THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION Volume XXVI, Number 6 • June 2019

INSIDE | JUNE

EVENTS AT A GLANCE

6/13	SBA and YLS Lunch & Learn Trial Advocacy Summer Series, Session 1 – Shreveport Bar Center
6/26	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club
7/11	SBA and YLS Lunch & Learn Trial Advocacy Summer Series, Session 2- Shreveport Bar Center
8/8	SBA and YLS Lunch & Learn Trial Advocacy Summer Series, Session 3- Shreveport Bar Center
9/12	SBA and YLS Lunch & Learn Trial Advocacy Summer Series, Session 4- Shreveport Bar Center
9/25	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club

From The President

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

BE AN INSPIRATION

As a consequence of my mother's military service, I was fortunate to spend some of my early childhood growing up in Germany. Due to the Europeans' widespread use of the rail system, we frequently traveled by train. Suffice it to say, I soon developed an affinity for that particular mode of transportation. During the summer of 2016, I was fortunate to share the experience with my children. We drove to Marshall and caught the Amtrak *Texas Eagle* to Dallas. Notwithstanding the gentleman who entered the train carrying what can only be described as a case for chainsaw, we had a fabulous time. And, the the roundtrip fare was less than the cost of fuel, had we driven. The train was equipped with a viewing cabin, which afforded panoramic views of the East Texas countryside. We enjoyed each other's company, and the difference in travel time proved to be negligible.

The train deposited us at Union Station, which left only a short walk to the Hyatt Regency. During our weekend in Dallas, we walked everywhere we wanted to go. Among our destinations was Dealey Plaza and the museum that is located on the 6th floor of what was formerly the Texas School Book Depository. Although I am a fan of the former President, I didn't deceive myself into thinking that my young children would want to spend a great deal of time being inundated with information relative to JFK. However, quite to my surprise, the kids were in no rush to leave the museum, the "grassy knoll," or the plaza area. Like most of us, they were taken in by the aura of a leader, who, despite his very human flaws, nevertheless inspired.

As we rode the *Texas Eagle* back to Marshall, my wife and I began to debrief on the weekend's trip. As we shared our thoughts, a particular one resonated in my mind: How vitally important it is to have leaders who inspire. To that point, I recently came across the following JFK quote: "I look forward to an America which will not be afraid of grace and beauty, which will protect the beauty of our natural environment, which will preserve the great old American houses and squares and parks of our national past and which will build handsome and balanced cities for our future." What an amazing concept! Certainly, many leaders have referenced an appreciation for Kennedy. And, many cite him as one who inspired their actions. Yet, he was a relatively young man when he left his mark on history.

Much like JFK, Martin Luther King, Jr. was only 34 when he went to Birmingham to address the injustices that pervaded the city. As it regards Birmingham, this past February, my wife and I took a group of high school students from our synagogue to visit the city. We traveled with a busload of students from a few New Orleans synagogues. While in Birmingham, we visited sites such as the 16th Street Baptist Church, which was bombed on September 15, 1963. As a consequence of the bombing, four young girls lost their lives. Ironically, our tour guide advised us that the Sunday school lesson that morning was titled "A Love That Forgives." The church bombing was one of three such bombings that had occurred within an 11-day span, and came on the heels of a Federal Court order that mandated the integration of Alabama's public school system. In this light, it is seen that the bombings were instituted as push back against the progress that was being made as a consequence of the Civil Rights Movement,

continued on page 4

RECENT DEVELOPMENTS BY THE JUDICIARY

Register early for a discount and a chance to win a prize.

Recent Developments By the Judiciary

Sponsored by:
The Shreveport Bar Association

October 16 & 17, 2019

Hilton Garden Inn · Homewood Suites – Bossier City, LA

12.5 Louisiana CLE Credit (including Ethics & Professionalism)
12.5 Texas Board of Legal Specialization CLE Credit Approved
Lunch Included with Paid Registration
Materials provided as a link (free) or jump drive ($25)

2019 RECENT DEVELOPMENTS BY THE JUDICIARY SHREVEPORT, LOUISIANA

REGISTRATION FORM:

Name _____ State Bar No. _____

Address _____ Phone No. _____

City, State, Zip _____ Fax No. _____

Email _____

I want my materials as ❑ a link (free) ❑ a jump drive ($25)

Please charge to my ❑ Visa ❑ MasterCard ❑ Discover ❑ American Express

Card No. _____

Expiration Date _____ SIC: _____

Signature _____

Before July 1
$375 for Non-SBA Members full program
$350 for SBA Members full program
The first 50 people registered will be entered into a special door prize giveaway drawing!

Beginning July 1
$400 for Non-SBA Members full program
$375 for SBA Members full program

After September 20
$425 for Non-SBA Members full program
$400 for SBA Members full program

Ethics Only - $60
Professionalism Only - $60

Call For Special Rates Available for
Government Employees

Cancellation Policy
Refund less a $25 administrative fee
until September 1, 2019
Credit less a $25 administrative fee may be applied
to future SBA sponsored CLE for up to one year

Please Contact **SBA Office at (318) 222-3643**

Please remit with payment to:
Shreveport Bar Association
625 Texas Street | Shreveport, LA 71101

Look for full class schedule in the mail soon!

which was being spearheaded by a young Dr. King. Again, notwithstanding their youth, both JFK and MLK were able to achieve great things because they inspired others to be more than themselves.

Although they provide monumental examples of inspiration from the standpoint of iconic, national heroes, trust that the influence of local, hometown heroes cannot be overstated. In this vein, I am reminded of Chief Judge Carl E. Stewart, District Attorney James E. Stewart, Chief Judge Felicia Toney Williams, and Jerry Tim Brooks, to name a few. Many will be familiar with the aforementioned judges and our DA; however, few are aware that Jerry Tim Brooks was a local educator and an avid golfer, who fought tirelessly to make golf available to African Americans more than a decade prior to the passage of the Civil Rights Act of 1964. Legend has it that Brooks won over 600 tournaments, and he made a hole-in-one, on each of the nine holes, on the local municipal golf course that bears his name.

As I've previously indicated, I began my legal career by working under Wellborn Jack Jr. Like all young associates, I was obviously green. Consequently, Wellborn wanted me to get into the arena, so that I could earn some battle scars. My first test would involve a Bossier Parish case. Wellborn had received a call from a woman who'd sustained a terrible injury at Louisiana Downs. She was represented by a father/daughter duo, who, for whatever reason, fled the country shortly prior the case going to trial, effectively leaving the lady unrepresented. The first order of business was to request a continuance. We didn't have any file material, or anything. And, the Downs was represented by the highly esteemed Charles Salley. Charles opposed the continuance. I'm sure his opposition was at the direction of his client. In any event, Judge Cecil Campbell had compassion, and granted our request. We conducted additional discovery, and ultimately put the matter in a posture for settlement. The case was resolved favorably for our client.

During one of the last hearing dates, as we were proceeding through motion practice, Judge Campbell learned that I was a new attorney. In open court, he stated that, if I continued to practice law as I had while appearing before him, I would have a long, fruitful career. When I returned to the office that day, I told Wellborn what the Judge had said. He let me know, in no uncertain terms, that Judge Campbell wasn't the type to throw around compliments. So, I must have impressed him. That was the fall of 2000, and I've never forgotten it. In fact, I ran into Judge Campbell in Benton a few months ago, and I recounted that story. He obviously had no recollection of it. But, it had a great impact on this formerly young lawyer. It was no sweat off his back, but it meant a great deal to me. It just goes to show how a chance encounter can leave a lasting impression. That impression can be a good one, or it can be an unpleasant one. We *can* be difference makers should we choose to do so.

That said, a few years ago, I became a member of the Downtown Rotary Club. I do my best to attend each Tuesday's lunch meeting. As the circle of life would dictate, Judge Campbell recently spoke at one of our luncheons in his capacity as our District Governor. The general theme of the judge's remarks centered upon the notion that we can all be an inspiration. I am personally of the opinion that we lack a sufficient supply of leaders who inspire us to be bigger than ourselves. Consequently, I think we should all heed the judge's advice, and be an inspiration.

Insofar as we are approaching the United States' seminal holiday, the 4th of July, I'd like to close with another JFK quote. During his 1961 address to the National Industrial Conference Board, President Kennedy stated, "For I can assure you that we love our country, not for what it was, though it has always been great…not for what it is, though of this we are greatly proud…but, for what it someday can, and, through the effort of us all, someday will be." Soaring rhetoric meant to inspire and capture a soaring ideal.

My kindest regards,

Curtis

BAR BRIEFS

In Memory of Honorable Charles Peatross

Ali Peatross Walsh, daughter of Judge Charles Peatross, wanted to provide a service to the Shreveport Bar Center in memory of her dad during Law Week this year. If you see Ali and her husband, Patrick, who are the owners of the local Jimmy John's restaurant in Shreveport and Bossier City, please thank them for sending Window Gang to clean the exterior windows of the Shreveport Bar Center.

Give for Good 2019 Was A Success!

The Shreveport Bar Foundation partnered with the Shreveport Bar Association and Rhino Coffee and hosted an online giving event at the downtown Rhino Coffee. $3,480.66 was raised during the 24-hour giving period. Funds raised will be used to help fund the SBF domestic violence program and Pro Bono Project. Donors are listed below:

Camille Abshire
M. Thomas Arceneaux
Elizabeth Carmody
Mortimer and Josephine Cohen Fund
Ashby Davis
Valerie DeLatte
Jerry Edwards
Felicia Hamilton
Leslie Hughes
Bernard Johnson
Curtis Joseph
Julie Lafargue
Scott Maddox
Heidi Kemple Martin
Margaret G. and Thomas E. McElroy, Jr. Family Fund
Brandi McKenzie
Jim McMichael
Fred Phillips
Walter-Poljak Family Fund
William Priestley
Barbara Rice
Kelli Sanders
Chris Slatten
Katherine Smith
Dana Southern
Jeania Stokes
Mary Winchell-Cash
Chelsea Withers

The following volunteered their time to receive donations and set up campaign goals on Facebook:

Jack Bailey III
Valerie DeLatte
Cody Grosshart
Patrick Harrington
Heidi Kemple Martin
Brandi McKenzie
Luke Thaxton
Angela Waltman
Elizabeth Wong

LUNCH & LEARN

TRIAL ADVOCACY SUMMER SERIES

Presented in Four Separate Two-Hour Sessions

11:00 a.m. - 1:00 p.m.

For the Following Dates:

June 13 * July 11 * August 8 * September 12

Shreveport Bar Center
625 Texas Street
Shreveport, LA 71101

Join us in learning more about Trial Advocacy by attending our Summer Series. Sponsored by the Shreveport Bar Association and the SBA Young Lawyers' Section. Lunch included in cost of attendance.

Prepare for Better Depositions
District Court Procedure
Introducing and Objecting to Evidence
Federal Court Procedure
Hearsay
Basics of Criminal Law
Cross-Examination
Basics of Family Law

Our 2019 Lunch & Learn programs will focus on Trial Advocacy. The four-part series, coordinated by Jim McMichael and the SBA Young Lawyers' Section, will feature practical presentations by local judges and experienced litigators. The series will be of most benefit to those new to practice and those with less experience in litigation, but any attorney interested in effective litigation techniques is encouraged to attend.

Session 1– Thursday, June 13, 2019

Taking Better Depositions and First Make a Roux! Trying a Good Case is Like Making a Good Pot of Gumbo

James C. McMichael Jr., Judge Frances Pitman and Judge Michael Pitman

11:00 a.m.—1:00 p.m.
2.0 Hours Louisiana CLE Credit

Session 2– Thursday, July 11, 2019

Introducing and Objecting to Evidence and Basics of Criminal Law

James C. McMichael Jr., and Judge Brady O'Callaghan

11:00 a.m.—1:00 p.m.
2.0 Hours Louisiana CLE Credit

Session 3– Thursday, August 8, 2019

Hearsay and Federal Court Procedure

James C. McMichael Jr., Judge Maurice Hicks and Judge Mark Hornsby

11:00 a.m.—1:00 p.m.
2.0 Hours Louisiana CLE Credit

Session 4– Thursday, September 12, 2019

Cross-Examination and Basics of Family Law

James C. McMichael Jr., and Judge Karelia Stewart

11:00 a.m.—1:00 p.m.
2.0 Hours Louisiana CLE Credit

Name _____

Address _____

City, State, Zip _____

Phone No. _____ **Email Address** _____

Registration Information: Questions, and to find out the Special Rate for YLS Members in Solo Practice for less than 5 years, contact Dana Southern at 222-3643, Ext.3 or email: dsouthern@shreveportbar.com.

SBA Members - $100 Per Session or $375 for All Four Sessions (if paid in full by June 13)

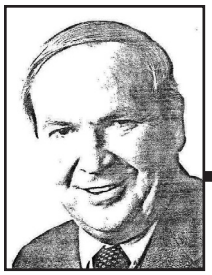
Non-SBA Members - $120 Per Session or $450 for All Four Sessions (if paid in full by June 13)

Please indicate session (s) attending _____

Register/Pay with credit card at www.shreveportbar.com/continuing-legal-education

Please remit with payment to:

SHREVEPORT BAR ASSOCIATION
625 Texas Street, Shreveport, LA 71101



Legal Hist

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

HUMOR AND HIJINKS IN LEGAL OPINIONS (PART 1)

Once a judge decides how a case should be decided, he or she must then consider the language needed to launch the opinion into propriety. If the writer is considering something jocular, he or she may consider Alexander Pope's saying, "Fools rush in where angels fear to tread," and cast the opinion in cold, precise, non-entertaining words going back for centuries. But it can be done with a lighter touch, and the thrust of this paper is to demonstrate where the writers have been successful and otherwise.

Ben Dawkins Jr., a former SBA member and significant federal judge in the Western District of Louisiana following the World War II era, wrote a bell-ringer opinion in *United States v. Dowden*, 139 F.Supp. 781 (W.D. La. 1956), in which he shot down the government's criminal charges against an unlucky defendant who was wrongly accused of shooting a doe in a National Forest because the deer was proven to be a buck, not a doe. (Title IX was still on the horizon.) Judge Dawkins must have smiled as he wrote the following:

> A tiny tempest in a tinier teapot has brought forth here all the ponderous powers of the Federal Government, mounted on Clydesdales, in hot pursuit of a private citizen who shot a full-grown deer in a National Forest.
>
> Not content with embarrassing defendant by this prosecution, and putting him to the not inconsiderable expense of employing counsel, the Government has compounded calumny by calling the poor dead creature a 'fawn'. Otherwise fully equipped with all the accouterments of virile masculinity, the deceased, alas, was a 'muley'. Unlike other young bucks, who could proudly preen their points in the forest glades or the open meadows, this poor fellow was foredoomed to hide his head in shame: by some queer quirk of Nature's caprice, he had no horns, only 'nubbins', less than an inch in length.
>
> * * *
>
> Evidently relying on some uncanny prescience instead of his eyesight for his judgment of the deer, or perhaps having trusted to luck – which was with him – or a proper profile view, defendant slew the animal at some forty paces in the Kisatchie National Forest on December 10, 1953. Soon the law had him in its clutches, but because the authorities obviously were unsure of their ground, formal charges were not filed here until February 24, 1955. Meanwhile, a State Grand Jury, having jurisdiction over the heinous offense, had refused to indict.
>
> * * *
>
> Except for his unfortunate looks, which he couldn't help, he was 'all man'.
>
> * * *
>
> Biologically he was a buck, not a fawn, who in strictly female company would have had to bow to no critic. His handicap actually was one only upon having to fight for the affections of the distaff side. What he lacked in weapons, he could have made up for in celerity, dexterity or finesse.
>
> In all important respects, therefore, notwithstanding the Louisiana Legislature, which may be forgiven for its ignorance, Buck has been grossly slandered. He never should have been dubbed arbitrarily as a 'fawn'. He was no baby and was not even a sissy.
>
> It necessarily follows that if Buck is not guilty, neither is Alvin, who is acquitted and discharged sine die.

In 2006, Gregory Presnell, a federal judge in Tampa, Florida, having had enough of opposing attorneys who could not, or would not, agree on the location for taking a deposition, issued an order requiring the attorneys for each side to play a game of "rock, paper, scissors" on the courthouse steps. The following is the text of that order:

> USDC Middle District of Florida, Orlando Division
> Avista Management, Inc., d/b/a Avista Plex, Inc., Plaintiff,
> v.
> Wausau Underwriters Insurance Company, Defendant.
>
> ORDER
>
> This matter comes before the Court on Plaintiff's Motion to designate location of a Rule 30(b)(6) deposition (Doc. 105). Upon consideration of the Motion, the latest in a series of Gordian knots that the parties have been unable to untangle without enlisting the assistance of the federal courts, it is ORDERED that said Motion is DENIED.
>
> Instead, the Court will fashion a new form of alternative dispute resolution, to wit: at 4:00 P.M. on Friday, June 30, 2006, counsel shall convene at a neutral site agreeable to both parties. If counsel cannot agree on a neutral site, they shall meet on the front steps of the Sam M. Gibbons U.S. Courthouse, 801 North Florida Ave., Tampa, Florida 33602. Each lawyer shall be entitled to be accompanied by one paralegal who shall act as an attendant and witness. At that time and location, counsel shall engage in one (1) game of "rock, paper, scissors." The winner of this engagement shall be entitled to select the location for the 30(b)(6) deposition to be held somewhere in Hillsborough County during the period July 11-12, 2006. If either party disputes the outcome of this engagement, an appeal may be filed and a hearing will be held at 8:30 A.M. on Friday, July 7, 2006 before the undersigned in Courtroom 3, George C. Young United States Courthouse and Federal Building, 80 North Hughey Avenue, Orlando, Florida 32801.
>
> DONE and ORDERED in Chambers, Orlando, Florida on June 6, 2006.

Those who follow college football and/or First Amendment

issues will find of interest the opinion of Judge Terence Evans of the U.S. Seventh Circuit who, in a 21-page opinion in *Crue v. Aiken*, 370 F.3d 668 (7 Cir. 2004), returned Chief Illiniwek, the hallowed mascot of the University of Illinois, to the reservation. The issue was whether the Chief was a mockery of Indian customs or a representation of a brave and fighting spirit.

Before reaching a conclusion, the judge informed us:

In the Seventh Circuit, some large schools – Wisconsin (Badgers), Purdue (Boilermakers), Indiana (Hoosiers), Notre Dame (The Fighting Irish), DePaul (the Blue Demons), the University of Evansville (Purple Aces), and Southern Illinois (Salukis) – have nicknames that would make any list of ones that are pretty cool. And small schools in this circuit are no slouches in the cool nickname department. One would have a hard time beating the Hustlin' Quakers of Earlham College (Richmond, Indiana), the Little Giants of Wabash College (Crawfordsville, Indiana), the Mastodons of Indiana University-Purdue University-Fort Wayne (Fort Wayne, Indiana), and the Scarlet Hawks of the Illinois Institute of Technology.

But most schools have mundane nicknames. How can one feel unique when your school's nickname is Tigers (43 different colleges or universities), Bulldogs (40 schools), Wildcats (33), Lions (32), Pioneers (31), Panthers or Cougars (30 each), Crusaders (28), or Knights (25)? Or how about Eagles (56 schools)? The mascots for these schools, who we assume do their best to fire up the home crowd, are pretty generic – and pretty boring.

Some schools adorn their nicknames with adjectives – like "Golden," for instance. Thus, we see Golden Bears, Golden Bobcats, Golden Buffaloes, Golden Bulls, Golden Eagles (15 of them alone!), Golden Flashes, Golden Flyers, Golden Gophers, Golden Griffins, Golden Grizzlies, Golden Gusties, Golden Hurricanes, Golden Knights, Golden Lions, Golden Panthers, Golden Rams, Golden Seals, Golden Suns, Golden Tigers, and Golden Tornados cheering on their teams.

All this makes it quite obvious that, when considering college nicknames, one must kiss a lot of frogs to get a prince. But there are a few princes. For major universities, one would be hard pressed to beat gems like The Crimson Tide (Alabama), Razorbacks (Arkansas), Billikens (St. Louis), Horned Frogs (TCU), and Tarheels (North Carolina). But as we see it, some small schools take the cake when it comes to nickname ingenuity. Can anyone top the Anteaters of the University of California-Irvine; the Hardrockers of the South Dakota School of Mines and Technology in Rapid City; the Humpback Whales of the University of Alaska-Southeast; the Judges (we are particularly partial to this one) of Brandeis University; the Poets of Whittier College; the Stormy Petrels of Oglethorpe University in Atlanta; the Zips of the University of Akron; or the Vixens (will this nickname be changed if the school goes coed?) of Sweet Briar College in Virginia? As wonderful as all these are, however, we give the best college nickname nod to the University of California-Santa Cruz. Imagine the fear in the hearts of opponents who travel there to face the imaginatively named "Banana Slugs"?

* * *

Not all mascot controversies are "fought" out as simply as was the dispute over the Banana Slug. Which brings us to the University of Illinois where its nickname is the "Fighting Illini," a reference to a loose confederation of Algonquin Indian Tribes that inhabited the upper Mississippi Valley area when French explorers first journeyed there from Canada in the early seventeenth century. The university's mascot, to mirror its nickname – or to some its symbol – is "Chief Illiniwek." Chief Illiniwek *is* controversial. And the controversy remains unresolved today.

Chief Illiniwek does not participate in traditional cheerleading activities, but he does "perform" at athletic events. Whether his presence, and what he does, makes him more mascot than symbol, or vice versa, is really for others to decide.

The expression "Illiniwek" was first used in conjunction with the University of Illinois by football coach Bob Zuppke in the mid 1920's. Zup was a philosopher and historian by training and inclination, and he was intrigued by the concept the Illini peoples held about their identity and aspirations. They spoke a dialect of the Algonquin language and used the term "Illiniwek" to refer to the complete human being – the strong, agile human body; the unfettered human intellect; the indomitable human spirit.

The pros and cons were then cited.

"Chief Illiniwek is a mockery not only of Indian customs but also of white people's culture," said Bonnie Fultz, Citizens for the American Indian Movement (AIM) executive board member. According to Fultz, the continued use of Indian history as entertainment degrades the Indian and disgraces the white race by revealing an ignorance of tribal cultures.

* * *

Mike Gonzalez, the current Chief, said that the only requirement in being considered for the position is an eagle spread jump. However, Gonzalez felt that Illiniwek is "majestic" and a symbol of fighting spirit. "In no way does it degrade the American Indian," Gonzalez said. "I think Illiniwek honors the Indian."

It was established that the Chancellor of the University had sent an email to all faculty members, many of whom were plaintiffs, directing them not to contact prospective student athletes claiming that the University was prejudiced against Native Americans. It was claimed this was a restriction of their free-speech rights. Plaintiffs prevailed and a TRO was granted. An email message was then sent by the chancellor retracting his message, making the TRO moot. The claims for damages still remained.

The Court found the email to be of "significant importance and that Chief Illiniwek created a hostile environment for Native American students."

The propriety of the TRO was affirmed and attorney fees awarded. The Chief has quietly faded into history. All the while those who follow the fortunes of the ACC and SEC may wonder why the Florida State Seminoles' Chief Osceola, with headdress flying, mounted on his paint horse, has received a pass from the NCAA and continues to promote the culture and heritage of their tribe by circling the field following each Seminole score.

Occasionally opinions are adorned with historical data, though whether to provide needed education to the bar or to bolster the substance of the opinion may be an open question. Our own (now retired) Harmon Drew traveled these shores in *Bank One, NA v. Dunn Elec.*, 40,718 (La. App. 2 Cir. 4/12/2006), 927 So. 2d 645, *writ denied*, 2006-1121 (La. 9/22/06), 937 So. 2d 385, in which

he affirmed summary judgment in a bank scam case involving an alleged attempt to establish a Consular office in Shreveport, of all places, for the country of Zaire. Judge Drew tersely but accurately educated us about Zaire in an opening footnote, which read:

> Zaire is now known as the Democratic Republic of the Congo. Originally a Belgian colony, the Republic of the Congo gained its independence in 1960. Col. Joseph Mobutu, who declared himself president in a November 1965 coup, changed the name of the country to Zaire, and his own name to Mobutu Sese Seko. Mobutu was toppled in 1997 and the country was given its present name.

An oft cited judge is Mark P. Painter, of the Ohio First District Court of Appeals, Cincinnati. His opinion in *Kohlbrand v. Ranieri,* 159 Ohio App. 3d 140, 823 N.E. 2d 76 (1 Dist. 2005), received the Scribes Society Award for the "best" legal opinion of the year. He was the only state judge so honored. Judge Painter is an advocate of clear, direct writing and has written several books on the subject. The opinion affirmed summary judgment for plaintiff in a suit treating a duty to defend and pay under an indemnity agreement. The dispute centered on the meaning of the expression "against all claims of all persons." In concluding that the quoted language meant just what it said, Judge Painter wrote:

> In both life and law, sometimes the sum of the parts is greater than the whole. And sometimes it is less. In the present case, it is exactly the same.
>
> Third-party defendant-appellant Monfort Supply Company appeals the trial court's grant of summary judgment. We affirm.
>
> * * *
>
> We decline to impose a rule that would require grantees to skip around the county recorder's office looking for any encumbrances that might exist on a prospective purchase where there is no mention of any encumbrance – and especially when there is a warranty *against* any encumbrance. Deeds subject to an easement should disclose the easement on the face of the deed. If Monfort had wanted to create an exception for the pipeline easement, it simply could have added "subject to" and referred to the easement in the general warranty section of the deed. But it did not.
>
> * * *
>
> Monfort contends, "Although a 'clear title' is one that is not subject to any restrictions, the case at bar involved a 'free and clear' title, which is the same as a marketable title." So, according to Monfort, a free and clear title is worse than a clear title. Say what?
>
> Would that Harold had not lost the battle of Hastings.
>
> *Free* and *clear* mean the same thing. Using both is an unnecessary lawyerism. *Free* is English; *clear* is from the Old French *cler.* After the Norman Conquest, English courts were held in French. The Normans were originally Vikings, but after they conquered the region of Normandy, they became French; then they took over England. But most people in England, surprisingly enough, still spoke English. So lawyers started using two words for one and forgot to stop for the last 900 years.
>
> So *free* and *clear* do not mean separate things; they mean, and were always meant to mean, *exactly the same thing.* Just as *null* and *void* and *due* and *payable* mean the same thing. All of these couplets are redundant and irritating lawyerisms. And they invite just what has happened here – an assertion that they somehow have different meanings.
>
> The Norman Conquest was in 1066. We can safely eliminate the couplets now.
>
> * * *
>
> Monfort cites *Zilka v. Cent. S. Ltd.*, a Ninth Appellate District case that distinguished a clear title from a free and clear title in much the same way that Monfort now argues. "In short, while 'clear title' cannot have any encumbrance or restriction whatsoever, 'free and clear' title is a marketable title* * *." We are, thankfully, unable to find any case that has cited this aberration – the Norman invasion has not progressed any further south in Ohio.
>
> We may consider *Zilka* and give it the weight that we consider appropriate. And we consider it inappropriate to give *Zilka* any weight at all.
>
> * * *
>
> Nine hundred years later, courts in Ohio are still dealing with the consequences of the Norman invasion. We can only hope that some day logic will prevail over silly tradition.

(To be continued in the next issue.)

Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

Those New York lawyers' fees. Luv N' Care, a plastic bottle manufacturer in Monroe (maker of Nuby® spill-proof infant cups), signed an agreement with Jackel International, Product Marketing Mayborn and several other related companies (collectively called "Mayborn") to distribute Luv N' Care's bottles nationally and internationally. However, Luv N' Care felt that Mayborn was copying its products. It sued and, in 2013, a jury agreed that Mayborn had copied seven of its cups using a distinctive silicone compression valve (in Mayborn's Tommee Tippee® line). The jury awarded damages and the court imposed a permanent injunction prohibiting Mayborn from selling those cups, copies, or "colorable imitations." By 2016, Luv N' Care felt Mayborn was violating the injunction (by selling the Tommee Tippee Sippee Trainer) and filed a motion for contempt. Mayborn defended vigorously, bringing in Dr. Kimberly Cameron, a highly credentialed mechanical engineer from Irvine, California, and John Goetz, an intellectual property lawyer from Fish & Richardson, in New York City (Midtown Manhattan, to be precise). They convinced the Fourth JDC that the Tommee Tippee Sippee Trainer did not contain or imitate Luv N' Care's compression valve. The court rejected the contempt claim and, after a hearing, ordered Luv N' Care to pay Dr. Cameron's expert witness fee of $19,433 and Mr. Goetz's attorney fee of $172,621. Luv N' Care appealed, contesting these two fees.

The Second Circuit slightly reduced both fees, ***Luv N' Care Ltd. v. Jackel Int'l Ltd.***, 52,615 (La. App. 2 Cir. 4/10/19), in an opinion by Chief Judge Williams. The court found that Dr. Cameron's rate of $360 an hour was reasonable, but disallowed eight hours which, according to the invoices, were actually performed by someone other than Dr. Cameron. As to attorney fees, the court found these were warranted under R.S. 13:4611 (1)(g), as Mayborn was the "prevailing party," and the number of hours was reasonable, given the "multiple exceptions with supporting memoranda" and two court appearances in Monroe. On the crucial issue of reasonableness of the fee, the court found it was "undisputed" that no local attorneys practiced in the field of intellectual property (Luv N' Care offered no affidavit or any evidence on the issue), and that Mr. Goetz's "experience and skill were noted by the trial court." The court disallowed $9,836 as "costs" that were undocumented, but affirmed Mr. Goetz's New York City rates: $770 an hour for Mr. Goetz, $665-$695 for one associate, and $495 an hour for another associate. By contrast, Mayborn's local counsel charged a paltry $290 an hour, and his associate, $225 an hour. Less the undocumented costs, the court affirmed attorney fees of $162,785. In a slight victory for the plaintiff, the court disallowed Mayborn's claim for additional attorney fees for defending the appeal.

Luv N' Care can't really cry over spilt milk. After all, Nubys don't spill.

A different kind of water damage. The Town of Sterlington, in northern Ouachita Parish, got tired of buying its drinking water from the City of Monroe, some 20 miles south. In 1996, the town (labeling itself a *city*) entered an agreement with Greater Ouachita Water Co. ("GOWC") to build Sterlington's own water system. It was a complicated and expensive process, but in 2015 the parties executed an asset purchase agreement whereby Sterlington would buy back the system from GOWC for $2.6 million (by my rough reckoning, about $1,000 per man, woman and child in town). Recriminations flew both ways; the town backed out, and, ultimately, sued to expropriate the infrastructure built by GOWC. The district court dismissed this claim as premature, and the town did not appeal. However, GOWC moved to tax fees and costs, and, after three days of hearings, the Fourth JDC condemned the town to pay $57,641. The town did not pay. GOWC then sought a writ of mandamus to compel the town to pay the fees and costs. The district court granted this, and the town appealed.

The Second Circuit reversed the writ of mandamus, ***Town of Sterlington v. Greater Ouachita Water Co.***, 52,482 (La. App. 2 Cir. 4/10/19), in an opinion by Judge McCallum. The court agreed that mandamus may issue directing a public officer to perform a "ministerial function," *Jazz Casino Co. v. Bridges*, 2016-1663 (La. 5/3/17), 223 So. 3d 488, and that courts may cast political subdivisions of the state in judgment for attorney fees and costs in expropriation actions, La. R.S. 19:201 A. However, the Constitution protects public property and funds from seizure, La. Const. Art. XII, § 10(C), and a statute says judgments against political subdivisions may be paid "only out of funds appropriated for that purpose," La. R.S. 13:5109 B(2). Lamenting that its review of the jurisprudence was "pedantic," especially *Newman Marchive P'Ship v. City of Shreveport*, 2007-1890 (La. 4/8/08), 979 So. 2d 1262, the Second Circuit concluded that the district court cannot mandamus the town to pay attorney fees and costs. However, the court affirmed a preliminary injunction ordering the town to allow GOWC's employees to enter the system and perform service.

GOWC will have to wait until the Board of Aldermen and the town's new mayor appropriate money for this purpose. The town fathers probably never expected that a little H_2O would get them in so deep.

Fishing for a summary judgment. Johnny Crump went to Lake Bruin State Park, in Tensas Parish, for a relaxing day of fishing. Unfortunately, the pier he selected was not in the best of condition; his right foot went through a rotting plank causing him to fall backwards, and his whole right leg was snagged in the splintery gap. He sued the Lake Bruin Recreation & Water Conservation District, a political subdivision of the State, for negligence or strict liability; early on, the Fifth JDC dismissed the strict liability claim on an exception of no cause, under R.S. 9:2800 C. Crump later joined the State Dept. of Recreation & Tourism, on grounds that it maintained the premises and failed to inspect and repair the pier. The Conservation District filed an MSJ alleging that it did not own, maintain, control, or have care or responsibility for the pier, as required for liability under R.S. 9:2700 A; in fact, the State had custody. The *State* filed its own MSJ, alleging the Recreational Use Immunity Statute, R.S. 9:2795. The district court granted both motions, and Crump appealed.

The Second Circuit affirmed, ***Crump v. Lake Bruin Recreation & Water Conserv. Dist.***, 52,559 (La. App. 2 Cir. 4/10/19), in an opinion by Judge Moore. Perhaps the most contentious claim was that the trial court abused its discretion in denying Crump's motion to continue the hearing on the MSJs. He branded these "first strike" MSJs: motions that defendants file shortly after being served, before any discovery has occurred, and then rush them to hearing. In addition to the usual problem of finding fact witnesses and scheduling depositions, Crump showed that he had "courteously" agreed to two motions for continuance, so the State could change counsel, and then abstained from moving to compel when the State delayed answering discovery for over 10 months. The Second Circuit said it was "sensitive" to these facts, perhaps recognizing that they very nearly warranted

the continuance. However, the court found no abuse of discretion, given that the hearing was over a year after the State was joined as a defendant, and 9½ months after the State filed its MSJ. Also, on the merits, there was no genuine issue that R.S. 9:2795 (recreational use) protected the State from this claim, and R.S. 9:2800 C protected the Conservation District (its enabling legislation conferred complete control over the supply of fresh water to the lake, but not the piers). In this situation, no additional evidence that the plaintiff might develop would have altered the outcome.

Lake Bruin might consider posting its facility "Fish At Your Own Risk."

Our bread and butter. A few cases from the court's February docket (argued in February, rendered in April) illustrate the "general civil practice," issues that most of us can recognize, give advice about, and then litigate either side.

Mr. Elliott executed a notarial will; he married his second wife two months later; he passed away five months after that; his new bride filed a petition for probate; the 26th JDC rendered judgment admitting the will and placing the new Ms. Elliott in possession. A few weeks later, Mr. Elliott's two adult daughters (from his prior marriage, to be sure) sued to annul the will, on grounds that their father was legally blind and unable to read, and the will did not comply with La. C.C. art. 1579 (for a testator who does not know how to read, or is physically impaired to the point that he cannot read, the notary must read the will aloud to the testator, and the witnesses must attest to this fact). The district court rejected the daughters' claim, and they appealed. The Second Circuit affirmed, ***Succession of Elliott***, 52,595 (La. App. 2 Cir. 4/10/19), in an opinion by Judge Bleich (pro tem). The court held that the testator's ability to read is an element of testamentary *capacity,* not authenticity or formality. Notably, the district court accepted the view of Mr. Elliott's ophthalmologist, Dr. Baber, who testified that being "legally blind" pertains to driving, and does not mean that the patient cannot read without prescription glasses, a magnifying lens or other assistance; he declined to give an opinion whether Mr. Elliott could read the will on the day he signed the will. The Second Circuit found no manifest error in the district court's decision. It noted, in conclusion, that with an ordinary notarial will, La. C.C. art. 1577, there is no requirement that the testator "actually read" the testament at the time of its execution.

Franks Investment Co. and the Shaws, Melba and Linda, were neighbors in southern Caddo Parish. Franks owned a 432-acre tract, used for farming; the Shaws owned an adjacent three-acre tract, used as a residence. The Shaws' parents' deed, from 1977, put the boundary along a fence line described in a 1960 survey, but the fence was long gone (only one post and an "H brace" remained). The Shaws began to occupy space beyond the fence line, up to a crop line. In 1978 they built a metal shed on the expanded tract, used it as a right-of-way to Leonard Road, and as a space for family gatherings and overflow parking. Franks acquired its large tract in 1998, and leased the property, up to the fence line, to tenant farmers and mineral lessees. In 2013, Franks's manager spotted the dirt road, and commissioned a survey, which showed that the metal shed sat on the old fence line. Negotiations were fruitless: in April 2016, Franks filed a boundary action, which the Shaws converted to petitory by claiming acquisitive prescription. The district court heard eight witnesses over two days. It ruled that although it was not in their title, the Shaws acquired ownership by adversely possessing the disputed area up to the crop line for themselves in an open, continuous, public, unequivocal and uninterrupted manner for over 30 years. Franks appealed. The Second Circuit affirmed, ***Franks Investment Co. v. Shaw,*** 52,636 (La. App. 2 Cir. 4/10/19), in an opinion by Judge Stone. The standard of review is, of course, manifest error, and the opinion gives a very good idea of the kind of evidence will prove corporeal possession in one's own name, La. C.C. arts. 3424, 3427.

Traders' Mart is an independent stock broker in Monroe. Its owner, Carter, signed an "Independent Representative Agreement" with AOS Inc., dba MoneyBlock, to execute certain stock trades on behalf of Traders' Mart. Carter entrusted most of his business to an employee, Ms. Recoulley, who listed herself as the acquiring broker for most of Traders' Mart's customers. After about 3½ years, Ms. Recoulley suddenly left Traders' Mart, opened her own brokerage, and took Traders' Mart's customers with her. Traders' Mart sued AOS and Ms. Recoulley alleging unfair and deceptive trade practices, under LUTPA, R.S. 51:1401, et seq. AOS filed a dilatory exception of prematurity, urging that its Independent Representative Agreement with Carter contained an arbitration clause. Traders' Mart countered that only its owner, Carter, signed the Agreement, and not in a representative capacity, so Traders' Mart was not bound the arbitration clause. The district court sustained the exception, and Traders' Mart appealed. The Second Circuit affirmed, ***Traders' Mart Inc. v. AOS Inc.***, 52,592 (La. App. 2 Cir. 4/10/19), in an opinion by Judge Garrett. The court looked to significant federal jurisprudence that an arbitration agreement may bind a nonsignatory in certain circumstances, *Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 129 S. Ct. 1896 (2009). Further, Traders' Mart "exploited and embraced the contract and knowingly sought and obtained direct benefits from the contract," thus subjecting it to the Agreement. Arbitration agreements are lurking in virtually every contract you sign (or merely "click to agree"), and the law strongly favors arbitration, R.S. 9:4201. This case shows the exceptionally long and strong reach of arbitration.

Technical findings, No. 1. Ms. Johnson bought a spark plug for her Poulan Pro 450 lawnmower at Lowe's; a sales associate assured her it was precisely the right spark plug. After she got it home and installed it, however, she tried to pull the cord. She alleged that the cable "jerked violently" and the crank handle struck her "violently" on her left arm, causing pain that radiated down from her neck and aggravated her preexisting carpal tunnel syndrome. She sued Lowe's, which moved for summary judgment. The district court granted, and Johnson appealed. The Second Circuit affirmed, ***Johnson v. Lowe's Home Ctrs. LLC***, 52,602 (La. App. 2 Cir. 4/10/19), in an opinion by Judge Stephens. Ms. Johnson's own equipment mechanic expert catalogued several things that were wrong with this lawnmower, but … and here is technical finding No. 1 … nothing about the spark plug can cause the starter cord to jerk violently.

Technical findings, No. 2. Your natural gas provider has probably installed an encoder receiver transmitter ("ERT") on the gas meter at your house. The meter still has a revolving wheel, but the ERT stores usage data for 40 days and transmits it by FM signal to the reader when he or she comes around, for lower cost and greater accuracy. Farrar, a homeowner in Minden, strongly objected when he saw the ERT on his meter: he never gave CenterPoint permission to install it, he never agreed that using it would be a condition of continued gas service, and it invaded his privacy. Most of all, he believed the ERT was an electronic surveillance device which allowed outsiders to know not only how much gas he was using, but also details and activities of the persons in his home. CenterPoint moved for summary judgment, which the district court granted. Farrar appealed, and the Second Circuit affirmed, ***Farrar v. CenterPoint Energy Res. Corp***., 52,557 (La. App. 2 Cir. 4/10/19), in an opinion by Judge Pitman. Farrar's expert, a retired Ph.D. in operations management, stated that data being gathered by energy companies "might be worth more than the commodities they sell," and thus the perception of an invasion of privacy is "not imaginary or unlikely." One of CenterPoint's experts, its own regional operations manager, stated that with the ERT technology, only meter readings are transmitted; another, its IT director, stated that the company does not commercially sell or share its meter readings. And so … here is technical finding No. 2 … that little gadget on your gas meter is not a surveillance system, spying device or "bug." At least not yet.

Member/Family Sunday Fun Day Crawfish Boil

SUNDAY FUN DAY
Shreveport Bar Association
2019 Member Day

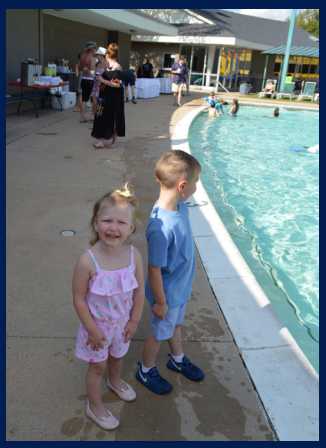
THANK YOU 2019 T-SHIRT SPONSORS

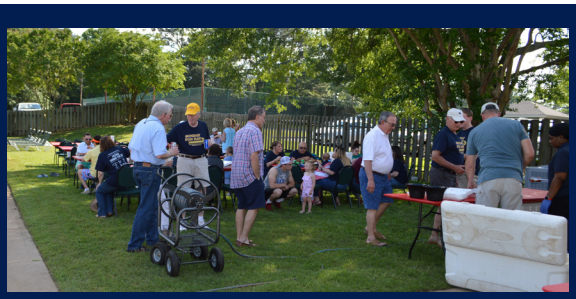
ALLEGRA
PRINT • MAIL • SIGNS

CITIZENS NATIONAL BANK
"Your Kind Of Bank"

Hilton Garden Inn
HOMEWOOD SUITES BY HILTON
SHREVEPORT/BOSSIER CITY, LA

SPECIALTY TREE CARE
318-489-3318





SUNDAY FUN DAY
Shreveport Bar Association
2019 Member Day

Richard King Memorial Shootout

The Eighth Annual Richard B. King Memorial Shootout was again a great success. Five teams participated in the shootout that began prior to the start of the SBA golf tournament on May 13. The participating teams were Jim Colvin and Cole Smith; Walter Gerhardt and Todd Benson; Holland Miciotto and Kyle McCotter; Zach Shadinger and Judge Mike Nerren; and Jimmy Mijalis and Alexander Mijalis, who were the winning team.

Trophies were presented to the victorious team. Congratulations Jimmy and Alexander on a job well done!

Golf Tournament Winners:

Overall Low Gross of 54 was Alexander Mijalis' team which included Jimmy Mijalis, Judge Craig Marcotte and Billy Joe Tolliver

1st Place, 1st Flight Net of 53 was Jim Colvin's team which included Cole Smith, Philip Jordan and James Manning

2nd Place, 1st Flight Net of 54 was Holland Miciotto's team which included Kyle McCotter, Ethan Arbuckle and Zach Shadinger

1st Place, 2nd Flight Net of 57 was Ray Kethley's team which included Danny Deck, Ken Chandler and Judge Charles Tutt

2nd Place, 2nd Flight Net of 59 was Parker Maxwell's team which included Sam Crawford, Reid Jones and Mickel Husted

Craig Wood won Closest to the Hole on hole #5
Kyle McCotter won Closest to the Hole on hole #17
Jim Colvin won Long Drive on hole #6

2019 SBA Golf Tournament

The annual Golf tournament was held at East Ridge Country Club on May 13. Golf Committee Co-Chairs Jarred Franklin, Curtis Joseph, Jimmy Mijalis and Alexander Mijalis, along with committee members Thomas Cook, Walter Gerhardt, Judge Craig Marcotte, Trey May, Jim McMichael, Holland Miciotto and Woody Nesbitt, planned the event which was enjoyed by over 100 SBA members, sponsors and guests.

Thanks to all of our golf teams, sponsors, committee members and volunteers!

THANK YOU 2019 SBA GOLF TOURNAMENT SPONSORS

GOLF TOURNAMENT SPONSORS

MASTERS

Blanchard, Walker, O'Quin & Roberts

Choice Copy Service

Colvin, Smith & McKay

Eldorado Resort Casino Shreveport

Karen Tyler Reporting, LLC

Lunn Irion Law Firm

Superior Steakhouse

US OPEN

Farmers Seafood Company

Moffitt Volkswagen, Porsche, Audi, Mazda

Morgan Buick GMC

THE PGA

Hilton Garden Inn / Homewood Suites Bossier City

Pizza Rev

Skrivanos Engineering, Inc.

Dr. Grady Stimits

SBA Officer Election Procedures

The Officer Nominating Committee, consisting of the five most recent past presidents of the Shreveport Bar Association, will meet this summer to nominate the 2020 SBA Vice-President and Secretary-Treasurer Elect. The Officer Nominating Committee will report its nominations to the Elections Committee on or before August 15, 2019, and those nominations will be announced in the September issue of *The Bar Review*. **Nominations for the offices of Vice-President and Secretary-Treasurer Elect may be made by any member in good standing of the Shreveport Bar Association who is not on senior status.**

Nominations are sought **from the membership** for the two Member-At-Large positions on the Executive Council. These positions are for a two-year term.

***All* nominations**, including any nominations from the general membership for the offices of Vice-President and Secretary-Treasurer Elect, **must be in writing and received by the Elections Committee, Shreveport Bar Association, 625 Texas Street, Shreveport, LA 71101, not later than 5:00 p.m. on Thursday, August 15, 2019.** The nominations should include a brief biographical sketch, and, if not a self-nomination, must be accompanied by a signed statement of the nominee that the nominee will stand for election and serve if elected.

The Elections Committee will certify the nominations timely received to the Executive Council for all of the offices open. Names of candidates and biographical information will be published in the September issue of *The Bar Review*. **Ballots will be sent to the entire SBA membership only if more than one nomination is received for any or all of the four offices.**

Jeff Thompson Assumes Second Circuit Seat

by Hal Odom Jr., rhodom@la2nd.org

Judge Jeff R. Thompson became the newest member of the Second Circuit in an investiture ceremony on April 29, 2019.

Chief Judge Felicia Toney Williams convened an almost-en banc session of the court (two judges were unable to attend), and Don Jones, former mayor of Bossier City, welcomed the assembled crowd. James N. Johnson, a friend of Judge Thompson's, offered an invocation, and Mayor Jones made brief opening remarks commending Jeff's family, dedication and work ethic. Richard Ray, a practitioner in Bossier City, then introduced Justice Scott J. Crichton, who traced a biographical sketch of Judge Thompson. In addition to his academic career at ULM and Tulane Law School, Judge Thompson has been an administrator at ULM, a reserve officer with the Monroe Police Dept., an insurance agent and, of course, a state representative from District 8. "Jeff brings a world of diverse experience to this bench," Justice Crichton concluded.

Justice Crichton then administered the oath, which Judge Thompson received with his wife, Toni, at his side. In closing comments, Judge Thompson profusely thanked his parents, saying, "Only death keeps them from being here today to share this." He also introduced his wife and his son, Rowe, and said that his daughter was unable to attend "because she's down at LSU taking her final exams." Finally, he thanked all the friends who came to the ceremony. "Y'all are dedicated, because there's not a parking space within two blocks of this building!"

The event was held in the Second Circuit courtroom, which was filled to capacity, with additional friends and colleagues standing along the back wall and some in the hall. After court was adjourned, many attendees went across the street to a reception honoring Judge Thompson at the Petroleum Club.

Judge Thompson is a graduate of Jena High School, ULM (real estate and insurance, 1988) and Tulane Law School (JD, 1995). He was District 8 representative in the La. House from 2012-2014, and was elected to the 26th JDC, Division B, in late 2014. Following the retirement of Chief Judge Henry N. Brown, Jeff ran for the Second Circuit, Second Dist., Election Section 2, winning the seat in a March 30, 2019, election. Jeff took his formal oath and received his commission on April 19, and the court docketed his first appearance on the Second Circuit bench for Tuesday, May 21, 2019.

Judge Jeff Thompson, left, raised his right hand as his wife, Toni, looked on as Justice Scott Crichton administered the oath of office on April 29, 2019.

Monroe Inn of Court

by Hal Odom Jr., rhodom@la2nd.org

FEDERAL PRACTICE AND PROFESSIONALISM

The Judge Fred Fudickar Jr. AIC (Monroe, La.) held its final regular meeting of the 2018-'19 season on Tuesday, April 30. A large team headed by U.S. District Court Judge Terry Doughty and U.S. Magistrate Judge Karen Hayes presented "Dos and Don'ts of Federal Court Practice," with an emphasis on professionalism.

The Monroe Division's courtroom deputy, Amy Crawford, gave an overview of the Western District's website, highlighting the deficiency checklist, and one of the permanent law clerks, Kayla May, demonstrated the use of the "chambers tab." One attendee chimed in, "You know, some of us 'old guys' aren't that familiar with the Internet," eliciting general laughter.

Judge Doughty then called attention to the court's Code of Professionalism, published as a districtwide standing order. "You might notice a slight difference," he said. "These are modeled on the version of the Code of Professionalism promulgated by the La. Supreme Court, but that version was changed in March 2018. We plan to amend ours at the next court conference." Part of the concept of professionalism is courtesy to the court and opposing counsel by not filing overlong memos: in motion practice, it's a 25-page limit on the memorandum. "And I like to be fast-ruling," he added: "The other side has 21 days to file an opposition. I've reduced the time for a reply memo from 14 to 7 days, and I do not want a sur-reply unless a new issue was raised in the reply memo."

Judge Hayes reminded members that they could sign up for the civil pro bono panel, to represent claimants in § 1983 cases. "It offers reimbursement up to $2,500, which is some incentive."

Other team members were Monroe Division attorneys, including Dennis Stewart, Bill Barkley, Thomas Tugwell and Rachel Karpov. They conducted a round robin discussion of various issues they had seen, particularly the failure of plaintiffs and removing defendants to allege citizenship "distinctly and affirmatively."

The meeting was held at The Lotus Club, in the Vantage/ONB building. The 24 members in attendance received professionalism CLE, and enjoyed an open bar and heavy hors-d'oeuvres. Judge Hayes announced that the final meeting, the annual crawfish boil, would be held May 13.

U.S. District Judge Terry Doughty

U.S. Magistrate Judge Karen L. Hayes led the discussion, assisted by her court staff. (Photos by Hal Odom Jr.)

2019 Professionalism Award Nominations
Nominate Someone Who Deserves to Be Honored

The Shreveport Bar Association Professionalism Award will be presented at the October luncheon meeting, and the recipient's name will be added to the permanent plaque which hangs in the Shreveport Bar Center. Prior recipients of this prestigious award are Frank M. Walker Jr., Kenneth Rigby, Justice Pike Hall Jr., Judge Henry Politz, Harry Nelson, Roland Achee, Edwin Blewer Jr., Judge Tom Stagg, Jackson B. Davis, Glenn Walker, John Frazier, Michael S. Hubley, Vicki C. Warner, Reginald W. Abrams, A. M. "Marty" Stroud III, Samuel W. Caverlee, Charles C. Grubb, Zelda W. Tucker, James Stewart, Don Weir Jr. and William J. Flanagan.

The SBA Professionalism award may be presented to any member of the Shreveport Bar Association who has remained in good standing during their practice of law, and he or she must have practiced law for a period not less than 15 years. The award may be given posthumously, but should not be limited to attorneys who have died. This award should be reserved for individuals who, during their practice of law, exemplify the high ideals and standards set forth by the Louisiana Bar Association's Rules of Professional Conduct, as well as the aspired goals for attorney conduct adopted by the Shreveport Bar Association.

Any attorney who meets the above criteria may be nominated by any other member of the Shreveport Bar Association. All nominations should be submitted in writing by **Friday, August 30, 2019**, and mailed to:

Chairman, Professionalism Committee
625 Texas Street
Shreveport, LA 71101

When submitting your nominations, please include why you think the attorney you are nominating should receive this award, and any additional information that would help the committee in its selection process.

SBA Professionalism Award Nomination Form
DEADLINE: Friday, August 30, 2019

The award is reserved for individuals who exemplify the highest standards of professionalism while practicing law. Any eligible attorney may be nominated by another SBA member. Written nominations may be hand-delivered to SBA staff or mailed to Chairman, Professionalism Committee, 625 Texas Street, Shreveport, LA 71101. Electronic submissions are acceptable, and use of this form is optional.

I would like to nominate the following SBA member to receive the 2019 Professionalism Award (please complete as much as possible)

Name	
Street Address	
City, State, Zip Code	
Home Phone	
Work Phone	
Email	

Reason the attorney should receive the award (you may attach additional information)

Signature

Name (printed)	
Signature	
Date	

North Louisiana Appellate Conference Highlights

Mark Your Calendar

JUNE 13
SBA and YLS Lunch & Learn
Trial Advocacy Summer Series, Session 1
11:00 a.m.-1:00 p.m. at the Shreveport Bar Center
Speakers: Judges Frances Pitman and Michael Pitman and Attorney James C. McMichael Jr.

JUNE 26
SBA Member Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
Speaker: State Representative Cedric B. Glover

JULY 11
SBA and YLS Lunch & Learn
Trial Advocacy Summer Series, Session 2
11:00 a.m.-1:00 p.m. at the Shreveport Bar Center
Speakers: Judge Brady O'Callaghan and James C. McMichael Jr.

AUGUST 8
SBA and YLS Lunch & Learn
Trial Advocacy Summer Series, Session 3
11:00 a.m.-1:00 p.m. at the Shreveport Bar Center
Speakers: Judges S. Maurice Hicks and Mark Hornsby and Attorney James C. McMichael Jr.

SEPTEMBER 12
SBA and YLS Lunch & Learn
Trial Advocacy Summer Series, Session 4
11:00 a.m.-1:00 p.m. at the Shreveport Bar Center
Speakers: Judge Karelia R. Stewart and James C. McMichael Jr.

SEPTEMBER 25
SBA Member Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
Speaker: TBD

OCTOBER 16-17
Recent Developments by the Judiciary CLE
Hilton Garden Inn, Bossier City

OCTOBER 23
SBA Member Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
Speaker: Alston Johnson
Professionalism Award Presentation

OCTOBER 29
SBA Memorial & Recognition Ceremony
2:00 p.m. at the Caddo Parish Courthouse

We would like to thank the following law firms and courts for their support by participating in the SBA and Ferris OfficeSmart, LLC Co-Op Program:

ABRAMS & LAFARGUE

BLANCHARD, WALKER, O'QUIN & ROBERTS

BOOTH, LOCKARD, POLITZ & LeSAGE

BOWIE & BERESKO

BRADLEY, MURCHISON, KELLY & SHEA

CASTEN & PEARCE

BOWIE & BERESKO

DISTRICT ATTORNEY, CADDO PARISH

JUDGE KATHERINE DORROH

DURRETT LAW FIRM

JUDGE RAMONA EMANUEL

KITCHENS LAW FIRM

LOVE, RIGBY, DEHAN & McDANIEL

McMICHAEL, MEDLIN, D'ANNA, WEDGEWORTH & LAFARGUE

DAVID MOORE, ATTORNEY AT LAW

PETTIETTE, ARMAND, DUNKLEMAN, WOODLEY, BYRD & CROMWELL

SECOND CIRCUIT COURT OF APPEAL

SMITHERMAN LAW FIRM

SOCKRIDER, BOLIN, ANGLIN, BATTE & HATHAWAY

JUDGE KARELIA R. STEWART

JUDGE CHARLES TUTT

WIENER, WEISS AND MADISON

The Captain Speaks

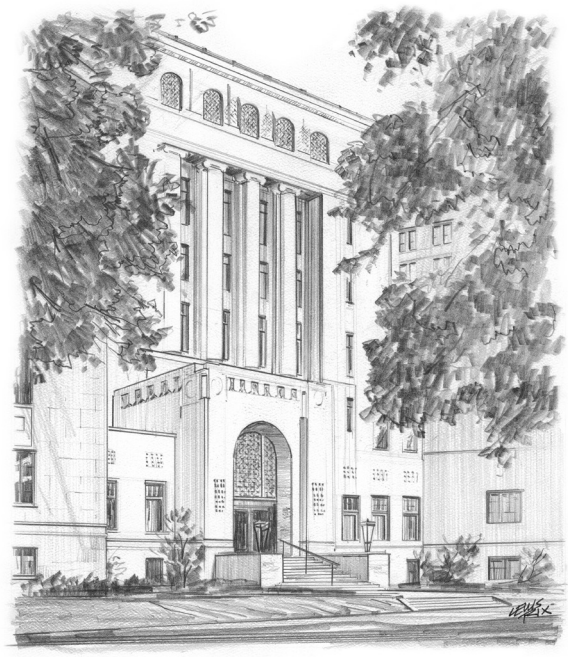
by Captain XXVI Rebecca Edwards, redwards@caddoda.com

The Justinian League is uniting! Thanks to all who have joined us so far by becoming members of the Krewe of Justinian. It is not too late to sign up and be a part of our 26th year celebrating the inspirational, aspirational and fantastical world of superheroes. You don't need a cape, a mask, a secret identity, or even a superpower to join. Just go online to www.kreweofjustinian.com/join-now and sign up!

Now is the time to join because Coronation XXVI is approaching faster than Superman soaring across the sky to rescue Lois Lane. August 9 is the date, and Sam's Town is the place to "Meet Me in Metropolis" to welcome the new royalty – the Superheroes of the Justinian League. Dance the hot summer night away to Manhattan, an awesome Dallas party band that will be making its Krewe of Justinian debut. Then cool off with the night's signature Kryptonite cocktail. I hear it's Lex Luthor's favorite.

Don't let excuses or stagnation keep you away. Escape from your personal "Fortress of Solitude" and join the Krewe of Justinian for fun and fellowship this year. It is going to be SUPER!

Captain Rebecca



Caddo Parish Courthouse
Shreveport, LA 71101

CADDO COURTHOUSE PRINTS AND NOTE CARDS AVAILABLE FOR PURCHASE

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**

KREWE OF JUSTINIAN
MEMBERSHIP APPLICATION

JUSTINIAN LEAGUE

2019-2020

CORONATION BAL -AUGUST 9, 2019
MIDWAY TO MARDI GRAS PARTY - - - - - - - - NOVEMBER 2, 2019
JUSTINIAN GRAND BAL - - - - - - - - - - - - - - - JANUARY 31, 2020
ROYALTY BRUNCH - - - - - - - - - - - - - - - - - - FEBRUARY 2, 2020

Your membership dues entitle you and your spouse/guest to attend four (4) parties at no additional charge.

Name_____ Spouse_____

Firm Name_____

Home Address_____

Office Address_____

Home/Cell Phone _____ Office Phone_____

Fax _____Email_____

Krewe Dues:

Attorney and Spouse Membership ($350.00)	$_____
Judge and Spouse Membership ($350.00)	$_____
Young Lawyer* and Spouse Membership ($225.00)	$_____
Government Employees and Spouse Membership ($225.00)	$_____
Paralegal/Legal Staff and Spouse Membership ($225.00)	$_____
Associate and Spouse Membership ($250.00)	$_____
("Friends of the Krewe")	

Make Checks Payable to: Krewe of Justinian

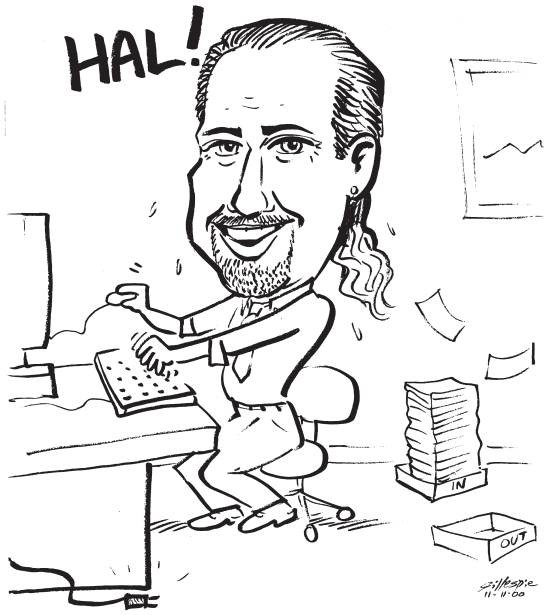
Mail to: Krewe of Justinian, 625 Texas Street, Shreveport, LA 71101

* Admitted to Bar for less than five (5) years

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

Careful about those uniforms. It was a provocative piece in *Sports Illustrated* predicting that head coach Ed Orgeron "will last a long time at LSU." Louisiana's largest newspaper picked up the story and, perhaps in gushing admiration (or gagging indignation), misquoted *SI*: "The hot seat talk last offseason came only from the *uniformed*, and Orgeron continues to upgrade LSU's roster." Did *The Advocate's* staff think the rumors of ousting Coach O came only from *players in uniform*? Those guys would be least likely to say so …



No, what *Sports Illustrated* wrote was that the talk of booting the coach came only from the *uninformed*, people who didn't know the "inside story." What a difference a letter makes!

Even professional editors can miss this. An online reference work, *The Law of Law Firms*, cited the District of Columbia's online solicitation rules to the effect that websites would be in violation if, among other things, they "make *uniformed* statements that the lawyer 'can help you[.]'" This should be *uninformed*, in that without information about the client and her claim the attorney could not possibly know if he can help her.

Another variant appeared in a recent published opinion: "A discrepancy exists between the minute entry, the State of Louisiana *Uniformed* Commitment Order (U.C.O.), and the transcript." This should be simply *Uniform*, in the sense of *following a template*. It's already an adjective; no need to make it into a perfect passive participle, like *infirmed* – an atrocity the legislature purged from La. R.S. 14:93.3, finally, in 2014.

Save *uniformed* for people *wearing uniforms*, like police officers, deputies and, yes, football players eligible to take the field.

Some of them ride bicycles. A guest editorial in Shreveport's daily newspaper commended prosecutorial success in convicting the leaders of a gang that had terrorized Queensborough with "firearm violence, armed robberies, drug *pedaling*, and witness intimidation." Of course a *pedal* is a *foot-operated lever*, and as a verb it means to *propel a bicycle*. The homophone, *peddle*, is the word for *carry around and sell in small quantities*. The Block Boyz were surely *peddling* drugs, although some of the lower members of the organization might have been on bike.

Courts occasionally make this mistake: "He also explained that in the case of a dealer *pedaling* crack cocaine, there generally will not be regular drug user paraphernalia found with the drugs[.]" *State v. Williams*, 2016-140 (La. App. 3 Cir. 9/28/16), 201 So. 3d 379. It should be *peddling*. One gun-toting felon was riding his bike when he saw two deputies: "He turned around with his bicycle and starting *peddling* fast." *State v. Vance*, 06-465 (La. App. 5 Cir. 12/12/06), 948 So. 2d 1106. It should be *pedaling*, but the defendant was carrying a small amount of marijuana. Most cyclists, I'm sure, never touch the stuff.

My favorite redundancy favorites. As a verb, *cite* means *refer to* or *offer as an example or as authority*. If you add the preposition *to*, you have constructed a redundancy that means *refer to to*. However, courts do this all the time. "Further, C.K.D. *cites to* his trial testimony that he had nearly completed the renovations on his family home[.]" *State in Interest of ALD*, 2018-1271 (La. 1/30/19), 263 So. 3d 860. The father merely *cites* his own trial testimony; other possibilities would be *points to* or *calls the court's attention to*. "While the Plaintiff *cites to* numerous cases to support an increase in the survival damage award, an examination of similar cases is unnecessary here." *Ponseti v. Touro Infirmary*, 2018-0109 (La. App. 4 Cir. 12/5/18), 259 So. 2d 1097. Just strike the redundant *to*, and you've said it perfectly.

Remand means to *send back*. If you add the adverb *back*, you have assembled a clunky redundancy that means *send back back*. I could cite hundreds of instances, but two will suffice. "The motion was granted, and the matter was *remanded back* to state district court where the defendants filed two separate pleadings[.]" *Roy v. Dixie RV Superstores of Acadiana LLC*, 2017-1154 (La. App. 3 Cir. 3/14/18), 241 So. 2d 1252. "The Department asks that * * * this Court find that the Board has incorrectly calculated the amount of the credit and *remand back* to the Board for recalculation, if necessary." *Woods v. Robinson*, 18-145 (La. App. 5 Cir. 9/19/18), 256 So. 3d 409. Please remand these to the authors for editing.

The initialism *ATM* stands for *automated-teller machine*. I keenly remember an impressive array of six of these things installed in the LSU Union by about 1978, but the device's first appearances in state court opinions did not come until *State v. Gordon*, 582 So. 2d 285 (La. App. 1 Cir. 1991) (as the single-function "money machine") and *State v. Savage*, 621 So. 2d 641 (La. App. 2 Cir. 1993) (in its modern form). The third letter of *ATM* stands for machine, so to write *ATM machine* creates the redundantly overdrawn *automated-teller machine machine*. "She was later notified by her bank that the robbers used her debit and/or credit cards at three *ATM machines* and two Game Stop stores." *State v. Rodas*, 15-792 (La. App. 5 Cir. 9/22/16), 202 So. 3d 518. I am pleased to see that occurrences of this construction are on the decline, perhaps owing to greater public awareness of the redundancy, or, more likely, our transition to a cashless society. If the term is really on the way out, please don't be the last person to use it.

You must remember this. The word for a *souvenir* or *keepsake* is *memento*. The root is the same: ***mem****ento*, ***mem****ory*, *re****mem****ber*. It has nothing to do with that other word, *moment*, which means a *short period of time* or *importance*. Please avoid the error of the headnote writer in *United States v. Shively*, 927 F. 2d 804 (5 Cir. 1991): "home was found to contain no family *momentos* following blaze[.]" Chief Judge Clark wrote it correctly: "After the fire, the home was found to contain no family photographs or *mementos*, and one investigator opined the house did not appear 'lived in.'" That's not so hard to remember, is it?

Red Mass 2019

SBA
SHREVEPORT BAR ASSOCIATION
625 Texas Street
Shreveport, LA 71101
www.shreveportbar.com

DEADLINE FOR SEPTEMBER ISSUE: AUGUST 15, 2019

SBA LUNCHEON MEETING - JUNE 26

Petroleum Club (15th floor) – Buffet opens at 11:30 a.m. Program and Speaker from 12:00 Noon to 1:00 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

LOUISIANA HOUSE CONCURRENT RESOLUTION 24

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

Where: Petroleum Club (15th floor)

Featuring: Rep. Cedric B. Glover, Louisiana House of Representatives

On June 26, State Representative Cedric B. Glover will discuss Louisiana House Concurrent Resolution 24 to urge the Board of Regents to study the potential for establishing a campus of the Southern University Law Center in Shreveport. Cedric Glover is a lifelong resident of Shreveport and was educated in the public and private schools of Caddo Parish. Early on, Cedric's parents instilled in him and his siblings a sense of community and civic commitment. These traits manifested themselves early in Cedric's life. He started what, at that time, was the only black Boy Scout Troop in the entire NORWELA Council area. He later served with the Volunteers of America Lighthouse program as a Program Coordinator. During this time, he was elected Treasurer of the Shreveport Chapter of the NAACP, and president of the Martin Luther King Jr. Civic Club. As president of the MLK Civic Club, Cedric had an opportunity to lead and advance an entire neighborhood. Prompted by the urging of many, Cedric offered himself as a candidate for the Shreveport City Council District A seat. In November of 1990, Cedric became the youngest individual ever elected to the Shreveport City Council. While on the City Council, he served terms as Council Chairman, Chairman of the Public Safety Committee, and was selected as Public Official of the Year by the Shreveport Chapter of the National Association of Social Workers. He also received the Louisiana Municipal Association's Community Achievement Award three times, as well as the Shreveport Negro Chamber of Commerce Political Achievement Award. During his tenure on the Council, he was a board member of the Greater Shreveport Economic Development Committee, Goodwill Industries, the Metropolitan YMCA, and became the youngest graduate of the Leadership Louisiana Program. In October 1995, Cedric was elected to the Louisiana House of Representatives. During that time, as a member of the House, he was elected to the Executive Committee of the Louisiana Legislative Black Caucus. On November 7, 2006, Cedric B. Glover made history as the first African American Mayor of Shreveport. On January 11, 2016, Glover returned to the state house to represent District 4.

YES, I'M ATTENDING

You may confirm your reservation(s) by email, telephone, or fax.
Email: cwithers@shreveportbar.com Phone: 222-3643 Ext 3 Fax: 222-9272

I plan to attend the June luncheon. Attorney:_____

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