

THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

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EVENTS AT A GLANCE

- 3/27 SBA Membership Luncheon – 12:00 p.m.
- Petroleum Club
- 5/1 SBA Law Day Luncheon – 12:00 p.m. -
Petroleum Club
- 5/3 Red Mass – Holy Trinity Catholic Church
- 5/7 Give for Good – Rhino Coffee Downtown
- 5/13 SBA Golf Tournament – East Ridge
Country Club
- 5/17 North Louisiana Appellate Conference –
Second Circuit Court of Appeal



From The President

by Curtis R. Joseph Jr., President, curtis@wjlawfirm.net

WHY ASK WHY?

At the end of each summer, as veteran students are preparing to return to school and new students are on the eve of matriculating, Washington and Lee's local alumni chapter hosts a rather nice going-away party. I had recently graduated from law school when I attended the gathering at the end of the summer of 1996. Being a recent graduate, I didn't quite know what was in store for me, either personally or professionally. And the strangest thing occurred in the weeks following the going-away party. I returned to work the following Monday and worked through the summer and into the fall. There was a red maple tree just outside the window to my office. As the seasons changed, I watched the leaves change color and slowly fall from the tree. Then it dawned on me. Unlike the students headed up to Virginia, I wasn't going anywhere. Much like the red maple, the seasons of my life were changing. I was settling into the everydayness to which we all gradually become accustomed.

As lawyers, we're frequently called to attend speaking engagements. People want to see us; they want to touch us; and, they typically want to hear what we have to say. In this regard, I recall attending a middle-school function wherein the students were tasked with interacting with adults in rapid fashion while taking notes. Bear in mind, I apply the term "adult" loosely to what I was at the time. In any event, the function was closely akin to speed dating, but from the standpoint that the students were seeking to learn about our various professions. Of the questions posed by the students, the one that stuck with me throughout the affair and afterward was, "What do you do every day?" Pause and reflect on that for a second. What do we do every day? More importantly, why do we do it?

Among the many things that I learned from Wellborn Jack Jr. was a methodology for eliciting witness testimony. With the following, you can literally ask questions all day: who, what, where, when, how, explain, describe, and tell me. Wellborn purposefully left "why" out of the initial set. As he explained, people are typically loath to discuss the "why" of any given situation. Discussing the "why," unlike the other questions, requires introspection because it addresses motive and intent. Having said that, why is it that we become lawyers?

During the summer of 2001, I attended a two-week trial practice seminar in Macon, Georgia, at the Mercer School of Law. I was surrounded by some of the best trial lawyers in the country, and we were immersed in the nuts and bolts of "how" to practice law; specifically, how to try criminal jury trials. Of the approximately 150 participants, I was the only one whose practice was primarily focused on civil litigation. The rest were state or federal public defenders. By and large, given their respective caseloads, most never had the opportunity to visit with their clients until they were about to call the case for trial. Yet, in terms of their motive for becoming lawyers, for most, the "why" was plainly obvious.

Given the great lengths to which we go in order to pursue this extraordinary calling, what is the payoff that we hope to achieve? Aside from the desire for increased earning

continued on page 3

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February Luncheon Highlights



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potential, many cite prestige, intellectual challenge, family tradition, transferable skills, flexibility and the opportunity to advocate on behalf of others as the rationale for why they became lawyers. For those of us who have been fortunate to practice the art and science of this noble profession, you will agree that, as with most arguments, there are at least two sides to the story.

Although there are tremendous rewards, there are also certain drawbacks that are attendant with the practice of law. Among the pitfalls that we must navigate are stress, long hours, alcohol and drug addiction, marital and family strife, and ever-rising law school debt. We've all heard people quip that so-and-so would make a good lawyer because they like to argue. However, in truth, a penchant for arguing will only go so far, and when bogged down in the minutiae of our day-to-day grind, the focus of your arguing will be directed inward. Why did I do this?

To this point, Judge Learned Hand has noted, "It is the daily, it is the small; it is the cumulative injuries of little people that we are here to protect ... If we are able to keep our democracy, there must be one commandment: Thou shalt not ration justice." According to Justice Benjamin Cardozo, "Membership in the bar is a privilege burdened with conditions." And, the Notorious RBG encourages us to "Fight for the things that you care about but do it in a way that will lead others to join you." In that regard, Justice Ginsburg essentially takes a page from my grandmother's book: You attract more flies with honey than vinegar.

One of my personal favorites, Clarence Darrow, rose to prominence as the most noted labor lawyer in the country, then shifted the focus of his practice to criminal law because, in his opinion, without adequate representation, defendants' lives were often ruined regardless of their guilt or innocence. During the mid-1920s, Darrow's cases captured the public's attention like today's trials involving Orenthal James "O.J." Simpson, George Zimmerman or Casey Anthony. For examples, see the trial of Leopold and Loeb, or the Scopes Monkey Trial.

Nevertheless, Darrow was constantly in pursuit of the "why" as it regards the practice of law. Consequently, in the months and years following the Scopes trial, he spent the enormous capital that he'd garnered, both monetarily and in terms of renown, defending African Americans, and ultimately serving as a founding attorney for the NAACP. Interesting sidebar: Darrow befriended my wife's great-grandfather, Rabbi Charles Mantinband, and my wife's grandmother has been so kind as to bequeath several of Darrow's inscribed writings to this lawyer. For his part, Darrow suggests, "As long as the world shall last there will be wrongs, and if no man objected and if no man rebelled, those wrongs would last forever." I think he was onto something.

My kindest regards,

Curtis



Women's Section

by Sarah Giglio,
sarah@gilmergiglio.com

Spring is just around the corner, and we hope each of you had a fabulous Mardi Gras season.

We are so grateful to Judge Elizabeth Foote of the Western District of Louisiana for opening up her Chambers to the Women's Section on February 19 and hosting us for a luncheon where members of the Women's Section got to learn more about federal courts and practice.

The officers of the Women's Section are working hard to plan events for the rest of the year, and we anticipate our March event being at Artipsy – look for details on that event in our next Women's Section newsletter.

Additional events that we are working on include hibachi dinner, bowling, and possibly even a cooking class. Of course, we will also host several more "Wine Down Wednesdays" throughout the year as well.

Please be on the lookout for our e-newsletter the first Monday of each month to get updated information about our events. Also, let us know when you have accomplishments, special announcements, etc., that you would like to be announced in our newsletter. Make sure you have "liked" our Facebook page at www.facebook.com/sbawomenssection. As always, if you have any particular events you would like to see the Women's Section host, don't hesitate to reach out and ask any officer – we are here to serve you!

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Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

Damages, plain, and not-so-simple. Many civil appeals address primarily the quantum of damages for personal injuries. On the lower end of the spectrum is a case like **Hobley v. Caddo Parish School Bd.**, 52,422 (La. App. 2 Cir. 1/16/19). A Caddo Parish school bus driver was trying to maneuver around a utility truck and trailer parked on the side of West 86th St. She was going at a “very slow rate,” but turned back into her lane too soon and clipped the left front of the trailer, causing a bus tire to deflate. Two of Ms. Hobley’s children were on the bus, and she sued the school board for their injuries. A chiropractor diagnosed cervical and thoracic “sprain/strain of the myofascial residuals, traumatically induced,” but prescribed no medication or therapy. A video camera inside the bus captured the event; the district court found that one of Ms. Hobley’s boys “leaned against the back portion” of the seat ahead of him, and did not appear to be shaken up; overall, the kids on the bus were “very noisy, standing up and laughing, joking.” Neither of the boys testified at trial. The district court awarded them \$500 apiece, which Ms. Mobley appealed. The Second Circuit affirmed, in an opinion by pro tem Judge Bleich, noting the “low-impact contact” and “very slight injuries” reported.

More complex was the case of Dr. Enriquez, a family practitioner in Delhi, who was in bed with his wife on the morning of July 4, 2016, when a Lincoln Town Car crashed into the two front bedrooms of their house! (Fortunately they were in the master bedroom, in the back. There was no physical injury.) They settled with their homeowners carrier, but repairs were not completed until October. In December 2016, they sued the driver of the Lincoln and his insurer, Safeway. They claimed not only the cost of repairs, but the inconvenience of having a gaping hole in the front of their house, which was covered with plywood but still allowed bugs and insects to get in. Also, without the front bedroom, their guests had to sleep on a couch. Repairs were delayed because builders couldn’t find new bricks to match the original color; eventually, the brick columns were disassembled and repurposed as front veneer, and new, white columns were installed. Mrs. Enriquez was at home for much of the ordeal of construction.

The district court awarded the Enriqueses \$6,750 each for loss of use, \$13,500 each for inconvenience, and \$3,500 each for mental anguish. Safeway appealed. In an opinion by Judge Garrett, the Second Circuit affirmed the award for loss of use. **Enriquez v. Safeway Ins. Co. of La.**, 52,425 (La. App. 2 Cir. 1/16/19). However, it reversed the award for mental anguish. After a comprehensive survey of the jurisprudence, the court found that with mere property damage, mental distress is not available unless the plaintiff proves “psychic trauma or mental injury,” not just inconvenience and hassle. The Court also reduced the award for inconvenience to \$10,000 total, finding significant overlap with the award for loss of use. In the end, Safeway saved \$24,000 by appealing.

At the upper end of the spectrum was the casino patron who was injured when a beverage server stumbled and spilled hot coffee down

her back. Ms. Jack was sitting at a penny slot at Eldorado, with her back to the server, and not expecting a hot splash. Getting doused with coffee would have been bad enough, but she reacted naturally, jumping out of her chair and trying to get away, but this sudden, awkward movement seriously injured her back. She had to undergo a complex spinal fusion, with the replacement of three discs, and residual pain and pressure in her lower back. She sued the casino, and a jury awarded her a total of \$1.4 million. The casino appealed.

The Second Circuit affirmed, **Jack v. Eldorado Casino Shreveport Joint Venture**, 52,454 (La. App. 2 Cir. 1/16/19), in an opinion by Judge Stephens. The only element of quantum Eldorado challenged was future lost wages, \$317,460. Ms. Jack claimed she had been unable to return to her job as office manager at Velocity Care, making \$33,000 a year, and tried and failed to attend BPCC to get an associate degree; her orthopedic surgeon and a voc-rehab specialist (and life care planner) supported this. An impressive array of defense witnesses (orthopedic surgeon, FCE specialist, voc-rehab specialist, economist) tried to show that her back injury was not that bad, there was some kind of work she could do, and, truth be told, she lost no earning capacity all. The jury didn’t buy it, and the Second Circuit found nothing unreasonable in the award.

Eldorado also contested the jury’s allocation of 100% fault. The jury disbelieved the server’s claim that she stumbled because an unidentified patron had suddenly backed his chair into her path. It probably did not help that Eldorado’s sophisticated video surveillance system, which normally captures every person, place and moment on its premises, *had a gap in its footage*, and was somehow missing the precise portion when the server tripped and spilled the coffee. My guess, and it’s purely speculation, is that the jury sensed a cover-up (were any of them old enough to remember Rose Mary Woods?) and decided to penalize the defendant with a high-end verdict. With all these facts in play, how can there be manifest error?

Water, water, everywhere. The major case of public interest from the last cycle was **Sand Beach Properties LLC v. City of Shreveport**, 52,436 (La. App. 2 Cir. 1/16/19). The background is familiar, but here’s my attempt at a recap. The City rolled out a new water rate structure in January 2015; in March, Pernici, a former City consultant, noticed that his bill did not look right. He did not notify the City, but discussed it with his friend, Wainwright, a local attorney then living out of state; they did some research, and hired a consulting firm, Manchac. They ultimately decided that customers in the higher-use tiers were being undercharged. Pernici, Wainwright and Manchac thought this information could be “of value,” and hired an attorney to “negotiate” with the City. This attorney advised the City Attorney that his client had “confidential information” that could enhance the City’s revenues, but the City would have to sign a nondisclosure agreement (“NDA”) to get a look at it. The NDA defined “confidential” as any information provided by Manchac “relating to operational, technical, financial or other affairs of recipient’s business activities previously unknown” to the City. The City Attorney signed, and then watched

Manchac's PowerPoint; Manchac proposed a deal whereby the city would receive 25% of the enhanced revenues from billing according to the new rate structure. The director of DOWAS, Featherston, and the City's CAO also acknowledged the NDA.

Two days later, Featherston emailed her customer service supervisor, Pilkington, telling her to research the situation; the next month, Featherston advised Manchac that the City had fixed the problem, and offered them 10% of the enhanced revenue. Manchac counteroffered that it would accept \$500,000 plus a city contract. The City balked. Manchac soon assigned its rights to Pernici and Wainwright's LLC, Sand Beach. Sand Beach then sued the City for breach of the NDA.

The City moved for summary judgment. It argued, chiefly through the deposition of Pilkington, that a customer had advised her about the underbilling in March 2015; she emailed the city's billing contractor to point out the problem, but never followed up; she also did not advise Featherston (DOWAS director) about any of this; and she got a "sinking feeling" when she heard about Manchac's presentation, because it was exactly the same problem she had seen back in March. And, for good measure, she never saw Manchac's PowerPoint. In short, the City really knew about this problem before Manchac called; just no one had acted on it. In opposition, the plaintiffs gave depositions describing how they developed their confidential information, but admitted they knew nothing about the City's billing hardware. The district court granted the City's MSJ.

The Second Circuit affirmed, in an opinion by Chief Judge Williams. There is a short review of the La. Trade Secrets Act, R.S. 51:1431, but the decision really hinges on the NDA, which prohibited the City from using any confidential information "previously unknown." There was no genuine issue of material fact that the billing issue was previously *known* to the City.

In a separate suit, Wainwright unsuccessfully argued that the mayor defamed him when she wrote in an email, "It appears we are [being] blackmailed by" Manchac, and made similar statements to news outlets. *Wainwright v. Tyler*, 52,083 (La. App. 2 Cir. 6/27/18), 253 So. 3d 203. With these matters cleared, it is hoped that the City will turn its full attention to maintaining its delicate system of water and sewer lines.

Did you fail to notice? After cohabiting for years, Bert left Teresa, and then sued her for injunctive relief so he could remove his stuff from her house. The district court granted a TRO to prevent her from damaging or disposing of his property. At a hearing on March 5, Bert's counsel told the court that Teresa's counsel was in the hospital, but that they had agreed to continue the trial until May 1. Bert's counsel said Teresa's counsel "would be notified by phone call," and the court minutes recited, "No notice to be sent by clerk." Predictably, on May 1, Bert and his counsel showed up, but Teresa and hers did not. After hearing Bert's case, the court issued an intricate preliminary and permanent injunction. Teresa appealed.

The Second Circuit vacated and remanded, *Howell v. Jurgens*, 52,458 (La. App. 2 Cir. 1/16/19), in an opinion by Judge Pitman. All parties are entitled to adequate notice of trial, La. C.C.P. art. 1571. Although Teresa was served with the petition and the order setting the rule for March 5, she was not present that day when opposing counsel advised the court of the continuance, the minutes showed she received no formal notice of the new setting, and the record did not show anybody ever phoned her with the information. The Second

Circuit found, almost peremptorily, that this did not constitute adequate notice. Bert will have to put on his case again – this time, with the opposite side present.

Get that in writing. Lucky was a businessman and landowner in Bossier Parish; he owned a large farm, and wanted to acquire a neighboring 365-acre tract, but the owner of that tract would not sell, because of a personal dispute. However, Lucky had been using an independent real estate contractor, Ms. Lollar, doing business as Magnolia Land Services, to sell various properties, research titles and notarize documents. Ms. Lollar had become a close friend and confidante of Lucky's. In 2003, the neighbor put up the 365-acre tract for sale. Ms. Lollar entered a contract to buy it, for \$425,000, making a down payment of \$80,000 and signing a mortgage for the balance; she eventually paid off the mortgage.

In 2008, Lucky sued her for breach of fiduciary duty. He claimed that Ms. Lollar was acting as his agent in buying the 365-acre tract, and was supposed to transfer it to Lucky, or to one of his business entities, but hadn't. He admitted there was no writing to this effect, but maintained that Ms. Lollar had agreed to it. The district court found that Ms. Lollar had indeed breached her principal-agent relationship with Lucky, and awarded him nearly \$1.8 million. Ms. Lollar appealed.

The Second Circuit reversed, *Lucky v. Carr*, 52,434 (La. App. 2 Cir. 1/16/19), in an opinion by Judge Stone. The court cited La. C.C. art. 1832, "When the law requires a contract to be in written form, the contract may not be proved by testimony or presumption," caselaw that a mandate to sell immovable property must be in writing, *Tedesco v. Gentry Dev. Inc.*, 540 So. 2d 960 (La. 1989), and passages from Saúl Litvinoff and Robert Scalise on Obligations. The court concluded that a mandate such as Lucky claimed must be in writing; no writing, no mandate. The court distinguished an earlier case, *Woodward v. Steed*, 28,676 (La. App. 2 Cir. 9/25/96), 680 So. 2d 1320 (which, coincidentally, involved the person from whom Ms. Lollar bought the 365-acre tract!), as involving only a promise to help the principal arrange the purchase, not actually to buy property on the principal's behalf. Actual purchase requires a writing. Judge Garrett concurred in the result.

If we have not learned the writing requirement by now, this \$1.8 million lesson ought to teach us, once and for all.

BILLY J. GUIN, JR.

Medical Review Panel

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| 8:00 a.m. | Registration | 11:45 a.m. | Lunch with the Second Circuit Court of Appeal Judges
75 Minutes |
| 8:30 a.m. | Brief Writing from A Practitioner's Perspective Part II/Writs
<i>Kenneth P. Haines, Board Certified Appellate Specialist, Certified by the Louisiana Board of Legal Specialization - Weems, Schimpf, Haines, Shemwell & Moore</i> | 1:00 p.m. | Professionalism: Top 10 Do's and Don'ts
<i>Chief Judge Felicia Williams, Judge Jeanette Garrett and Judge Frances Pitman - Second Circuit Court of Appeal</i> |
| 9:30 a.m. | Break | 2:00 p.m. | Break |
| 9:35 a.m. | Second Circuit Approach on How to Do Writs
<i>Amy Gardner Day and Jessica Lustig - Second Circuit Court of Appeal</i> | 2:10 p.m. | Recent Developments in Criminal and Civil Appeals
<i>Molly Able, Jennifer Segner and Hal Odom - Second Circuit Court of Appeal</i> |
| 10:35 a.m. | Break | 3:10 p.m. | Break |
| 10:45 a.m. | Clerk's Office Rules and Procedure
<i>Lillian Evans Richie, Clerk of Court and Karen McGee, Advanced Certified Paralegal, Chief Deputy Clerk - Second Circuit Court of Appeal; Mike Spence - Caddo Parish Clerk of Court; and Melissa Fox - Twenty-sixth Judicial District Court</i> | 3:25 p.m. | Ethics
<i>Judge Jay B. McCallum - Second Circuit Court of Appeal</i> |

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BAR BRIEFS

JUDGE JOHN HODGE INVESTITURE HELD

Friends, family and members of the bar gathered at the Tom Stagg United States Court House on February 1, 2019, for the formal investiture of Bankruptcy Judge John S. Hodge, who began his duties in Shreveport in August 2018. Judge Hodge's mother, siblings and other family members were on hand to see him sworn in and welcomed to the court by an impressive bench of Western District officials.

Chief Judge S. Maurice Hicks Jr. presided over the ceremony, Chief Judge (Fifth Circuit) Carl Stewart administered the oath of office, and Magistrate Judge Mark Hornsby presented Hodge with his robe. Joining them on the bench were District Judges Dee Drell, Elizabeth Foote, Terry Doughty, Robert Summerhays and Michael Juneau, as well as Magistrate Judge Karen Hayes. Other honored guests included state court Judges Paul Young and Katherine Dorroh, U.S. Attorney David Joseph, U.S. Marshal Henry Whitehorn and Bankruptcy Judge-select (Alexandria) Stephen Wheelis. Former law partner Allison Jones was a featured speaker, and several attorneys and staff members from Weiner, Weiss and Madison, where Judge Hodge formerly practiced and served as a Chapter 7 Trustee, were in attendance.



Hellon Hodge, Judge Hodge, and Allison Jones ▲

Judge Hornsby ▶ presents Judge Hodge with his robe.



▲ Chief Judge Carl Stewart congratulates Judge Hodge after administering oath

◆ Back Row, L to R: Judges Robert Summerhays, Elizabeth Foote, Carl Stewart, Maury Hicks, Terry Doughty and Michael Juneau
Front Row, L to R: Judges Mark Hornsby, Dee Drell and Karen Hayes

LOUISIANA BAR HOD PASSED RESOLUTION IMPACTING CONSUMER REPORT USAGE



David Szwak



Vercell Fiffie

At its Mid-Year Meeting, the Louisiana State Bar Association's House of Delegates considered and passed Resolution No. 4, brought by Attorneys David Szwak and Vercell Fiffie. The approved Resolution recommended action to the Louisiana Supreme Court "for approval and further orders to issue according and as necessary: That the use of consumer credit reports and credit scores as part of the character and fitness process be terminated. Further, that the use of consumer credit reports and credit scores by the Office of Disciplinary Counsel be terminated. For reasons outlined by the proponents of this Resolution, there are a number of substantial problems which make the use of those reports and scores problematic and lacking as a reliable measure for character, fitness and as an investigative device for discipline." The thrust of the Resolution was based on the reliance on both traditional credit reports and public record vendor reports (collectively "consumer credit reports"). The national credit reporting system has been plagued with gross inaccuracy rates, loose match algorithms, ID theft, mixed files, and other deficiencies, for decades. Reliance on those reports as a measure to examine character and fitness of a Bar applicant is improper. Further, usage of the reports in ODC investigations and prosecutions should likewise be stopped. Movants cited multiple reported examples of the problems created by the reports. A copy of the Memo that accompanied the Resolution can be viewed on the SBA's website, www.shreveportbar.com/memberresources.

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Captain Speaks

by H. Lyn Lawrence Jr., Captain,
lyn@lynlawrence.com

Krewemates,

The Run for the Roses, Justinian Grand Bal XXV Feb 1 at the Horseshoe Riverdome was, as promised, EPIC! We pushed hard down the stretch and crossed the finish line in grand fashion. Secretariat would be proud!!!

A sold-out crowd of over 600 attended and enjoyed the sights of red roses everywhere and the sounds of In10City, who played past the witching hour for the Krewe.

King Deryl Medlin, Queen Lisa Clark, Duke Holland Miciotto, Duke Chris Stahl, Duchess Rachel Wiggins Bays, Duchess Liza Beth Grozinger, Prince Christian Hall and Princess Peyton Lawrence all toasted the overflow crowd. Tribune Rebecca Edwards and Consort, Bill Edwards, looked magnificent and will be leading the charge for Justinian in 2018-19! The Krewe is in perfect hands.

We are in the Lenten season now and ask that you remember those less fortunate. Never forget our mission – to support the Pro Bono Project through the Shreveport Bar Foundation. I would encourage you to support that mission by

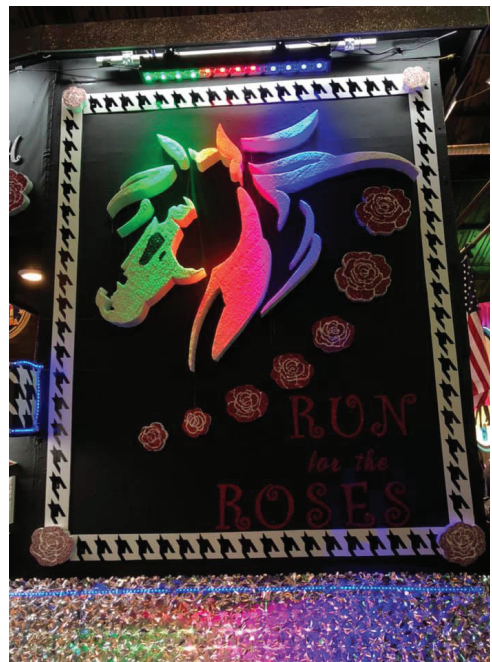
- 1). Volunteering to accept a client referred to you by the Pro Bono Project;
- 2). Accepting a client that just needs our help as lawyers; and/or
- 3). Joining the Krewe of Justinian.

You will never regret helping someone less fortunate than you that sincerely needs your help. Trust me, nothing will warm your heart like getting a thank you from that client.

Lastly, it has been my absolute pleasure to serve as your Captain. The Silver Anniversary of The Krewe of Justinian was “off the chain.”

TALK DERBY TO ME!!!

Captain Lyn Lawrence





*Krewe of Justinian
Grand Bal XXV*





Pro Bono Project

by Kelli Sanders, Coordinator,
ksanders@shreveportbar.com

Give for Good Returns May 7, 2019 The Shreveport Bar Foundation Pro Bono Project online Give for Good site will go live in the next few weeks. You will receive an email with a link to schedule your online donation. We will have the link on our Facebook page as well. I kindly ask you as you read this article, to go to your Facebook page and “like” The Shreveport Bar Foundation Pro Bono Project Facebook page. Look for the 2019 Give for Good Campaign information and share it on all your social media sites. For those not on social media, you can email the link to your family, friends and colleagues. For lawyers who are not able to volunteer to take pro bono cases, this is something you can do to help your local Pro Bono Project.

Our February Ask-A-Lawyer clinic volunteers were Jake Bailey, Valerie DeLatte, Elizabeth Hancock, Pamela King, Hannah Marler, Patrick Murphree, Lauren Telep, Chris Victory and Elizabeth Wong. We are grateful to our Ask-A-Lawyer volunteers, many of whom are dedicated to volunteering monthly.

The Pro Bono Project is able to do all that we do because of the support we receive from our grantors, Louisiana Bar Foundation, Acadiana Legal Services Corporation, United Way of Northwest Louisiana, The Community Foundation, Carolyn W. and Charles T. Beaird Family Foundation, First United Methodist Church and the SBA Krewe of Justinian.



DONATE MAY 7



When you donate to Shreveport Bar Foundation Pro Bono Project via www.giveforgoodnla.com on May 7 your donation will support victims of domestic violence with obtaining Protective Orders and will assist the indigent with obtaining legal help for civil matters.

Shreveport Bar Foundation



EST. 1986

Pro Bono Project

Give For Good

SAVE THE DATE

SBA Members, Spouses, Significant Other, Children and Grandchildren are invited to

Shreveport Bar Association's Sunday Fun Day

Sunday, May 5 from 4:00 to 7:00 p.m. at East Ridge Country Club





Legal Hist

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

LITIGATION WITH AND AGAINST WHITFIELD JACK AND HIS MAGICAL BRIEFCASE

In the Shreveport Bar following World War II, there was one lawyer looked on as King of the Hill, the best, the toughest, the most formidable, the man to see for the best result. His name was Whitfield Jack. I tried many cases with and against him which resulted in longtime affection and admiration.

Whit was the son of U.S. District Court Judge George Whitfield Jack, raised in Shreveport, and a graduate of Shreveport High School (predecessor to Byrd) who achieved an appointment to West Point and graduated in 1928 as a second lieutenant of infantry. His military career was outstanding. At some point in our relationship, I asked him why he left the Army to attend law school and his answer was something like this. It was a scorching hot day at Fort Sam Houston in San Antonio and he was watching his platoon sergeant conduct a repetitive close order drill and it "came to him" that he was not cut out for the red tape of the peacetime Army and that he needed to do something else to move on with his life. Thus he enrolled in the Yale University Law School, then spent a year at Tulane Law, learning the Civil Code, and then returned to Yale to graduate. He returned to Shreveport, worked several years in the U.S. Attorney's Office, then formed a partnership with his brother, Wellborn (father of SBA member Wellborn Jack Jr.), who was an able, aggressive criminal lawyer in his own right, and also served in the Louisiana legislature for 24 years.

Whit did not leave the Army totally behind, but served in the reserves and had achieved the rank of captain when World War II occurred. He was assigned to the 82nd Division, which had been sent to Camp Beauregard, La., for conversion into the Screaming Eagles 82nd Airborne Division. This was Whit's cup of tea and he achieved the rank of lieutenant colonel with the division, parachuted into north Africa, then landed in a glider in the invasion of Sicily, then parachuted into Italy, was returned to England for training for D-Day, crash-landed in a glider in Normandy, and stayed with the division where he became the G-2 (intelligence) officer for Gen. Matthew Ridgway, later to become the Army's 4-star chief of staff.



Following the war, he returned to Shreveport, established roots and a home on Linden Street and made the acquaintance of Harry Booth and Leonard Lockard, who had a solid reputation as successful plaintiffs' lawyers with good political connections and officed on Milam Street. Whit soon became a named partner in the firm and their practice blossomed. Whit was creative, aggressive and eager to try even the hardest cases. Soon the firm was attracting some of the best and brightest young lawyers in

Shreveport, including John Dixon, John Pleasant, Joe LeSage, Hank Politz, H.F. Sockrider, Jim Thornton, Troy Bain and Jim Reeder, who all contributed to the firm's success.

Whenever I could, I took the opportunity to watch him try cases, especially jury ones. He was a dynamo loose in the courtroom. Soon I observed that he carried a battered brown leather briefcase into court and plopped it next to his chair. From time to time, during a trial, he would open the briefcase, withdraw usually a law book or a yellow tablet, or something else to which he paid attention. It usually attracted the attention of the jury and caused them to focus more on Whit than his adversary.

My baptism of fire with the briefcase came in 1959 when he had filed a railroad case in federal court, then in the old post office building, now the public library on Texas Street. Judge Ben Dawkins Jr., a World War II veteran and contemporary of Whit's, was the presiding judge. The case was more or less routine and concerned personal injuries to a motorist who said he stopped, looked and listened at a crossing in Springhill, La., saw the way was clear and proceeded on, only to be struck by a phantom train. The railroad's main defense rested on a Mr. Blackwell, a 78-year-old farmer working a field near the crossing who told the investigating police officer that the motorist did not stop but ran out in front of the approaching train.

After Mr. Blackwell testified, I thought effectively, I tendered the witness and my stomach dropped, perspiration started, as I

saw Whit open the brown briefcase – I knew that something was going to happen, only I knew not what. Whit did not disappoint and extracted a folded-up piece of white cardboard. Then he carefully walked off a measured 30-foot distance from the jury box to a column in the courtroom on which he proceeded to attach his exhibit which I soon saw contained the letters of the alphabet, all in decreasing size from the big “E” at the top. Mr. Blackwell remained in the witness chair, much calmer than I was, and I held my breath wondering what to do next. I came up with an objection and stammered something along the lines that Mr. Jack was not a physician and not qualified to conduct an eye examination – which is exactly what happened after judge Dawkins overruled my objection, saying something to the effect that one learned many things at West Point. Whit worked down from the big “E” on the chart, and Mr. Blackwell read the letters calmly and correctly; after that, Whit stopped and turned facing the rear of the courtroom and asked the witness if he saw the “three towheaded boys sitting on the back row.” Of course, there was no one there, and this was a last Hail Mary pass attempted by Whit. Mr. Blackwell peered and peered, rubbed his eyes and I held my breath. Finally, he said, “Mr. Jack, if there is, they’re lying down because I sure don’t see them.” Whit accepted the inevitable and the jury returned a verdict in favor of the railroad.

Our friendship seemed to flourish and after that, when opposed to each other, we often traveled to Kansas City, New Orleans, Baton Rouge and elsewhere to take depositions. In 1962, he evened things up with me when he persuaded John Appleman, who wrote the 10-volume books on insurance law, that I had cited one of his statements as authority in another case before Judge Dawkins, to change his opinion and reverse the statement and thus even the score.

Whit died April 23, 1989. I remember him with respect and affection as an exemplary trial lawyer, soldier and friend. He is truly missed.

SAVE THE DATE

The Shreveport Bar Foundation Pro Bono Project will be hosting an event at the downtown Rhino Coffee location on Tuesday, May 7. The SBF Pro Bono staff will be there to take donations from 8:00 a.m. - 3:00 p.m. So, come by and support one of your favorite nonprofit organizations and get some amazing coffee!



Monroe Inn of Court

by Hal Odom Jr., rhodom@la2nd.org

The Fred Fudickar Jr. AIC (Monroe, La.) held its fourth meeting of the 2018-'19 season on February 12. Ty Storms, of the Storms Law Office, in Ruston, presented “Good Guys Win,” a program on professionalism with a PowerPoint prepared by LSBA.

“Looking out on this audience,” he told the relatively small contingent of 15 members who attended, “I see the local practitioners who have absolutely the least need for a refresher in professionalism!” Gentle flattery aside, Ty gave a schematic overview of the structure of LSBA and a synopsis of its various member services, including the Judges and Lawyers Assistance Program (“JLAP”), Fastcase online research, member discounts at hotels, and others. “Most members don’t even know about this, but if you have to go to New Orleans, the discounts really help.” He also offered the fun fact that as of November 6, 2018, LSBA had 22,762 members in good standing, of which Millennials, those born between 1981 and 2000, already comprise over 20%.

Ty offered several views from his service on a La. Attorney Disciplinary Board hearing committee. “We recently heard a petition for readmission by Art Gilmore, who was disbarred after being convicted under the RICO statute. Honestly, I thought RICO was about bringing down drug kingpins like El Chapo Guzmán or crime families like the Gambinos. I didn’t expect them to use it on city councilmen for taking money to change their votes.” He commended the recent upgrades to LSBA’s character and fitness examination of prospective attorneys. “That’s a hurdle that most of the people here didn’t have to jump, but I think it’s working.” And, in an item of interest to Inns of Court officials, he noted that approval of programs for CLE credit was recently transferred from the Supreme Court Committee on CLE to LSBA. The Inn’s secretary, Mike Street, suggested, “I think they were trying to put more scrutiny on paid CLE providers, and not just delay the process for Inns of Court. As of tonight, everybody’s CLE credit has been applied for.”

The program was held Tuesday, February 12, at 6:00 pm, at the Lotus Club, in the historic Vantage/ONB building. The next meeting will be a noon luncheon on Monday, March 11, at Fat Pelican.



Some of the Inn members arrived early for the social hour, including (left to right) U.S. Magistrate Judge Karen Hayes; Charlen Campbell, of Nelson Zentner, in Monroe; Ty Storms, of Ruston, who presented the program; and Fourth JDC Judge Stephens Winters. (Photo by Hal Odom Jr.)

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The Shreveport Bar Association has a limited number of prints of a sketch done of the Caddo Parish Courthouse approximately 40 years ago. The print is \$15.00. We also have a note cards with envelopes. A set of 25 note cards with envelopes sell for \$20.00.

If you are interested in purchasing a print or note cards call the SBA office 222-3643 to place an order or stop by the Shreveport Bar Center.

12X18 PRINTS - \$15.00

**NOTE CARD SET
25 note cards with envelopes - \$20.00**



*Caddo Parish Courthouse
Shreveport, LA 71101*

Mark Your Calendar



MARCH 15

April Bar Review Deadline
For Ad Submission

MARCH 27

SBA Member Luncheon
12:00 Noon at the Petroleum Club [15th Floor]
Speaker: Jeremy Alford

APRIL 15

May Bar Review Deadline
For Ad Submission

MAY 1

Law Day Luncheon
12:00 Noon at the Petroleum Club [15th Floor]

MAY 3

Red Mass
9:00 a.m. at Holy Trinity Catholic Church

MAY 5

SBA Member/Family Day
4-7 p.m. at East Ridge Country Club

MAY 7

Give For Good Campaign
Rhino Coffee Downtown

MAY 13

Annual SBA Golf Tournament
12:30 p.m. at East Ridge Country Club

MAY 15

June Bar Review Deadline
For Ad Submission

MAY 17

North Louisiana Appellate Conference CLE
at Second Circuit Court of Appeal

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WIENER, WEISS AND MADISON

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

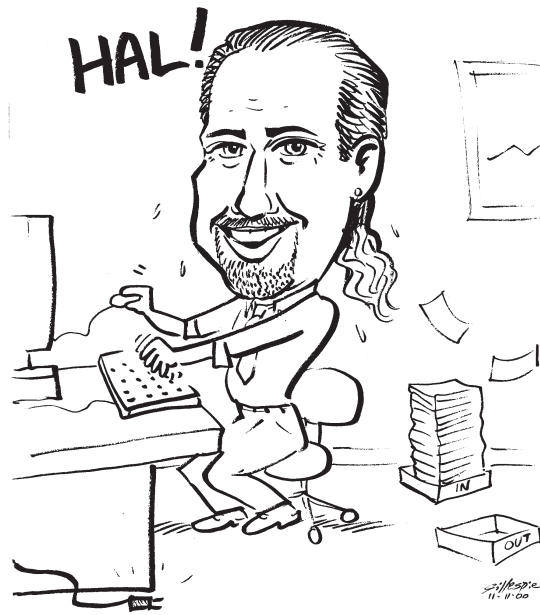
To be together ... by another name. A recent published opinion made me wonder about the right word for *living together but not married*. “[T]he majority of the past due rent from the tenant accumulated during the time that the parties *cohabitated* together after their divorce[.] As of October 2014, when the parties stopped *cohabitating* together, the tenant had an unpaid balance of \$2,835.06[.] * * * Heather argues that the trial court denied her more than two years of reimbursement because she *cohabited* with Jeffrey following their divorce until October 2014.” *Berthelot v. Berthelot*, 2017-1055 (La. App. 3 Cir. 7/18/18), 254 So. 3d 800. Is the verb *cohabitate*, or simply *cohabit*?

Our state legislature prefers, uniformly, the shorter term: La. C.C. art. 115 refers to a “judicial determination that the obligee has *cohabited* with another person of either sex in the manner of married persons”; R.S. 9:321 F, to “a person who has *cohabited* with another person of either sex”; and R.S. 40:1151.1 (13) defines a “spouse” to include a person who “is *cohabited* with another person in the manner of married persons.” Congress prefers *cohabit* about four-to-one: 18 U.S.C. § 2266(7)(A)(ii)(I) (“spouse or intimate partner” includes “a person who *cohabits* or has *cohabited* as a spouse”); 8 U.S.C. § 1227(a)(2)(E)(i) (similar definition for “domestic violence”); 10 U.S.C. § 930(a)(5) (similar definition for “intimate partner”); 25 U.S.C. § 371 (allowing descent of land to children of Native Americans “who have *cohabited* together as husband and wife according to the custom and manner of Indian life”); and in four other places. However, 18 U.S.C. § 117(b) defines “domestic assault” as committed by a person “who is *cohabitating* with or has *cohabited* with the victim,” and, curiously, 18 U.S.C. § 921(a)(32) uses both in the same phrase: “an individual who *cohabitates* or has *cohabited* with the person.”

The dictionaries prefer the simple term *cohabit*. American Heritage® Dict. of the English Language (5 ed., ©2019) lists *cohabit* as an informal variant of *cohabit*; Merriam-Webster Online defines it by referring to *cohabit*; the venerable Oxford English Dict. labels *cohabit* as “obsolete,” with a citation to 1633; Chambers 20th Century Dict. (New ed., 1983) does not even give it an entry! Our leading legal writer, Bryan Garner, swats down the long form as “a misbegotten back-formation.” A Dictionary of Modern English Usage, 2 ed. (Oxford U. Press, ©1995). But note: the noun form is always *cohabitation*.

So, I would suggest using the short version, *cohabit*, *cohabited*, *cohabiting*. Still, if you are quoting one of those two Title 18 statutes, you just have to live with what Congress gave us.

These things pile up. From a memorandum filed in the Eighth JDC: “Exception of Improper Accumulation. The Fiduciary Defendants assert an additional Exception regarding improper *accumulation* of Action.” Of course that should be *accumulation*, a special word of legal terminology. It’s hard to improve on one court’s response to the same error: “Although [the defendant in re-convention] filed an exception of improper ‘accumulation’ of actions, which the district court granted, we note that pursuant to La. Code Civ. Proc. art. 926 A(7) the proper title of this exception is an improper *cumulation* of actions.” *Countrywide*



Home Loans Servicing LP v. Thomas, 2012-1304 (La. App. 4 Cir. 3/20/13), 113 So. 3d 355, fn. 1. Don’t improperly cumulate actions, or accumulate usage errors!

Stick to principle. Our state courts recently rendered some puzzling pronouncements. “Miller itself was an adaptation of the *general principals* for federal judicial estoppel[.]” *Webb v. Webb*, 2018-0320 (La. 12/5/18), ___ So. 3d ___. “Keeping in mind *these principals*, we must evaluate whether each of the nine plaintiffs * * * met their burden of proof to establish causation.” *Bowling v. Citgo Petr. Corp.*, 2018-169 (La. App. 3 Cir. 11/28/18), 261 So. 3d 1014. “Accordingly, it is difficult to envision a law denying recourse to individuals when that law’s *principle* aim is individual protection.” *Anderson v. Ochsner Health Sys.*, 2013-2970 (La. 7/1/14), 172 So. 3d 579.

This means it is time to revisit one of my favorite topics, *principle* vs. *principal*.

Principle. This is a noun meaning a *concept, rule* or *source*. The word is always a noun: there are *principles* of estoppel and *principles* of statutory construction. There is no such thing as a “principle aim.” The mnemonic device is that *principle* and *rule* both end in *-le*.

Principal. This is usually an adjective meaning *most important* or *primary*. The *principal* argument is more important than the *subordinate* one. The mnemonic device is that *principal* is spelled with an *a*, like the first letter of *adjective*.

Now, the slightly confusing part: *principal* is also a noun, in these special situations:

- All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are *principals*. La. R.S. 14:24. (These are distinguished from *accessories after the fact*.)

- A person who confers authority on another person (the mandatary), to transact one or more affairs for the first person, is a *principal*. La. C.C. art. 2299. At common law (and commonly in Louisiana!), the mandatary is called an *agent*, but *principal* is standard for the first party either in La. or common law.

- The key person in an organization is a *principal*. One statute defines such person as “any officer, director, owner, sole proprietor, partner, member, joint venturer, manager, or other person with similar managerial or supervisory responsibilities.” La. R.S. 9:3594.2 (6). Likewise, the head of a school is the *principal*. The mnemonic is, “Your *principal* is your *pal*.”

- Money deposited in a bank is the *principal*, distinguished from *interest*, and the trust corpus is sometimes called the *principal*, as in La. R.S. 9:1847.

Keep these principles firmly in mind! Make good spelling your principal aim.

**SHREVEPORT BAR ASSOCIATION GOLF
SPONSORSHIP OPPORTUNITIES**

The emphasis is on fundraising and golf fun at the 2019 Shreveport Bar Association Golf Tournament being held on Monday, May 13, 2019, at East Ridge Country Club. The money raised from this tournament helps fund many worthwhile programs and community services. We would not be able to put on this major event without the support of our sponsors, and we hope you will consider getting involved in this year's tournament. Listed below are the different levels of sponsorship.

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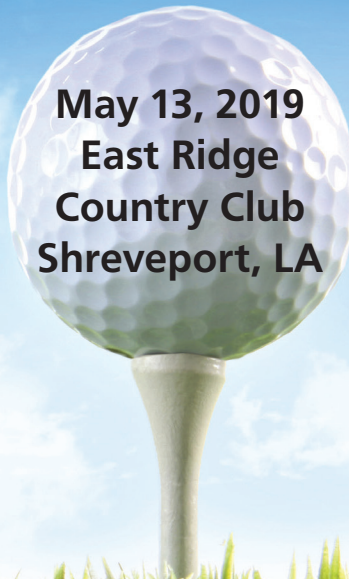
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DEADLINE FOR APRIL ISSUE: MARCH 15, 2019

SBA LUNCHEON MEETING - MARCH 27

*Petroleum Club (15th floor) – Buffet opens at 11:30 a.m. Program and Speaker from 12:00 Noon to 1:15 p.m.
 \$25.00 for SBA members includes lunch with advance reservation and \$30.00 for late reservation
 (after 5:00 pm the Monday prior to the luncheon) and Non SBA Members*



**2019 LEGISLATIVE SESSION PREVIEW
 AND FALL GUBERNATORIAL RACE**

When: Wednesday, March 27 from 12:00 Noon to 1:15 p.m.

Where: Petroleum Club (15th floor)

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

On March 27, Jeremy Alford will discuss the 2019 Legislative Session Preview and Fall Gubernatorial Race. 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.

**YES, I'M
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You may confirm your reservation(s) by email, telephone, or fax.
 Email: mfarrar@shreveportbar.com Phone: 222-3643 Ext 2 Fax: 222-9272

I plan to attend the March luncheon. Attorney: _____

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