

The Advocate

Louisiana Association of Criminal Defense Lawyers

Volume 6, Issue 1-2

Winter/Spring 2009

LACDL: THE PREMIER CRIMINAL DEFENSE ASSOCIATION IN LOUISIANA

DEATH PENALTY CERTIFICATION CLE SEMINAR

July 23 & 24, 2009

Paragon Casino & Resort

711 Paragon Place

Marksville, LA



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- **19TH ANNUAL LAW & ALL THAT JAZZ PICTURES (PAGE 15)**



LACDL
P.O. Box 82531
Baton Rouge, LA 70884
Phone 225-767-7640
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FROM THE PRESIDENT, Rick Schroeder



Any good trial plan includes a theory of the facts and a theme. Here's mine for 2009.

Here's my theory, as we enter this new year: The vast majority of folks who hold negative stereotypical views of certain groups of other folks, do so out of ignorance and fear; and once enlightened, many change their minds.

As criminal defense lawyers, this is not a new theory. You deal with it in virtually every case and trial. From voir dire to closing statements we work to identify, neutralize and eliminate bias in more ways than we can count, mostly as it affects the jurors' perception of our clients and witnesses.

But in case you haven't noticed, many folks in this State hold a dim view of lawyers in general, and a definitely dark disaffection for criminal defense lawyers.

My theme for 2009 is Enough! LACDL needs to educate, eradicate and enlist.

Rick Schroeder
LACDL President

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www.ip-no.org/contact.htm

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www.nacdl.org

MARK YOUR CALENDAR!!

LACDL UPCOMING EVENTS

Death Penalty & Certification CLE Seminar
July 23-24, 2009
Paragon Casino & Resort
Marksville, LA

Board Meeting
5:00pm (following last presentation)
July 23, 2009
Paragon Casino & Resort
Marksville, LA

The Art of Using An Expert CLE Seminar
October 1 - 2, 2009
Petroleum Club
Shreveport, LA

General Membership & Board Meeting
5:00pm (following last presentation)
October 1, 2009
Petroleum Club
Shreveport, LA

Last Chance CLE Seminar
December 3 - 4, 2009
Renaissance Pere Marquette Hotel
New Orleans, LA

24th Annual Justice Tate Awards Banquet
December 4, 2009 - 6:30 pm
Renaissance Pere Marquette Hotel
New Orleans, LA

Association News

With everything going on in the world today, LACDL need's a strong "voice." Our "voice" comes from our members and each of you should make an effort to recruit at least one new member this year. **Our membership keeps the Association alive. We need the support of you to help generate more members.** You can download and print a membership form and brochure on the LACDL website. Please use this resource to solicit our potential members.

The 23rd Annual Tate Awards Banquet was held December 5, 2008 in New Orleans at the Hotel Monteleone and was a huge success with over 205 in attendance. **The recipient for this years Tate Award was the much derserving Henry Walker of Shreveport, LA.** LACDL was honored to present Mr. Walker with this prestigious award because of his dedication and hard work he has done in the criminal justice field. Mr. Walker is respected by his colleagues and is known for his exceptional accomplishments as a Criminal Defense Attorney. He has always been a great supporter of LACDL, as well as all of the members.

LACDL and LaPDA joined together this year to establish an award which recognizes the outstanding work on behalf of Criminal Justice in an official position. **It was only fitting to name the award the Chief Justice Pascal F. Calogero, Jr. Lifetime Achievement Award after the Honorable Justice Pascal Calogero, Jr. and to honor him with the award the first year at our 23rd Annual Tate Awards Banquet.**

LACDL held it's 19th Annual Law and All That Jazz Seminar April 23-25, 2009 at the Reninascence Pere Marquette in New Orleans. Jim Boren and Mike Mitchell had an excellant line-up of speakers. The seminar comments and evaluations were great (see pg. 15) and we returned to the Bourbon Vieux for the Welcome Reception and another night to remember. Next year will be our 20th Annual Law and All That Jazz Seminar. **The Law and All That Jazz seminar will be held April 22-24, 2010. Make plans now to attend our 20th celebration of awesome speakers, great friends and good times.**

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PLEASE SUPPORT THE ADVERTISERS IN THIS ISSUE AS THEY HAVE SUPPORTED LACDL!!!

Date: Feb. 18, 2009

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FOR IMMEDIATE RELEASE

'BADLY FRAGMENTED' FORENSIC SCIENCE SYSTEM NEEDS OVERHAUL; EVIDENCE TO SUPPORT RELIABILITY OF MANY TECHNIQUES IS LACKING

WASHINGTON -- A congressionally mandated report from the National Research Council finds serious deficiencies in the nation's forensic science system and calls for major reforms and new research. Rigorous and mandatory certification programs for forensic scientists are currently lacking, the report says, as are strong standards and protocols for analyzing and reporting on evidence. And there is a dearth of peer-reviewed, published studies establishing the scientific bases and reliability of many forensic methods. Moreover, many forensic science labs are underfunded, understaffed, and have no effective oversight.

Forensic evidence is often offered in criminal prosecutions and civil litigation to support conclusions about individualization -- in other words, to "match" a piece of evidence to a particular person, weapon, or other source. But with the exception of nuclear DNA analysis, the report says, no forensic method has been rigorously shown able to consistently, and with a high degree of certainty, demonstrate a connection between evidence and a specific individual or source. Non-DNA forensic disciplines have important roles, but many need substantial research to validate basic premises and techniques, assess limitations, and discern the sources and magnitude of error, said the committee that wrote the report. Even methods that are too imprecise to identify a specific individual can provide valuable information and help narrow the range of possible suspects or sources.

"Reliable forensic evidence increases the ability of law enforcement officials to identify those who commit crimes, and it protects innocent people from being convicted of crimes they didn't commit," said committee co-chair Harry T. Edwards, senior circuit judge and chief judge emeritus of the U.S. Court of Appeals for the District of Columbia Circuit. "Because it is clear that judicial review alone will not cure the infirmities of the forensic science community, there is a tremendous need for the forensic science community to improve."

Strong leadership is needed to adopt and promote an aggressive, long-term agenda to strengthen forensic science, the report says. To achieve this end, the report strongly urges Congress to establish a new, independent National Institute of Forensic Science to lead research efforts, establish and enforce standards for forensic science professionals and laboratories, and oversee education standards. "Much research is needed not only to evaluate the reliability and accuracy of current forensic methods but also to innovate and develop them further," said committee co-chair Constantine Gatsonis, professor of biostatistics and director of the Center for Statistical Sciences at Brown University. "An organized and well-supported research enterprise is a key requirement for carrying this out."

To ensure the efficacy of the work done by forensic scientists and other practitioners in the field, public forensic science laboratories should be made independent from or autonomous within police

departments and prosecutors' offices, the report says. This would allow labs to set their own budget priorities and resolve any cultural pressures caused by the differing

missions of forensic science labs and law enforcement agencies.

The report offers no judgment about past convictions or pending cases, and it offers no view as to whether the courts should reassess cases that already have been tried. Rather, the report describes and analyzes the current situation in the forensic science community and makes recommendations for the future.

CERTIFICATION AND ACCREDITATION SHOULD BE MANDATORY

Many professionals in the forensic science community and the medical examiner system have worked for years to achieve excellence in their fields, aiming to follow high ethical norms, develop sound professional standards, and ensure accurate results in their practice. But there are great disparities among existing forensic science operations in federal, state, and local law enforcement agencies. The disparities appear in funding, access to analytical instruments, and availability of skilled and well-trained personnel; and in certification, accreditation, and oversight. This has left the forensic science system fragmented and the quality of practice uneven. Except in a few states, forensic laboratories are not required to meet high standards for quality assurance, nor are practitioners required to be certified. These shortcomings pose a threat to the quality and credibility of forensic science practice and its service to the justice system, concluded the committee.

Certification should be mandatory for forensic science professionals, the report says. Among the steps required for certification should be written examinations, supervised practice, proficiency testing, and adherence to a code of ethics. Accreditation for laboratories should be required as well. Labs should establish quality-control procedures designed to ensure that best practices are followed, confirm the continued validity and reliability of procedures, and identify mistakes, fraud, and bias, the report says.

Setting standards for certification and accreditation should be one of the responsibilities of the new National Institute of Forensic Science recommended in the report. The institute should work with the National Institute of Standards and Technology, government and private labs, Scientific Working Groups, and other partners to develop protocols and best practices for forensic analysis, which should inform the standards.

Existing data suggest that forensic laboratories are underfunded and understaffed, which contributes to case backlogs and makes it hard for laboratories to do as much as they could to inform investigations and avoid errors, the report says. Additional resources will be necessary to create a high-quality, self-correcting forensic science system.

EVIDENCE BASE OFTEN SPARSE, VARIES AMONG DISCIPLINES

Nuclear DNA analysis has been subjected to more scrutiny than any other forensic discipline, with extensive experimentation and validation performed prior to its use in investigations. This is not the case with most other forensic science methods, which have evolved piecemeal in response to law enforcement needs, and which have never been strongly supported by federal research or closely scrutinized by the scientific community.

As a result, there has been little rigorous research to investigate how accurately and reliably many forensic science disciplines can do what they purport to be able

to do. In terms of a scientific basis, the disciplines based on biological or chemical analysis, such as toxicology and fiber analysis, generally hold an edge over fields based on subjective interpretation by experts, such as fingerprint and toolmark analysis. And there are variations within the latter group; for example, there is more available research and protocols for fingerprint analysis than for bitmarks.

Nuclear DNA analysis enjoys a pre-eminent position not only because the chances of a false positive are minuscule, but also because the likelihood of such errors is quantifiable, the report notes. Studies have been conducted on the amount of genetic variation among individuals, so an examiner can state in numerical terms the chances that a declared match is wrong. In contrast, for many other forensic disciplines -- such as fingerprint and toolmark analysis -- no studies have been conducted of large populations to determine how many sources might share the same or similar features. For every forensic science method, results should indicate the level of uncertainty in the measurements made, and studies should be conducted that enable these values to be estimated, the report says.

There is some evidence that fingerprints are unique to each person, and it is plausible that careful analysis could accurately discern whether two prints have a common source, the report says. However, claims that these analyses have zero-error rates are not plausible; uniqueness does not guarantee that two individuals' prints are always sufficiently different that they could not be confused, for example. Studies should accumulate data on how much a person's fingerprints vary from impression to impression, as well as the degree to which fingerprints vary across a population. With this kind of research, examiners could begin to attach confidence limits to conclusions about whether a print is linked to a particular person.

Disciplines that are too imprecise to identify an individual may still be able to provide accurate and useful information to help narrow the pool of possible suspects, weapons, or other sources, the report says. For example, the committee found no evidence that microscopic hair analysis can reliably associate a hair with a specific individual, but noted that the technique may provide information that either includes or excludes a subpopulation.

In addition to investigating the limits of the techniques themselves, studies should also examine sources and rates of human error, the report says. As part of this effort, more research should be done on "contextual bias," which occurs when the results of forensic analysis are influenced by an examiner's knowledge about the suspect's background or an investigator's knowledge of a case. One study found that fingerprint examiners did not always agree even with their own past conclusions when the same evidence was presented in a different context.

COURT TESTIMONY SHOULD BE GROUNDED IN SCIENCE, ACKNOWLEDGE UNCERTAINTIES

The committee was not asked to determine whether analysis from particular forensic science methods should be admissible in court, and did not do so. However, it concluded that the courts cannot cure the ills of the forensic science community. "The partisan adversarial system used in the courts to determine the admissibility of forensic science evidence is often inadequate to the task," said Edwards. "And because the judicial system embodies a case-by-case adjudicatory approach, the courts are not well-suited to address the systemic problems in many of the forensic science disciplines."

Continued on page 11

LACDL Death Penalty Seminar Schedule

Thursday, July 23, 2009 (6 1/2 hours)

- 8:00-8:30 a.m. Registration & Breakfast
- 8:30-8:45 a.m. Welcome
- 8:45-9:45 a.m. Jim Boren, Baton Rouge, LA
Ethics: "The Ethics of Death – Either Abide By Them or Be Cross Examined About Why You Did Not"
- 9:45-10:00 a.m. Break
- 10:00-11:00 a.m. Dr. Brooke Butler, Sarasota, FL
"Moving Beyond McCleskey: Death Qualification, Prejudice and Implications for Due Process"
- 11:00-12:00 p.m. Russ Stetler, Oakland CA
Using ABA Guidelines to Obtain Essential Resources in Capital Cases
- 12:00-1:00p.m. Lunch (on your own)
- 1:00-2:00 p.m. Gary Clements, New Orleans, LA
Latest Laws and Trends in Criminal Defense
- 2:00-2:15 p.m. Coffee Break
- 2:15-3:45 p.m. Richard Bourke, New Orleans, LA
"How to Get Your Client to Plead Guilty"
- 3:45-4:45 p.m. Dr. James Pinkston, Shreveport, LA
"The Value of Neuropsychology in Criminal Cases"
- 5:00 pm LACDL Board Meeting
(open to all Members)

Friday, July 24, 2009 (6 hours)

- 8:00-8:30 a.m. Registration & Breakfast
- 8:30-9:30 a.m. Billy Edwards, Los Angeles, CA
"Developing a Medical and Educational Social History for the Diagnoses of Fetal Alcohol Syndrome"
- 9:30-10:30 a.m. Panel: George Parnham, Norm Revis and Dr. David Self, "Teamwork in a Case"
- 10:30-10:45 a.m. Break
- 10:45-11:45 a.m. Dr. David Self, Flint, TX
Effective Use of a Mental Health Expert
- 11:45-12:45 p.m. Lunch (on your own)
- 12:45-1:45 p.m. Richard "Racehorse" Haynes, Houston, TX,
Professionalism: Reflecting on Fifty Years in Criminal Defense
- 1:45-2:00 p.m. Coffee Break
- 2:00-3:00 p.m. George Parnham, Houston, TX
"Insanity and the Law"
- 3:00-4:00 p.m. Norm Revis Houston TX
"Picking A Jury"

IMPORTANT NOTE: This schedule was accurate at the time of printing. We make every effort to present the topics as listed at the assigned times. Due to unforeseen circumstances, times, speakers and/or presentations are subject to change. This schedule will allow 12.5 hours of Louisiana CLE credit. For LPDB certification, please contact them directly at 225-219-9305.

General Information

- This Seminar is open to all attorneys, However, LACDL policy **strictly prohibits attendance by Prosecutors.**
- All registrations received after **July 13, 2009** will incur a \$50 late registration fee.
- All registrations cancelled on or after **July 13, 2009** will incur a \$100 cancellation fee.
- **There will not be any refunds for no shows or cancellation's made after July 22, 2009.**
- LA MCLE is included in your registration. **If you would like CLE credit in another state OTHER than LA, please add \$25 for each additional state.**
- **You can fax your registration form with your credit card information filled in to 225-767-7648.**

Hotel Information

Hurry, Reserve Your Room By July 1, 2009

Paragon Casino & Resort is located at 711 Paragon Place, Marksville, LA. The hotel is holding a block of rooms at a special rate of **\$89 per night** for a single or double room. **Make sure to mention LACDL DeathPenalty Seminar-LACJ22G when making your reservations!** Make your reservations NOW by calling 800-642-7777. **The special room rates will not be guaranteed and reservations will be based on availability after July 1, 2009.**

MAKE SURE TO MENTION LACDL DeathPenalty Seminar-LACJ22G WHEN MAKING YOUR RESERVATIONS!

Call the Paragon Casino & Resort at 800-642-777 for reservations.

Visit their website at:
www.paragoncasinoresort.com

LACDL Death Penalty Seminar Registration

SEMINAR REGISTRATION FEES

(A CD of materials will be included with all registrations)

Life Time Member \$35- With Printed Materials & CD **
No Charge - CD only

Non-Member \$435- With Printed materials & CD **
\$400- CD only

Member \$335- With Printed materials & CD **
\$300- CD only

New Members Joining* \$285- With Printed materials & CD **
 (must pay your dues now) \$250- CD only

One Day Registration \$185- With Printed materials & CD **
\$150- CD only

Non-Lawyer Team (P.I., Paralegal, etc.) \$235- With Printed Materials & CD **
\$200- CD only

Public Defender \$235- With Printed Materials & CD **
\$200 - CD only

The above PD registration is discounted for those involved in Capital Defense Cases.



Questions???

Contact:

Jill Guillory

jill@tatmangroup.com

Phone (225) 767-7640

Fax (225) 767-7648

www.lacdl.org

* New Member Joining must pay membership dues with seminar registration. Membership Dues: Lifetime \$2000, Sustaining \$250, Regular \$150, and Indigent Defender \$75.

** Written materials will not be available at the seminar. If you would like printed materials, they must be purchased before **July 13, 2009**. Purchased materials will be handed out at the seminar. All registrations received after **July 13, 2009** will incur a \$50 late registration fee.

All registrations cancelled on or after **July 13, 2009** will incur a \$100 cancellation fee.

There will not be any refunds for cancellation's made after July 22, 2009. There will not be any refunds for no shows.

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Membership Dues:	\$ _____
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(If after July 13, 2009)	
Other State CLE Fee	\$ _____
(LA included, \$25 extra per other state)	
Total Amount Enclosed:	\$ _____

Association and Member News Bulletin Board

IT'S NOT TOO LATE TO ATTEND OUR

DEATH PENALTY
CERTIFICATION CLE SEMINAR

July 23-25 2009
Paragon Casino & Resort
Marksville, LA

(More information on page 6 & 7. Also visit www.lacdl.org)

Congratulations to Chris Aberle who got a reversal from the Fifth Circuit of a conviction on 37 counts of threatening to use a weapon of mass destruction, 38 counts of mailing threatening communications and four counts of transmitting threats by wire. USA v. Long, 07-31131

REMINDER.....
Send LACDL your submissions for the next Advocate Issue by July 31, 2009 to jill@tatmangroup.com



Check out the latest news on the Amicus, Legislative and Recognition pages on the LACDL Website at www.lacdl.org

CONGRATULATIONS

BILL GOODE

\$350,000 Settlement in Case Against Lafayette Police

Lafayette City-Parish government agreed to pay \$350,000 to settle a lawsuit filed in federal court by owners of a restaurant who alleged excessive police force in a disturbance outside the restaurant. William Goode is one of the plaintiff attorneys in the case.

CONGRATULATIONS TO THE 2009 LACDL CAMILLE GRAVEL SCHOLARSHIP RECIPIENT

**MS. AVA DE MONTAGNE
NEW ORLEANS, LA**

Congrats To Our LACDL 10:1 Award Recipients!!!

**Derrick M. Whittington
and
Brian C. Racer**

www.lacdl.org

Have you seen our website lately??

Congratulations to Mark Upton who got his SECOND not guilty in federal court in Baton Rouge. Client was charged with possession of a firearm by a convicted felon and possession of CDS. After little more than an hour the Jury came back with not guilty on BOTH counts!

NACDL President John Wesley Hall Testifies in Congress on National Crisis in Indigent Representation

Washington, DC- (June 5, 2009) – NACDL President John Wesley Hall testified Thursday, June 4, before the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security's hearing on "the growing national crisis" in indigent representation. Hall's statement and testimony on behalf of NACDL featured the recently released NACDL monograph, "Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts." The report was introduced by Rep. Bobby Scott in his opening remarks and was a focus of discussion among the committee members.

Hall's written testimony focused on the rights of misdemeanor defendants, the severe collateral consequences of prosecution and conviction, the problem of overcriminalization and the need for alternative enforcement mechanisms, the pervasive lack of counsel where it is constitutionally required, the staggering caseloads of public defenders, the ethical implications of these problems, and the lack of performance standards, supervision and training for indigent defenders.

"Criminal justice reform efforts often have noted that extensive problems exist in misdemeanor courts but rarely have focused exclusively on these courts," Hall explained, adding that NACDL's 18-month study concluded that "misdemeanor courts across the country are incapable of providing accused individuals with the due process guaranteed them by the Constitution."

The full text of NACDL's misdemeanor report and related materials are available at: <http://www.nacdl.org/misdemeanor>.

Man Ready To Get Settlement Covington man spent 19 years in prison for rape

Source: *The Advocate*

A man who spent 19 years in prison for a rape he did not commit is set to receive \$1.4 million in the settlement of a federal lawsuit filed against the city.

The Covington City Council approved a \$300,000 promissory note to Dennis Patrick Brown, whose 1985 conviction for aggravated rape was overturned in 2004 after DNA evidence conclusively showed he could not have committed the crime.

The \$300,000, which will be paid to Brown in 10 annual installments of \$30,000, plus \$1.1 million from the city's insurers, will be used to settle the suit Brown filed in October 2005, City Council members said Friday.

Brown sued the city and former city police officers, alleging civil right violations, after his release from Louisiana State Penitentiary and the dismissal of the charges against him by the district attorney's office.

One of Brown's attorneys, William E. Rittenberg of New Orleans, declined to discuss details of the pending settlement. Brown, now 41 and living near Covington, was in prison from age 17 until his release at age 36.

Covington police arrested Brown in September 1984 after a woman reported being raped at knifepoint in her home. Based on her description, police sketched an image of a suspect with a bandanna covering all but his eyes. She later picked Brown out of a lineup and identified him at trial as her attacker.

Brown denied the attack, testifying that police had threatened him with a knife to gain a confession. He was sentenced to life in prison.

Tulane Law School News - 185,715 Pro Bono Hours Completed in 20 Years

TULANE LAW SCHOOL AND THE PUBLIC INTEREST

During this past year alone, Tulane Law School students logged more than 19,000 pro bono hours. This brings the documented total hours contributed since the Community Service Program officially began 20 years ago to an amazing 185,715. While the majority of contributions occur in local communities, placements are scattered across the United States and as far away as Italy, Thailand and South Africa. In the 2008-2009 academic year, more than 100 different organizations and placements benefitted from Tulane law students generous volunteer work.

As Assistant Dean for Public Interest Programs, Julie H. Jackson's principal responsibility is administering the law school Pro Bono Program, which she implemented in 1988 when the Tulane Community Service Program became the first mandatory pro bono program in the nation. In the fall of 1987, prior to Dean Jackson's putting the program into practice, the Tulane Law School faculty had voted unanimously on a student requirement of a minimum 20 hours pro bono work on behalf of indigent clients. Then in the fall of 1988 Dean Jackson and Program Coordinator Eileen Ryan launched this unique program. Two decades later law students across the nation have followed in Tulane's footsteps as 34 other law schools have added a public service/pro bono requirement.

Jackson has continued to oversee the Pro Bono Program as it has grown in size and scope to encompass a wide range of public interest legal opportunities in various locales. While the program's development over the past two decades brings Jackson a personal level of satisfaction, she says the concept of a pro bono requirement, which would instill in every Tulane law student the duty of the lawyer to serve the community, belongs to her mentor, Dean John Kramer (1986-1996).

It has been my privilege to be the one charged

with the responsibility of taking this inspiring idea and running with it, Jackson states. Over the past twenty years it has been my role to establish at Tulane the first mandatory pro bono program in the nation and then to guide its growth into a major source of free legal assistance for those in need as well as experiential public interest education for our students.

Following Hurricane Katrina, the faculty voted in 2006 to expand the definition of qualifying pro bono service and to increase the number of service hours each student must contribute. As a result, each graduating student as of the Class of 2009 must complete a minimum of 30 hours of pro bono service in order to graduate. Qualifying public interest service includes legal assistance provided to persons of limited means; work performed in the public sector on behalf of most local, state or federal government entities; work on behalf of qualifying public interest non-profit organizations; and contributions to qualifying student-led organizations serving public interest law-related goals. But the Class of 2009 went far beyond the minimum requirement. In fact, 76% of the class exceeded the requirement.

Role Model Walks the Walk

For some students, such as Holmes E. Rackleff (L '09), 30 hours of pro bono work is like a walk in the park. Upon graduating this past May, Rackleff had reported an extraordinary 507.5 hours of pro bono service.

Rackleff decided to attend Tulane Law School while gutting houses in the 9th Ward of New Orleans in December of 2005. Since moving to New Orleans in April of 2006, Holmes helped to create the Tulane chapter of the National Lawyers Guild, coordinated annual efforts in the National Student Day Against the Death Penalty, spent a year volunteering at the Saturday free legal clinic at Common Ground Relief, spent three years volunteering at Entertainment Law Legal Assistance (ELLA), and participated in social justice events and demonstrations in and around New Orleans.

Continued on page 12

THE FIRST ANNUAL CHIEF JUSTICE PASCAL F. CALOGERO, Jr. LIFETIME ACHIEVEMENT AWARD

LACDL and LaPDA joined together last year to establish an award which recognizes the outstanding work on behalf of Criminal Justice in an official position. It was only fitting to name the award the **Chief Justice Pascal F. Calogero, Jr. Lifetime Achievement Award** after the Honorable Justice Pascal Calogero, Jr. and to honor him with the award the first year. The joint award will be co-sponsored by LACDL and LaPDA and given out at the Justice Albert Tate Awards Banquet each year.



At the 2008 Tate Banquet Honorable Barrigan along with Sam Dalton presented the Honorable Calogero with the prestigious award. Honorable Barrigan began the presentation by sharing with everyone the life and legacy of Honorable Calogero. She began by saying "Pascal Calogero was the son of a New Orleans police officer, the first in his class at Loyola Law School, Editor in Chief of the Law Review and came to the Supreme Court in 1973, to fill an unexpired two year term. Although obviously very smart, he had no prior experience as a judge and he came to a court that was evenly divided between liberals and conservatives. Within a few weeks of his arrival, his philosophy, commitment and courage were all tested when he signed off as the swing vote on *State v. Prieur*, a landmark ruling that severely restricted the admissibility of prior crimes against a criminal defendant. That decision also swung the court into the liberal camp, and infuriated conservatives and Justice Calogero's own law enforcement base. Over the next few months, he swung several more decisions in favor of the rights of criminal defendants, including voiding the state's obscenity law. And by the time he came up for re-election barely two years later, all hell had broken loose. Conservatives and law and order advocates rallied around his opponent, the politically powerful sheriff of Jefferson Parish. Their campaign accused this new upstart justice of releasing murderers and rapists into the streets. The rhetoric was hot, furious and ugly. Justice Calogero won re-election but over the next thirty five years, every election was a similar roller coaster ride with Justice Calogero hanging onto his seat against angry and powerful opposition, largely because of his continuing courageous commitment to the rights of criminal defendants.

In the early years, this commitment was as part of a majority of four justices believing in those rights. In those hyacinth years, he authored a number of majority opinions that overturned convictions for illegal searches and seizures, for failing to establish confessions were freely given, for failing to change venue because of pretrial publicity and in one pre-Batson case out of Baton Rouge, reversed a conviction because the prosecutor used peremptory challenges to systematically exclude black jurors from serving. [Old timers can probably figure out who that prosecutor was].



Beginning in the late 1980's and into the 1990's, though, with the conservative shift nationwide and more conservative members coming to his court, Justice Calogero found himself more and more a dissenter. But for all these courageous and committed stands, the greatest and most sustained focus of Justice Calogero's concern for criminal defendants has been in the area of the fundamental right to counsel for indigents. Repeatedly throughout his career he has authored majority opinions, and dissents, upholding an indigent's right to adequate counsel. For the sake of his political career, he could have gone silent since he wasn't going to win anyway, but again his courage and commitment showed through repeatedly.

So it is altogether fitting that this new award be created as Justice Calogero retires from the bench. As a person, he is singularly one of the most decent human beings we could be blessed to know. He is compassionate and humble. He has walked with kings, wielded great power, but has never lost the common touch. His greatest influence has come through treating people with dignity and respect, be it governors, legislators, lawyers or the lowliest soul on Death Row. Many in this room consider him a personal friend, someone approachable as a peer."

LSU Law Students Chosen for Juvenile Public Defender Fellowships

Ten LSU Law Center students were selected for summer fellowships with the Juvenile Public Defender Board and will serve in offices throughout the state. The fellowships are funded by the Juvenile Public Defender Board and are being managed via LSU's Public Interest Law Society, or PILS.

The following are the students receiving the fellowships and where they will serve:

- Matt Boatwright - Baton Rouge Public Defender's Office.
- Emma Frost - Shreveport Public Defender's Office.
- Natasha George - State Public Defender's Office.
- Nick Martin - Houma/Thibodaux Public Defender's Office.
- Jonathan Mitchell - Baton Rouge Public Defender's Office.
- Jacob Richard - Lake Charles Public Defender's Office.
- Richard Scandrett - Baton Rouge Public Defender's Office.
- Mike Smith - Baton Rouge Public Defender's Office.
- Elma Rose Stacks - Baton Rouge Child in Need of Care Office.
- Sharon Tsai - Baton Rouge Child in Need of Care Office.

"This internship project is a long overdue perfect match of public need and student talent," said Professor Lucy McGough, a member of the Louisiana Public Defender Board. "The Public Defender offices throughout the state are woefully underfunded and stretched thin in providing quality defense services for adults. The gap between need and representation is even greater for young offenders in the juvenile courts.

"Our student interns who were selected for these internships will have a terrific opportunity to learn defense skills, share responsibility for real juvenile clients, and make a difference in the way their clients and families will view lawyers and the legal system," McGough added.

LACDL would like to thank the following 2008 Tate Banquet Sponsors

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The committee also concluded that two criteria should guide the law's admission of and reliance upon forensic evidence in criminal trials: the extent to which the forensic science discipline is founded on a reliable scientific methodology that lets it accurately analyze evidence and report findings; and the extent to which the discipline relies on human interpretation that could be tainted by error, bias, or the absence of sound procedures and performance standards.

The report points out the critical need to standardize and clarify the terms used by forensic science experts who testify in court about the results of investigations. The words commonly used -- such as "match," "consistent with," and "cannot be excluded as the source of" -- are not well-defined or used consistently, despite the great impact they have on how juries and judges perceive evidence.

In addition, any testimony stemming from forensic science laboratory reports must clearly describe the limits of the analysis; currently, failure to acknowledge uncertainty in findings is common. The simple reality is that interpretation of forensic evidence is not infallible -- quite the contrary, said the committee. Exonerations from DNA testing have shown the potential danger of giving undue weight to evidence and testimony derived from imperfect testing and analysis.

STRONG, INDEPENDENT LEADERSHIP NEEDED

The existing forensic science enterprise lacks the necessary governance structure to move beyond its weaknesses, the report says. The recommended new National Institute of Forensic Science could take on its tasks in a manner that is as objective and free of bias as possible -- one with the authority and resources to implement a fresh agenda designed to address the problems found by the committee. The institute should have a full-time administrator and an advisory board with expertise in research and education, the forensic science disciplines, physical and life sciences, and measurements and standards, among other fields.

The committee carefully considered whether such a governing body could be established within an existing agency, and determined that it could not. There is little doubt that some existing federal entities are too wedded to the current forensic science community, which is deficient in too many respects. And existing agencies have failed to pursue a strong research agenda to confirm the evidentiary reliability of methodologies used in a number of forensic science disciplines.

The report was sponsored by the National Institute of Justice at the request of Congress. The National Academy of Sciences, National Academy of Engineering, Institute of Medicine, and National Research Council make up the National Academies. They are private, nonprofit institutions that provide science, technology, and health policy advice under a congressional charter. The Research Council is the principal operating agency of the National Academy of Sciences and the National Academy of Engineering.

A committee roster follows.

Copies of **STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES: A PATH FORWARD** are available from the National Academies Press; tel. 202-334-3313 or 1-800-624-6242 or on the Internet at WWW.NAP.EDU. Reporters may obtain a copy from the Office of News and Public Information (contacts listed above). In addition, a podcast of the public briefing held to release this report is available at [HTTP://NATIONAL-ACADEMIES.ORG/PODCAST](http://NATIONAL-ACADEMIES.ORG/PODCAST).

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News From Southern University Law Center: Alexander Wins LSBA 2009 Student Pro Bono Award

Shelly Alexander is a winner of the 2009 Louisiana State Bar Association Law Student Pro Bono Award. Every year, LSBA selects one student from each of the four law schools in Louisiana to be honored for the Law Student Pro Bono Award. Alexander put forth an outstanding effort as a volunteer in the development of the Louisiana Public Defender Immigration Handbook. She also volunteered as an intern with Catholic Charities of Baton Rouge Migration and Refugee Services where her legal research and time spent interviewing clients allowed the single attorney there to expand the number of indigent clients she is able to serve and keep up with the high demand for representation in immigrant removal proceedings. Alexander has been a model to her fellow students and has significantly aided legal providers in their delivery of services to indigent clients.

Alexander was honored at the annual awards ceremony and reception hosted by the Louisiana Supreme Court on Tuesday, May 19.

**Supreme Court: Cross-Examination Crucial
To Exposing Junk Science and Bogus 'Experts'**

Washington, DC- (June 25, 2009) – A criminal defendant's right to confront the witnesses against him includes the right to challenge the testimony of state crime lab technicians through cross-examination of those witnesses, the U.S. Supreme Court held today. The Court held that a state may not submit a drug analysis report in lieu of live testimony by the crime lab technicians over a defendant's hearsay objection. The case is *Melendez-Diaz v. Massachusetts*, No. 07-591. The National Association of Criminal Defense Lawyers, along with the National Association of Federal Defenders and the National College for DUI Defense filed a friend-of-the-court brief in the case.

NACDL's president predicted that challenging the prosecution to prove that its experts and evidence are sound could help restore public confidence in police forensic laboratories, which have been rocked by scandal in recent years.

The defendant, Luis Melendez-Diaz, was convicted of distributing cocaine after police found 19 small bags of white powder in a police car in which Melendez-Diaz had been transported after his arrest on suspicion of drug trafficking. The state offered as evidence a certified report from the department of public health laboratory stating that the bags contained cocaine, and the defendant objected on hearsay and Confrontation Clause grounds. Massachusetts law provided that such reports are "prima facie evidence" of illegal narcotics. The Massachusetts appeals courts upheld Melendez-Diaz's conviction.

The U.S. Supreme Court reversed on Sixth Amendment confrontation grounds. "There is little doubt that the documents at issue in this case fall within the 'core class of testimonial statements'" the Court said, citing its 2004 decision in *Crawford v. Washington*. The lab report stated that the substance in question at Melendez-Diaz's trial was cocaine—the precise testimony the analysts would have been expected to provide at trial. Such reports are "functionally identical to live, in-court testimony, doing 'precisely what a witness does on direct examination.'"

"You cannot cross-examine a piece of paper," said NACDL President John Wesley Hall. "You can't test the truth of a lab report without cross-examining the expert."

Hall noted that the Court repeatedly cited the recent report of the National Academies' National Research Council, which found that forensic evidence is not immune from manipulation or incompetence – there have been documented cases of fraud and error time and time again. "Police even have a name for it – 'drylabbing' – where a lab technician submits a report of tests that were never performed."

Such problems were in the national spotlight over a decade ago when NACDL filed a Freedom of Information Act suit against the U.S. Department of Justice for the results of the Inspector General's investigation of the FBI Lab. More recently, the FBI ceased performing comparative bullet lead analysis after it was found that the technique's capabilities were grossly exaggerated and misled juries. But problems of incompetence and fraud have persisted at the state level, the NRC report found.

"As the majority noted, cross-examination tests lab analysts' 'honesty, proficiency, and methodology,'" Hall said.

Stanford University law professor Jeffrey L. Fisher, who also argued *Crawford*, argued the case for petitioner Melendez-Diaz. Fisher is a director of Stanford's innovative Supreme Court Litigation Clinic, and also serves as a co-chair of NACDL's highly-successful *Amicus Curiae* Committee. Jeffrey Green, of Sidley Austin, Washington, D.C., filed the *amicus curiae* brief on behalf of NACDL. Green is deputy chair of the committee.

On the Web:

The Supreme Court decision:
<http://www.supremecourtus.gov/opinions/08pdf/07-591.pdf>

NACDL's *Amicus Curiae* brief:
[http://www.nacdl.org/public.nsf/newsissues/amicus_attachments/\\$FILE/MelendezDiaz_Amicus.pdf](http://www.nacdl.org/public.nsf/newsissues/amicus_attachments/$FILE/MelendezDiaz_Amicus.pdf)

Continued from page 9

Throughout her law school career, Holmes has demonstrated the utmost dedication to providing legal services to the poor, says Jackson. Through her contributions on so many pro bono fronts, she has provided a role model for all.

Since graduating, Holmes has moved to New York City with plans to design a grant-funded legal aid program in Brooklyn. She thanks her parents for teaching her the value of compassion and good citizenship, and her brothers for helping her maintain a sense of humor.

Students do not earn academic credit for their pro bono work. Instead, individual transcripts reflect the total number of certified pro bono hours performed by the individual student.

Summer PILS Fellowships Awarded to Thirteen LSU Law Students

Thirteen LSU Law students have received Public Interest Law (PILS) Fellowships for the summer. The students were selected through a competitive application process, and each will receive a \$2,000 stipend to pursue work in a variety of public interest areas. The stipends were funded by the Law Center.

The following are the students who received fellowships and where they will be working:

- Jonathan Brown - Southwest Louisiana Law Center, Lake Charles.
- Airzola Cleaves - Capital Area Legal Services, Baton Rouge.
- Amanda Darby - Capital Area Legal Services, Baton Rouge.
- Jeanette Dewitt - Southwest Louisiana Law Center, Lake Charles and Capital Area Legal Services, Baton Rouge.
- Andre Gaudin - Orleans District Attorney.
- Laura Beth Graham - Child Advocacy Center, Baton Rouge.
- Mallory Hedditch - 16th JDC Family Court.
- LaToya Jordan - Federal Public Defender's Office, New Orleans.
- Kyle Marunick - 23rd JDC District Attorney.
- Carrie Mills - Federal Public Defender, Baton Rouge.
- Tara Peveto - Catholic Charities, Baton Rouge.
- Lynn Austin - Wild South, North Carolina.
- Nick Martin - Gwinnett County Juvenile Court, Georgia.

PILS is a student run organization that strives to foster student interest and action in the public interest community. Its mission is to provide like-minded students an opportunity to gain hands-on legal experience through exposure to areas of the law that aid the public.

PILS provides pro bono and community service activities, educational lectures, and a public interest career counselor to raise awareness of issues faced by the immediate community and beyond.

JUNE 4, 2009

FOR IMMEDIATE RELEASE

Chief Justice Catherine D. Kimball announced today that the Court's recently-adopted amendments to the Rules of Professional Conduct pertaining to lawyer advertising have been further amended in response to recommendations received from the Louisiana State Bar Association.

The Court initially amended the attorney advertising rules in June, 2008 following a lengthy study conducted by the Louisiana State Bar Association, recommendations of the LSBA House of Delegates, and further study by a Court Committee chaired by Chief Justice Catherine D. Kimball, which were triggered by a 2006 Senate Concurrent Resolution.

On February 18, 2009, the Court deferred implementation of the rules until October 1, 2009 and asked the LSBA to further study certain rules in light of the constitutional challenges that have been raised. On April 15, the LSBA provided the Court its "*Findings and Recommendations of the LSBA Rules of Professional Conduct Committee Re: New Lawyer Advertising Rules and Constitutional Challenges Raised,*" and upon review, the Court adopted the recommendations of the LSBA Rules of Professional Conduct Committee and amended the rules accordingly.

The new rules resulting from the additional review balance the right of lawyers to truthfully advertise legal services with the need to improve the existing rules in order to preserve the integrity of the legal profession, to protect the public from unethical and potentially misleading forms of lawyer advertising, and to prevent erosion of the public's confidence and trust in the judicial system. The effective date of the new rules remains October 1, 2009.

**Something Short Of Insanity - Criminal Law in Louisiana
LAST CHANCE CLE SEMINAR**



Bill Goode was excellent.



Very Informative, great location.

Great Seminar.

Jelpi Picou, Sol Fulero, Greg Riley and the Professionalism Panel were very good speakers!



Jelpi Picou was awesome.



Bret Dillingham was interesting.



False Confessions with Fulero was GREAT!



Great classes!



Love the location!



Jill Hays was so good, she needed more time.



The seminar was one of the more valuable seminars in recent memory.

I am very happy with this seminar. I actually came despite having all my hours because of the information provided.



Brett Dillingham is a great speaker.

Great Seminar. Great Location.



Interesting subjects and flowed smoothly.

The presenters were excellent and knowledgeable.

Amicus Committee Update

Amicus Committee Co-chairs Julie Kilborn and King Alexander welcome Mark D. Plaisance of Baker who has volunteered to assist with the growing project load. Mark was City Court Judge in Baker for the last six years, and has recently joined the East Baton Rouge Public Defender's Office as head of appellate litigation. The committee invites other LACDL members to participate in researching and writing amicus briefs as an opportunity to address critical issues that affect each of our clients.

The Amicus Committee has continued its strong advocacy for ensuring the integrity of our constitutional rights. This term, the LACDL has filed amicus briefs on two issues before the United States Supreme Court. First, LACDL has played an essential role providing the historical genesis of Louisiana's non-unanimous verdict rule. Louisiana and Oregon are the only two states that provide for non-unanimous jury verdicts. Since the Apprendi-Revolution – in which the Court, along with Justices Scalia and Thomas concurring, observed that one of the “two longstanding tenets” of common-law criminal jurisprudence: that the “truth of every accusation” against a defendant “should afterwards be confirmed by the unanimous suffrage of twelve of his equals and neighbors,” expert Supreme Court watchers have considered Louisiana's rule permitting non-unanimous juries susceptible to challenge.

Based upon ground-breaking research compiled by Richard Bourke and others at The Justice Center, the LACDL has been able to inform the Court that the rule permitting non-unanimous jury verdicts has its source in the Louisiana Constitution of 1898. In amicus briefs to the United States Supreme Court (first in *Lee v. Louisiana* and now pending in *Bowen v. Oregon*),

LACDL has played an essential role in ensuring that the Court understand that the origin of this rule arose in a Constitutional Convention in which the stated goal was “to establish the supremacy of the white race in this state.” The amicus brief filed in the *Bowen* case was joined by the NACDL and the Charles Hamilton Houston Institute for Race and Justice at Harvard University. The Houston Institute filed the brief on behalf of the LACDL, saving the organization considerable expenses.

Second, the LACDL has raised a serious challenge to the proportionality review provided to capital defendants by the Louisiana Supreme Court. After *Furman v. Georgia* and *Gregg v. Georgia*, when the Louisiana legislature sought to write a constitutional death penalty scheme, a critical component of the structure was meaningful proportionality review by the Louisiana Supreme Court. Over the years, that review has diminished significantly into a mere comparison with other cases in which the death penalty has been imposed. The amicus brief filed by the LACDL asks the United States Supreme Court to grant certiorari in *Holmes v. Louisiana* to address the lack of meaningful proportionality review. Brandy Holmes was convicted and sentenced to death out of Caddo Parish. Her lawyers on certiorari to the Supreme Court include Professor Charles Ogletree of Harvard and Sarah Ottinger of the Capital Appeals Project. Three other groups, including the national organization of The Constitution Project, have filed amicus briefs encouraging the Court to grant certiorari. The pro bono assistance of the law firm of McDermott, Will & Emery is very much appreciated—the firm not only covered the cost of printing and filing the amicus brief, but also devoted the time of three partners and four associates to researching and drafting the brief.

The committee has also been active in the U.S. Fifth

Circuit. LACDL filed an amicus brief in *USA v. Davis*, a case concerning sufficiency of the evidence and Eighth Amendment gross disproportionality of sentence where a 71-year-old physician with no prior record was convicted of attempted production of child pornography for requesting a “sexy pic” which never ultimately existed, of a fictitious fourteen-year-old. The defendant received over 17 years on a mandatory minimum of fifteen under a statute intended for professional pornographers and organized pedophilia swap rings. In that case the U.S. Fifth Circuit granted the motion for leave to appear as amicus and file a brief, but denied the rehearing. The Committee remains very interested in participating at the court of appeals and La. Supreme Court level, on the original version of R.S. 14:81.3, computer-aided solicitation of a minor, which was amended effective July 20, 2008, where unconstitutionality based on free speech has been adequately preserved. For how to preserve constitutionality issues, see the La.S.Ct. opinion in *State v. Hatton*, which was the first case under this statute to reach that court.

The amicus committee has also recently addressed issues pending in the Louisiana Supreme Court and state appellate courts. The committee welcomes and actively solicits amicus requests from members who have cases going up on appeal that involve important issues of general concern to the state's criminal defense bar. It is very important that amicus assistance be requested early to allow the committee an opportunity to participate on original hearing since most courts prohibit amicus briefs at the rehearing application stage.

For more information on how you can get involved in the amicus committee or to request assistance of the committee, please contact the LACDL office at 225-767-7640.

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23rd Annual Tate Banquet Honors

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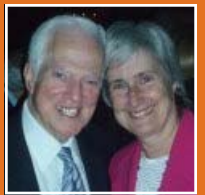
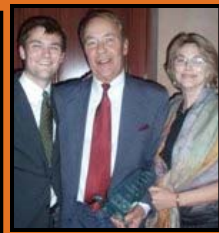
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Sister Kathy Broussard, Eda Gordon & Kenneth R. Richards
LaPDA Trustees of Freedom Award



19th Annual Law & All That Jazz

Seminar was great as usual!



On Tyrone Monciffe: "Excellent Speaker", "Awesome", "Great", "Quite Engaging and Inspiring"



Great Seminar – Thank You!

On Mike Stepanian: "Terrific!", "Awesome" "Great, bring him back", "Please bring him back for other seminars"

On Barry Scheck: "Good Website Info", "Wonderful", "Good PowerPoint", "Knowledgeable"

Great Job Guys!



The Pere Marquette was terrific.



EXCELLENT!!

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I enjoy this CLE every year. Keep up the good work!

On Billy Edwards: "Excellent", "Terrific", "Great subject, well organized and well presented"



On Jim Boren: "Always my Favorite", "Always Inspiring"

The seminar was great and one I look forward to attending every year.

On David Lewis: "Outstanding wonderful mind", "Great", "Funny guy. Interesting Presentation", "Was the best", "Please bring him back for other seminars"



This was one of the better LACDL Jazz Fest CLE in a long time. Very informative and "entertaining."



I liked this hotel – good accommodations (location, amenities, and staff)



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