

# OBITER DICTUM

The Newsletter of the Louisiana District Judges Association

July 2012 - Vol. 2, Issue 3

## PRESIDENT'S MESSAGE



Scott J. Crichton  
1st JDC  
President, LDJA  
2011-2012

This year is passing so quickly that it's difficult to recognize all of the incredible contributions to local communities and the tremendous sacrifices of personal time made by the district court judges. Your good work has not gone unnoticed, and I extend my sincere thanks for the collective work of all our district judges, but specifically for the work of the Committee Chairs. In particular, I would like to recognize **Judge Bob Morrison** for his tireless work as Chair of the Legislative Committee. As we all know, this year proved to be an extremely ambitious legislative session, with many bills and proposals directly affecting the work or concerns of the district court bench. Judge Morrison's commitment to our cause is evidenced by the results of the session summarized in this issue of *Obiter Dictum*. While it was obvious to all that Judge Morrison devoted an overwhelming amount of time advocating for and against certain legislative positions, just how much time he committed became even more clear to me when - after the session finally ended - he said, "Wow, I don't know what to do with all the free time I have!" If you have not yet done so, please take a moment to personally thank Judge Morrison for his work.

School's out and Summer School is over. Congratulations to all who worked to make the Sandestin Joint Summer School program a huge success. That success was revealed in the record attendance of judges and the compelling courses and presentations. Many thanks go to all judges who participated as speakers, coordinators, and panelists. Your work is greatly appreciated. Just as important however are all of you who attended the conference and socialized with your colleagues at the receptions and joint functions. This program would certainly not have been so successful without your being there!

Back in October when I took office, I mentioned three main initiatives for the year: 1) to improve our community outreach efforts; 2) to increase diversity, and 3) to improve mental and physical wellness awareness. As for community outreach, the Judges in the Classroom Program, chaired by **Judge Wendell Manning**, drew the largest amount of judges ever to participate in the program. Regarding diversity, I continue to strive for racial, geographic, and gender diversity on our committees, in the LDJA programs, and through our participation with diversity initiatives such as the Annual Conclave on Diversity. Finally, carrying the "Wellness" torch, **Judge Mike Pitman** succeeded in securing accreditation for his wellness program as a professionalism hour, and again presented that program in Sandestin. For all of you who have assisted me in my continued focus on these initiatives, I again extend my sincere thanks.

I encourage you all to continue your good work, to not lose sight of your communities, and to make time for your own wellness program. I wish you all the best for the remainder of this year.

**Scott Crichton**  
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## LEGISLATIVE UPDATE OF THE 2012 SESSION

*By: Darryl Schultz, Trial Court Services*

I would like to take this opportunity to thank everyone for their involvement during this past legislative session, particularly Judge Morrison for hanging in through thick and thin, rain or shine, DA's, Sheriff's, Public Defenders, Clerks, Court Reporters, etc.; he was there for it all.

There were several issues that the LDJA took positions either in support or opposition, as well as a number of issues that were monitored and no position was taken. Most, if not all of this, was contained in Judge Morrison's report of May 31, 2012. Summarizing the more important issues, Judge Morrison noted his successes in the following legislative action.

## ***LEGISLATIVE ACTION***

### ***Retirement:***

- Present judges are excluded from additional contributions;
- The bill to increase the final average compensation from a 3 year to 5 year average did not pass;
- Judges and court officers were excluded from the increase in the retirement age eligibility;
- The bill of the retirement package that passed is the "Cash Balance Plan" (HB 61), providing for a "401 K" type plan for new state employees effective July 1, 2013, including judges.

### ***Civil Law Issues:***

- The bill seeking to lower the civil jury threshold to \$5,000 never got out of committee;
- The mandatory loser pay bill for unsuccessful litigants on motions died in committee;
- The bill providing that court reporter backup tapes are not public record passed.

### ***Criminal Law Issues:***

- The bill to allow criminal jury note-taking, which we supported, was defeated;
- The bill to allow a crime lab technician to sign a certification we supported passed;
- The bill to require paying the public defender before new counsel enrolls, which we opposed, died in committee;
- Court costs for the indigent defender fund were increased to \$45, to be assessed in criminal cases in each jurisdiction.

### ***Other Issues:***

- The bill requiring a pre-hearing before subpoenaing a judge as a fact witness passed;
- The bill to increase the lease car allowance for judges in multi-parish districts to \$600 passed.



*Darryl Schultz, Gay Smith, assistant to the president of the senate, Chief Justice Kimball, Clyde Kimball.*

## ***SESSION-END RESOLUTIONS***

Some of the issues that the LDJA followed that did not make it through the process later appeared in the final days of the session as resolutions. As you know, resolutions do not carry the weight of law, but merely express the wishes of the legislature. Therefore, these resolutions may indicate the type of legislative action we may see in the future. Civil Jury Trials seemed to be on the minds of several legislators. As a result of their curiosity, we have the following resolutions.

### ***Civil Law***

- HSR #3 by Rep. Harrison requesting the House Committee on Civil Law and Procedure to study provisions relative to the recovery of attorney fees in civil actions (loser pay, HB263);
- HCR #81 by Rep. Huval requesting the Louisiana State Law Institute to study and make recommendations for legislation relative to expedited jury trials (HB 342, 437, 461); and,
- SCR #108 by Sen. Murray urging and requesting the Louisiana State Law Institute to study certain aspects of civil jury trial procedure (HB342, 437, 461).

### ***Criminal Procedure:***

- HCR #90 by Rep. Seabaugh directs the Criminal Code Committee of the Louisiana State Law Institute to study the feasibility of assessing filing fees for applications of post-conviction relief;
- HCR #3 by Rep. Lopinto directs the Louisiana State Law Institute to study and make recommendations for the revision of laws regarding expungements (maybe they will get it right this time);
- HCR #113 by Rep. Harrison directs the Louisiana Sentencing Commission to study the feasibility of requiring an offender to serve an imposed sentence through home incarceration with the use of electronic monitoring;
- HCR #124 by Rep. Dixon requests the Innocence Project to apply to the Judicial Council for additional court cost to fund the Innocence Compensation Fund; and,
- HCR #105 by Rep. Lorusso requests the Department of Veterans Affairs to study the feasibility of Veterans Treatment Courts.

### ***Juvenile and Family Courts:***

- HCR # 129 by Rep. Leger requests certain state agencies implement recommendations related to the informal Families in Need of Service process; and,
- HCR # 5 by Rep. Schroder continues the Task Force on Legal Representation in Child Protection Cases.

### ***Other issues:***

- SCR #154 by Rep. Johnson requires prior legislative approval of the privatization or sale of Office of Group Benefits. These issues are sure to be revisited in upcoming sessions.

### ***Commendation Resolutions:***

- HR #103 by Rep. K. Jackson commends the Hon. Benjamin Jones upon being named Distinguished Jurist by the Louisiana Bar Foundation.

### ***And, in the waning days of the session:***



*Chief Justice Kimball is presented the Resolution by Chuck Kleckly, speaker of the house.*

SCR 140 by All Members of the Legislature, both the Senate and the House, took Personal Privilege to recognize **Chief Justice Catherine D. "Kitty" Kimball** on her many years of dedicated service to the state and the

Judiciary of Louisiana upon her retirement. The rules were suspended in both houses to allow the Chief Justice on the floor to address both the Senate and the House members.

There were also 2 resolutions (SR #174 and HR 162) to commend **Justice Bernette Joshua Johnson** on her extraordinary accomplishments, and there were several condolence resolutions to recognize deceased members of the judiciary.

To assist with the work of the Legislative Committee in the future, please contact:

Judge Morrison at [rmorrison@21stjdc.org](mailto:rmorrison@21stjdc.org), or  
Darryl Schultz at [dschultz@lajao.org](mailto:dschultz@lajao.org).

## **LDJA RECOGNIZES KEY OPINIONS OF CHIEF JUSTICE CATHERINE D. KIMBALL – PART I**

*By: Judge Scott Crichton*

As we all know, Chief Justice Kimball announced that she will retire from her service on the Supreme Court in January of 2013. A judge for thirty (30) years, including twenty (20) years as a supreme court justice, and Chief Justice since 2009, Justice Kimball is admired and accredited by the legal community for many outstanding contributions to society, both in and out of the court setting. In a stirring resolution, read on the House and Senate floors during the recent 2012 legislative session, Louisiana's lawmakers acknowledged and commended Justice Kimball as a "veritable pillar of the Louisiana legal community, having profoundly affected the laws, rights, and property of the citizens of Louisiana." That profound effect on the law is briefly explored in this article and highlighted through selected jurisprudence.

During her tenure on the Supreme Court, Justice Kimball authored hundreds of cases whose legal precepts span many facets of the law. In the criminal arena, Justice Kimball was challenged by, and wrestled with, the ebb and sway of Louisiana's stance on capital punishment and the hard-line institution of tough sentencing laws, all the while demonstrating no tolerance for the denial of, or infringement on a defendant's constitutional right to a fair trial. These legal concepts are made fervently clear in her dissenting opinion of *State v. Snyder*, 1998-1078 (La. 9/6/06); 942 So. 2d 484, which opinion became the United States Supreme Court's majority opinion when it reversed the Louisiana high court, relying in significant part on the dissenting opinion of Justice Kimball.

In *Snyder*, the defendant was convicted of first degree murder and sentenced to death. During voir dire, defense counsel argued that the State exercised several of its peremptory challenges against African-American prospective jurors in a racially discriminatory way in violation of *Batson v. Kentucky*, 476 U.S. 79, 106 S.Ct. 1712, 90 L.Ed.2d 69 (1986). The trial court denied the defendant's *Batson* challenges. Consequently, Snyder, an African-American, was tried by an all-white jury. Snyder appealed his conviction to the Louisiana Supreme Court.

After reviewing the defendant's *Batson* challenges, the Supreme Court majority concluded that the trial court did not abuse its discretion or err in its denial of the claims

and affirmed the conviction. Justice Kimball disagreed. As explained in her well-reasoned and thorough analysis of *Batson* and its progeny, *Miller-El v. Cockrell*, 545 U.S. 322, 123 S.Ct. 1029, 154 L.Ed.2d 931 (2003), Justice Kimball would have reversed based upon her finding of racially motivated peremptory strikes. In her dissenting opinion, Justice Kimball wrote:

*Miller-El* directs that appellate courts cumulate all relevant items tending to point to purposeful discrimination and view them together.... The record shows that issues of racial prejudice existed at the outset of this case.... In my view, the cumulative evidence...is too powerful to conclude anything but intentional racial discrimination motivated the State's strike of [the African-American juror]. *Snyder at 505*.

The United States Supreme Court, granting writs in part based on the same *Batson* challenges, agreed with the Chief Justice rather than with her brethren in the majority opinion, and essentially adopted her dissenting opinion when it concluded an Equal Protection violation occurred which warranted a reversal.

More recently, in *State v. Dorsey*, 2010-0216 (La. 9/7/11); 74 So. 3d 603, Justice Kimball again reviewed allegations of racial discrimination in the State's exercise of peremptory juror strikes, together with performing a capital sentence review. Like *Snyder*, the defendant in *Dorsey* was convicted of first degree murder and sentenced to death. After a review of the proceedings below, Chief Justice Kimball gave "due deference to the district court's factual determination on the issue," and found that the "defendant failed to establish a prima facie case of purposeful discrimination by the state." Her extremely well written majority opinion affirmed the conviction and death sentence.

These few cases, while only a snapshot of the integrity and objectivity in Chief Justice Kimball's decision making, demonstrate both her reverent safeguard of the Equal Protection Clause of the United States Constitution and her fortitude and courage when faced with the difficult decisions. Through those decisions, which number in the hundreds and span myriad issues of both criminal and civil law, Chief Justice Kimball has earned the admiration and respect of the entire the legal community for her contributions as an esteemed jurist.

Stay tuned for Part II of this article, appearing in the next

issue of the *Obiter Dictum*, where I will further explore the legal contributions of Chief Justice Kimball and pay greater homage to her work on the Supreme Court.

## JUDGE JULES EDWARDS ON *LOUISIANA INCARCERATED*

By: Judge Jules Edwards

15th JDC

Lafayette, Louisiana



Jules Edwards  
15th JDC

I was deeply moved by the recent Times-Picayune exposé on incarceration in our state entitled *Louisiana Incarcerated* (<http://www.nola.com/prisons>). Coincidentally, many of our summer school sessions focused on alternatives to incarceration and this series of articles and videos informed and animated many of our discussions. Those discussions were so rich and fruitful that I was inspired

to write a letter to the Times-Picayune journalist to commend and encourage the continuation of this kind of reporting. The editors must have appreciated it because they decided to print it as a letter to the editor. I am honored to work with so many judges who are striving to administer a justice system that balances the interest of all concerned.

### ***Louisiana Must Rethink Punishment And Prisons: A Letter To The Editor***

*Published: Wednesday, June 13, 2012*

*By Letters to the Editor, The Times-Picayune*

***Re: "Louisiana Incarcerated: How We Built The World's Prison Capital"***

I am a state trial court judge who has advocated change for the past 19 years. I am convinced this series of articles and videos has reached more people and inspired them to think than I have been able to reach in all of that time.

Citizens and officials have historically responded to crime emotionally. In the contest between compassion on the one hand and fear and vengeance on the other hand, compassion regularly and repeatedly loses. Your series will help us to rationally respond to those emotions while acknowledging that those emotions are both valid and insufficient.

We must think about the desired outcome of a sentence that is imposed on an offender. Criminal sentences produce both intended and unintended consequences. Criminal sentences produce costs and benefits. Our systems of public health, public education and criminal justice affect individuals, families and communities, as well as local and state governments.

Unfortunately our responses to the emotions of fear and vengeance have been behavior that increases disease, incarceration and death. Too many children in this state are the victims of and exposed to such adverse childhood events as abuse, neglect, separation from their parents and violence upon their parents. Too many of our citizens are unable to access mental health treatment and/or treatment for addiction to alcohol or other drugs. About 16,000 children drop out of school each year. About 16,000 offenders are sentenced to prison each year.

I implore you to periodically return your attention to this topic. Elected officials respond to the desires of the voters. The news media both informs and entertains the voters. Thank you for informing us.

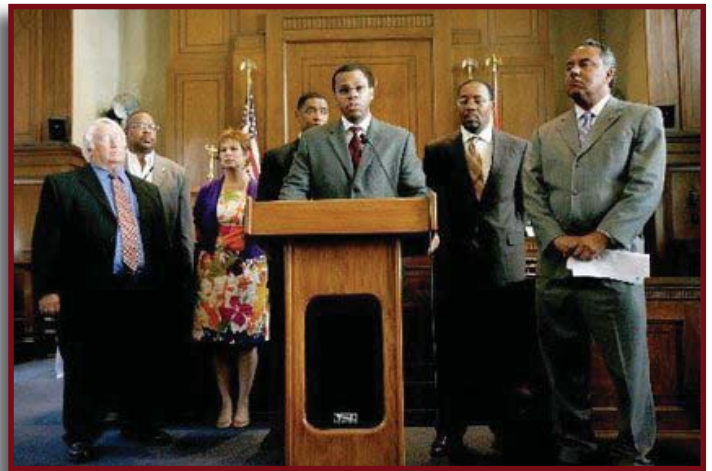
Judge Jules D. Edwards III  
Lafayette

## **RE-ENTRY COURTS MADE POIGNANT BY TIMES-PICAYUNE SERIES, LOUISIANA INCARCERATED**

According to the Louisiana DOC, approximately 13,000 inmates are released from prison each year. Most go home without a job, with no skills, and often as near strangers to their own children. Many return to the same environs and carry on with the same non-productive lifestyle which sent them to prison in the first place. Re-Entry Courts are a step in a positive direction, aimed primarily at teaching life skills and providing resources for non-violent, non-sex offenders so that they may successfully re-enter their communities upon their release from prison. Such courts, and their stated purpose, were made more poignant by the Times-Picayune 8-Part Series referenced by Judge Edwards in this newsletter, and titled, *Louisiana Incarcerated*.

Over two years ago, the Orleans Parish Re-entry Court was spearheaded by **Judges Laurie White and Arthur Hunter**,

who were convinced that incarceration for non-violent offenders should mean more than idle time behind bars. Since the summer of 2010, Judges White and Hunter have ordered a selection of nonviolent offenders with relatively short sentences to serve their time at Angola State Penitentiary under the tutelage of inmate mentors. Those without high school degrees earn their GEDs. All get certified in a trade and spend evenings in "life skills" classes while constantly being prodded by the older inmates to pull up their pants, stop cursing, and to respect others. The program has gained traction in other districts.



*Judge Arthur Hunter speaks during a news conference, as Burl Cain, Judge Laurie White and others look on.*



William "Rusty"  
Knight  
22nd JDC

Recently, **Judge William "Rusty" Knight** of the 22nd Judicial District Court began his own Re-Entry Court, modeled from the Orleans Parish program, and also based on the successful Drug, DWI and Mental Health Courts already in place in St. Tammany Parish. Judge Knight's Re-Entry Court was recently the topic of a Times-Picayune Article, *St. Tammany Parish Re-Entry Court Program Aims to Divert Career Petty Criminals from*

*Prison*, published June 18, 2012. The 22nd Judicial District's program was signed into law in June, along with a similar program in Baton Rouge.

Still, even with the advent of the new Re-Entry Courts, a majority of non-violent offenders with shorter sentences will serve their time in crowded parish jails that provide almost nothing to prepare them for life on the outside. The statistics in Louisiana, as outlined by the Times-Picayune columnist Cindy Chang in her 8-Part Series, are staggering. (*Louisiana Incarcerated*: <http://www.nola.com/prisons>)

Such data should encourage more districts to craft their own Re-Entry Courts.

The Times-Picayune articles referenced above are accessible by following the links below: Orleans Parish Re-Entry Courts: [http://www.nola.com/crime/index.ssf/2011/07/re-entry\\_court\\_offers\\_opportun.html](http://www.nola.com/crime/index.ssf/2011/07/re-entry_court_offers_opportun.html); Louisiana Incarcerated: <http://www.nola.com/prisons>; St. Tammany Parish Re-Entry Court: [http://www.nola.com/crime/index.ssf/2012/06/st\\_tammany\\_parish\\_re-entry\\_cou.html](http://www.nola.com/crime/index.ssf/2012/06/st_tammany_parish_re-entry_cou.html).

## JUDGE CHILDRESS GOES BACK TO KINDERGARTEN

By: Judge Ray Childress, 22nd IDC

A request was made during the Spring Conference for a judge to speak to a class in Bogalusa. Bogalusa being my hometown, I volunteered to go. When I was told it was a class of pre-K students, I was somewhat put-out or maybe a bit embarrassed. But I was committed, so I went. After receiving a warm welcome from Ms. Chaisson and her students, I was pleasantly surprised by the children's limited understanding of the role of a judge. They were well behaved and asked age appropriate questions such as, "Why do you wear a robe?"



Looking at the smiling faces of these children who were excited for my visit, eager to listen, and primed to learn, I couldn't help but wonder how society manages to suppress the enthusiasm of so many of them before they reach middle school. Perhaps through this program, and with our continued participation every year, we can make a difference. As for me, I can't wait until my next assignment. Maybe I can move up to third graders!

-- Ray

This year, the *Judges in the Classroom* program reached over 9000 students, with 26 judges participating and 156 presentations, almost doubling the participation of last year. If you're interested in this important outreach to the community, please contact Judge Wendell Manning at [wmanning@4jdc.com](mailto:wmanning@4jdc.com).

## UPCOMING EVENTS

- **Domestic/Family Seminar**  
August 9-10, New Orleans, LA
- **Annual Fall Judges' Conference**  
September 30 - October 2nd, New Orleans, LA
- **Sentencing Program at Angola and The Bluffs**  
October 19-20, St. Francisville, LA
- **Annual Torts Seminar**  
December 7, 2012, New Orleans, LA

Very noteworthy is the upcoming seminar at Angola entitled, *Smart, Tough & Fiscally Responsible Sentencing*. The program is designed to review and explore sentencing alternatives for non-violent offenders. The program can only accommodate 50 judges, so if you are interested in attending, and particularly if you preside over a criminal division, please contact Billie Bennett at the Louisiana Judicial College to reserve your place.

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