

THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

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EVENTS AT A GLANCE

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
11/10	Justinian 5K Run and Midway to Mardi Gras Party



From The President

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

HOW TO FIGHT WISELY – THE ART OF WAR FOR FIRST GRADERS AND LAWYERS

Last month, I wrote that we are lucky to work in Shreveport-Bossier where civility and professionalism are practiced by the overwhelming majority of our lawyers and judges and exceptions are rare. I ended the column with the LSBA Code of Professionalism – thirteen rules of conduct we lawyers aspire to that are grounded in principles that have been called “mom-and-apple-pie unobjectionable” based on “fairness,” “cooperation,” “service” and “support.”

From that standpoint, they could have come from a book that came out a few years ago – “Everything I Need to Know I Learned in Kindergarten” – based on the idea that the rules we learn as four- and five-year-olds carry through and should forever guide our conduct as adults. You remember, “Share everything,” “Play fair” (actually, the foundation for our rules of professionalism), “Don’t hit people,” “Don’t take things that aren’t yours,” “Take a nap every afternoon.” You get the picture.... Nice, but somehow incomplete and vaguely innocent.

However, I have found a set of principles that offer even more guidance to lawyers on how to play fair (act professionally) while still effectively engaging in the daily litigation and negotiation battles we fight.

They are contained in a recent Japanese translation and adaptation of the ancient Chinese strategy book, *The Art of War*, by Sun Tzu, for kids six years old and older. Apparently, in Japan, if you’re old enough to read, then you need to learn to fight, or to avoid fighting, or to run away if you can’t win the fight.

Sun Tzu was an ancient Chinese warrior and military strategist who lived during the 6th century BC. *The Art of War* describes strategies and tactics for warfare that have influenced leaders throughout time, including the samurai of ancient Japan and the military of modern Japan. Many historical and modern-day military leaders are also said to be students of the book.

I have read (or tried to read) English translations of *The Art of War* in an effort to relate its principles to modern litigation for a trial advocacy program or lecture, but I never could quite make it work. Now that I know there is a version written for Japanese grade-schoolers (which is about my level of strategic thinking), I think I will renew my efforts.

The children’s version of the book is divided into four sections: winning, making your dreams come true, dealing with adversity and making one more step forward.

The perfect fighter in Japan is described in these words – “100 battles and 100 victories.” However, as the book points out, the second half of the phrase reads, “Rather than win 100 victories in 100 battles, to win without fighting is really amazing.” A surprisingly peaceful message for a book that’s supposed to be about warfare. And remarkably clear-cut advice. And, there’s more:

“The greatest victory is that which requires no battle.”

continued on page 3

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September Luncheon Highlights



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“To face the enemy head first is important. But sometimes you want to try being tactical.”

“Never interrupt your enemy when he is making a mistake.”

“Even if you win the battle but fail to achieve your goals, that is a failure. Don’t forget what you’re fighting for in the first place.”

“There’s such a thing as a meaningful escape. If you can’t win, then run away for the time being.”

“Don’t push the opponent into the wall or too far. Even in winning there must be good manners.”

“Every fight comes with danger. Think about what is to be gained and if you’re not willing to shoulder the risk, don’t haphazardly fight.”

“Compare the danger of battle to the value of what you’re fighting for and then decide on your actions.”

The Art of War even offers great practical advice for lawyers who find themselves on the same side of a dispute rather than opposing each other across the table:

“Even two people who don’t get along can work together if they find themselves on the same boat facing a common danger.”

And it could be part of a textbook on trial preparation:

“People who succeed treat information with great importance. Be sure to know the correct information even a second faster than anyone else.”

Can we apply Sun Tzu’s principles as lawyers? Certainly – Sun Tzu preaches preparation and organization as being essential in warfare. The same holds true for litigation – in order to be prepared, we must know the facts of the case, the legal side of the case and the psychological side of the case. We must know the judge, the opposing counsel and ourselves. Finally, we must be organized and immersed in the management and logistics of the case in order to fully understand and implement the strategies necessary to know how and when to fight and when to avoid fighting.

And finally, one of Sun Tzu’s overriding truths is “The true object of war is peace.” As he explained, no one ever benefits from prolonged warfare. “Only one who knows the disastrous effects of a long war can realize the supreme importance of rapidly bringing it to a close. It is only one who is thoroughly acquainted with the evils of war who can thoroughly understand the profitable way of carrying it on.” In other words, fighting for its own sake, without a clear and worthy goal for our clients, is not what we should be striving for.

The takeaway – always fight fairly, wisely and with a noble purpose. Good advice for first graders and lawyers alike.

Welcome TO THE SBA

Matthew S. Kelley
Armour Law Firm
Alexandria, LA

Jordan M. Lewis
Attorney at Law
Practicing in Dallas, TX

Jeffrey W. Price
Kean Miller LLP

DUES NOTICE

**Watch your mailbox for your
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being mailed in November
2018. Your dues must
be paid by
January 31, 2019.**



BILLY J. GUIN, JR.

Medical Review Panel

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Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

Succession matters figured prominently in the court's August 2018 opinions.

In **Succession of Watson**, 52,199 (La. App. 2 Cir. 8/15/18), __ So. 3d __, Ms. Watson left a notarial will stating, on the first page, that she wished to use the attestation requirements of La. C.C. art. 1578 (testator who knows how to sign his name and read, can read the will but cannot sign it because of physical infirmity). However, the attestation clause actually used was a variant of La. C.C. art. 1577 (testator who knows how to sign his name and read, and is physically able to do both). Ms. Watson's son sued to annul the will on grounds that the attestation clause did not comply with Art. 1578, as stated in the text of the will. The district court rejected this claim, and the son appealed, pro se.

The Second Circuit affirmed, in an opinion by Judge Stone. The form of the attestation clause is not sacrosanct, *Successions of Toney*, 2016-1534 (La. 5/3/17), 226 So. 3d 397, and only substantial compliance with attestation is required, *Succession of Holbrook*, 2013-1181 (La. 1/28/14), 144 So. 3d 845; hence, substantial compliance with Art. 1577 satisfied any requirement for attestation. The court theorized that the reference to Art. 1578 on the first page was merely "an error by the drafter of the will."

Practitioners will earnestly hope that their clients are ready to make a will while they're still healthy enough to sign the document, and thus not invoke Art. 1578. Either way, we should probably copy the suggested attestation clause word for word, just to prevent any problems.

In **Succession of Perritt**, 52,210 (La. App. 2 Cir. 8/15/18), __ So. 3d __, Ms. Perritt left a notarial will that made a particular legacy (called "Provision 3.7") of "certain certificates of deposits, bank accounts and related items," on certain of which she "designated beneficiaries pursuant to 'payable on death' provisions" of R.S. 6:314, and "should any of those designations be deemed insufficient," then "I leave to the person(s) designated in such 'payable on death' directions the account or other item identified." The will also made a residual legacy. The executrix filed a rule to determine the ownership of two deposit accounts at Home Federal Bank. The district court found that Provision 3.7 was invalid because it "made reference to another document that is not itself a will," and awarded the deposit accounts to the residual legatees. The particular legatee appealed.

The Second Circuit affirmed, in a judgment by Judge Stephens. Judge Stephens cited, with the trial court, the vintage case of *Succession of Ledet*, 170 La. 449, 128 So. 273 (1930): "A will cannot be made by mere reference to another document not itself a will, or to a former will that is invalid because of want of form." He conceded that Provision 3.7 attempted to comply with R.S. 6:314, but was still invalid because it "required the examination of extrinsic evidence of indeterminate" CDs or bank accounts. He added that the bank accounts did not really illuminate the testator's intent. Since Provision 3.7 was null and void, the residual legatees got the two Home Federal accounts.

Judge Williams concurred, finding that Provision 3.7 was ambiguous but not invalid. However, in her view, the record showed that Ms. Perritt never actually signed the pay-on-death affidavits for the two Home Federal accounts, and thus they did not really satisfy Provision 3.7. She voted to affirm on these grounds. Judge Stone concurred without stating reasons.

It takes a little more work, but it is probably better to list bank accounts, CDs and other intangible assets by account number, name of institution and title of the account. The failure to do this may well have frustrated Mrs. Perritt's testamentary intent.

In **Succession of Houston**, 52,181 (La. App. 2 Cir. 8/15/18), __ So. 3d __, Mr. Houston made Ms. Williams, an investment counselor at Jefferson Pilot, the executrix of his estate and trustee of his inter vivos trust. A 12-member jury found that Ms. Williams had been grossly negligent in administering the estate, to the tune of \$406,605, and had breached her fiduciary duty to the trust, to the tune of \$1.1 million. Ms. Williams appealed.

The Second Circuit affirmed, in an opinion by Judge Cox. It is difficult to recap the massive evidence (a relationship of five years between Mr. Houston and Ms. Williams, litigation of some nine years, a jury trial of 2½ weeks), but the independent executor alleged that assets were missing from Mr. Houston's (substantial) estate, and that Ms. Williams had improperly distributed certain assets to herself. Evidence shows that she billed the estate for having Mr. Houston over for Christmas dinner in 2006, for visiting his grave on his birthday, and for meals and drinks with her attorneys. It takes a lot of this kind of stuff to add up to \$406,605.

Among many other issues, Ms. Williams contended that the jury improperly accepted the testimony of the estate's witnesses, who never knew Mr. Houston or observed his close working relationship with her, and disregarded the testimony of herself and of one of Mr. Houston's daughters. The court quoted two full paragraphs from *Rosell v. ESCO*, 549 So. 2d 840 (La. 1989), the case cited most often in Louisiana jurisprudence to define the manifest error rule. Such a citation and quote virtually assures that the court will find no abuse of the jury's vast discretion. And it found none here.

On a different note, ***Dollar v. Laird***, 52,097 (La. App. 2 Cir. 8/15/18), ___ So. 3d ___, illustrates a very basic rule of civil procedure. Dollar and Laird were two members of an LLC; Laird transferred his interest to Dollar with a warranty that it "is not under any legal impediment or subject to any agreements that prevent its transfer[.]" However, Laird was at the time involved in community property litigation with his ex-wife: Dollar was made a defendant in that suit, and judgment was later rendered declaring the LLC interest community property, of which the former Ms. Laird was co-owner, but not fixing a dollar value. Dollar filed an indemnity action against Laird. Laird filed the dilatory exception of prematurity, as there was yet no valuation of the LLC interest. The district court sustained the exception, dismissing Dollar's suit with prejudice. Dollar appealed.

While the appeal was pending, the district court rendered a final judgment in the community property suit. The Second Circuit, in a very brief opinion by Judge Cox, found that the resolution of the community property suit made the indemnity claim ripe for resolution. It therefore reversed and remanded.

The opinion also corrected the district court's ruling: dismissal for prematurity must be *without prejudice*, since the cause of action can arise at any time – just as it did in this case. It is safe to say that but for the timely judgment in the community property suit, the Second Circuit would have amended the ruling on the exception and remanded for the parties to await that judgment. Timing can be everything.

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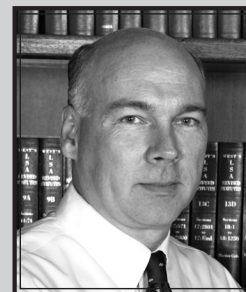
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OCTOBER 11-12

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

Justinian 5K Run

Rhino Coffee on Southfield Road

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.

The Robinson Film Center

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John Bel Edwards
GOVERNOR

Proclamation

WHEREAS, four of every five Louisianans living in poverty lack access to legal assistance that is often critical to their safety and independence, with the majority of these civil problems being domestic violence, divorce, child custody, evictions, mortgage foreclosures and the physical and financial abuse of the elderly; and
WHEREAS, legal services agencies, pro bono service programs, the State Bar of Louisiana and local bar associations throughout Louisiana have enlisted the services of volunteer attorneys to provide valuable legal services to those in need; and
WHEREAS, civil legal aid is often an indispensable tool necessary to address critical survival needs such as employment and income, housing, healthcare, education and family safety; and
WHEREAS, access to civil legal aid attorneys can mean the difference between shelter and homelessness, economic stability and bankruptcy, positive work and unemployment; and
WHEREAS, during the week of October 21 - 27, 2018 the Louisiana State Bar Association's Access to Justice Program, in collaboration with local pro bono projects, businesses, government agencies and community organizations will be celebrating "Pro Bono Week" and the "Lawyers in Libraries" program to highlight the work of Louisiana's pro bono community and the difference it makes to our state, our system of justice, our communities and most of all, to the clients served.

NOW, THEREFORE, I, John Bel Edwards, Governor of the State of Louisiana, do hereby proclaim October 21-27, 2018 as

PRO BONO WEEK
in the State of Louisiana.



In Witness Whereof, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 21st day of October A.D. 2018.
[Signature]
Governor of Louisiana

Local Court Group Donates \$10,000 to Benefit Barksdale Airmen

The Federal Bar Association of North Louisiana held its 6th Annual Clay Shoot Fundraiser at the Shreveport Gun Club on Friday, Sept. 7. For the third straight year, the beneficiary of the fundraiser was Operation Bright Holiday, a project that helps send first-year airmen at BAFB home for the holidays.

A \$10,000 check was presented by Scott Chafin, fundraising chairman and former president of the local FBA chapter, to Col. Michael Miller, 2nd Bomb Wing Commander. The donation is expected to help approximately 80 airmen spend the 2018 holidays with their families.

More than 80 shooters participated in the clay shoot, and over 15 airmen from Barksdale volunteered to assist.

Current officers of the local FBA chapter are President Whitney Howell, Immediate past-president Alexander Mijalis, Vice-President Will Huguet, Secretary-Treasurer Jason Nichols and Fundraising Chairman Scott Chafin. Team Sponsors for the 2018 Clay Shoot were Cook Yancey King & Galloway; Cole, Evans & Peterson; Gregorio, Chafin, Johnson, Poolson & Tabor; Rice & Kendig; BRF; Kean Miller; Fischer & Manno; Milan G. Mody, M.D.; Bradley Murchison Kelly & Shea; Wiener, Weiss & Madison; Boeing; Pilant Court Reporting; and Blanchard Walker.





Krewe of Justinian XXV 4th Annual

Midway to Mardi Gras 5K "Run for the Beads"

Saturday November 10, 2018

supporting the

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www.shreveportbarfoundation.org

**The first 300 finishers will receive a specialty bead!*

Date & Starting Time: Saturday, November 10, 2018 • Fun Run begins at 7:30 am • 5K begins at 8:00 am

Location: **RHINO COFFEE** • 721 Southfield Rd, Shreveport, LA 71106

Early Bird Registration: Sept 1 - Nov 9 • \$25 • Includes T-shirt

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Race Day Registration: \$35 • T-Shirts not guaranteed

T-shirt & Packet Pick-Up: Every pre-registered participant will receive an original race t-shirt. Packet pick-up will be held at Sportspectrum on Thursday, Nov 8 from Noon to 7 pm and Friday, Nov 9 from 10 am to 5:30 pm. You may also pick up your packet on Race Day at the race site at 7:00 am.

Awards: Overall Male & Female finishers in the 5k race will receive \$100. Overall M/F age group 1st place winners will receive \$25. Additionally, the first 300 finishers will receive a specialty bead.

Age Groups: <19, 20-29, 30-39, 40-49, 50-59, 60+

Post Party: Join us after the race for coffee and breakfast at **RHINO COFFEE!**

Special Note: Strollers, wagons, baby joggers and any hand-pushed or pulled vehicle will be allowed on the course, but at a walk pace only. Absolutely NO in-line skates, roller skates or runners with baby strollers will be allowed on run course. This is an RRCA regulation!

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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.



Veterans Day Program

The Shreveport Bar Association 2018 Veterans Day program will be held on Wednesday, November 7 beginning at 12:00 Noon at the Petroleum Club (15th floor).

Our Veterans Day Program special guest speaker U.S. Coast Guard Captain Kristi M. Luttrell, Deputy Sector Commander, Sector New Orleans.

Whether you have served or not, please join us on Wednesday, November 7th as we honor our SBA Veterans



Memorial & Recognition Ceremony

Members of the Shreveport Bar Association are encouraged to participate in the annual Memorial & Recognition Ceremony to be held Tuesday, October 30 at 2:00 p.m. at the Caddo Parish Courthouse in Courtroom G. It is an opportunity for SBA members to honor the deceased and celebrate their contributions to the profession and to the sanctity of law. Their families are also invited and truly appreciate this show of honor and respect. The memorial service is followed by the introduction of new lawyers, which is an important and meaningful kickoff tradition for those just starting to serve the legal profession.

In addition to honoring deceased members and recognizing new members, this gathering presents an occasion to reflect on your own legal career and to encourage those who are just entering the profession.

A reception following the Memorial & Recognition Ceremony will be held at the Shreveport Bar Center, 625 Texas Street.

Attention All Attorneys!

**New Attorneys will be honored on October 30.
Please pass this information along to anyone who
passed the Louisiana Bar Exam in 2018.**

In connection with the SBA's Memorial & Recognition Ceremony being held on Tuesday, October 30, 2018, the following events have been planned for area new attorneys:

8:30 AM – 1:30 PM New Attorney Seminar – Petroleum Club (15th Floor) – Energy “A” Room (includes lunch). All new attorneys who have passed the Louisiana Bar Exam in 2018 are invited to attend the seminar.

2:00 PM – Memorial & Recognition Ceremony – Courtroom G – Caddo Parish Courthouse

**Reception immediately following at
the Shreveport Bar Center, 625 Texas Street**

All attorneys who have passed the Louisiana Bar Exam in 2018 will be recognized during the ceremony. Attorneys and judicial offices are asked to turn in any names of attorneys who have passed the bar to Dana at the SBA Office either by email: dsouthern@shreveportbar.com, telephone (222-3643) or fax (222-9272).

In Memory of:

Susan Armstrong

Victoria Marie Cranford

Peter Reichman Flowers

Robert Kirk Mayo

Michael Allyn Stroud

The Shreveport Bar Association
and Judges of the
First Judicial District Court
cordially invite you
to attend the annual

Memorial & Recognition Ceremony

honoring deceased and
new members of the Bar
Tuesday, the thirtieth of October at
Two o'clock in the afternoon
Courtroom G
Caddo Parish Courthouse
501 Texas Street
Shreveport, Louisiana
Reception to follow
at the Shreveport Bar Center
625 Texas Street Shreveport, Louisiana



Legal Hist

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

HUEY LONG: THE POLITICIAN (1910-1935)

PART 2. SENATOR LONG GOES TO WASHINGTON

In the winter of 1932, Long and his entourage consisting of his wife, Rose, Governor-elect O.K. Allen, Seymour Weiss, J.B. Fontenot, Mayor Walmsley of New Orleans and Bob Maestri, boarded the *Crescent Limited* of the Southern Railroad and departed for Washington, D.C. Arriving the following morning, they checked into the Mayflower Hotel and Huey entered the Senate chambers where the Republican leader of the Senate, Jim Watson of Indiana, was idling on the floor. Huey approached and slapped him sharply in the chest saying, "Jim, I want to get acquainted with you," to which Watson replied "Well, who in the hell are you?" Long replied in a loud voice, "I am Huey Long."

That afternoon, he reentered the chambers for a swearing-in ceremony smoking a cigar, indicating he was unimpressed with the Senate's no-smoking tradition and placing the smoldering cigar on another senator's desk while he held up his right hand to be sworn in. It was customary for the other senator from the state to swear in new members, but his opposite from Louisiana, Edwin Broussard, was a bitter enemy, who was demanding that Huey resign as governor, and refused the honor. Thus, Huey was sworn in by his old friend, Senator Joe Robinson of Arkansas.

Huey lasted only one day in Washington, for he received word that the Lieutenant Governor, Paul Cyr, was marching on Baton Rouge and thus Huey caught the *Crescent Limited* for the return trip to Louisiana where he managed a short press conference. He told reporters, "The Democrats seem like a whipped rooster with the victor pecking us on the head, and all standing there bleeding, taking it."

He found that Cyr was in Baton Rouge, claiming to be governor and that Huey could not hold two positions at the same time. Cyr had the oath administered to him and ignored the Supreme Court decision. Huey learned that Cyr was operating "executive offices" out of a suite at the Heidelberg Hotel and had the manager evict him; Cyr returned to Jeanerette. Huey, fearing that Cyr would return and attempt to occupy the governor's mansion, ordered out several units of the National Guard to encircle the mansion, close it to visitors, and this threat never materialized.

Before returning to Washington, Huey and Rose completed the move from Shreveport to New Orleans where he settled into an Italian Renaissance mansion on Audubon Boulevard, but still retained his suite in the Roosevelt Hotel.

While in New Orleans, with Mardi Gras approaching, Huey called President Smith of LSU and ordered the university band sent immediately to New Orleans. This was accomplished. That night Huey and the huge band, clad in purple and gold, surprised the crowd by marching at the Head of the Parade of Rex down Canal Street with Huey waving a baton and very much in his cups. Surely he was one of a kind.

Following Mardi Gras, Long returned to Washington and soon began to make his mark on the Senate floor. While his contemporaries normally wore black or gray suits, Huey showed

his independence by wearing his traditional double-breasted white suit or a brown tweed outfit, accompanied by pastel blue or pink shirts, all with a bright red tie and pocket handkerchief.

His first meeting with President Roosevelt was a disaster. Invited to the White House, Huey wore his straw Panama hat at all times, persisted in calling FDR "Frank," a name that no one else had ever used, and interrupted the President constantly, attempting to say that the New Deal Social Security program and pension plans were already covered by his Share the Wealth program. Upon Huey's departure, Sara Roosevelt, the President's mother, leaned over to the person next to her and asked, "Who is that awful man seated next to my son?"

In May of 1935, Long began his pursuit of the Presidency. Convinced that there was a plot to kill him, he announced his candidacy for president in August 1935 with six armed bodyguards at his side.

The summer of 1935 was beastly hot in our nation's capital. Thousands of Shriners invaded Washington for their national convention and the conventioners, being a festive bunch, wanted to see the most entertaining show in town. Huey Long did not disappoint them. They packed the Senate galleries and easily recognized Long from his white suit and pink shirt and tie. At 3 p.m., Long took the floor and began a filibuster that would last until dawn the following morning, a total of 15½ hours. After spending four hours attacking Roosevelt's NRA, calling it the "National Racketeers Association," "National Ruin Administration," "Nuts Running America" and "Never Roosevelt Again," he shifted gears and read each section of the Constitution; then gave a biography of Frederick the Great and Victor Hugo, described his recipe for Roquefort salad dressing, told his colleagues how to fry oysters, all the while sipping milk and gnawing on a sandwich. At this point, many of the senators were falling asleep and Huey asked Vice President John Garner, who was presiding over the session, if he would force the senators to stay awake and listen to him. Garner, not noted for his intellect or sense of humor, replied, "That would be unusual cruelty under the Bill of Rights" and so Huey continued on, giving a treatise on how to brew and drink Louisiana coffee. Senators were miserable. A new cooling contraption refused to work. One senator later wrote his son, saying, "Nobody knows what he is trying to do, and he does not know himself."

At 5:30 the following morning, the daylight beginning to struggle through the capitol's windows, Huey began to stagger and shake, had trouble speaking and then raced for the men's room. His opponents immediately took over the floor, called for the NRA vote, which passed easily, 41-13. During 1935, Huey staged five similar filibusters, primarily opposing Roosevelt's New Deal program. One of these filibusters delayed a needed \$100 million funding for Social Security, which resulted in Huey's few Washington allies turning their backs on him.

Back in Louisiana, the heat and morale were even worse. A New Orleans businessman by the name of Oscar Whilden had

formed an organization known as the Square Deal Association, which was strongly anti-Long and had some members who were better known for violence and trepidation. On July 17, 1935, two dozen Louisiana state policemen broke into his three-floor apartment in the French Quarter without any warrant, searched the premises and found only one handgun.

The wracking of Whilden's apartment was not the only sign of suffering during that hot, wilting summer. New Orleans was at a boiling point. City workers were being let off, unpaid, and families were falling off the welfare rolls as Huey, still in control, refused to release state funds allotted to Roosevelt's welfare program, to the city. Garbage rotted and piled up in the streets. Tempers were high, and the murder rate, already high, rose rapidly. Many New Orleanians carried a gun, agreeing that if someone was to be shot, it should be Huey Long.

Later that week, two hundred of Long's close, bitter opponents gathered on the 5th floor of the historic DeSoto Hotel for a "what to do" meeting. The Long forces, hearing of the meeting, arranged to secretly have it recorded. Among those present were Mayor Walmsley, ex-senator J.Y. Sanders Jr., ex-governor Parker, and noted newspaper editor Hodding Carter. Men from Whilden's Square Deal Association were also present, saying they were "ready to levy war" and advocating taking over the state capitol of Baton Rouge. These were serious times indeed. Cooler heads prevailed, advocating that a personal message be delivered to FDR that the people of Louisiana were behind him and that the Long dynasty was collapsing of its own weight. In later testimony, there were conflicting views as to whether or not a murder plot was hatched against Huey. In any event, soon after the meeting adjourned, one of Huey's men called him in Washington to warn of the temperament and assassination discussion. Huey, now more red-faced and animated than ever, returned to the Senate floor, told of the plot, and President-to-be, Harry Truman, then presiding over the senate, stated, "Does anyone doubt that President Roosevelt would pardon the man who rids the country of Huey Long?"

All in all, Huey's time in the senate was as underwhelming as his term as governor in Louisiana was fueled with fire and fury. Much of his time in Washington was spent in promoting the "Share Our Wealth" program which at its height had 720,000 dues-paying members and 22,000 active chapters scattered throughout the United States. Thirty-four typists were required to take care of the volume of mail generated by the organization and its income exceeded \$1 million a month.

All of this did not go unnoticed by President Roosevelt, who broadened the Social Security program to include higher benefits, medical payments and broader old-age pensions. He also launched the IRS to investigate Long's tax returns, but the results turned up empty.

Back in Louisiana, Huey continued his program with increased taxes on industry, particularly Standard Oil. To keep things in shape while he was in Washington, Huey installed in the role of governor O.K. Allen, a failed Winnfield businessman, as his permanent yes-man who could be counted on to do Huey's will, regardless of the law or consequences

On Saturday morning, September 7, 1935, a week after his 42nd birthday, Huey Long called another special session of the legislature. Even though it was on short notice, most of them were happy to travel to Baton Rouge and receive the \$10 a day per diem and 10¢ a mile, which was a significant income during the Depression.

At 10:00 that night, the Senate went into session, while across the hall, speaker Allen Ellender¹ counted 85 of 100 representatives at their desks. Forty-two bills were introduced in the House, of

which 39 were requested by Huey, and all the bills were referred to one committee. The Senate met briefly and adjourned until Monday morning, awaiting House action on the bills.

The House committee met on Sunday morning, September 8, and all 39 of the bills he requested were easily approved. The House was then scheduled to meet at 8:00 p.m. that night to receive the committee report and schedule the bills for discussion the next morning. The House was gavelled to order at 8:30 p.m., with Huey in attendance. Huey sat next to speaker Allen Ellender to ensure that his legislators had "voted right." Ellender said that all was well and everything passed uneventfully. The House was preparing to adjourn at about 9:30 p.m. when Huey exited the chamber through the side door and turned west into the marbled corridor leading to the governor's office, accompanied by a large group of followers, including John Fournet, now a justice on the state Supreme Court, and also by John O'Connor of the Public Service Commission and the Reverend L.K. Smith, a supporter of Long's Share the Wealth plan. He always walked fast, and his bodyguards were walking just behind him, trying to keep up.

As they approached the governor's suites in the center of the building, just behind the main lobby, he asked a secretary where Bill Pegues was, one of his supporters who was not present, and stated, "We need his vote tomorrow." The secretary said that Pegues was at home, and Long replied, "We'll need his vote tomorrow."

At that moment, a thin young man with big spectacles and wearing a light-colored linen suit stepped out from behind one of the pillars and approached Huey. He brushed through the entourage, holding his hat in his left hand, and, according to Fournet, raised a small black automatic pistol in his right hand and fired one shot into Huey's chest from about 4 feet away. Shortly after being shot, the expiring Long reportedly said, "I wonder why he shot me." Huey hollered, turned around and ran back down the corridor for the governor's office. At least four of the bodyguards opened fire on the assassin, shooting him over 60 times as he crumbled to the floor. Meanwhile, as bullets ricocheted off the marble walls, Long staggered alone from the scene and started down the stairway, leading down to the capitol basement. He encountered his friend, Jimmie O'Connor, and said Huey replied, "Jimmie, my boy, I've been shot." O'Connor helped into an automobile which he flagged down and instructed the driver to go to nearby Our Lady of the Lake Hospital.

Long died two days later of internal bleeding, following Dr. Arthur Vidrine's attempt to close the wounds. His last words were, "God, don't let me die. I have so much to do." Huey's funeral was three days later, the largest gathering in Louisiana history, attended by close to 200,000 people, to hear the oration by reverend Gerald Smith, Huey's partner in the Share Our Wealth organization. His pallbearers were those closest to him, and included O.K. Allen, Seymour Weiss, John Fournet, Robert Maestri, Allen Ellender and Jimmy Noe. Huey was buried in the garden spot in front of his State Capitol alongside the Mississippi River. Some 70 years earlier, another governor, the beloved Henry W. Allen, was buried in similar location on the high bank of the Mississippi River in front of the old gothic State Capitol.

The shooter, Carl Weiss, was a 30-year-old physician, educated at Tulane and with medical degrees in Paris and Vienna. Weiss practiced with his father as an ear, nose and throat specialist in Baton Rouge. He was known as being reserved, with interest in music, painting and mathematics. Weiss had never met Huey. The only apparent connection between the two was that Weiss's wife, Yvonne, was the daughter of respected St. Landry Parish district

¹ Ellender later became a U.S. senator in 1951 and died during the senatorial campaign of 1971, thus assuring the election of SBA member J. Bennett Johnston Jr. to the U.S. Senate.

judge Benjamin Pavy, who had been gerrymandered out of his judgeship by the legislation that Huey had pushed through prior to the shooting. Further, Huey had fired Yvonne's uncle, Paul Pavy, from his job as principal of Opelousas High School, as well as her sister Marie, who was a schoolteacher in Eunice. Although we may never know Weiss's precise motivation, it is most likely that Long's petty act of trying to destroy his father-in-law was simply the last straw that broke the camel's back.

An alternative theory is that Weiss was not armed and had punched Long in the mouth, not shot him, and that, instead, Long was struck by a stray bullet from his own bodyguards, who shot Weiss after they mistakenly believed that Weiss was going to shoot Long. Francis Grevemberg, superintendent of the Louisiana State Police from 1952 to 1955, who is best remembered for his fight against organized crime, supports this view of the shooting. Grevemberg's memoirs, *My Wars: Nazis, Mobsters, Gambling & Corruption - Col. Francis C. Grevemberg Remembers*, describes how during a ride into north Louisiana, state troopers told of the shooting of Huey Long in 1935. They stated that Carl Weiss was not armed, and that Long was in fact shot to death by his own bodyguards.

Grevemberg described how the assassination of Long came up during a conversation among four troopers who were accompanying Grevemberg on a casino raid. He said the troopers told how Weiss's gun had been taken from his car after the shooting. "It appears * * * that all of the actions following the shooting were a conspiracy to cover up the accidental death of Senator Long and the killing of Dr. Weiss," said Grevemberg. The troopers told Grevemberg that what started out as a fist to Long's lip by Dr. Weiss, triggered an accidental shooting that ended in a hail of gunfire.² This claim was also repeated in a 1990s segment of the NBC series *Unsolved Mysteries*. The claim has been rejected by scholars, claiming that the troopers were repeating a story that was invented after the fact by anti-Long politicians and spread widely.³

Michael Wynn, a Louisiana historical collector and co-author of a popular play, "Who Shot The Kingfish," about the shooting in which the audience decides what happened, said, "The two most amazing things about the U. S. Senator Huey P. Long's assassination are that it was never investigated by the FBI or any other Federal agency nor was there an autopsy performed." He further stated, "The only premise that I personally believe in, is that no matter what theory that you believe in personally, there exists serious and believable evidence that disputes your theory, as well as other theories."⁴

As H.L. Mencken, the sharp-pen editor of *The Baltimore Sun*, wrote, Long was a "backwoods demagogue of the oldest, most familiar model – impudent, blackguardly, and infinitely prehensible."⁵

Despite this view, his constituency in Louisiana remained faithful to the end.

Thanks and credits:

Edward F. Haas & Glenn R. Conrad, eds., *The Age of the Longs, Louisiana, 1928-1960*. Lafayette, La.: U. of La. at Lafayette Press, c2001 (La. Purchase Bicentennial Series in La., No. 1).

E. Phelps Gay, "The History of the Louisiana State Bar Association." 60 La. Bar J. 466-472 (April/May 2013).

Hon. Harmon Drew Jr., personal interview with the author, June 29, 2018.

Judge Pike Hall Jr., law partner, personal conferences with the author, 1961-1971.

Charles Salley, former LSBA president, personal interview with the author, June 29, 2018.

W. Scott Wilkinson, law partner, personal conferences with the author, 1948-1984.



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² T. Harry Williams, *Huey Long*. New York: Knopf, c1969, pp. 870-71.

³ "Francis C. Grevemberg: A Legend Lost," *La. Trooper* (Summer 1990), pp. 39-59.

⁴ Robert Travis Scott, "The enduring mystery of who killed Huey P. Long." *Nola.com/The Times Picayune*, 9/5/10, https://www.nola.com/politics/index.ssf/2010/09/the_enduring_mystery_of_who_ki.html

⁵ Richard D. White, *Kingfish: The Reign of Huey P. Long*. New York: Random House, c2006, p. 122.

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

It's not greater, it's ... From a published opinion: "Defendant was sentenced to a lesser sentence based on the lessor included conviction upheld by this Court and within the new sentencing range as a second felony offender." Is the court maligning somebody's tenant? No, it just made a typo for *lesser*, meaning *shorter* (sentence) or *less serious* (offense). Officially, it's a "lesser and included grade of the offense," La. C. Cr. P. art. 815. The court got it right the first time, but wrong the second. *State v. Beason*, 17-254 (La. App. 5 Cir. 11/15/17), 232 So. 3d 1255.

This error is surprisingly frequent. "[T]he following verdicts are responsive: (1) Guilty; (2) Guilty of a lessor and included grade of the offense[.]" 26 La. Supreme Court Reports No. 7, p. 9 (July 2018). "Here, although * * * Falkins was charged with home invasion when a person under the age of 12 is present, the jury found him guilty only of the lessor included offense of attempted unauthorized entry of an inhabited dwelling." *State v. Falkins*, 2012-1654 (La. App. 4 Cir. 7/23/14), 146 So. 3d 838. "And then, May 30, 2014, which is the instant case of first degree murder which ended up being a verdict of the lessor included offense of manslaughter[.]" Trial transcript of *State v. Ware*, case in 27th JDC, as quoted in state's brief.

Go easy on those tenants. Always use the *lesser* included offense.

Not permissible. From a trial transcript in the First JDC: "Just take a look at that, and it says, Mr. Ritchie I think actually read it *allowed*[".] This is a classic homophone, but extremely rare in legal writing. The word for *audibly* is *aloud*; the word used by the court reporter means *permissible* or *legal*. Chief Justice Sanders showed deft control of the two: "At the State's request and over a defense objection, the Clerk was *allowed* to read the document *aloud*." Since the document was already in evidence, there was no violation of the "best evidence" rule. *State v. Rowell*, 306 So. 2d 668 (La. 1975).

This is one you don't have to whisper. Your outdoor voice is permitted.

Prefix predicament. A reader asks: a document is damaged after a person has signed it; the attorney sends it through the printer and asks the person to *sign it again*; is the request to *resign* the document, or *re-sign* it?

The standard rule is stated in *The Chicago Manual of Style*: Compounds formed with prefixes are normally closed, whether they are nouns, verbs, adjectives or adverbs. "Closed" means *not hyphenated*. The examples are *nonviolence*, *prewar*, *underpayment*. There are, however, certain exceptions. A hyphen is needed to separate two *i*'s, two *a*'s, "and any other combination of letters or syllables that might cause misreading." In the case of *signing something again*, the closed compound *resign* would cause confusion: *resign* means to give up a position or job. The client must *re-sign* the paper. Saints fans were



glad that Drew Brees *re-signed* with New Orleans and didn't *resign* from the team. (He had 50 million reasons to stay.)

Some other common words requiring a hyphenated *re-* would include:

- *re-lease* = lease the same property again, distinguished from *release* = let go of
- *re-cover* = put a new cover on (a couch, a chair, a book), distinguished from *recover* = get back (one's money) or get well (from an illness)
- *re-creation* = act of building or assembling the same thing again, distinguished from *recreation* = amusement or fun
- *re-present*, an ungainly word for to exhibit again, distinguished from *represent* = act as an attorney for, inherit the portion of a predeceased parent, or depict something by imagery.

The other prefix that seems to baffle legal writers is *pre-*. Please write it down, once and for all, the word for *occurring prior to trial* is **pretrial**, no hyphen! The correct, unhyphenated word appears uniformly in the Federal Rules of Civil Procedure, the Louisiana Code of Civil Procedure and published opinions of the U.S. Supreme Court. The substandard, hyphenated word appears in a few Louisiana Supreme Court opinions ("Fon's filed several *pre-trial* motions including motions to exclude the expert testimonies of Drs. Geller, Guzzardi and Richardson") and lingers in a few underutilized rules, such as La. S. Ct. Rule I, Section 6(e) ("The transcripts of *pre-trial* hearings shall conform to the requirements of Section 5(i) above") and La. District Court Rule 15.0 (amended in 2010 to remove an appearance of *pretrial* from the same sentence).

In one instance, however, I would disagree with *The Chicago Manual of Style's* recommendation. It suggests that the word for a *fellow employee* is a *co-worker*, hyphenated to avoid the resemblance to a milk-producing farm animal. However, Bryan Garner's *Dictionary of Modern Legal Usage*, 2 Ed., as well as the *American Heritage Dictionary of the English Language*, 4 Ed., both list the closed, unhyphenated form, *coworker*. This word is so frequent, and exposure to dairy farms so rare, that there should be little chance of confusion.

It's shrinking. Since I wrote about it in my first *How Write You Are* installment, October 2000, the grammatically uninformed phrase *de minimus* has virtually vanished from published legal opinions! The latest appearance I can detect praised "the *de minimus* amount of time and effort by the trial judge in conducting a colloquy in compliance with Faretta[.]" *State v. McCorvey*, 2016-423 (La. 4/7/2017), 215 So. 3d 213 (concurring opinion). If it's too small to matter, it's *de minimis* – all those little vowels.



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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*
- 9:30 A.M. Employment Law**
60 minutes *Allison Jones - Downer, Jones, Marino & Wilhite and Michael Lowe - Kean Miller*
- 10:30 A.M. Sponsor Break (Refreshments)**
- 10:45 A.M. Federal Procedure**
75 minutes *Magistrate Judge Mark Hornsby - U.S. District Court, Western District of Louisiana*
- 12:00 Noon 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*
- 2:30 P.M. Sponsor Break (Refreshments)**
- 2:45 P.M. Ethics**
60 minutes *Justice Scott J. Crichton - Louisiana Supreme Court*
- 3:45 P.M. Bankruptcy**
60 minutes *Judge John Hodge - United States Bankruptcy Court*

Friday, October 12, 2018

- 7:30 A.M. Continental Breakfast**
- 8:30 A.M. Recent Developments in Criminal Law**
60 minutes *Judge Brady O’Callaghan - First Judicial District 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)**
- 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*
- 12:15 P.M. Lunch (included with full registration)**
- 1:00 P.M. Successions**
60 minutes *Attorney Bennett L. Politz - Booth, Lockard, Politz & LeSage*
- 2:00 P.M. Sponsor Break (Refreshments)**
- 2:15 P.M. Appellate Practice**
60 minutes *Attorney Kenneth P. Haines. - Weems, Schimpf, Haines, Shemwell & Moore*
- 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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SBA LUNCHEON MEETING - OCTOBER 24

Petroleum Club (15th Floor) – Buffet opens at 11:30 a.m. Program and Speaker from 12:00 Noon to 1:15 p.m. \$30.00 for SBA members includes lunch with advance reservation and \$35.00 for late reservation (after 5:00 pm the Monday prior to the luncheon) and Non SBA Members

Mr. Johnson’s presentation is eligible for 1 hour CLE credit



2018 LEGISLATIVE UPDATES

When: Wednesday, October 24 from
 12:00 Noon to 1:15 p.m.

Where: Petroleum Club (15th floor)

Featuring: H. Alston Johnson III

H. Alston Johnson is a favorite presenter at the SBA luncheon series. His annual Louisiana legislative update CLE is highly anticipated and well-attended. Johnson was for many years senior counsel in the Baton Rouge office of Phelps Dunbar LLP, with a particular emphasis on complex litigation and appellate matters. He received his J.D. from the Paul M. Hebert Law Center and is now an adjunct member of the LSU Law faculty.

He is the author or co-author of three books on Louisiana law, published by West Publishing Company in the Louisiana Civil Law Treatise series: *Louisiana Worker’s Compensation Law and Practice* (Fourth Edition); *Louisiana Insurance Law and Practice* (Second Edition, with Shelby McKenzie); and *Louisiana Civil Jury Instructions* (Second Edition). He was associate editor of the Louisiana Law Review and member of the Order of the Coif. In 2005, he was chosen for the Curtis R. Boisfontaine Trial Advocacy Award by the Louisiana State Bar Association. In May, 2006, he was honored by the Louisiana Bar Foundation with its Distinguished Attorney Award for 2005.

2018 SBA Professionalism Award will be announced at October Membership Luncheon

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You may confirm your reservation(s) by email, telephone, or fax.
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I plan to attend the September luncheon. Attorney: _____

Please remember to call and cancel if you’re unable to attend. The SBA pays for each reservation made. Thank You!