SWING**

then get a 4-man team together to participate in the BRBF Ball M阜 Golf Tournament in November! Contact Ann G. Scarle with any questions: 225-214-5563 or ann@brba.org.

**GO BELLY UP WITH THE BAR**

Friday, Oct. 22, 2010, at 5 p.m. Enter your cooking team today! Contact Donna Buuck at 225-214-5556 or donna@brba.org.

**Teens Helping Teens**

**TEEN COURT**

of Greater Baton Rouge needs attorneys to volunteer to assist with the program.

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

**BRBA Volunteer Committee’s**

12th Annual Fall Food Drive, 9 a.m.-2 p.m., Wal-Mart at Lee Drive and Highland Road.

**BRBA Finance Committee meeting**

7:30 a.m., 8702 Jefferson Hwy, #B;
BRBA Executive Committee meeting, 8 a.m., 8702 Jefferson Hwy, #B;
Law Day Committee meeting, 12 p.m.;
Pro Bono Committee meeting, 12-2 p.m.
Thirst for Justice, St. Vincent de Paul, 3-5 p.m.

**Bench Bar Conference Committee meeting**

12 p.m.;
Thirst for Justice, St. Vincent de Paul, 3-5 p.m.

**Membership Committee**

12 p.m.
Ask-A-Lawyer Workshop, 9-11:30 a.m., Catholic Charities;
Thirst for Justice, St. Vincent de Paul, 3-5 p.m., Delmont Service Center;
Board of Directors meeting, 6 p.m.

**Public Law Section Meeting**

12 p.m.;
Family Law Section Meeting & CLE, Carrabbas’s Italian Grill, 12-2 p.m.
Thirst for Justice, St. Vincent de Paul, 3-5 p.m., Delmont Service Center

**Belly Up with the Bar event**

5 p.m., Moore, Thompson, Lee & Broyles

**Ask-A-Lawyer Workshop**

9-11:30 a.m., Goodwood Library

**Teens Helping Teens**

**TEEN COURT**

of Greater Baton Rouge needs attorneys to volunteer to assist with the program.

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

**Youth Education Committee meeting**

12 p.m.
Teen Court of Greater Baton Rouge

**Teen Court Committee meeting**

12 p.m.
Thirst for Justice, St. Vincent de Paul, 3-5 p.m.

**Workers’ Comp Social**

5-7 p.m., Boudreaux & Thibodeaux’s

**Demonstrative Evidence Clinic**

Midleton Bar Center & Federal Courthouse, 8 a.m.-3:30 p.m.

*Unless otherwise noted, all meetings will be held at the Baton Rouge Bar office.*
"THE PARTNERS FIGURED THEY COULD GIVE ME MORE WORK NOW. TURNS OUT THEY’RE RIGHT."

BRENT KIMBALL, ASSOCIATE GREENSPOON MARDER, P.A. ORLANDO

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