

# The Advocate

Louisiana Association of Criminal Defense Lawyers

## A message from the President

By: Ron Ware

Greetings friends and colleagues. As usual, we are faced with many challenges at our doorsteps. But remember, every challenge presents an opportunity.

Before I go any further let me state, for the record, it is indeed an honor and a privilege to preside over what I have come to know and respect as the greatest collection of criminal defense intelligence and talent in this state.

Now with all of the formalities aside, I am very proud to announce that the LACDL has successfully met a monumental challenge that presented itself during the first few months of this year. Unfortunately, our long-time and dear friend Norman Ferachi and

his associates resigned as Executive Director and managers of our beloved organization. Norman and his entire staff served us very well during their twelve to thirteen year association with us and in many ways spoiled us.

I am not sure they knew what they were getting into when they signed on with this outfit but I can personally attest that we are better off for having them when we did. We all wish them well and send them off with a resounding THANK YOU, JOB WELL DONE.

Now that I have hopefully set the stage, let me take the opportunity to introduce you to the Ferachi and Associates successors, The TATMAN Group. This enormously talented association

management firm is headed by David Tatman and has a proven performance record.

I salute the LACDL members on the search committee who worked very hard and made tough decisions given the quality of the applicants they interviewed, including some of our own. David the membership welcomes you, Jessica Seals, Paula Laird, Ashley Mendoza, Keli Ourso, and your entire staff on board. I assure you all, even though you may at times doubt it, there is a consistency and logic embedded in our madness.

The transition in management was nearly seamless and now we are operating on all cylinders

*Continued on page 15.....*

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July/August/  
September 2004

### FYI:

- Check out [www.faculty.ncwc.edu](http://www.faculty.ncwc.edu) for the best "links" on the web pertaining to anything and everything criminal justice.

### LACDL 2004 Officers

Ronald Ware  
President

David Price  
President-Elect

John Calmes  
Secretary

John DiGiulio  
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Addison Goff, IV  
Immediate Past President

### LACDL Staff

David Tatman  
Executive Director

Ashley Mendoza  
Paula Laird  
Keli Ourso  
Jessica Seals  
Debbie Blied

## Making Changes

In an effort to move the association forward, LACDL has switched association management firms! The transition was completed in June to the Tatman Group. This group of talented people is eager to begin a relationship with the members of

LACDL to ensure a strong future for the Association. The Tatman Group has plans of revamping *The Advocate* to a publication that is not only informative, but is also a joy to read.

We welcome all comments, suggestions and questions. Our ser-

vices are tailored to suit your needs and are designed to get your message out effectively. Once again, please feel free to contact any of the LACDL staff if we can assist you with anything.

**A "Nuts & Bolts" Seminar ♦ Sept. 10 & 11, 2004  
Lafayette, LA ♦ Holiday Inn Holidome**

**Speakers include:**      **Judge Berrigan "Eyewitness MISidentification",  
John Martzell "Don't Concede Anything! Motion Practice"  
John Calmes "Update on DWI Interstate Compact"**

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## **"Truth Serum" passes in House**

How does being drugged with sodium amytal, sodium pentothal or brevitall sound? What is expected to be heard is confessions of people who have been on death row and are about to have their spot vacated. The House has approved the changes that the Senate made to House Concurrent Resolution 237 by Rep. Dorsey. It is going to be in Foti's hands to decide if it is constitutional to inject people with this serum in hopes they will speak of previous crimes committed. All inmates will be given immunity, before they are executed of course. If Foti finds that this is not uncon-

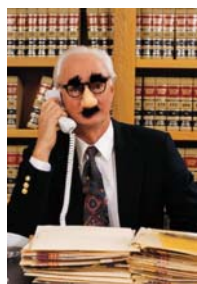
stitutional, Rep. Dorsey's resolution will require the Department of Public Safety and Corrections to further study the issue.

It is a common misconception that "truth serum" actually makes you tell the truth. You will lose inhibitions, but not self-control. So if a person so chooses to tell the truth then they will. It works just as a barbiturate would. It depresses the central nervous system, slows the heart rate and lowers blood pressure. In this state of relaxation a person is more susceptible to suggestion.

*Rep. Yvonne Dorsey  
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Baton Rouge, LA 70802  
225-342-9700  
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## **A little humor.....**

A North Carolina man, having bought several expensive cigars, insured them against... get this... fire. After he had smoked them, he then decided that he had a claim against the insurance company and filed. The insurance company refused to pay, citing the



obvious reason that the man had consumed the cigar normally. The man sued. The judge stated that since the company had insured the cigars against fire, they were obligated to pay. After the man accepted payment for his claim, the company then had him arrested ..... for arson.

*Two prisoners are talking about their crimes:*

*George: "I robbed a bank, and they gave me 20 years"  
Herman: "Hmm. I killed a man, and I'm here for 3 days"  
George: "\*\*WHAT\*??? I rob a bank and get 20 years; you kill a man and get 3 days???"*

*Herman: "Yeah, it was a lawyer."*



# **2004 Final Report**

## **Legislative Recap**

**By: George Steimel**



## Recapitulate

The 2004 Regular Session

By

George Steimel

The first regular session of the Blanco administration began on March 29 and ended on June 21. In those 85 days the legislature passed hundreds of acts and resolutions. The hope is that these acts and resolutions will improve the quality of life for Louisiana citizens.

This year LACDL's legislative committee tracked some 350 bills and resolutions that created new or amended statutory criminal law and procedure. Fortunately only about a third of these bills made it through the process. While we don't necessarily agree that all of these acts will improve the criminal justice system LACDL's legislative committee did its best to assist in the legislative process. Among those 100 or so new acts there are some good and some bad.

The most impressive reform is in the area of juvenile justice. Four new laws all recommendations from the Louisiana State Law Institute and three authored by Rep. Cheryl Gray from New Orleans. The first new law changes the nature of confinement for certain crimes committed as juveniles. Second new law provided for the procedures to be followed by the court to be used when the mental incapacity of a child is raised. The third new law provides for the circumstances in which a juvenile may waive the assistance of counsel in a juvenile delinquency proceeding and prohibits the child from waiving assistance of counsel in certain cases. The last Law Institute bill by Glenn Ansardi of New Orleans adds the requirement that counsel be qualified for the legal representation of children in need of care and delinquent children for adjudication. House bill 1276 by Rep. Billy Montgomery was the result of hard work by the newly formed Juvenile Reform Act Implementation Commission. The act creates youth services, as a separate entity in the Department of Public Safety and Corrections, comprised of the office of youth development. Last but not least is senate bill 490 by Sen. Don Cravins that authorizes any district indigent defender board to contract with one or more other district indigent defender boards for the establishment of a regional defense service center for the representation of juveniles in juvenile courts. It seems the only issue the legislature failed to pass was to prohibit the imposition of the death penalty for juvenile offenders, maybe next year.

Just a few acts that deserve your attention as they are major changes to procedure and evidence rules. Act 413 provides that if a judge orders a mistrial, upon motion of either the state or the defendant, the court shall order an automatic 24-hour stay of all proceedings in which either the state or the defendant may take an emergency writ application. Act 465 provides that crimes, wrongs, or acts involving sexually assaultive behavior or acts which indicate a lustful disposition toward children may be admissible and considered in these cases for its bearing on any matter to which it is relevant. Senate bill 570 by Sen. Joel Chaisson amends C.E. Art. 801(D)(1)(a) to provide that a statement is not hearsay if the declaring testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is inconsistent with his testimony, provided that the proponent has first fairly directed the witness' attention to the statement and the witness has been given the opportunity to admit the fact. This is a major change with regards to prior inconsistent statements of witnesses. One more item that deserve attention is Senate bill 781 by Sen. Art Lentini that codifies *Ford v Wainwright*, 477 U.S. 399, 417, 106 S.Ct. 2595, 2606, 91 L.Ed.2d 355 (1986), the United States Supreme Court made clear that the Eighth Amendment to the United States Constitution precludes the states from executing "one whose mental illness prevents him from comprehending the penalty or its implications.

During the interim the legislature passed a resolution to continue the La. Task Force on Indigent Defense Services to study the system of indigent defense. The Task Force assembled early this year and will continue its effort's to learn more about the system. It will make its recommendations sometime before the 2005 regular session.

We would like to thank everyone who volunteered his or her time and made this year a success. Please take some time to review the following list of Acts from this year's regular session.

You can find the full text of each bill or act on the Internet at this address: [www.legis.state.la.us](http://www.legis.state.la.us)

*Full text of these Acts beginning on page 4.*

**Act: 142****BY REPRESENTATIVE FAUCHEUX**

(Amends R.S. 15:145(B)(3))

Deletes the requirement that contract attorneys for judicial district indigent defender boards be residents of the judicial district.

**HOUSE BILL NO. 19****BY REPRESENTATIVE SHEPHERD**

(Amends C.Cr.P. Art. 814(A)(3))

Adds negligent homicide as a responsive verdict to the crime of second degree murder.

**Act: 143****BY REPRESENTATIVE FARRAR**

(Amends R.S. 14:93(A))

Provides that cruelty to juveniles is the intentional or criminally negligent exposure, by anyone 17 years of age or older, of any child under the age of 17 to a clandestine laboratory operation as defined by R.S. 40:983 in a situation where it is foreseeable that the child may be physically harmed. Lack of knowledge of the child's age shall not be a defense.

**HOUSE BILL NO. 37****BY REPRESENTATIVE BALDONE**

(Amends R.S. 40:981.3(E))

Provides that the minimum sentence imposed pursuant to the present law in a drug free zone, shall be served without benefit of suspension of sentence.

**Act: 144****BY REPRESENTATIVE FAUCHEUX**

(Amends R.S. 14:35.3(B)(2))

Adds to the definition any minor child presently living in the same residence or living in the same residence within five years immediately prior to the occurrence of domestic abuse battery, or any biological minor child of the offender regardless of where the child resides.

**Act: 145****BY REPRESENTATIVE FAUCHEUX**

(Amends R.S. 14:30(B); Adds R.S. 14:30(A)(9))

New law adds to the crime of first degree murder the killing of a victim when the victim was a witness to a crime or a member of the immediate family of a witness to a crime committed on a prior occasion and: (1) The killing was committed for the purpose of preventing or influencing the victim's testimony in any criminal action or proceeding whether or not such action or proceeding had been commenced; or (2) The killing was committed for the purpose of exacting retribution for the victim's prior testimony.

New law defines "member of the immediate family" as a husband, wife, father, mother, daughter, son, brother, sister, stepparent, grandparent, stepchild, or grandchild.

New law defines "witness" as any person who has testified or is expected to testify for the prosecution, or who by reason of having relevant information is subject to being called as a witness for the prosecution, whether or not any action or proceeding has yet commenced.

**Act: 321****BY REPRESENTATIVE ANSARDI**

(Amends Ch.C. Arts. 697(A), 666(B), 884(B), and 1016(B))

Provides for the legal representation of children in need of care and delinquent children and for adjudication that these children's families are in need of services. Requires that such counsel shall be an independent and qualified attorney.

**Act: 241****BY REPRESENTATIVE BRUCE**

Amends R.S. 15:283, 440.1, 440.2, 440.4, the introductory paragraph of R.S. 15:440.5(A), 440.5(A)(4), (6), (8), (B), and (C), 440.6, Children's Code Arts. 322, 323(2), 324(A), the introductory paragraph of Children's Code Art. 326(A), Art. 326(A)(1), (2), (4), (6), (7), and (B), 327(A)(2), (3), and (B), 327(A)(2), (3), and (B), 328, 329, 652(A)(4), the introductory paragraph of Children's Code Art. 1027(A) and Art. 1027(A)(4); adds Children's Code Art. 323(3)

Expands the provisions of law which authorize the taking of testimony outside of the courtroom and the use of videotaped statements to persons who are crime victims or witnesses who are either (1) fourteen years or younger, or (2) who have a developmental disability or mental retardation.

**Act: 147****BY REPRESENTATIVES WALKER AND DORSEY**

(Amends R.S. 15:541(1) and 542.1(H)(3)(b))

Amends the definition of "aggravated offense" to require sex offenders who engage in sexual acts involving penetration with a victim under the age of 14 to register as a sex offender for life. The Act shall have prospective application only.

**Act: 85****BY REPRESENTATIVE MARTINY**

(Adds R.S. 14:112.2 and 112.3)

New law provides that fraudulent portrayal of a law enforcement officer or firefighter is the impersonation of any law enforcement officer or firefighter for the purpose of obtaining access to a public building, facility, or service.

**Act: 484****BY REPRESENTATIVE GRAY**

(Amends Ch.C. Arts. 116(10), 897.1, and 901(E) and R.S. 15:906(B) and 908(A); adds Ch.C. Art. 116(24.1) and (24.2); repeals Ch.C. Art. 728(3.1))

Adds a definition of "secure placement" which is placement characterized by a range of moderate to high security level facilities designed to restrict the movements and activities of the residents and are intended for treatment of children who have been adjudicated delinquent. Provides that secure placements include but are not limited to secure correctional centers for children and community-based secure detention facilities. Further provides that a child shall not be placed in a community-based secure detention facility when the child has been adjudicated for the commission of first degree murder, second degree murder, aggravated rape, aggravated kidnapping, or armed robbery, unless the committing judge and the district attorney have been advised of such placement.

**Act: 485**

**BY REPRESENTATIVE GRAY**

(Amends Ch.C. Arts. 804(7), 832, 834, 835, 837, and 838; Adds Ch.C. Art. 730(9))

Amends provisions governing child delinquency proceedings, including but not limited to a revision of the procedures to be used when the mental incapacity of a child is raised.

**Act: 366**

**BY REPRESENTATIVES RICHMOND AND SCALISE**

(Adds R.S. 14:97.2)

New law creates the crime of unlawful sale, purchase, possession, or use of a traffic signal preemption device.

**Act: 367**

**BY REPRESENTATIVE PIERRE**

(Adds R.S. 15:144(E))

New law provides that authority of the district court judges in each judicial district to appoint members to the district indigent defender board shall not in any way be construed to authorize those judges to participate in specific management decisions of the board in order to preserve the independence of attorneys appointed to represent indigent defendants consistent with the standards adopted by the American Bar Association and other standards of practice.

**HOUSE BILL NO. 247**

**BY REPRESENTATIVE THOMPSON**

(Amends R.S. 14:67.2(A) and (C)(intro.para.); Adds R.S. 14:67.2(B)(4))

Clarifies that the crime of theft of animals includes the killing of an animal and authorizes the court to order restitution in certain cases of theft of an animal.

**HOUSE BILL NO. 255**

**BY REPRESENTATIVES BADON AND WALSWORTH**

(Amends R.S. 14:32.1(B))

With regard to vehicular homicide, requires a minimum mandatory sentence of five years if the offender was previously convicted of operating a vehicle while intoxicated or if the operator's BAC level is 0.15% or more.

**Act: 496**

**BY REPRESENTATIVE MARTINY**

(Amends C.Cr.P. Art. 326(B))

Law provides that upon a plea of guilty or no contest in a felony case, the bail undertaking shall cease and the surety shall be relieved of the obligations of the bond, unless the surety agrees in writing to continue on the existing bail or post another bond.

**Act: 43**

**BY REPRESENTATIVE MARTINY**

(Amends R.S. 15:571.4(B)(1))

Authorizes the forfeiture of good time when an inmate fails to report to or return from employment or other activity under the work-release

program.

**HOUSE BILL NO. 356**

**BY REPRESENTATIVE MARTINY**

(Adds R.S. 14:90.5)

Creates crime of unlawful play of certain gaming devices by a person under the age of 21.

**HOUSE BILL NO. 357**

**BY REPRESENTATIVE MARTINY**

(Adds R.S. 32:661.1(D))

Defines "public navigable waterways" for the purpose of implied consent to chemical testing.

**Act: 499**

**BY REPRESENTATIVE FLAVIN**

(Amends C.Cr.P. Art. 734(C))

Authorizes investigators employed by any district attorney in this state to serve subpoenas in certain cases.

**Act: 500**

**BY REPRESENTATIVE DAMICO**

(Adds R.S. 13:5112.1)

Requires any person requesting the production of documents, through subpoena duces tecum, from a governmental entity to reimburse the governmental entity for the reasonable costs incurred in the production of the requested documents.

**Act: 502**

**BY REPRESENTATIVES MONTGOMERY AND MURRAY**

(Amends C.C.P. Art. 3603.1(C))

Requires the clerk of court to assist persons who are seeking protection from domestic abuse, stalking, or sexual assault in the making of an application for protective orders.

**Act: 408**

**BY REPRESENTATIVES LAFLEUR AND DORSEY**

Creates the La. Sexual Assault Task Force within the Dept. of Justice, office of the attorney general. Provides for a membership of 26 members. Provides that the attorney general shall serve as chairman. Provides for a listing of issues that the task force shall study, including but not limited to investigation issues, procedures used in obtaining and analyzing sexual assault evidence, training requirements for law enforcement officers and others in sexual assault cases. LACDL is on the task force.

**Act: 379**

**BY REPRESENTATIVE LAFLEUR**

(Amends C.Cr.P. Art. 611)

Provides that if the offender is charged with the crime of first or second degree murder and it cannot be determined where the offense or the elements of the offense occurred, the offense is deemed to have been committed in the parish where the body of the victim was found.

**HOUSE BILL NO. 549****BY REPRESENTATIVE BALDONE**

(Amends R.S. 14:98(D)(1) and (3)(a)(intro. para.) and (iii) and (E)(1) and (3)(a)(intro. para.) and (iii))

Provides with respect to substance abuse treatment, probation, and home incarceration for repeat DWI offenders.

**Act: 157****BY REPRESENTATIVES WALSWORTH, KATZ, AND THOMPSON**

(Adds R.S. 14:61)

New law provides that unauthorized entry of a critical infrastructure is the intentional entry by a person without authority into any structure or onto any premises, belonging to another, that constitutes in whole or in part a critical infrastructure that is completely enclosed by any type of physical barrier including but not limited to: (1) chemical manufacturing facilities; (2) refineries; (3) electrical power generating facilities; (4) water intake structures and water treatment facilities; (5) natural gas transmission compressor stations; (6) LNG terminals and storage facilities; and (7) transportation facilities such as ports, railroad switching yards, and trucking terminals. Law shall not be construed to prevent lawful assembly and peaceful and orderly petition for the redress of grievances, including but not limited to any labor dispute between any employer and its employees.

**Act: 331****BY REPRESENTATIVES MORRISH, BRUCE, ROMERO, AND SCALISE**

(Amends R.S. 15:572.4(D))

Increases the time periods for additional application for pardon or commutation of sentence by offenders sentenced to life imprisonment.

**Act: 381****BY REPRESENTATIVES ROMERO AND SCALISE**

(Amends R.S. 14:32.1(B))

Increases the maximum potential sentence for vehicular homicide from 20 years to 30 years.

**Act: 382****BY REPRESENTATIVE ROMERO**

(Adds R.S. 15:499(C))

Authorizes the use of electronic signatures on a certificate of analysis from a criminalistics laboratory.

**Act: 218****BY REPRESENTATIVE QUEZAIRE**

(Adds R.S. 32:666(C))

Present law contains provisions governing the refusal to submit to chemical tests when a

person is suspected of operating a vehicle while intoxicated. Provides that when a person

submits or refuses to submit to a chemical test, the law enforcement officer shall submit a

sworn report that the officer had reasonable grounds to believe that the

driver was under the influence of drugs or alcohol, that the officer followed procedure informing the driver of his rights, and that such person either submitted or refused to submit to the test.

New law provides that any law enforcement officer appointed as an ex officio notary public may exercise the function of a notary public to administer the oath required by present law.

**HOUSE BILL NO. 640****BY REPRESENTATIVE M. GUILLORY**

(Adds R.S. 14:106.3)

Creates the crime of unlawful exhibition of sexually explicit material in a motor vehicle and provides that it shall be unlawful for any person to knowingly exhibit sexually explicit material in a motor vehicle on a public street, highway, public place, or any place

open to public view knowing that the material is visible to the public from the motor vehicle.

**Act: 385****BY REPRESENTATIVE BADON**

(Adds R.S. 14:95.1.1)

Provides that illegally supplying a felon with a firearm is the intentional giving, selling, donating, providing, lending, delivering, or otherwise transferring a firearm to any person known by the offender to be a person convicted of a felony and prohibited from possessing a firearm as provided for in present law.

**Act: 253****BY REPRESENTATIVE LAFLEUR AND SENATOR DARDENNE**

(Amends R.S. 56:31 and 31.1)

Changes class one wildlife and fisheries violations from civil violations to criminal violations. It's all about the money.

**Act: 413****BY REPRESENTATIVE MARTINY**

(Adds C.Cr.P. Art. 775.1)

New law provides that if a judge orders a mistrial, upon motion of either the state or the

defendant, the court shall order an automatic 24-hour stay of all proceedings in which either the state or the defendant may take an emergency writ application to the appropriate reviewing court. The jury shall not be released pending the stay unless both the state and defendant agree to release the jury.

**Act: 415****BY REPRESENTATIVE M. POWELL**

(Amends R.S. 15:1356(E); Adds R.S. 15:1352(A)(16) and (17))

Adds the crimes of pandering (R.S. 14:84) and money laundering (R.S. 14:230) to the definition of "racketeering activity" and otherwise retains the provisions of present law. Deletes reference to "drug" activities in racketeering statute (R.S. 15:1356(E)).

**HOUSE BILL NO. 877****BY REPRESENTATIVE DORSEY**

(Adds R.S. 46:1844(K)(2)(g))

Provides that the victim impact statement can include testimony regarding the overall effect of the crime upon the victim and the victim's family.

**Act: 338**

**BY REPRESENTATIVE JACK SMITH**

(Adds R.S. 15:542(B)(6))

Requires a sex offender who provides recreational instruction to persons under the age of seventeen years to post a notice in the building or facility where such instruction is being given.

**Act: 270**

**BY REPRESENTATIVE MARTINY**

(Amends R.S. 14:222.1)

Clarifies the elements and penalties of the crime of unauthorized interception, interference with, or retransmission of services offered over a cable television system.

**Act: 165**

**BY REPRESENTATIVE TOOMY**

(Amends R.S. 40:1049(E))

Present law provides penalties for transactions involving proceeds from drug offenses of imprisonment for not more than 10 years or fined not more than \$10,000, or both. Amendment provides that the term of imprisonment be served with or without hard labor and otherwise retains the provisions of present law.

**Act: 345**

**BY REPRESENTATIVES FARRAR AND THOMPSON**

(Adds R.S. 40:966(E)(5))

Allows distribution or possession with intent to distribute marijuana to serve as predicate offenses for possession of marijuana.

**Act: 399**

**BY REPRESENTATIVE M. POWELL**

(Amends R.S. 14:123(C)(4))

Provides that the penalty provisions for perjury committed "in all other cases" applies to perjury when committed in any civil action, or in any administrative proceeding, or in any legislative hearing or proceeding, or in any other legal proceeding.

**Act: 111**

**BY REPRESENTATIVE TRICHE**

(Adds R.S. 14:102.19)

Law provides that it shall be unlawful for any person to organize or conduct any commercial or private event, wherein there is a display of combat or fighting among one or more domestic or feral canines and feral or domestic hogs and in which it is intended or reasonably foreseeable that the canines or hogs would be injured, maimed, mutilated, or killed. Creates an exception to the crime for "Uncle Earl's Hog Dog Trials" Only in Louisiana do we need this kind of exception.

**Act: 7**

**BY REPRESENTATIVES MONTGOMERY, HUNTER, MARTINY, AND MURRAY**

**AND SENATORS MOUNT, CRAVINS, JONES, LENTINI, AND AMEDEE**

(Amends R.S. 15:1202(A)(intro. para.) and 1204.1(A) and (B)(11), R.S. 36:401(B)(1) and (2) and (C)(1), 402, 405(A)(1)(intro. para.) and (c) and (2), (B), and (C), 406(A), (B)(3), and (C), 407(B) and (C), and 408(G)(1) and (H), R.S. 39:21.3(D), and R.S. 46:2602(B)(3); Adds R.S. 15:1202(A)(27), 1228.2(10), and 1228.3(14) and R.S. 36:405(D) and 406(B)(4)) Creates youth services as a separate entity in the Department of Public Safety and Corrections, comprised of the office of youth development (moved from corrections services) and a new office of management and finance for youth services. Provides for a deputy secretary for youth services who reports directly to the governor. Includes special provisions for implementation of the office of management and finance for youth services.

**Act: 555**

**BY REPRESENTATIVE WINSTON**

(Amends R.S. 46:1941.1, 1941.2, 1941.5, and 1941.8; Repeals R.S. 46:1941.3(1), 1941.4,

1941.6, 1941.7, and 1941.9-1941.13)

Provides for the creation of youth services planning boards in each judicial district of the state. With respect to membership of these boards, proposed law provides for at least eleven but not more than twenty-five members who shall be representative of health and social services, law enforcement, prosecutors, public defense, the judiciary, where possible a judge elected to juvenile court, early childhood, public education, ethnic minorities, business community, faith-based organizations, parent organizations, organizations that advocate for youth, and the lay citizen. Requires at least two members of the board to be 18 years of age or younger.

**HOUSE BILL NO. 1437**

**BY REPRESENTATIVE STRAIN AND SENATOR NEVERS**

(Adds R.S. 40:983.1)

Provides for the crime of creation or operation of a clandestine laboratory for the unlawful manufacture of a controlled dangerous substance on any property used for school purposes by any school or within 1,000 feet of any such property.

**Act: 400**

**BY REPRESENTATIVE JACK SMITH**

(Amends R.S. 40:2616(A)(1))

Authorizes the district attorney to authorize a licensed auctioneer to conduct a sale of forfeited property. Show me the money!

**Act: 401**

**BY REPRESENTATIVE LAFLEUR**

(Amends C.Cr.P. Art. 930.8(C))

Existing law provides that at the time of sentencing, the trial court shall inform the defendant of the prescriptive period for post-conviction relief. New law retains the provisions of existing law and provides that the instructions may be given either verbally or in writing. Further provides that if a written waiver of rights form is used during the acceptance of a guilty plea, the notice of the post-conviction relief prescriptive period may be included in the written waiver of rights.

**Act: 402****BY REPRESENTATIVES RICHMOND, TOWNSEND, DORSEY, MURRAY**

(Adds R.S. 13:1568.3)

Provides for special divisions of juvenile courts located in any parish having a population of greater than 465,000. (New Orleans)

**Act: 567****BY REPRESENTATIVES MARTINY AND ANSARDI**

(Amends C.Cr.P. Art. 336(A)(2) and (3); Adds C.Cr.P. Art. 336(A)(4))

Provides that every person arrested for a felony offense not already required to submit to a pretrial drug test may be required to submit to a pretrial drug test.

**HOUSE BILL NO. 1508****BY REPRESENTATIVES GRAY AND RICHMOND**

(Amends Ch.C. Art. 810; Adds Ch.C. Art. 809(E) and (F))

Provides for the circumstances in which a juvenile may waive the assistance of counsel in a juvenile delinquency proceeding and prohibits the child from waiving assistance of counsel in certain cases.

**HOUSE BILL NO. 1551****BY REPRESENTATIVES HEATON, DARTEZ, DORSEY, FARRAR, RICHMOND**

(Amends R.S. 46:2140)

Provides for certain guidelines for law enforcement officers to use in determining the predominant aggressor in domestic violence cases.

**HOUSE BILL NO. 1595****BY REPRESENTATIVE CROWE**

(Amends R.S. 15:541(14.1); Adds R.S. 14:238.1)

Creates the crime of voyeurism and adds the second and subsequent conviction of the crime of voyeurism to the definition of "sex offense" for purposes of sex offender registration and notification.

**HOUSE BILL NO. 1604****BY REPRESENTATIVE CAZAYOUX**

(Adds R.S. 32:662.1)

In all criminal cases where intoxication is an issue, any certificate or writing made in accordance with the provisions of R.S. 32:663, including but not limited to intoxilyzer machine recertification forms, and other certificates or writings made with respect to the chemical analyses of a person's blood, urine, breath, or other bodily substance, shall be admissible as evidence. This one may have problems with cross-examination.

**HOUSE BILL NO. 1710****BY REPRESENTATIVES BALDONE AND WALSWORTH**

(Amends R.S. 15:306(B))

Requires proof of installation by all persons who are ordered by the court to have an ignition interlock device as a condition of probation.

**HOUSE BILL NO. 1712****BY REPRESENTATIVE BALDONE**

(Amends R.S. 32:415(B) and 415.1(A)(1)(intro.para.))

Requires courts to order the installation of an ignition interlock device on vehicles registered to persons whose driving privileges have been suspended because of a DWI-related offense.

**HOUSE CONCURRENT RESOLUTION NO. 32****BY REPRESENTATIVES WALKER AND CROWE**

Requests the Louisiana State Police to increase public awareness regarding Louisiana's Sex Offender Registry through the use of public service announcements.

**HOUSE CONCURRENT RESOLUTION NO. 90****BY REPRESENTATIVE TOWNSEND**

Requests the Louisiana Supreme Court to study and make recommendations for a uniform and streamlined procedure for expungement of criminal records. Requires a report of the study to be submitted to the legislature 120 days prior to the 2005 Regular Session.

**HOUSE CONCURRENT RESOLUTION NO. 273****BY REPRESENTATIVE DORSEY**

Requests the DPS&C to request an opinion from the office of the attorney general regarding the constitutionality of utilizing medications to facilitate confessions by those incarcerated in its correctional facilities prior to imposition of the death penalty, when immunity is provided for any crimes confessed, and to examine the feasibility of utilizing medications for such purpose upon the issuance of an opinion that such practice would not violate the U.S. or La. constitutions. This should be a no-brainer.

**HOUSE RESOLUTION NO. 143****BY REPRESENTATIVE MORRELL**

Requests all statewide offices, including but not limited to the office of mental health, the office of addictive disorders, the office for citizens with developmental disabilities, as well as all criminal justice agencies, to work together to provide an integrated system of mental health care to those persons who are involved in the criminal justice system as nonviolent offenders.

**Act: 178****BY SENATOR N. GAUTREAUX AND REPRESENTATIVES E. GUILLORY AND****SCHNEIDER**

(Amends R.S. 14:91.1(A)(2); adds R.S. 15:538(D) and 550)

Existing law provides that it is unlawful for a sexually violent predator to physically reside within 1,000 feet of any public or private elementary or secondary school. New law retains existing law but includes a day care facility, playground, public or private youth center, public swimming pool or free standing video arcade facility. New law provides that no sexual offender, whose offense involved a minor child, shall be eligible for probation, parole, or suspension of sentence unless, as a condition thereof, the sexual offender is prohibited from: (a) Going in, on or within 1,000 feet of the school property of any public or private, elementary or secondary school, or the physical presence in any motor vehicle or other means of conveyance owned, leased, or contracted by such school to transport students to or from

school or a school-related activity when persons under the age of eighteen years are present on the school property or in a school vehicle.

(b) Going in, on or within 1,000 feet of a day care facility, playground, public or private youth center, public swimming pool or free standing video arcade facility.

(c) Physically residing within 1,000 feet of any public or private elementary or secondary school, day care facility, playground, public or private youth center, public swimming pool or free standing video arcade facility.

(d) Communicating with the victim or a family member of the victim unless the victim agrees in writing to such communication.

New law provides that the offender may be granted permission to be present on school premises from the superintendent of the school board in the case of a public school or the principal or headmaster in the case of a private school. New law provides for 24 hour notice of such a visit by the superintendent to the school principal.

New law provides penalties for violations of revocation of probation, parole or suspension of sentence and a fine of not more than \$1,000 or imprisoned for not more than six months, or both. New law does not apply to a defendant while the defendant is in or going immediately to or from

(a) Community supervision and corrections department office;

(b) Premises at which the defendant is participating in a program, activity or work required as a condition of community supervision;

(c) Residential facility in which the defendant is required to reside as a condition of community supervision, if the facility was in operation as a residence for defendants on community supervision on June 1, 2004; or

(d) Private residence at which the defendant is required to reside as a condition of community supervision.

New law provides for a pilot program using a tracking and crime correlation based electronic monitoring supervision program for certain sex and violent offenders. Requires DPS&C to promulgate rules and regulations to implement this pilot program. Provides for the qualifications of participants in the program and provides for restrictions. Provides that such provisions are to be implemented only upon the availability of funding.

**Act: 29**

**BY SENATOR NEVERS**

(Amends R.S. 15:574.2(B))

In the case of a parole hearing for an offender who was convicted of a crime of violence against a peace officer. Requires all seven members of the board to be present and vote to grant parole to such an offender.

**Act: 15**

**BY SENATOR CHAISSON**

(Amends R.S. 32:300(A), (B)(3)(b), (D) and (E); adds R.S. 32:300(F))

New law prohibits a passenger of a motor vehicle from possessing an open container while the motor vehicle is operated on a public highway or right-of-way.

**SENATE BILL NO. 438**

**BY SENATOR ULLO**

(Amends R.S. 14:67.10(B)(2))

Present law provides penalties for the crime of theft of goods. Requires

that when the misappropriation or taking amounts to a value of \$100 or more but less than \$500, the offender be imprisoned, with or without hard labor, for not more than two years or fined not more than \$2,000, or both. New law increases the minimum value from \$100 to \$300.

**SENATE BILL NO. 439**

**BY SENATOR ULLO**

(Amends R.S. 14:78.1(C))

Present law relative to crime of aggravated incest prohibits certain acts with a person under the age of 18. Present law additionally provides that consent is a defense where victim is a stepson or stepdaughter who is 18 or older. New law removes references to the victim being a stepson or stepdaughter age 18 or older and provides that consent is not a defense. No sex with adult stepchildren.

**SENATE BILL NO. 441**

**BY SENATOR ULLO**

(Amends R.S. 14:30(A)(7))

Present law provides that first degree murder includes intent to kill while engaged in ritualistic acts. New law retains present law but includes specific intent to inflict great bodily harm while engaged in ritualistic acts which results in the killing of a human being.

**SENATE BILL NO. 443**

**BY SENATOR ULLO**

(Amends R.S. 14:32.6)

Present law defines and provides penalties for first degree feticide.

New law retains provisions in present law but provides that the offense includes when the offender is engaged in perpetration or attempted perpetration of an assault by drive-by shooting and second degree kidnapping.

**SENATE BILL NO. 444**

**BY SENATOR ULLO**

(Amends R.S. 14:2(13)(kk) and 64.4)

Changes the name of the offense of aggravated robbery to second degree robbery in the criminal definitions.

**SENATE BILL NO. 490**

**BY SENATOR CRAVINS**

(Amends R.S. 15:150(C)(1) and (F)(1); adds R.S. 15:150(B)(3))

Authorizes any district indigent defender board to contract with one or more other district indigent defender boards for the establishment of a regional defense service center for the representation of juveniles in juvenile courts.

**SENATE BILL NO. 523**

**BY SENATOR BAJOIE AND REPRESENTATIVES ARNOLD, BALDONE, BURRELL, HEATON AND WOOTON**

(Adds R.S. 14:95.2.1)

New law provides that whoever commits the crime of illegal carrying of weapons with any firearm used in the commission of a crime of violence, within one thousand feet of any parade, shall be fined not more than \$2,000, or imprisoned, with or without hard labor, for not less than one year nor more than five years, or both.

**SENATE BILL NO. 556****BY SENATOR DUPRE AND REPRESENTATIVE FUTRELL**

(Adds R.S. 15:1228.9)

New law provides for an impaired driver tracking system (tracking system) as a component of the Integrated Criminal Justice Information System (ICJIS) Project. Requires that the tracking system component be designed to provide accurate, complete, and reliable information regarding the arrest of each driver for the certain offenses involving vehicles and the disposition, of each case, including information on prosecution, dismissal, conviction, disposition, or completion of the sentence. Requires that all agencies participating in the tracking system have access to the data collected by the system concerning any of the offenses of vehicular homicide, vehicular negligent injuring, first degree vehicular negligent injuring, operating a vehicle while intoxicated, and any municipal ordinance that prohibits the operation of a motor vehicle, aircraft, watercraft, vessel, or other means of conveyance while intoxicated, while impaired, or while under the influence of alcohol, drugs, or any controlled dangerous substance.

Requires that information in the tracking system be shared by all agencies that contribute information to the system in accordance with provisions of the ICJIS project so that they may effectively investigate, prosecute, or dispose of cases involving impaired driving.

**SENATE BILL NO. 570****BY SENATOR CHAISSON**

(Amends C.E. Art. 801(D)(1)(a))

This is how the rule read as amended.

D. Statements which are not hearsay. A statement is not hearsay if:

- (1) Prior statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(a) In a criminal case, inconsistent with his testimony provided that the proponent has first fairly directed the witness' attention to the statement and the witness has been given the opportunity to admit the fact and where there exists any additional evidence to corroborate the matter asserted by the prior inconsistent statement;

**Act: 465****BY SENATORS CHAISSON, AMEDEE AND DARDENNE**

(Amends C.E. Art. 412.2(A))

The rule as amended provides that crimes, wrongs, or acts involving sexually assaultive behavior or acts which indicate a lustful disposition toward children may be admissible and considered in these cases for its bearing on any matter to which it is relevant.

**SENATE BILL NO. 594****BY SENATOR BAJOIE AND REPRESENTATIVE K. CARTER**

(Adds R.S. 15:571.61)

New law requires the DPS&C to request, no later than 2/1/05, proposals from nongovernmental organizations seeking to provide services as part of a pilot program which will implement programs to operate post-release, residential and non-residential facilities designed to facilitate the successful reintegration of offenders into the community.

**SENATE BILL NO. 633****BY SENATOR KOSTELKA**

(Adds R.S. 14:75)

New law makes it a crime for any obligor to intentionally fail to pay a support obligation for any child who resides in this state, if such obligation has remained unpaid for a period longer than one year or is greater than \$5,000.

**SENATE BILL NO. 645****BY SENATOR HINES AND REPRESENTATIVE DURAND**

(Amends R.S. 40:961(7), (8), (9), (10), (13), (14), (15), (20), (21), (24), (27), (32), (34), and (38); adds R.S. 40:961(39), (40), and (41))

Updates definitions in the Uniform Controlled Substances Law to conform with those used in federal law. Defines "Substance abuse" or "addiction", "Tolerance", and "Physical dependence".

**SENATE BILL NO. 659****BY SENATOR ULLO**

(Amends R.S. 14:2(13)(m), 43.2(A)(intro para) and (C), 78.1(B)(1), 107.2(A), R.S.

46:1844(W)(2), C.C.P. Art. 571.1 and 893.3(E)(1)(b) and C.E. Art. 412.1)

Changes the name of the offense of aggravated sexual battery to second degree sexual battery. Further changes all references to aggravated sexual battery to second degree sexual battery in provisions dealing with aggravated incest, the definition of the crime of violence, hate crimes, the basic rights for victims and witnesses, the time limitation for certain sex offenses, violent felonies in which a firearm is used or possessed, and as to evidence of a victim's attire in sexual assault cases.

**SENATE BILL NO. 662****BY SENATOR DARDENNE**

(Amends R.S. 40:964(Schedule III)(D)(3) and (4))

Substitutes hydrocodone for dihydrocodeinone as a Schedule III controlled dangerous substance.

**Act: 467****BY SENATOR ADLEY**

(Adds R.S. 32:73.1)

New law provides that when an operator of a motor vehicle remains in the passing lane of a multiple-lane highway traveling at the same speed as the vehicle in the right lane of that highway, such action shall be considered a rolling roadblock, which is prohibited by present law.

**SLOWER TRAFFIC KEEP RIGHT****SENATE BILL NO. 781****BY SENATOR LENTINI**

(Adds R.S. 15:567.1)

New law provides that a person who is not competent to proceed to execution may not be executed.

**Act: 318**

**BY SENATOR MCPHERSON**

(Amends R.S. 32:661(A)(2)(b))

Present law requires the taking of blood from all victims of traffic fatalities in order to perform a toxicology screen. Amended law requires that such toxicology screen involve the most current scientific methods available and to determine whether the presence of alcohol in the blood is the result of postmortem synthesis of ethanol in determining alcoholic content at the time of death.

**SENATE CONCURRENT RESOLUTION NO. 56**

**BY SENATORS DARDENNE AND SMITH**

Urges and requests the legislative auditor to compile the report on the cost of operating the district court system in Louisiana for presentation to legislature prior to the 2005 Regular Session; to request assistance of various state and local governmental entities which perform various district court functions or provide financial support of the court system; to create supplemental forms necessary to capture and compile information necessary for the report; and to report to the legislature any limitations imposed on the compilation of timely, relevant, and accurate information on the operations of the district court system.

**SENATE CONCURRENT RESOLUTION NO. 110**

**BY SENATOR CHAISSON**

Extends the expiration date for the authority of the Forensic Strategic Task Force created by SCR 28 of the 2002 RS and SCR 138 of 2003 RS until July 1, 2006.

Requires the task force to report its findings and recommendations to the Senate Committee on Judiciary C and the House Committee on the Administration of Criminal Justice, the president of the Senate, and the speaker of the House sixty days prior to the convening of the 2006 Regular Session. Creates a subcommittee of the task force and provides for the subcommittee to study the issues of identification, commitment, and treatment of sexually violent predators and to implement a comprehensive statewide system for civil commitment of sexually violent predators. Provides for the chairman of the subcommittee to be appointed by the task force chairmen. Provides for the subcommittee to submit a report to the subcommittee chairman and the task force chairmen; provides for the subcommittee to conduct on-site visits of commitment facilities; and requires the subcommittee to submit a strategic plan for a civil commitment scheme, including a fiscal note, to the chairman of the subcommittee, the chairmen of the task force, the chairman of the Senate Committee on Judiciary C, the chairman of the House Committee on Administration of Criminal Justice, the president of the Senate and the speaker of the House of Representatives.

**SENATE CONCURRENT RESOLUTION NO. 136**

**BY SENATOR JACKSON**

Continues the La. Task Force on Indigent Defense Services to study the system of indigent defense in the state established by HR 151 and SR 112 of 2003 RS.

Designates the membership of the task force (38 persons or their designees). Provides that the chairman of the Senate Committee on Judiciary C, or his designee, serves as chairman of the task force and his duties shall be established by the task force; the task force shall fix a time and place for its regular meeting; a majority of the membership shall constitute a quorum; and a majority of the membership present shall be necessary to take action. Requires the task force to provide a

report with any recommendations for legislation to the legislature not later than 4/1/05.

## Know Your Legislator



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**Committee Assignments**

Judiciary, Chairman  
Insurance

**Parish(es) Represented In District**

Jefferson

**Corresponding Senate District(s)**

1, 7, and 8

**Year Elected**

1983

**Final House Term Eligibility**

2003

**LEGISLATIVE AIDE**

Toni Lynn Black

**BIOGRAPHICAL DATA**

**Occupation**

Insurance broker, Toomy and Associates

**Education**

Archbishop Shaw High School, Marrero; M.B.A., Tulane University

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## Blakely vs. Washington

The constitutionality of the federal sentencing guidelines, and nearly a dozen state sentencing guidelines schemes, was seriously called into question June 24, 2004, with the Supreme Court's decision in *Blakely v. Washington*,

No. 02-1632. The case, following the line of *Apprendi v. New Jersey* and its progeny, held that no sentence in a criminal case can be enhanced beyond the statutory maximum for an offense unless the fact is found by a jury or the defendant waives the jury (or pleads guilty to it).

This *Blakely* Resource Page collects the latest opinions, briefs, transcripts, articles and op-eds, and special Members Only features. It is updated regularly with submissions from NACDL members and public defenders and private lawyers in the criminal defense bar at large.

To read more on this case visit [www.nacdl.com](http://www.nacdl.com)

*Source: NACDL website.*

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## Sentencing Guidelines and Judges; Representing a Deaf Client

By: Ellen S. Podgor

### Sentencing Guidelines and Judges

Richard T. Boylan, *Do the Sentencing Guidelines Influence the Retirement Decisions of Federal Judges?*, 33 *Journal of Legal Studies* 231 (2004):

Richard T. Boylan, a professor in the Department of Economics and Finance at the University of Alabama, provides a fascinating article that describes a correlation between the U.S. Sentencing Guidelines and district court judges taking an earlier senior status. After explaining his methodology and the variables employed in this statistical study, Professor Boylan concludes that, “judges take senior status after .4 years instead of after 3 years of eligibility.”

After finding no correlation between the timing of judicial retirements and the political party in office (whether it was the same party that initially appointed the judge), he states “[s]uch results are consistent with assuming that judges care about power, not being overturned, and imposing sentences proportional to the offense.” This article sends a strong message to Congress to re-evaluate the appropriateness of having sentencing guidelines that significantly impairs judicial discretion.

### Representing a Deaf Client

Michele LaVigne & McCay Vernon, *An Interpreter Isn't Enough: Deafness, Language and Due Process*, 2003 *Wisconsin Law Review* 843 (2003):

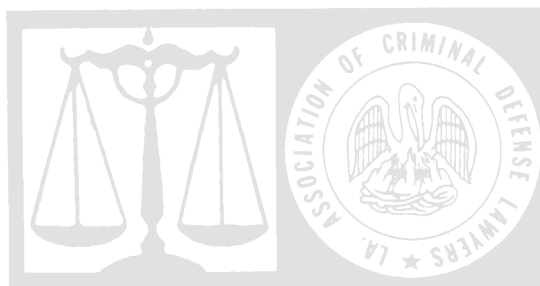
Professors Michele LaVigne and McCay Vernon examine “the intertwined issues of deafness, language acquisition, interpretation, and their cumulative impact on deaf people’s ability to participate meaningfully in the justice system.” They demonstrate why an interpreter may be insufficient in meeting the due process rights of a client who is deaf.

The authors begin by explaining language acquisition and the problems faced by individuals who are deaf and are learning both English and American Sign Language (ASL). They next discuss the

different types of interpretation, the inherent problems in providing an accurate translation, and the client who may have “minimal language skills.” They also factor in considerations such as whether the interpretation should be simultaneous or consecutive.

Professors LaVigne and Vernon discuss how a court and defendant’s lawyer may not realize the “deaf person’s communication difficulties.” The authors provide the legal arguments that can be used to show why merely having an interpreter is insufficient in these circumstances. They also offer concrete suggestions of how to enhance the client’s comprehension. This is a practical article that can prove extremely useful to the attorney representing a deaf client.

Source: *The Champion*, NACDL Magazine



*(Continued from page 1)*

again including resumption of the timely publication of THE ADVOCATE.

The following comments are something I prepared earlier this year but I think the message is still timely.

It is my belief, and I certainly hope I am correct, that the biggest challenge we have an opportunity to address this year is our failing indigent criminal defense system. I also believe that if any knowledgeable person were asked, "Is the system close to what it should be?" the honest answer would have to be "no". If that person were also asked, "Is the system shamefully unfair to the indigent and their defenders?", the honest response would have to be "yes".

It is sad to note that it appears those who have the responsibility to ask those questions and know their answers have done precious little over the years to inform themselves and do something meaningful to address this glaring problem that will not go away by itself. Surely, some have done more than others. Maybe some don't want to know how bad it is and perhaps no one has told the others.

I suggest it is time for those who do not want to know to move on and for us to accept the challenge and embrace the opportunity to tell the others, loud and clear, about the current unacceptable state of affairs.

If it sounds like I am preaching to the choir then that is okay because that means you are part of the choir. We have got a great choir which will forgive me because it knows it is time to go tell it on the mountain for all to hear.

There are various proposals and ideas as to how to best address what we all know is a systemic crisis in the indigent criminal defense system in Louisiana.

One idea is to attack and tear down the current system and see what arises from the ashes and dust to replace it. Some have called this the systemic litigation option.

Another proposal which has already taken form and I think is a good idea, is to assemble a broad coalition to work within the existing framework in a cooperative and collaborative effort to make the necessary adjustments and improvements. This is now the mission of the state legislature's advisory Louisiana Task Force on Indigent Defense Services.

One approach that seems to have been the stale strategy of the past and must be abandoned is to dilly-dally around until the Federal Justice Department just cannot take it any longer and targets Louisiana as it seems to enjoy doing anyway. For better or worse, I call this the "we should have seen it coming federal disaster aid." Should we stir in a little bit of each of these ingredients to make the perfect gumbo? Perhaps we should. Even though the litigation option is very costly and problematic it may have legs because the Federal Constitution's 6<sup>th</sup> Amendment right to the effective assistance of counsel and the legislature's obligation to provide "...a uniform system for securing and compensating qualified counsel for indigents," found in Article I, section 13 of the Louisiana Constitution, do not have to run for re-election. Although a good idea, the state-wide task force will take a while to find its way through the introductory (why am I here, who

are all of these people, and when and where do we meet) phase; then the alliance (with whom and what interest do I align myself with) phase; and still the education (what is this all about anyway and what can we do about it) phase before any serious work begins. This is not intended as a knock on the task force but instead a realistic assessment of the logistics inherent in any undertaking of this magnitude.

Lastly, who knows if, or when, the Feds will actually deliver a federal aid package but that doesn't mean that source of assistance cannot be courted. While our impressive gathering of intelligentsia may not know everything, we all recognize a few simple truths in life. One is that there must be a beginning before there can be an ending. Therefore, let us all rise to the challenge and seize what may be our best opportunity yet to begin the tedious process of reformation where in the end all people accused of crime really get the effective assistance of counsel.

# Louisiana Association of Criminal Defense Lawyers

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### **September 10 & 11, 2004**

Nuts & Bolts Seminar  
Holiday Inn Holidome  
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Last Chance Seminar/  
Justice Al Tate Awards Banquet  
Hotel Monaco  
New Orleans, LA

### **April 21-23, 2005**

15th Annual Law & All That Jazz  
Astor Crowne Plaza  
New Orleans, LA

