

THE BAR REVIEW

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EVENTS AT A GLANCE

9/15	October Bar Review Ad & Article Submission Deadline
9/26	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club
10/11-12	Recent Developments by the Judiciary Seminar at Hilton Garden Inn Event Center Bossier City
10/15	November Bar Review Ad & Article Submission Deadline
10/24	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club
10/30	SBA Memorial & Recognition Ceremony



From The President

by Jim McMichael, President, jmcmichael@mmw-law.com

PROFESSIONALISM AVOIDING OUTER OBNOXIOUSNESS

In a famous Peanuts cartoon, Charlie Brown's sister Sally proclaims, "I hate everybody. I hate everything." Charlie Brown replies, "But I thought you had inner peace." Sally's response: "I do. But I still have outer obnoxiousness."

Sadly, we lawyers are often thought of as the poster children for outer obnoxiousness. But, hey, it's not totally our fault – we often feel overwhelmed. We are trained to be reactive and many of us are perfectionists by nature. Plus, we work in the equivalent of a combat zone. Not exactly the nesting grounds for inner or outer peace. Often, it feels more like we're fighting for our lives. So – we all have occasional bouts of outer obnoxiousness.

However, we should all generally feel lucky to practice in the Shreveport-Bossier City and the northwest Louisiana area. For the most part, our judges and fellow attorneys avoid outer obnoxiousness and remain committed to the traditional ideals that our profession was built upon. Civility, honesty and camaraderie are not merely concepts that we revisit once a year at some annual hour-long professionalism CLE program. These are the tenets that, by and large, guide the conduct and practice habits of our members. Which is not to say that we aren't subject to the same pressures that attorneys who practice elsewhere face – primarily that the economics of the practice of law have transformed our practice from a profession into a business. We all work hard at dispelling the notion that many in the public have – that we are no longer independent intermediaries and counselors, but, rather, are "hired guns" or "hit-men," determined only to do our clients' bidding in an "eat-or-be-eaten" culture.

How do the SBA and our members contribute to our efforts? We work very hard through the SBA, the Shreveport Bar Foundation's Pro Bono project, its LRVDV projects, and the civic and charitable activities of the Young Lawyers' and Women's Sections to show our commitment to legal and public education and service. Through SBA social functions, the Krewe of Justinian and those of us who participate in the local Inns of Court program, we promote collegiality and civility among our members.

And, importantly, each year, we choose an SBA member to receive the annual SBA Professionalism Award to honor a colleague who lives the ideals of professionalism that we value. I believe that the award is the highest honor the SBA can bestow on a member. We have already begun to solicit nominations for worthy candidates. This year's winner will be announced at the October Luncheon. Please plan to attend and honor our award winner.

The LSBA Code of Professionalism

1. My word is my bond.
2. I will never intentionally mislead the court or other counsel.
3. I will not knowingly make statements of fact or law that are untrue.
4. I will clearly identify for other counsel changes I have made in documents

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Shreveport Bar Staff

Executive Director
Dana Southern
dsouthern@shreveportbar.com

Administrative Assistant
Madeline Farrar
mfarrar@shreveportbar.com

Pro Bono Coordinator
Kelli Sanders
ksanders@shreveportbar.com
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June Luncheon Highlights



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5. I will conduct myself with dignity, civility, courtesy and a sense of fair play.
 6. I will not abuse or misuse the law, its procedures or the participants in the judicial process.
 7. I will consult with other counsel whenever scheduling procedures are required and will be cooperative in scheduling discovery, hearings, the testimony of witnesses and in the handling of the entire course of any legal matter.
 8. I will not file or oppose pleadings, conduct discovery or utilize any course of conduct for the purpose of undue delay or harassment of any other counsel or party. I will allow counsel fair opportunity to respond and will grant reasonable requests for extensions of time.
 9. I will not engage in personal attacks on other counsel or the court.
 10. I will support my profession's efforts to enforce its disciplinary rules and will not make unfounded allegations of unethical conduct about other counsel.
 11. I will not use the threat of sanctions as a litigation tactic.
 12. I will cooperate with counsel and the court to reduce the cost of litigation and will readily stipulate to all matters not in dispute.
 13. I will be punctual in my communication with clients, other counsel and the court, and in honoring scheduled appearances.

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Attorney at Law

Courtney Harris
Attorney at Law

Taylor E. Hipp
Attorney at Law

Christina Hobbs
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Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

Insurance policy, or tort doctrine? The courts regularly intone, “The insurance policy is the law between the parties.” See, e.g., *Sims v. Mulhearn Funeral Home Inc.*, 2007-0054 (La. 5/22/07), 956 So. 2d 583. Insurers are free to write policy provisions that limit their liability, as long as the provisions violate no statute or public policy. And courts strictly enforce policy provisions, even if they sidestep normal tort doctrine.

Mrs. Slaughter bought a guaranteed health and accident policy in October 1983; she and her husband paid all premiums for over 32 years. In February 2016, however, they sued the insurer, Central United Life, alleging that Mrs. Slaughter had been totally disabled since February 1994 due to nervous breakdown and depression. (She actually attempted suicide that month.) They demanded maximum benefits under the policy, \$940 a month for 60 months, or \$56,400, plus interest. Alternatively, they demanded a refund of all premiums paid during that five-year period. Central United Life filed exceptions of no cause and prescription, which the district court sustained, dismissing the claim. The Slaughters appealed.

The Second Circuit reiterated the “law between the parties” principle before citing three crucial policy provisions: “notice of claim” (written notice of claim to insurer required within 30 days after “occurrence or commencement” of loss), “proofs of loss” (written proof of loss to insurer required within 90 days after the end of the period for which the insurer is liable), and “legal action” (no suit until 60 days after proof of loss and in no event more than 10 years after proof of loss was due). On the facts alleged, the latest date for proof of loss was June 29, 2000, and for suit was June 29, 2010. Mrs. Slaughter’s proof of loss, submitted January 22, 2015, and suit, filed February 16, 2016, were obviously too late.

Mrs. Slaughter ingeniously argued that her disability was a continuing condition, so she would qualify for benefits for any five-year period between 1994 and 2015; by this measure, their proof of loss and suit would have been timely. It is, after all, normal tort doctrine that prescription does not begin to run on a *continuing tort* until the conduct causing the damage has abated; her debilitating depression has never abated. However, this is not a tort case; against the insurer, policy provisions prevail. Applying the three clauses cited above, the Second Circuit affirmed the denial of Mrs. Slaughter’s claim for benefits, in an opinion by Chief Judge Brown, *Slaughter v. Central United Life Ins. Co.*, 51,961 (La. App. 2 Cir. 6/27/18), ___ So. 3d ___. It did, however, reverse to give her the opportunity to prove, if she can, that she is entitled to the return of five years’ premiums.

Cause for concern. The phrase *proximate cause* trips off the tongue with ease, but what does it mean? In *Dixie Drive It Yourself Sys. v. American Beverage Co.*, 242 La. 471, 137 So. 2d 298 (1962), the Supreme Court denounced it as “a legal concept without fixed content,” replacing it with our cherished (and perhaps equally elusive) Civilian concept of *duty/risk*. Still, proximate cause is so embedded in our legal conscience that we can’t let go. Does the average person even know what “proximate” means? Consider that in *McAdams v. La. Power & Light*, 95-126 (La. App. 5 Cir. 7/25/95), 659 So. 2d 820, the jury passed the judge a note that read, “Proximate?,” the judge did not define it, and the Fifth Circuit affirmed his action!

In *Shephard v. AIX Energy Inc.*, 51,965 (La. App. 2 Cir. 5/23/18), ___ So. 3d ___, the plaintiffs, a toolpusher and a floor hand, were seriously injured in a natural gas fire while working at an oil well in Claiborne Parish. They sued AIX, the owner/operator of the well; the contractor who supplied the completion consultant; the completion consultant personally; the contractor hired to measure flowback; the contractor who supplied the completion fluid; the plaintiffs’ immediate employer; and various insurance companies. Close to the end of a nine-day jury trial, the court proposed this jury charge: “The burden of proving both the existence of the injuries and the causal connection between them and the accident rests with the Plaintiff.” AIX objected, arguing that the instruction should use the phrase *proximate cause*. The court did not change the charge; the jury found AIX 97½% at fault and awarded over \$23 million in damages.

AIX appealed, arguing, *inter alia*, that the court failed to properly instruct the jury as to proximate cause; had it done so, the jury would have found that the other contractors on the site were more responsible for the plaintiffs’ injuries, as AIX did not exert “operational control” over them. The Second Circuit rejected this argument, in part because AIX arguably waived its objection.

On the merits, the court noted that the jury charge used neither “a cause” nor “proximate cause,” and it did not track the formulation of a negligence claim in the lead case of *Pitre v. Opelousas General Hosp.*, 530 So. 2d 1151 (La. 1988), or in Alston Johnson, 18 La. Civ. L. Treatise, Civil Jury Instructions, § 3:17. However, the trial court’s use of “causal connection” was close enough, given that references to “proximate cause” or “legal cause” can be “inherently confusing,” and that the verdict form carefully listed all other defendants. The Second Circuit, in an opinion by Judge Moore, rejected this argument and largely affirmed the jury verdict, slightly reducing some elements of damage.

A really trusty employee. Convicted of distribution of cocaine and serving his hard-labor sentence at Claiborne Parish Detention Center, French applied for trusty status so he could get out of jail a few hours a day and work for the Police Jury on its highway chipper crew, at a wage of \$3.00 a week. Driving a tractor along a parish road, French struck an obscured tree trunk, was pitched from his seat, and got his pelvis mashed under the wheels of the tractor. He sued the Police Jury for his injuries, alleging failure to train inmates in the proper use of work machinery, supervise inmates, inspect the area before bush hogging, provide a safe workplace, and other acts of negligence. The Police Jury moved for summary judgment on grounds that French's exclusive remedy was workers' comp. The district court granted, and French appealed.

The Second Circuit affirmed, *French v. Claiborne Parish Police Jury*, 52,192 (La. App. 2 Cir. 6/27/18), ___ So. 3d ___, in an opinion by Judge McCallum. The court held that the presumption of employment, La. R.S. 23:1044, is rebuttable, but that French did not produce enough evidence to create a genuine issue for trial. The court used the standard test for determining an employment relationship, quoted in *Hillman v. Comm-Care Inc.*, 2001-1140 (La. 1/15/02), 805 So. 2d 1157: selection and engagement, payment of wages, power of dismissal, power of control. Interestingly, French cited an older case, *Jones v. Houston Fire & Cas. Ins. Co.*, 134 So. 2d 377 (La. App. 3 Cir. 1961), in which an inmate doing hard time injured his hand in a cotton gin; he sued the Department of Institutions for workers' comp, but lost because the court, applying the standard quoted in *Hillman*, found he was not an employee but a "compulsory laborer" of the state. Surely, French argued, if an inmate can't sue for comp, he can sue for tort? Sorry, the court said: work as a trusty was voluntary, paid (some) wages, and meets the *Hillman* standard.

Considering that the Second Circuit's opinion came over four years after French's accident, it was probably too late for him to file a disputed claim for workers' compensation against the Police Jury.

Who're you gonna believe? On an icy February morning, Antley was driving his Chevy Avalanche east on I-20 in Monroe, doing about 62 mph in the left lane. At the same time, Coleman was driving his girlfriend's Chevy Equinox on the same stretch of road, doing about 40-50 mph in the center lane. Coleman hit a patch of ice and momentarily lost control. According to Antley, the Equinox veered into the left lane and struck the right front end of the Avalanche; after the collision, the Equinox would not stop, even though Antley honked his horn and flashed his lights; Antley called the police and reported the Equinox's tag number. Police traced the tag, called the girlfriend, and later that day she and Coleman went to the police station.

Coleman coolly denied everything: that he swerved out of the center lane, that he ever made (or felt any) contact with the large pickup, or that he heard or saw anyone pursue him; in fact, he knew nothing about it until his girlfriend called him. The police officer inspected the Equinox, found nothing he

considered "fresh damage," and could not say whether it had been involved in a collision. (The officer did cite Coleman for driving without a license.)

Antley sued the girlfriend, her insurer and Coleman. After a bench trial, the judge explicitly accepted Antley's account of the accident and rejected Coleman's denials. The court rendered judgment in favor of Antley for \$23,429.43. (Because property damages were only \$706.43, one might infer that the impact was pretty mild.)

Coleman appealed, contending he breached no duty of care, but this was untenable given his testimony that he hit the ice and "ventured into that far left lane." He also argued the court was plainly wrong to accept Antley's self-serving testimony, when his own (Coleman's) was supported by the police officer's inability to find evidence of impact on the Equinox and by the relatively minor damage to the Avalanche. The Second Circuit invoked the manifest error/clearly wrong rule and declined to disturb the trial judge's credibility call, in an opinion by Judge Williams, *Antley v. Rodgers*, 52,168 (La. App. 2 Cir. 6/27/18), ___ So. 3d ___. A bland, blanket denial just may not be as persuasive as a graphic account of a collision and a frenzied chase down a frozen Interstate. Driving without a license didn't help Coleman's credibility, either. The court's going to believe somebody, right?

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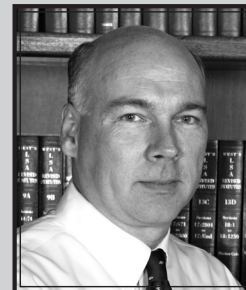
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Mark Your Calendar



SEPTEMBER 26

SBA Member Luncheon

12:00 Noon at the Petroleum Club (15th Floor)

Speaker: Jeremy Alford

OCTOBER 11-12

Recent Developments by the Judiciary CLE

Hilton Garden Inn, Bossier City

OCTOBER 24

SBA Member Luncheon

12:00 Noon at the Petroleum Club (15th Floor)

Speaker: Alston Johnson

Professionalism Award Presentation

OCTOBER 30

SBA Memorial & Recognition Ceremony

2:00 p.m. at the Caddo Parish Courthouse

NOVEMBER 7

SBA Member Luncheon

12:00 Noon at the Petroleum Club (15th Floor)

Speaker: TBD (Veterans' Program)

NOVEMBER 10

Midway to Mardi Gras Party

Petroleum Club

DECEMBER 11-12

December CLE By the Hour Seminar

Petroleum Club (15th Floor)

DECEMBER 16

Area Law Student Holiday Reception

3:00 p.m. to 5:00 p.m.

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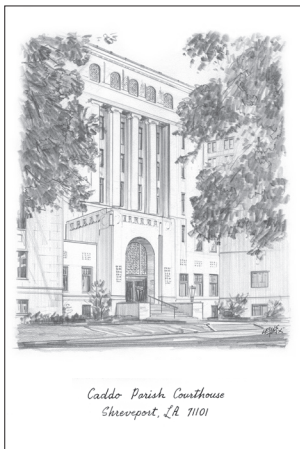


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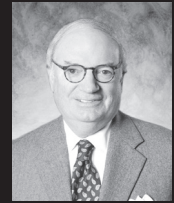
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Young Lawyers' Section

by: Gahagan Pugh, President, Gahagan@thepughlawfirm.com

Congratulations to all of the newly admitted attorneys! The Young Lawyers' Section will host a New Lawyers Orientation & Luncheon at the Petroleum Club on Tuesday, October 30, 2018. This event is free to newly admitted lawyers who have recently been admitted to the practice of law, and it will include presentations which will count toward your Continuing Legal Education. The schedule is as follows:

<u>TIME</u>	<u>TOPICS</u>
8:00 – 8:30	Registration
8:30 – 11:30	LSBA Trust Account Workshop: presentation by Richard P. Lemmler Jr., <i>LSBA Ethics Counsel</i>
11:30 – 12:30	Trial Advocacy: presentation by the James C. McMichael, <i>McMichael, Medlin, D'Anna, Wedgeworth & Lafargue</i>
12:30 – 1:30	Lunch

Following lunch, we will adjourn to the First Judicial District Court for the Memorial and Recognition Ceremony. Following the ceremony, the Shreveport Bar Association will host a reception for the newly admitted lawyers at the Shreveport Bar Center. For more information on the events of October 30, or to reserve your place, please contact Dana Southern at 318-222-3643 Ext. 3 or dsouthern@shreveportbar.com.

I would like to thank Daniel Wilson with *Shreveport Doctors Rehab* for sponsoring our May 24 social event at The Remington Suite Hotel. We had a great turnout from our Young Lawyers' Section. If your contact information has changed, or you have not been receiving emails from us, please email your current contact information to shreveportbarassocyls@gmail.com so we can notify you of all our activities.

We also post our scheduled events on Facebook, so please follow our Facebook page “Shreveport Bar Association – Young Lawyers' Section” as well.



Krewe of Justinian XXV *Derby Days*



celebration



BAR BRIEFS

Chief Judge S. Maurice Hicks Jr. announced on August 20, 2018 that John S. Hodge has taken the oath of office to fill the vacancy in the United States Bankruptcy Court for the Western District of Louisiana, Shreveport Division. The vacancy was created when Judge Jeffrey P. Norman relocated to Houston, where he will serve as a bankruptcy judge for the Southern District of Texas.

Judge Hodge, a native of New Iberia, received his B.S. and J.D. from LSU. Before joining the court, he was a shareholder at Wiener, Weiss and Madison, where he had a civil practice and served as Chapter 7 Trustee.



Chief Judge S. Maurice Hicks Jr. administered the oath of office to Judge John S. Hodge on August 20, 2018. Nephew James Hodge held the family Bible

On June 26, 2018 Shreveport Bar Foundation staff attorney Heidi Kemple Martin gave a presentation at the Samaritan Counseling Center on the services the Shreveport Bar Foundation's Legal Representation for Victims of Domestic Violence "LRVDV" program offers to the public who are seeking a protective order.



Front Row L-R is Heidi Kemple Martin, Jennifer Crow, Mary Young
Back Row L-R is Valencia Edwards, Nonie Caruthers, Ann Inabnet and Barbie Hutches



On July 7, 2018 the in New Orleans, Louisiana, during the Essence Music Festival, The Honorable Judge Sheva Sims received The Power of Influence -Woman of Inspiration Award at the Power of Influence Luncheon. The Power of Influence Award Luncheon primarily focuses on honoring prominent men and women in business, politics, art, entertainment and sports. It also provides a platform for recipients to network alongside each other.

On June 27, 2018, The Shreveport Bar Foundation was presented with a \$45,000 check from the Community Foundation of North Louisiana and a \$2,500 check from United Way of Northwest Louisiana to help fund the Legal Representation for Victims of Domestic Violence Program. The program provides a free attorney to appear in Caddo Parish District and Juvenile courts to assist victims of domestic violence obtain restraining orders and related orders involving custody, support and visitation rights, when such actions are directly connected to family violence cases and are taken to ensure the health and safety of the victim.



Pictured above are Dana Southern, Heidi Kemple Martin, Kelli Sanders and Dr. Bruce Wilson



Pictured above are Stacey Williams and Kristi Gustavson



Pictured above are Dana Southern, Heidi Kemple Martin, Kelli Sanders and Kristi Gustavson

Announcing the 2019 SBA Officers

The Officer-Nominating Committee, consisting of the five immediate past presidents of the Shreveport Bar Association, recently met and nominated the following officers who will serve in 2019.

Vice-President

Donna Y. Frazier

Secretary-Treasurer Elect

Nancy Cooper

SBA President-Elect **Curtis R. Joseph Jr.** will automatically elevate to the office of President, **M. Thomas Arceneaux** to the office of President-Elect, and **Rebecca Luster Radford** will serve as the office of Secretary -Treasurer.

The two Member-At-Large positions (serving in 2019 and 2020) on the Executive Council will be filled by **Natalie R. Howell** and **Anna Brown Priestley**.



Curtis R. Joseph Jr

M. Thomas
Arceneaux

Donna Y. Frazier

Rebecca Luster
Radford

Nancy Cooper

Natalie R. Howell

Anna Brown
Priestley

The SBA Website Had A Makeover!

We recently announced our freshly designed website which is accessible at www.shreveportbar.com. Our last website restructure was made effective five years ago, and we decided it was time for a little rejuvenation.

We have launched our site into 2018 with a more contemporary look and feel, cleaner layout, and an overall improved user-friendly experience. Aside from being more aesthetically pleasing, our new site is now an easier experience to find the information that is important to you.

For example, SBA members have the opportunity to view the current edition of The Bar Review online and to view and print archived copies with just a few clicks. Also, site visitors can handle all transactions securely online, including but not limited to: membership in SBA and the Krewe of Justinian, CLE registration, Lawyer Referral Participation and more.

Our four most popular links on our site (Join SBA, Signup for CLE, The Bar Review, and Lawyer Referral) have been moved to the main focus, located in large gold circles at the center of the Home Page. Login Information can be found at the top right. Contact Information, Site Map (Committees, Sections, Other Resources, and more), Quick Links, and Social Media can be found along the bottom of the screen at all times.

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Legal Hist

by Arthur R. Carmody, Jr., ACarmody@wcglawfirm.com

HUEY LONG: THE POLITICIAN (1910-1935)

PART 1. HUEY LONG BECOMES GOVERNOR

We have recently considered two Louisiana governors, Henry Watkins Allen and Michael Hahn, who were poles apart on political issues, but never touched by scandal and had reputations for honesty, integrity, decency and propriety, all terms which are the antithesis of today's subject, Huey P. Long, politician, who early on was described by Louisiana newspapers as "venal, crooked, a thief, a liar, a scoundrel, and a defrocked Pentecostal preacher." These salvos never bothered Huey; rather, he relished them, firing back with the likes of "a piss-ant, plunder bound pie-eater, a murderer of 'poor priests,'" and more. By the 1930s, he was showing Presidential ambition, and was not above referring to FDR as an "incompetent old man in a wheelchair," and so it was.

Born in 1893, Huey had by 1918 acquired a wife, a law license from the Louisiana Supreme Court, a partnership in Shreveport with his older brother Julius Tyson Long and a seat on the Louisiana Railroad Commission, a public body then of little business and influence established by the constitution of 1898. Soon the Constitution of 1921 would change the name of this body to the Louisiana Public Service Commission with increased jurisdiction and powers, particularly over electric utilities, telephone companies, gas companies and railroads, providing Huey with an available platform to attack his enemies and champion his views. The Commission's powers and influence increased as the state grew in population, industry and technology. Huey became chairman of the commission in 1922 and held that position until he was elected governor for the first time in 1928. The commission has been a springboard for governors since that time, starting with Jimmie Davis in 1944, John McKeithen in 1964 and Kathleen Blanco in 2004.

In a case which went all the way to the United States Supreme Court, Huey successfully challenged the telephone company for improperly giving a 20% rate increase which resulted in a \$440,000 refund to its customers, giving highly favorable statewide publicity for Huey.¹ He was quick to select his corporate enemies and pursued them vigorously, particularly Standard Oil Co., owner of the Esso Refinery in Baton Rouge, all telephone companies in Louisiana and the Illinois Central Railroad. As to why he singled out the Illinois Central, perhaps it was because it had a large office in Baton Rouge and he was even thinking of the day which came to pass when he forced the railroad to provide free transportation to Nashville, Tennessee, in return for the 1000-plus LSU students who wanted to attend the LSU-Vanderbilt football game. The other two major railroads in Louisiana, the Kansas City Southern and the Missouri Pacific, both kept a low profile with Huey, and generally avoided his hostility, perhaps because more railroad jurisdiction was being assumed by the federal government.

The Roaring 20s came in fast, like a gusher: bright, dazzling, glitzy, nightclubs, blind tigers, the Charleston, the Bunny Hop, all fueled with alcohol and jazz. Some say that Louisiana was not affected by all of this because it had been a way of life in New Orleans

and elsewhere for over a century. Shreveport and north Louisiana, where cotton prices were up and the oil boom was coming into play, seemed to receive its share of these good times.

Huey and Rose, while not madcaps, were settled into a comfortable cottage at 1702 Madison Avenue in Shreveport, and Huey was practicing law with his older brother Julius in the American Bank Building on Milam Street. He had already been elected as a railroad commissioner and almost by chance belatedly entered the 1924 contest for governor. He had no campaign manager or any backing of consequence, traveling alone to every parish in the state where he put out flyers and cultivated the friendship of the sheriff, the person he believed most important in each parish. His speeches were all the same, aimed at the poor, uneducated group who were his principal audience and aimed at free schools, better roads and highways, and a pension for the elderly and disabled. He made no effort to get involved with the Ku Klux Klan or the advocates for wets and dries in the liquor controversy, and, surprisingly to many, he ran third in the contest and received a respectable number of votes.

This campaign was marked by Huey's preference for white linen suits, usually double breasted, which he carried on for the rest of his political life. The winner of the race was one Henry Fuqua, the warden of the Angola penitentiary, who had strong ties to the Old Regulars in New Orleans, and other Democratic leaders throughout the state.

This loss did nothing to deter Huey's political ambitions, for he came out planning his campaign for 1928. One wonders had he known what the future years held for him whether he would continue on the main course that lay ahead: election as Governor in 1928, impeachment, election to the U.S. Senate, a national political campaign aimed at the upcoming U.S. Presidential election of 1936 and an assassin's bullet in the halls of his grand 37-story state capitol building in Baton Rouge. I believe he would have stayed the course with no changes made.

He planned his 1928 campaign by tapping more deeply into the support of rural residents and proposed far more free governmental services than at any time in the state's history.

He strengthened his presence in the south Louisiana Catholic Cajun country by hiring the popular legislator Harvey Peltier from Thibodaux as his campaign manager and won the Democratic primary but failed to obtain a secure majority. He received 44% of the vote, while his opponents split the remaining 56%. Riley J. Wilson, who carried New Orleans, had 82,000 votes and the short-term incumbent governor Oramel Simpson, the victim in Huey's well-publicized fist fight in the lobby of the Roosevelt Hotel, garnered 80,000 votes. A stalemate developed as neither Wilson nor Simpson elected to face Huey in a runoff election and he was declared governor on April 17, 1928, with a total of 93,000 votes against 4,000 for the Republican candidate.

Long worked to consolidate his vote in New Orleans and

¹ *Cumberland Tel. & Tel. Co. v. La. Public Serv. Comm'n*, 260 U.S. 212, 43 S. Ct. 75 (1922).

obtained the support of the president of Hibernia Bank and also the mayor, Sims Walmsley. However, by 1930, Walmsley and Long were in a poor, hostile relationship, as Huey had many of the municipal powers stripped from the domain of the mayor. One think that appeared in Long's considerable armament at this time was the election of Percy Saint, an independent, aggressive lawyer from St. Mary Parish who was elected Attorney General and several times ruled against Long during his gubernatorial term.

Long almost immediately fired hundreds of opponents in the state bureaucracy at all levels from cabinet heads and board members to rank-and-file civil servants and state road workers and filled the vacancies with his own political supporters. Every employee who depended on Long for a job was expected to pay a one-time portion of his or her salary (estimated at 5-10%) into Long's war chest, which raised approximately \$1 million in each election cycle. The funds were kept in the infamous "deduct box" to be used at Long's discretion. One historian wrote this was "the closest thing to a dictatorship that America has ever known."

After Long had control of the state's political apparatus, he turned his attention to the passage of bills through the 1929 session of the legislature. These included free textbooks and night courses for adult literacy, at a time when half of the electorate in the state were illiterate. He also was responsible for bringing cheap natural gas into the city of New Orleans.

He followed up on his campaign promises by building roads (in 1925 only 300 miles were paved), bridges, charity hospitals and educational institutions, including the medical school in New Orleans and the charity hospital in Shreveport. In doing so, Long achieved a mythic hero status among the majority of the state's rural population.

In 1929, Long leveled his sights on the Standard Oil Company and called a special session of both houses of the legislature to pass a new "occupational license tax" at five cents per barrel on the production of refined oil to help fund his programs. The bill was fiercely opposed by the state's oil interests led by freshman lawmaker Cecil Morgan, a young, smart, aggressive Shreveport lawyer, and the new state representative Pike Hall Sr., both respected SBA members who were cut from the same cloth.

Morgan led a movement to impeach Long on charges ranging from blasphemy, bribery, misuse of state funds and abuse of power, which hurt Long to the quick. His strategy, led by John B. Fournet, speaker of the house, and later to serve as Chief Justice of the Louisiana Supreme Court until 1970, was to physically keep Morgan away from the microphone and have one of the Long supporters move for an adjournment *sine die* and thus the issue would never come to pass. When this strategy unfurled, Morgan physically moved for the microphone and a rough, infamous brawl ensued that spilled across the capitol floor, but in the end, the legislature voted to remain in session and proceed with the impeachment. All accounts agree that J.B. Fournet, who was a large man and a former LSU football player, bear-hugged Morgan and prevented him from reaching the podium. In the end, the House voted 58-40 to convict Long on one charge, blackmail, and the following day returned and indicted him 58-41 on all remaining charges, which were then sent to the Senate.

This resulted in a change in the Long strategy and, in the end, 15 pro-Long senators signed the controversial "round robin" paper that said in effect that they would never vote to impeach Long no matter what the circumstances, and thus Cecil Morgan's efforts failed.² Morgan died on June 14, 1999, at the age of 100. His colleague, Pike Hall Sr., died prematurely on December 16, 1945. Both men were

outstanding persons and a credit to the Shreveport Bar Association.

Following the failed impeachment attempt in the Senate, Long became more ruthless in dealing with his enemies. He fired them and their relatives in state jobs and supported candidates to defeat them in elections. This did not include any of the 27 Longs who T. Harry Williams said were holding state jobs, or his 24-year-old mistress, Alice Lee Grosjean, whom he had named Secretary of State, and also favored her with a sporty new Buick coupe, which he paid for with \$4,500 out of a special appropriation earmarked for a governors' conference to be held in New Orleans (which was later canceled). He also retained Grosjean's ex-father-in-law, who was employed in the highway department. He continued his attempt to control the judiciary and said that while there were 100 district judges in the state, he owned 70% of them.

Huey was never popular with north Louisiana lawyers or judges. On one occasion in which Huey had defamed Harmon Caldwell Drew, a longtime, respected Bossier-Webster district judge (father of Judge Harmon Drew Sr. and grandfather of Judge Harmon Drew Jr., all considered legal icons in the Bossier-Webster district) on a Monroe radio station, accusing him of being a "crook," and threatening to kill him, it was reported that Long and his bodyguards were en route to Minden and the threat of harm was in the air. A group of prominent Shreveporters who included Scott Wilkinson, Val Irion, George Hardy, Cecil Morgan and Pike Hall Sr., some of them allegedly armed, drove to Minden and met the Long crowd. Cooler heads prevailed and the incident dissolved. Huey had limited contact with Caddo and Webster Parishes after this incident, although he did agree to pass special expropriation statutes which allowed for the taking of land necessary for the construction of Barksdale Air Force Base. Huey rewarded his two former speakers of the House, John B. Fournet and Gaston Porterie, by supporting Fournet's election to the Louisiana Supreme Court in 1932 and naming Porterie as Attorney General.

He also feuded with what would become the Louisiana State Bar Association, whose first president was Pike Hall Sr., by forming his own bar association called simply the Louisiana Bar Association and named Porterie as president, who was later fired by the board of directors for ethics violations and later, after an undistinguished career as a lawyer, was named a federal judge in the Western District.

During the period 1930-1933, Huey obtained full control of the public school system, the state's bonding authority, the state hospitals, the National Guard, and, he claimed 58 of the 64 sheriffs in Louisiana. J. Howell Flournoy, in Caddo Parish, remained a staunch enemy. Long's efforts to control the Louisiana newspapers were unsuccessful and resulted in bitter opposition to him. In response, he created his own paper called *Louisiana Progress*, and it was soon apparent that only advertisers in the *Progress* would be awarded state contracts.

Huey was always a man in motion, doing the unpredictable and getting away with it. In 1930, after serving two years as governor, he unexpectedly announced that he was going to run for the U.S. Senate in 1932 and did so by defeating the incumbent, Senator Joseph Ransdell, handily. Long did not resign as Governor, saying that his leaving would hurt Louisiana, and that with Ransdell, the seat was vacant anyway. By not leaving until his term was up, he prevented the Lieutenant Governor, Paul Cyr, a former ally but now an enemy, from succeeding him and from rolling back his reforms.

Cyr's challenge to Long's governorship ended up with a 4-3 decision from the Louisiana Supreme Court denying Cyr's claims. Cyr returned to Jeanerette, still not satisfied with the situation, and even more bitterly opposed to Long.

End of Part 1

² Cecil Morgan was later elected general counsel of Standard Oil Co. and thereafter named the Dean of the Law School at Tulane University.

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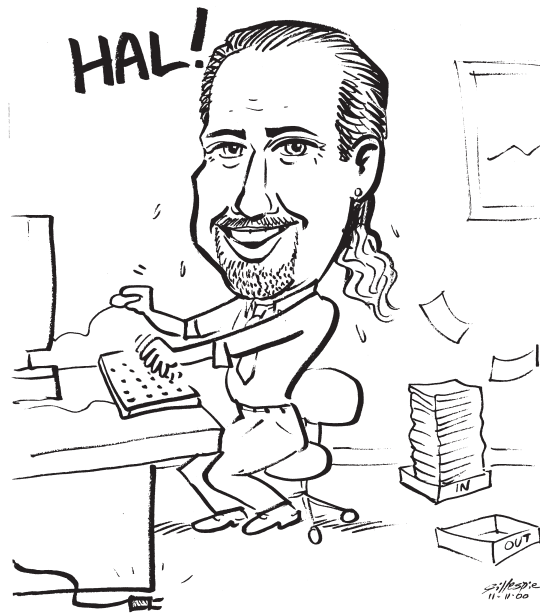
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How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

Don't miss this "cue." A reader asks if this is the correct spelling: "The defendant and other float drivers were *cued up* to move their floats into the storage garage." No, it's not.

The expression, with a whiff of British sophistication, for *form into a line while waiting* is *queue up*. It's properly used in the following: "Scotty Taylor, also a student at the school, was *queued up* behind the Gentry vehicle when the crash happened." *Gentry v. State Farm*, 45,844 (La. App. 2 Cir. 12/15/10), 56 So. 3d 353. "He *queued up* in the checkout line behind two customers." *State v. Mays*, 51,642 (La. App. 2 Cir. 11/3/17), 245 So. 3d 172. In the U.S., we usually write *lined up*, but *queued up* seems to suggest patience and lack of aggravation.



The more common word, *cue*, is a *signal* to an actor to enter the stage or start his monologue. The phrase *cue up* means to *search for and reach* a specific track on a recording, although court reporters don't always know this: "Q. Is it (the videotape) *queued up* to a certain spot when you take a look at the tape?" *Adams v. Harrah's Bossier City*, 41,468 (La. App. 2 Cir. 1/10/07), 948 So. 2d 317. Thank goodness we are not struggling with videotapes anymore! "Click the deposition of your choice and it begins playing. No *cueing up* the tape to the beginning." David C. Fulton, "Courtroom Technology: DVD, Digital, Settlement Brochures in a Tort Liability Case," 1 Ann.2001 ATLA-CLE 755 (July 2001).

As an odd aside, *queueing* is one of only eight words in English that contains a string (or a queue) of five consecutive vowels, and it is the only one that is remotely familiar. Have you ever heard any *cooeeing*?

It's raining homophones. A much more frequent error is using *reign* (rule, as a king or queen) instead of *rein* (restrain or hold back). "For the reasons set forth below, and to *reign in* the length of this opinion, we hereby adopt the findings of fact and conclusions of law made by the Commission[.]" *In re Laiche*, 2015-1691 (La. 5/2/16), 198 So. 3d 86. "There, the Supreme Court *reigned in* the ban on non-pecuniary damages in the general maritime law[.]" *Melancon v. Gaubert Oil Co.*, 17-2905 (E.D. La. 8/10/17). "With this recognition of the importance of finality, the Supreme Court began to *reign in* the use of writs of habeas corpus." *State ex rel. Neal v. Cain*, 2002-2258 (La. 10/3/03), 871 So. 2d 1071 (dissenting opinion). These should all be *rein in* or *reigned in*.

The correct usage is clear and refreshing: "This change was consistent with the goal of *reining in* public pension costs, such that any benefit provision of a public retirement system could be altered only by legislative enactment." *Retired State Employees Ass'n v. State*, 2013-0499 (La. 6/28/13), 119 So. 3d 568. "[T]he overall coverage for contractual liability for property damage is apparently *reined in* drastically by the policy exclusions[.]" *Broadmoor Anderson*

v. National Union Fire Ins. Co. of La., 40,096 (La. App. 2 Cir. 9/28/05), 912 So. 2d 400. In both instances, the court correctly meant *control* or *limit*.

The other expression can sometimes occur: "The land parcels that are the subjects of this appeal * * * were privately owned under French *reign* in the late 1700s[.]" *Plaquemines Parish Gov't v. Schenk*, 2015-0127 (La. App. 4 Cir. 12/9/15), 182 So. 2d 1122. It has been a long time since we have experienced royal hegemony.

Absolutely identical. Legal writing author Bryan A. Garner pulled this out of a recent law review article: "The Court noted that had the defendant used any different combination of elements to recreate [(a) *the same exact*; (b) *the exact same*; or (c) *exactly the same*] game, they could have avoided infringement." Which one is right?

The answer is (c), "an expression of pinpoint precision," while (b) is a "lazy truncation" of the right phrase, and (a) merits no editorial comment. Either (a) or (b) would be perfectly acceptable in informal speech, but they don't quite fit in formal writing.

Astute readers might find other enigmas in the quoted sentence. Careful writers will hyphenate *re-create* (create anew) to distinguish it from *recreate* (have fun). The defendant, a software company, is singular, and thus takes the singular pronoun *it*. And it is slightly unclear how using different elements could result in an identical product, but this might depend on some inside info known only to gamers!

Preferred expressions. The Federal Register recently reviewed its "Don't Use / Use Instead" list. Many of these are old friends, but are worth a quick reminder – starting with the letter A.

- accorded – given.
- afforded – given. These two are often, and confusingly, interchanged; I would save *afford* for *be able to pay for*.
- adequate number of – enough.
- all of the – all the. "All of" is sometimes correct, as in, "Do all of you agree?" But not in front of "the."
- approximately – about. It's bad enough to make me read a 13-letter behemoth when a short word does better. However, I have also read briefs with gems like "at approximately 8:47 pm, Harris entered the Circle K." Perhaps a jury can be forgiven for not knowing *proximate*, but with this precise time reading, the writer apparently does not know what *approximate* means!



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8:30 A.M. Helpful Hints from A to Z from Fannin Street
60 minutes *Judge Jeanette Garrett - Second Circuit Court of Appeal*

8:30 A.M. Recent Developments in Criminal Law
60 minutes *Judge Brady O'Callaghan - First Judicial District Court*

9:30 A.M. Bankruptcy
60 minutes *Judge John Hodge - United States Bankruptcy Court*

9:30 A.M. Technology in the Courts: 2018 Update
60 minutes *Attorney Melissa Allen - United States Fifth Circuit Court of Appeals*

10:30 A.M. Sponsor Break (Refreshments)

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10:45 A.M. Federal Procedure
75 minutes *Magistrate Judge Mark Hornsby - U.S. District Court, Western District of Louisiana*

10:45 A.M. United States Supreme Court Update 2017 -2018 Term
90 minutes *Chief Judge Carl E. Stewart - United States Fifth Circuit Court of Appeals*

12:00 Noon Lunch (included with full registration)

12:15 P.M. Lunch (included with full registration)

1:00 P.M. Professionalism: Changes in the Practice of Law Over the Past 50 Years
90 minutes *Judge (Ret) Eugene Bryson, Marianne Boston – Louisiana Department of Justice, Jerry Edwards – Blanchard, Walker O'Quin & Roberts, James C. McMichael Jr.- McMichael, Medlin, D'Anna, Wedgeworth & Lafargue, Anna Priestley – Regions Bank and Jacqueline Scott - Attorney at Law*

1:00 P.M. Successions
60 minutes *Attorney Bennett L. Politz - Booth, Lockard, Politz & LeSage*

2:30 P.M. Sponsor Break (Refreshments)

2:00 P.M. Sponsor Break (Refreshments)

2:45 P.M. Ethics
60 minutes *Justice Scott J. Crichton - Louisiana Supreme Court*

2:15 P.M. Appellate Practice
60 minutes *Attorney Kenneth P. Haines. - Weems, Schimpf, Haines, Shemwell & Moore*

3:45 P.M. Employment Law
60 minutes *Allison Jones - Downer, Jones, Marino & Wilhite and Michael Lowe - Kean Miller*

3:15 P.M. Winning Strategies for District and Appeal Court
75 minutes *Judge Frances J. Pitman - Second Circuit Court of Appeal, Judge Michael Pitman - First Judicial District Court and James C. McMichael Jr.- McMichael, Medlin, D'Anna, Wedgeworth & Lafargue*

Recent Developments By the Judiciary

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2018 FALL ELECTION SEASON

When: Wednesday, September 26 from 12:00 Noon to 1:00 p.m.

Where: Petroleum Club (15th floor)

Featuring: Jeremy Alford, publisher and editor of *LaPolitics.com* and *LaPolitics Weekly*

On September 26, Jeremy Alford will discuss the 2018 fall election season. Jeremy is an independent journalist and the co-author of *Long Shot*, which recounts Louisiana’s 2015 race for governor. His bylines appear regularly in *The New York Times* and he has served as an on-camera analyst for CNN, FOX News, MSNBC and C-SPAN. He is the publisher and editor of *LaPolitics Weekly*, the state’s leading trade publication for elected officials, lobbyists, campaign professionals, journalists and others making their way along the backroads of Bayou State politics. Jeremy also produces *Tuesday Tracker*, a weekly political tip sheet, as well as the *LaPolitics Report* podcast and *LaPolitics.com*, which serves as the digital hub for all of his work. His syndicated news and opinion columns run in 25 newspapers and magazines throughout Louisiana and he produces a political news feed for television stations in the Baton Rouge, Shreveport and Lafayette markets. When it’s not Mardi Gras or duck season, Jeremy lives in Baton Rouge with his wife Karron Clark Alford, their daughter Zoe and son Keaton.

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