

# THE BAR REVIEW

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## INSIDE | SEPTEMBER

From The President .....	1 & 3
June Luncheon Highlights .....	2
Bar Briefs .....	4-5
Lunch & Learn Summer Series .....	7
Second Circuit Highlights.....	8-9
Calendar .....	10
Announcing the 2020 SBA Officers.....	11
Spotlight on Professionalism.....	11
KOJ Coronation.....	13
The Captain Speaks .....	14-17
Legal Hist.....	18-20
Welcome to the SBA.....	20
How Write You Are.....	21
Recent Developments .....	22-23
SBA Luncheon.....	24

## EVENTS AT A GLANCE

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
10/16-17	Recent Developments by the Judiciary Seminar at Hilton Garden Inn Event Center Bossier City
10/19	Midway to Mardi Gras Party
10/23	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club
10/29	SBA Memorial & Recognition Ceremony



## From The President

by Curtis R. Joseph Jr., President, [curtis@wjlawfirm.net](mailto:curtis@wjlawfirm.net)

### BE AN INSPIRATION

This motto was adopted by the Founding Fathers in 1782 as being representative of the nascent country that they were fashioning. The phrase itself was submitted in 1776 by Pierre Eugene du Simitiere to the committee charged with developing the Great Seal of the United States. Du Simitiere was born in Switzerland and lived in the West Indies for more than a decade before he moved to New York and ultimately settled in Pennsylvania. While in Pennsylvania, he was elected to the American Philosophical Society, which has long been regarded as the first learned society in the United States, and it has played an important role in American cultural and intellectual life for over 270 years.

Noted members of the American Philosophical Society have included the following: George Washington, John Adams, Thomas Jefferson, Alexander Hamilton, Thomas Paine, James Madison, John Marshall, Charles Darwin and Thomas Edison. The society employed a global approach and, in that regard, recruited members from other countries. Also among its ranks was Princess Dashkova, who was a principal player in the Russian Enlightenment. Not only did Dashkova play a part in the coup d'état that placed Catherine the Great on the throne, but she was the first woman in the world to lead a national academy of sciences. Consequently, it is fitting that she was a member of such a forward-thinking assembly. It is equally fitting that our nation's motto was spun from a member of a group containing so many capacious minds. Not only does the motto speak to the 13 individual states becoming one nation, but it is also reflective of the fact that our country is home to many races, religions and ethnicities. And, it's also home to individuals like Pierre Eugene du Simitiere, who come from other countries. Yet, the idea is for the many to come together as one.

In addition to my service in our bar association, I am a proud member of our local chapter of the American Inns of Court. In that capacity, I recently took a trip to Boston, Mass., to attend a leadership summit. Boston is the perfect destination for those of us who are enamored with history. So, Barbara and I flew up a few days early to take in some of the historical sites that the city offers. Among our activities was a tour of the Beacon Hill area, which lies just behind the Massachusetts State House. Our tour began at a monument dedicated to the 54th Regiment Massachusetts Volunteer Infantry, which was an infantry regiment that saw extensive service in the Union Army during the American Civil War. Although they sacrificed equally, the Army was deeply segregated at that time. Consequently, not only were the black soldiers denied the ability to achieve rank as officers, but they also received unequal supplies and pay. Rather than accept unequal pay, the soldiers engaged in a peaceful protest of the disparate treatment by refusing to accept paychecks until they were paid fairly for their sacrifice. Their protest went on for over a year and a half. Nevertheless, the Army remained segregated until July 26, 1948, when President Harry S. Truman issued Executive Order 9981, which prohibited discrimination in the United States Armed Forces on the basis of race, color, religion or national origin.

*continued on page 3*

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# June Luncheon Highlights



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That said, I bought the tie depicted in the photograph at an estate sale more than 15 years ago. As a drummer, I particularly appreciate the fact that drums, as shown on the tie, have played a vital role on the battlefield for centuries. Not only did they keep the soldiers marching in step, but they also communicated various commands from officers to troops. Consequently, I enjoy wearing the tie. However, I derive even greater pleasure in wearing the tie in and around the Fourth of July.

My heritage may be different from yours. I may practice a different religion than you. And, my heart may belong to someone that you do not approve of. But, it's all good because the ideals and free institutions upon which this country were founded contemplated the many becoming one.

In our respective comings and goings on the Fourth of July, it is likely that we encountered all types of Americans, each cherishing an idea of a country that they call home. As a young military kid, I learned that the monolithic American does not exist. We're all different, we're all vested with different talents, and in the grand scheme of things, we all play different roles. None more important than the next ... simply different. For example, my band recently performed at the conclusion of the Firecracker 5K, which is held on the Fourth of July. For my part, I played drums and cymbals in concert with four other musicians and a vocalist. The drums and cymbals can be found in sculptural representations throughout prehistoric times. Our saxophonist played an instrument that was created by a Belgian gentleman named Adolphe Sax. Our trumpeter played an instrument that was heard tearing down the walls of Jericho over 3000 years ago. Likewise, our guitarist followed the Hittites, who played stringed instruments more than 3000 years ago. Many instruments, many cultural representations, many textures, yet one overall groove. Throughout our country, many enjoyed hot dogs and, unfortunately, some lost fingers as a consequence of exploding fireworks. As a young man living in Germany, I recall eating a frankfurter and being amazed at how much it resembled a hot dog. And, as I appreciate it, fireworks date back to the Tang Dynasty of the 600s.

Beauty is in the simplest of things ... the small. To that point, my band's gig at the Firecracker 5K was rained out; however, had it not been rained out, I wouldn't have had the amazing experience of numerous individuals, whom I'd never met, coming together to help us schlep our equipment through the rain. We didn't request their help. They simply saw that we were in a precarious position and that we needed help. We were a motley crew, no doubt, but as we moved the equipment through the rain, the thought that ran through my mind was, "This is America – random strangers lending a hand without being asked."

In this regard, much is in the news these days concerning our country's immigration policy. Irrespective of which side

of the fence your argument falls upon, consideration should be given to Emma Lazarus' sonnet "New Colossus," which is mounted on the pedestal of the Statue of Liberty, and reads, in pertinent part, as follows:

*Give me your tired, your poor,  
Your huddled masses yearning to breathe free,  
The wretched refuse of your teeming shore.  
Send these, the homeless, tempest-tossed to me,  
I lift my lamp beside the golden door!*

All in all, our country is still a young one when consideration is given to the vast arc of history. We still have time and opportunity on our side. We can get this right. Our country is an idea, and its beauty lies in its diversity. We are great because of our diversity, not in spite of it. We are great because our many become one. May God bless each of you with life, liberty and the pursuit of happiness. And, may God bless these United States of America!

My kindest regards,

Curtis

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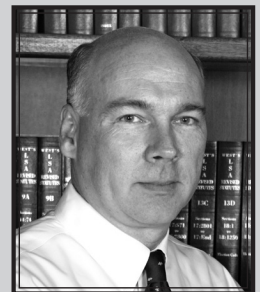
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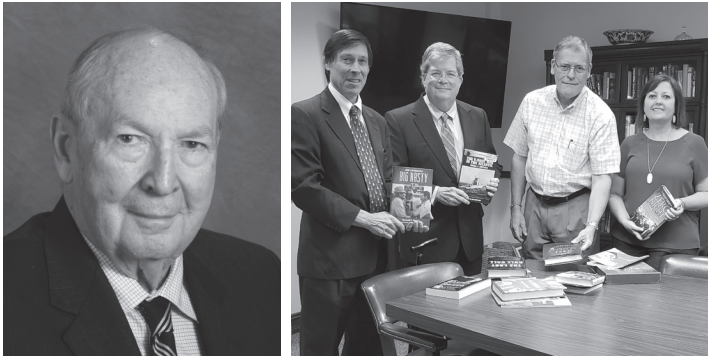
Elizabeth W. Middleton



Charles D. Elliott

## Arthur R. Carmody Jr. Donates to the Shreveport Bar Center Library

From his extensive personal library Art Carmody donated books to the Shreveport Bar Association library located on the second floor of the Shreveport Bar Center for all to enjoy. Pictured below from left to right past SBA presidents Larry Pettiette, Jim McMichael, Ben Politz and Rebecca Edwards are happy to receive the donated books from Mr. Carmody.



## Caddo District Attorney Honorable (Ret) James E. Stewart Sr. Honored for Work with Youth



Add another title to James E. Stewart Sr., retired judge and current Caddo Parish District Attorney. Now you can call him a hero, says the local group Volunteers for Youth Justice.

At a surprise ceremony Friday, June 14, 2019, the group named Judge Stewart as its 2018 “Hero of the Year” for his efforts to help children and families.

“Our mission is to provide a community caring for children, youth and families who are in crisis,” VYJ Executive Director Kelli Todd told a group of several score Stewart staffers, family members and friends at a brief ceremony in the Caddo Parish Courthouse Friday, June 14, 2019. “Each year we name a hero or person that embraces our mission and walks right alongside us and helps us carry out the mission.”

She cited numerous policies and activities D.A. Stewart and his office have implemented since he was elected in late 2015, including anti-truancy programs, partnerships to provide uniforms and medical care for children in need, Christmas bike giveaways to children who normally wouldn’t receive any presents, and summer football and volleyball camps for parish youth. She singled out the anti-truancy program for its impact. “When he was first sworn in, we were sending a thousand kids a year, little kids, to court,” Todd said. “Now we’re sending less than 20.”

In sum, she said, “Things like that made him an easy choice for this award.” D.A. Stewart was visibly surprised by the gathering and the award. “Normally, I know what’s going on in the office,” he said. “I have my spies.” He directed the praise to the attorneys and staffers in his office. “It’s not so much me but the people around me who come to me and ask, “Can we do this? Can we do that? If you don’t help the community, you’re not doing anything. We’re going to do more than prosecute cases, we’re going to go back to the community and serve the people. There’s an old Greek saying that society is better when old men plant trees whose shade they will not sit under.”

One of the friends in the gallery was Pastor Brady Blade Sr., who lauded D.A. Stewart’s defense of local families. “The devil has launched an attack on the most important institution in our land, and that’s the family,” Rev. Blade said.

Volunteers for Youth Justice is a volunteer-based, community-supported nonprofit organization whose mission is to provide a community caring for children, youth, and families in crisis. VYJ was established in 1981 by members of First Presbyterian Church of Shreveport, with the mission of providing intervention services to children involved in the juvenile justice system. VYJ currently administers four categories of programs: Court Programs, Youth Programs, TASC (Truancy Assessment Service Center) and CASA. These programs rely on community volunteers to provide advocacy

Karen Greer McGee, chief deputy clerk at the Second Circuit Court of Appeal, recently received the 2019 President’s Award from the National Association of Legal Assistants (“NALA”). This award recognizes the outstanding achievements of NALA members and their contributions to the paralegal profession. Karen accepted the award during NALA’s three-day conference in Scottsdale, Arizona, in July. A graduate of the LSU Paralegal Institute, Karen became a Certified Paralegal in 1990, an Advanced Certified Paralegal in Civil Litigation in 1994, was named La. State Paralegal Association’s Outstanding Paralegal of the Year in 1996 and was president of NALA 2010-2012. Since coming to the Second Circuit clerk’s office in January 1999, Karen has filled every function of the office, and is a familiar voice to clerks of the lower courts and a helping hand to the paralegals, secretaries and attorneys who do business at the court. Congratulations, Karen, on the national recognition, and thanks for your exemplary service to our legal community. Pictured below: Debra L. Overstreet (NALA Secretary) and Karen Greer McGee



for child victims of abuse or neglect and those who are at-risk of being involved in the juvenile court system. The programs provide developmentally appropriate, consequential and educational diversion services. VYJ serves children of all ages, racial and socio-economic.

The Harry V. Booth-Judge Henry A. Politz American Inn of Court held its Annual Dinner on May 16, 2019, at the Shreveport Club. The Inn recognized Hon. Carl E. Stewart for his distinguished service and significant contribution to our Inn, of which he was a founding member. Judge Stewart served two terms as national president.

This year the Inn honored Sherron Williams as the outstanding member. Team 6, which put on a musical CLE entitled “The Nanny State,” won the member’s choice program award. That program was chaired by Elizabeth Carmody, Graham Todd and Judge Ramona Emanuel.



*Pictured above Hon. Katherine Dorroh (Secretary), Jerry Edwards (Treasurer) Hon. Carl Stewart and Hon. Elizabeth Foote (President).*



*Pictured above “Team 6” Elizabeth Carmody, Kenny Haines, Marguerite Slattery, Curtis Joseph, Gahagan Pugh, Hon. Ramona Emmanuel and Kevin Hammond*



*Jerry Edwards and Sherron Williams*

On June 26, 2019, The Shreveport Bar Foundation was presented with a \$62,014 check from the Community Foundation of North Louisiana and a \$21,000 check from SBA Krewe of Justinian to help fund the SBF Legal Representation for Victims of Domestic Violence program and Pro Bono Project program.



*Pictured above are Dana Southern, Luke Thaxton, Emily Smith and Elizabeth Gibson*



*Pictured above Luke Thaxton and Emily Smith*



*Pictured above are Curtis Joseph, Lyn Lawrence and Luke Thaxton*

On August 16 & 17 the SBA Executive Council held a Retreat dinner and meeting in Natchitoches, and discussed long range planning for the Shreveport Bar Association. Attending the Retreat dinner and meeting are Curtis Joseph (President), Thomas Arceneaux (President-Elect), Donna Frazier (Vice-President), Jim McMichael (Immediate Past President), Rebecca Radford (Secretary/Treasurer), Nancy Cooper (Secretary/Treasurer-Elect), Members at Large Heidi Martin, Emily Merckle and Anna Priestley. Valerie DeLatte (YLS President), Sarah Giglio (Women’s Section President), Luke Thaxton (SBF President) and Dana Southern (Executive Director).



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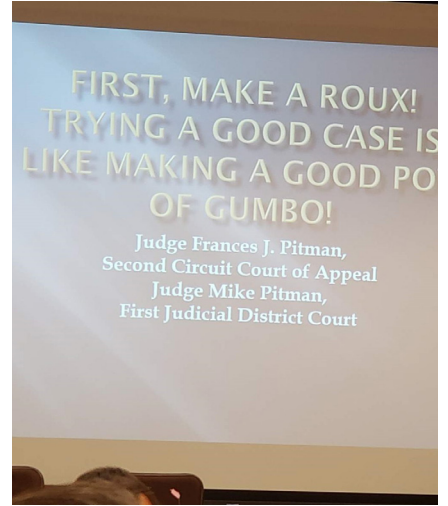
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# Second Circuit Highlights

by Hal Odom Jr., [rhodom@la2nd.org](mailto:rhodom@la2nd.org)

Several recent cases have involved wills and succession rights.

**We can attest to the template.** Lee Mark Hanna executed a prior will leaving his entire estate to his granddaughter, Savannah. About one month later, he executed a second will, but this one gave Savannah only a right of use over one tract of land and the income from a testamentary trust. Otherwise, the will gave his immovable property to his two stepchildren, Rose and Mark, and named Rose the succession representative. Predictably, Savannah sued to set aside the second will. Among other things, she claimed that the attestation clause was defective because it lacked a declaration by the witnesses and notary that the testator signed the will “at the end and on each other separate page,” as required by La. C.C. art. 1577 (2). To be sure, the will was in fact signed by the testator at the end and on every page, but the attestation clause omitted to mention this obvious fact.

Savannah filed a MSJ urging that under the strict construction of attestation clauses recently reaffirmed in *Successions of Toney*, 2016-1534 (La. 5/3/2017), 226 So. 3d 397, this clause was deficient and the will invalid. The district court agreed, granting summary judgment and annulling the will. The stepchildren appealed.

The Second Circuit reversed, ***Succession of Hanna***, 52,664 (La. App. 2 Cir. 6/26/19), \_\_ So. 3d \_\_, in an opinion by Judge Stephens. The court acknowledged the model attestation clause printed in Art. 1577 (2) and the holding of *Toney*. However, the code article permits the use of a clause “substantially similar” to the model clause, and *Toney* held that only “significant and material” deviations would invalidate the clause. The court found that omitting to state the obvious – that the testator signed the will on each page and at the end – simply was not a material deviation. The court reversed and remanded.

Essentially the same issue arose in ***Succession of Pesnell***, 52,740 (La. App. 2 Cir. 6/26/19), \_\_ So. 3d \_\_, an opinion by Judge Pitman. There, the attestation clause was slightly more complete, omitting only the words “on each other separate page.” However, the testator obviously signed at the end and on each separate page. The district court denied the adult children’s petition to annul the will, and they appealed. The Second Circuit affirmed, in language that echoed that in *Hanna*.

Readers know that I usually deplore reliance on templates. However, with a notarial testament, given the historically strict enforcement of statutory formalities and the suggested (even enclosed in quote marks) attestation clause, it seems an unnecessary risk to try to write it your own way.

**Does this scare you?** John and Dora Robinson lived many years in Kansas and had five daughters. After Dora died, John moved to Louisiana. Apparently, there was intense family strife; at one point, two of the daughters, Mandi and Sherry, had their father briefly interdicted. John executed a notarial will naming two other daughters, Jana and Merla, as succession representatives, making specific bequests to four of them, Jana, Merla, Mandi and Krista, but disinheriting Sherry. The will included a no-contest (also called *in terrorem* clause, as it seeks to *scare you* out of challenging the will):

“If any beneficiary under this will shall contest, obstruct, oppose or otherwise resist the probate of or validity of this will \* \* \*, such beneficiary thereby shall forfeit all bequests and rights conferred upon such beneficiary under this will[.]” After John died, Jana and Merla sued to open the succession and recognize the will.

Mandi and Sherry filed a “claim” asserting that their late mother’s estate had never been distributed, and it was worth half a million dollars. Later, they retracted this after finding out that under Kansas’s joint tenancy law, the mother’s estate passed entirely to the father and it was his to bequeath. Then, Sherry informed the court that she did not want to continue pursuing the case. Mandi, however, did not back out (the will had given her \$30,000). Jana filed for declaratory judgment striking the legacy to Mandi for violating the *in terrorem* clause. Jana later filed a MSJ on this issue. The district court denied, and Jana appealed.

The Second Circuit affirmed, ***Succession of Robinson***, 52,718 (La. App. 2 Cir. 6/26/19), \_\_ So. 3d \_\_, in an opinion by Judge Garrett. The court first noted that *in terrorem* clauses are not prohibited, *Succession of Laborde*, 2017-1334 (La. App. 1 Cir. 5/31/18), 251 So. 3d 461. The court then accepted that Mandi’s “claim” was merely to determine whether her father’s estate included her predeceased mother’s estate, and not to “contest, obstruct, oppose or otherwise resist” her father’s will. Jana could not get rid of her sister that easily.

**And then, inheriting wrongful death.** Ashley and Jeremiah lived in an apartment in Monroe with their son, Ezekiel, and with Ashley’s son from a prior relationship, Prince. (Ashley also had a daughter, Jalynn, who did not live with them.) Because of faulty wiring, the apartment caught fire and burned down; all four family members died of smoke inhalation. Albert Myles, Jalynn’s father, filed suit against the landlord for his daughter’s wrongful death; Princeton Vallo, Prince’s father, filed suit for Prince’s death. The suits were consolidated, and Myles (the other plaintiff, surprisingly not the defendant) filed an exception of no right of action against Vallo.

The gist of the exception was that Vallo had “abandoned the deceased during his minority” and was therefore “deemed not to have survived him.” La. C.C. art. 2315.2 E. Vallo admitted, in a deposition, that when Prince was born, he (Vallo) was doing 11 years in Allen Correctional Center for a drug conviction, had never been married to Ashley, and never provided one dime for Prince’s care or support. He maintained that he wrote letters to Prince and talked to him on the phone, even though the child was deaf. The district court sustained the exception, and Vallo appealed.

The Second Circuit affirmed, ***Myles v. Howell***, 52,716 (La. App. 2 Cir. 6/26/19), \_\_ So. 3d \_\_, in an opinion by Judge McCallum. The court conceded that Art. 2315.2, which sets inheritance rights for wrongful death actions, did not define “abandoned.” Vallo contended that the term should be read as in the Children’s Code, for termination of parental rights: the state must prove, by clear and convincing evidence, intent to permanently avoid parental responsibility, as by making no payments or visits for six months. La. Ch. C. art. 1015 (5)(b) and (c). The court found, however, that



this was not a termination case, but a wrongful death action, and the word “abandoned” fell under the general definition of La. C.C. art. 3506 (3): a parent has “left his child for a period of at least twelve months and \* \* \* failed to provide for the child’s care and support, without just cause[.]” Further, imprisonment is not an excuse to escape parental obligations, *State in Interest of BJ*, 48,857 (La. App. 2 Cir. 1/15/14), 135 So. 3d 777. The court was unfavorably impressed that Prince was conceived *after* Vallo was incarcerated: his situation is “even more egregious than the parent who is confined to prison after a child is born.”

Precisely how Vallo was able to conceive the child, i.e., impregnate Ashley, *after* he was incarcerated, was not apparent from the record. Therein probably lies a tale. Coincidentally, someone named Princeton Vallo was recently in the news, this time for somehow leaking cellphone videos of officers roughing him up at CCC in 2017 or 2018 while he was doing time for unauthorized entry of an inhabited dwelling; he’s filed a pro se tort suit alleging brutality. If these two distinctively named people are one and the same, he seems determined to keep the legal system busy for a while.

**You mustn’t have noticed.** Ms. Donatto, a resident of Bossier City, owned a house in Hampton, Virginia. She sold it to Ms. Holmes-Taylor, who eventually discovered latent termite damage. She sued Ms. Donatto and three others – the home inspector, the exterminating company and the real estate agency – for damages in Hampton General District Court. She took a default judgment against Ms. Donatto (only) for \$25,000, plus interest and court costs. She then filed suit against Ms. Donatto in the 26th JDC, under the Uniform Enforcement of Foreign Judgments Act (“EFJA”), to make this executory. Seven days later, the court rendered judgment making the Virginia judgment executory; notice was mailed to Ms. Donatto five days after that.

Ms. Donatto appealed, arguing that the first notice she ever received of any of this, in Virginia or Bossier Parish, was the notice of judgment. The Second Circuit reversed, ***Holmes-Taylor v. Donatto***, 52,712 (La. App. 2 Cir. 5/22/19), 273 So. 3d 1274, in an opinion by Judge Moore. The outcome hinged on a close reading of EFJA, La. R.S. 13:4243 B, which requires the clerk of court to send a notice of filing of petition to the judgment debtor by certified mail; in the alternative, the judgment creditor can place in the record proof that he or she personally mailed such notice to the judgment debtor. The slender record contained no proof that either form of notice had ever been sent to Ms. Donatto. Notice of judgment, after the fact, is not sufficient.

**Don’t abandon me.** In February 2014, Ms. Fowler filed suit, personally and on behalf of her minor son, for injuries sustained in an auto accident. A month later, the defendant, ANPAC, settled the son’s claim, leaving Ms. Fowler as the only plaintiff. ANPAC answered and requested discovery, which Ms. Fowler supplemented on May 21, 2015, with a cover letter and a signed copy of a release of Medicaid forms. Precisely three years later, May 21, 2018, Ms. Fowler moved to set the case for trial. ANPAC then moved to dismiss for abandonment. The district court granted this, and Ms. Fowler appealed.

The Second Circuit reversed, ***Fowler v. McKeever***, 52,754 (La. App. 2 Cir. 6/26/19), \_\_\_ So. 3d \_\_\_, in an opinion by Judge Thompson. The issue was whether Ms. Fowler’s last act, sending ANPAC’s counsel a cover letter and signed copy of the Medicaid release, constituted “formal discovery,” the linchpin of La. C.C.P. art. 561. Admittedly, Ms. Fowler did not file a certificate of service in the record, as required by La. C.C.P. art. 1313 B, but the court found that any service that complies with Art. 1313 “shall be considered a step in the prosecution or defense of the action for purposes of

Article 561,” La. C.C.P. art. 1474 C(4). The court also noted the judicial reluctance to declare cases abandoned, *La. Dept. of Transp. & Dev. v. Oilfield Heavy Haulers LLC*, 2011-0912 (La. 12/6/11), 79 So. 3d 978. Ms. Fowler’s counsel prudently kept an eye on the calendar.

**How often do you win a no cause?** In the latest installment of a long-running dispute between an attorney and court personnel of the 26th JDC, the Second Circuit held that the court’s audio recording of a criminal trial is not subject to the Public Records Law, ***Pesnell v. Sessions***, 52,646 (La. App. 2 Cir. 5/22/19), 274 So. 3d 697, in an opinion by Judge Pitman. The general provision of the law defines a public record to include “All books, records, \* \* \* tapes, recordings,” La. R.S. 44:1 A(2)(7), but an exception removes from the law “the physical medium or contents of any electronic storage device including any compact disc, \* \* \* audio or video cassette tape,” R.S. 44:4 (47)(a). Of course the special law prevails over the general. The court declined to rule on whether the exception was constitutional. In short, the attorney has no cause of action to obtain the raw tapes.

We are all familiar with, for instance, insurance policies that define coverage broadly and then except or exclude special situations, such as the business use exception in a personal auto policy. It seems unusual for the statute to define public records to *include* tapes and recordings, and then to *exclude* audio cassette tape, exactly the same thing. Until the legislature provides some guidance, courts will stand by the maxim *lex generalis non derogat speciali*.

The court also held that a homeless person has no cause of action against a nonprofit homeless shelter for refusing to give her overnight accommodations, ***Blanche v. Varner***, 52,659 (La. App. 2 Cir. 5/22/19), 273 So. 3d 620, in an opinion by Judge Stephens. The DeSiard Street Homeless Shelter, in Monroe, refused to take in Ms. Blanche on the night of June 8, 2018; in her pro se petition, she said she was given no reason for being turned away. The Shelter contended it had “prior experience” with Ms. Blanche and “reasonable grounds” to deny her admittance, and filed an exception of no cause on grounds that it was “not obligated to provide such services.” The city court agreed, and the Second Circuit affirmed. It noted that DeSiard Street is not a public facility, but a privately run, charitable nonprofit entity owing no specific obligation to any particular person.

According to news reports, the Salvation Army reopened its shelter in Monroe in July 2018, after a year’s closure due to budget problems. Ms. Blanche may now have another alternative, but even the Salvation Army may balk at a litigious guest.

**Sovereignty takes a hit.** Many pro se claims are unsuccessful, but when the party dons the robes of the Sovereign Citizen movement, the results can be downright unpleasant. Ms. Prevo, the defendant in a deficiency judgment case, decided to become a sovereign citizen, thinking this would exempt her from the laws of the United States and of Louisiana. She had a very regrettable excursion through the 26th JDC, interrupting everyone and demanding proof of the court’s jurisdiction. The court ruled her in contempt and exposed her to the jurisdiction of the downstairs jail for a few hours. She appealed, and the Second Circuit affirmed, ***Credit Acceptance Corp. v. Prevo***, 52,734 (La. App. 2 Cir. 6/26/19), \_\_\_ So. 3d \_\_\_, in an opinion by Judge Moore.

My guess is that she got most of her information from various Sovereign Citizen Websites. It turned out to be worth exactly what she paid for it – nothing.

# Mark Your Calendar



## **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: Elaine Goldenberg,  
Law Office of Munger, Tolles & Olson  
Washington, D.C.

## **OCTOBER 16-17**

Recent Developments by the Judiciary CLE  
Hilton Garden Inn, Bossier City

## **OCTOBER 19**

Midway to Mardi Gras Party  
Petroleum Club

## **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

## **NOVEMBER 2**

5th Annual Midway to Mardi Gras  
"Run for the Beads" 5K, 10K, and Fun Run  
Red River Brewery

## **NOVEMBER 6**

SBA Member Luncheon  
12:00 Noon at the Petroleum Club [15th Floor]  
Speaker: TBD [Veterans' Program]

## **DECEMBER 10-11**

December CLE By the Hour Seminar  
Petroleum Club [15th Floor]

## **DECEMBER 15**

Area Law Student Holiday Reception  
3:00 p.m. to 5:00 p.m.  
Silver Star Grille

## **Ferris OfficeSmart, LLC**

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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:

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**BRADLEY, MURCHISON, KELLY & SHEA**

**CASTEN & PEARCE**

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**DURRETT LAW FIRM**

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**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**

# Announcing the 2020 SBA Officers

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The Officer-Nominating Committee, consisting of the five immediate past presidents of the Shreveport Bar Association, recently met and nominated the following officers who will serve in 2020.

Vice-President

**Donald Armand Jr.**

Secretary-Treasurer Elect

**Sarah R. Giglio**

SBA President-Elect **M. Thomas Arceneaux** will automatically elevate to the office of President, **Donna Y. Frazier** to the office of President-Elect, and **Nancy Cooper** will serve as the office of Secretary-Treasurer.

The two Member-At-Large positions (serving in 2020 and 2021) on the Executive Council will be filled by **Heidi Kemple Martin** and **Emily Settle Merckle**.



M. Thomas  
Arceneaux



Donna Y. Frazier



Donald  
Armand Jr.



Nancy Cooper



Sarah R. Giglio



Heidi Kemple  
Martin



Emily Settle  
Merckle



## Spotlight on Professionalism

---

by William Gaskins, [wgaskins@caddoda.com](mailto:wgaskins@caddoda.com)



In this month's issue, I'd like to highlight a local lawyer who has exhibited the professional virtues of friendliness and courtesy.

Richard "T-Dale" Woolbert is a solo practitioner with an office in Shreveport. He graduated from LSU Law School in 2003, received an LLM in tax law from the University of Denver in 2004, and joined the Louisiana Bar in 2005. He started in

tax work, but then realized that he preferred criminal law because it gave him more opportunities to go to court. In addition to his solo practice consisting mostly of criminal law clients, T-Dale is a public defender in Sabine Parish; he also has performed public defender work in Webster and Caddo. Outside of lawyering, he enjoys spending time with his family and riding his Harley Davidson Road King, having ridden as far as South Dakota a couple of times. He notes that the latter pursuit is valuable to his professional life as an avenue to forget the compassion fatigue that so often accompanies law practice.

When I asked T-Dale what advice he had for new attorneys,

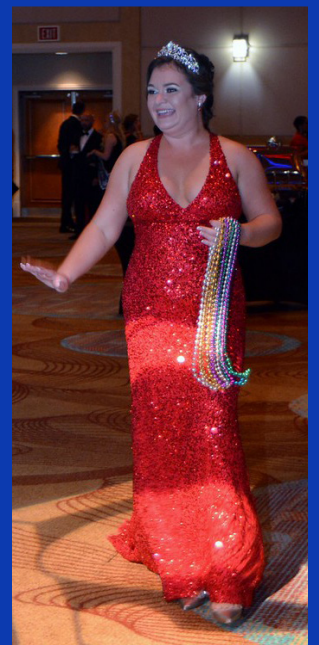
he recommended that they not be afraid to ask for aid. "We are fortunate to have a small and cordial local bar. When I started out, any time that I had an issue arise and called experienced lawyers for advice, they always stopped whatever they were doing to help." T-Dale also observed that "The favor you grant today is the favor you receive tomorrow."

Two of my colleagues have tried felony cases opposite T-Dale, and described him as always accommodating. They praised his ability to balance the two competing duties in any adversarial case: dedication to his clients and respect for the lawyers and parties opposite him. I agree with my colleagues' assessment. In all the cases in which I have been opposed to him, T-Dale's character has been proof that those two duties are not mutually exclusive. I asked if there were any interesting "war stories" from those two trials, but was told that T-Dale tried both cases with the kind of unmitigated courtesy and professionalism that led to no further "drama." He was just a pleasure to work with.

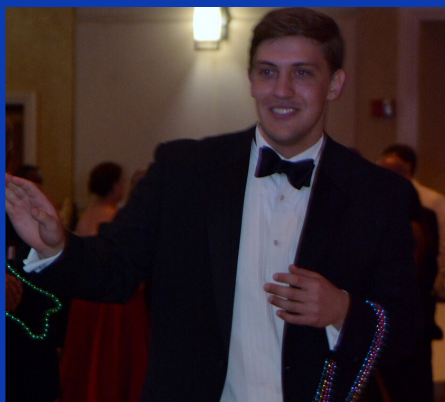
The experience of my two colleagues with T-Dale Woolbert is the same as my own. T-Dale reconciles adversarial duty and professional collegiality, and for this reason I recommend him as an example of the friendliness and courtesy one hopes for in opposing counsel.

# Krewe of Justinian XXVI

# JUSTINIAN LEAGUE



# Coronation





# The Captain Speaks

by Captain XXVI Rebecca Edwards, [redwards@caddoda.com](mailto:redwards@caddoda.com)

The Krewe of Justinian and guests met in Metropolis on August 9 for the Coronation Bal to introduce the royalty for Justinian XXVI: **King Jeff Cox, Queen Helen Herzog, Duke Sam Crichton and Duchess Anne Wilkes, Duke Kyle Robinson and Duchess Elizabeth Hancock, Prince Michael Schimpf, and Princess Ellie Marcotte.** I am thrilled to have such a super group of royals for the “Justinian League” this year. Congratulations to you all!

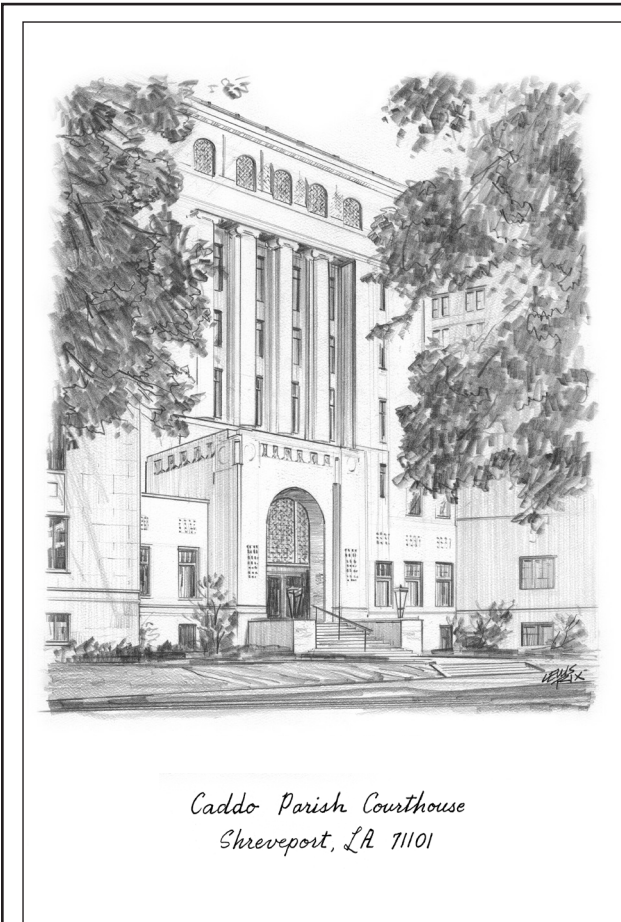
Amy Day, with assists from Nichole Buckle and Captain XXII Susie Stinson, did an incredible job chairing the Coronation. Special thanks to them, as well as to Angela Horton Costakis for her dynamite invitation design and to Dana Southern and Chelsea Withers for all the behind-the-scenes help.

Next up for the Justinian League is our Midway to Mardi Gras party on Saturday, October 19 at the Petroleum Club. Let out your inner superhero or villain by coming in costume or come as you are. Just be there to join in the fun! Special

entertainment will be provided by Easy Money with SBA President Curtis Joseph on the drums. The party is free for Justinian members. Otherwise, tickets will be \$45. It is not too late to join the Krewe of Justinian. You can become a member, RSVP for Midway to Mardi Gras and/or purchase tickets at [www.kreweofjustinian.com](http://www.kreweofjustinian.com).

Mark your calendars for Saturday, November 2, when we will hold the Run for the Beads beginning at Red River Brewery. Both a 5K and 10K will be held in conjunction with Run Wild/Live Free. You can sign up to participate at [www.runwild.us](http://www.runwild.us). Sponsorships are available, and information is included in this newsletter.

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 ----- OCTOBER 19, 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



# SPONSORSHIP OPPORTUNITIES

	Captain Obligator \$5,000	Royal Liti-gator \$3,000	King Miti-gator \$2,000	Queen Insti-gator \$1,000	Duke Investi-gator \$500	Duchess Abdi-gator \$250
<b>ROYAL RECOGNITION</b> *Large, prime placement of business name/logo on the race t-shirt (one color) *Individual banner with logo displayed at race and Justinian Midway Party *4 Tickets to the Justinian Grand Bal	♣					
<b>PURPLE LEVEL</b> *Business name/logo on race t-shirt (one color) *Business name/logo on banner at race entry *2 Tickets to the Justinian Grand Bal		♣				
<b>GREEN LEVEL</b> *Business name/logo on race t-shirt (one color) *Business name/logo on banner at either a water station or the finish line *2 Tickets to the Justinian Grand Bal			♣			
<b>GOLD LEVEL</b> *Recognition through Krewe of Justinian social media, website & publication	♣	♣	♣			
*Business name/logo on signage along race route	♣	♣	♣			
*Business name/logo on race t-shirt (one color) and on race-site banner	♣	♣	♣	♣		
*Business name on back of t-shirt and on race-site banner					♣	♣
*Sponsor provided business literature placed in race bags. Must be received by 10-21-2019.	♣	♣	♣	♣	♣	♣



**RACE DATE/TIME/LOCATION**  
November 2, 2019 (Sat) @ 7:30am  
Red River Brewing \* Shreveport, LA

For more information, contact  
Amy Bokenfohr @ 318-518-7117  
or [aboken4@bellsouth.net](mailto:aboken4@bellsouth.net)



# SPONSORSHIP SIGN UP

Each year, the Krewe of Justinian donates money raised through its activities, such as Run for the Beads, to the Shreveport Bar Foundation ("SBF"), which is the charitable arm of the Shreveport Bar Association. The funds raised and donated by the Krewe of Justinian benefit vital community programs, including:

- The Pro Bono Project, which provides free legal assistance in Caddo and Bossier for qualified individuals of low income to help with issues affecting their health, safety, or shelter;
- The Legal Representation for Victims of Domestic Violence program, which provides free legal representation that helps to protect vulnerable victims and secure families; and
- Ask-a-Lawyer clinics, where anyone can seek free legal advice from a volunteer attorney.

The funding provided by the Krewe of Justinian also allows the SBF to operate legal clinics and programs in partnership with organizations such as Volunteers for Youth Justice, Soldiers of Compassion, and the Martin Luther King Health Center. Special programs are directed to benefit the needs of veterans, students, and the elderly.

Your sponsorship of the Run for the Beads will enable us to continue to provide needed funding for these projects and others vital to the Shreveport - Bossier City area. With the generous support of sponsors, the Krewe of Justinian has donated approximately \$100,000 since our first Run for the Beads. And we are committed to doing more. Please join us by becoming a sponsor of Run for the Beads #5 and being a Superhero for our community! Sponsorship opportunities are listed below:



\$5,000 Captain Obli-gator	\$1,000 Queen Insti-gator
\$3,000 Royal Liti -gator	\$500 Duke Investi-gator
\$2,000 Royal Miti-gator	\$250 Duchess Abdi-gator

## FORM OF PAYMENT

<input type="checkbox"/> Check Enclosed <i>(Make payable to: the Krewe of Justinian)</i>	<input type="checkbox"/> Invoice Business
<input type="checkbox"/> Mastercard   <input type="checkbox"/> Visa   <input type="checkbox"/> American Express   <input type="checkbox"/> Discover <i>(circle one)</i>	
Name on Card	
Card Number	
Exp Date	Billing Zip

## SPONSOR INFORMATION

Sponsor Name & Recognition	
Sponsor Name for Publication	
Contact Person	Phone
Email	



**RACE DATE/TIME/LOCATION**  
November 2, 2019 (Sat) @ 7:30am  
Red River Brewing \* Shreveport, LA

For more information, contact  
Amy Bokenfohr @ 318-518-7117  
or [aboken4@bellsouth.net](mailto:aboken4@bellsouth.net)



## Legal Hist

by Arthur R. Carmody, Jr., [ACarmody@wcglawfirm.com](mailto:ACarmody@wcglawfirm.com)

### HUMOR AND HIJINKS IN LEGAL OPINIONS (PART 2)

In the previous installment, we were introduced to Judge (now retired) Mark P. Painter, of the Court of Appeals of Ohio, First District, who justifiably won an award from Scribes, the legal writing society, for the “best” opinion of 2005. A year earlier Judge Painter wrote another well received opinion in *Dunkelman v. Cincinnati Bengals, Inc.*, 158 Ohio App. 3d 604, 821 N.E. 2d 198 (1 Dist. 2004), in which the following quotes tell the story:

We address another chapter in the seemingly endless fallout from the construction of Paul Brown Stadium and its aftermath.

This case presents a simple legal question about arbitration clauses. It is not about how a professional sports franchise should treat its fans. The trial court ruled that an arbitration clause was enforceable and punted the case to binding arbitration. The fans appealed that call; after review, we reverse the call made on the field and send the case back to the trial court.

\*\*\*

Plaintiffs-appellants are Jay Dunkelman, Edward Walton, and Robert and Betty Brown (for convenience, we designate them as “the fans,” though “the former fans” might be more accurate). They appeal from a decision granting defendant-appellee Cincinnati Bengals’ motion for a stay pending arbitration and staying their motion for a preliminary injunction.

Dunkelman, Walton, and the Browns are the named plaintiffs in a putative class action against the Bengals. Evidently disenchanted by the Bengals’ decade of demise, these fans stopped buying season tickets. The Bengals tried to make them pay for the tickets anyway. The fans sued the Bengals, alleging common-law claims of negligent misrepresentation and fraud, along with statutory violations of the Ohio Consumer Sales Practices Act – all as a result of the fans’ dealings with the Bengals regarding season tickets for club (luxury) seats.

\*\*\*

This opinion addresses only whether the trial court erred in finding the controversy to be arbitrable.

\*\*\*

During the construction of Paul Brown Stadium, the Bengals and Hamilton County decided to sell season-ticket “seat licenses” in the new stadium as a source of revenue to help pay for the construction. Fans were told that they could not buy tickets directly; they first had to buy a license to buy a seat. Then they had to actually buy the seats. This two-step handoff engendered

misunderstanding and court cases.

\*\*\*

By purchasing a COA (seat license), a fan bought the right to purchase season tickets at a discounted rate for a specified number of years. Anyone who wanted to buy season tickets to the Bengals home games had to first buy a COA. The seats involved here, club seats, generally provided a better view of the field than general-admission seats.

\*\*\*

The Bengals now argue that the first brochure, the COA, was merely a brochure – not a contract. And they now argue that they did not create the brochure. They point out that Hamilton County and Tri-State Sports – not the Bengals – sent out the brochure. But this is a distinction without a difference. The Bengals were the ultimate beneficiaries of any agreement that eventually led to the purchase of season tickets – and they agreed to the game plan. The team logo appeared throughout the brochure, and the Bengals’ address was on the outside of it. The county and the Bengals were, in this scheme at least, on the same team. In legal terms, the county was at least an agent of the Bengals. In real terms, they were in cahoots.

The plaintiffs here are a class of fans who signed COAs, but stopped buying season tickets. The Bengals tried to get them to pay for the season tickets that they had refused to buy. Then the fans sued the Bengals to enjoin them from collecting the money and from harassing them about payments.

\*\*\*

Whether a controversy is arbitrable under a contract is a question of law for the trial court to decide. On that issue, appellate courts will generally accept the trial court’s findings of fact but review the question of law de novo. Therefore we decide the legal issue here – we are the referees.

\*\*\*

Therefore, as a matter of law, the contract was formed when the fans signed the application for a COA and submitted their initial payments. The fans never agreed to submit to arbitration. Therefore, the arbitration clause was invalid; the trial court should not have stayed the proceedings for arbitration. We therefore sustain the fans’ first assignment of error and return the trial court’s punt.

The Academy Award, best of the best, of truly humorous

opinions, is awarded for the saga of Blackie the Talking Cat. The written opinions of two levels of federal courts memorialize that feline wonder. They are *Miles v. City Council of Augusta, Ga.*, 551 F.Supp. 349 (S.D. Ga. 1982), and 710 F.2d 1542 (11 Cir. 1983). These opinions are so notable that West published a special book in their honor in 1996. Miles had a humble beginning on the streets of Augusta, Georgia. The good citizens of that city had passed an ordinance that authorized the City Council to require any person or entity to pay a license tax on any business conducted within the corporate limits of Augusta. The ordinance covered a laundry list of occupations or trades subject to the tax, which was set at \$50.00. It did not provide, however, for the licensing of talking cats or, for that matter, of any type of talking or non-talking animal.

Enter Carl Miles and his wife, Elaine, an unemployed couple and owners of “Blackie, the Talking Cat.” Trained by Carl, Blackie could allegedly speak a number of words in the English language. The Mileses accepted contributions from the populace of Augusta who wanted to hear Blackie speak. Several complaints resulted in a citation to court for failure to obtain a business license.

At this point I defer to District Judge Dudley Bowen’s opinion, a jurist noted for his propriety and sobriety – one held in high regard by his peers. The opinion begins with Footnote One, an effort at full disclosure regarding possible litigant communications, which reads:

In ruling on the motions for summary judgment, the Court has considered only the evidence in the file. However, it should be disclosed that I have seen and heard a demonstration of Blackie’s abilities. The point in time of the Court’s view was late summer, 1982, well after the events contended in this lawsuit. One afternoon when crossing Greene Street in an automobile, I spotted in the median a man accompanied by a cat and a woman. The black cat was draped over his left shoulder. Knowing the matter to be in litigation, and suspecting that the cat was Blackie, I thought twice before stopping. Observing, however, that counsel for neither side was present and that any citizen on the street could have happened by chance upon this scene, I spoke, and the man with the cat eagerly responded to my greeting. I asked him if his cat could talk. He said he could, and if I would pull over on the side street he would show me. I did, and he did. The cat was wearing a collar, two harnesses and a leash. Held and stroked by the man, Blackie said “I love you” and “I want my mama.” The man then explained that the cat was the sole source of income for him and his wife and requested a donation which was provided. I felt that my dollar was well spent. The cat was entertaining as was its owner. Some questions occurred to me about the necessity for the multiple means of restraint and the way in which the man held the cat’s paw when the cat was asked to talk. However, these are not matters before the Court and are beyond the purview of a federal judge. I do not know if the man whom I saw with the cat was the plaintiff Mr. Miles.

This sequence has not been considered as evidence or as an uncontroverted fact in the case. It is simply stated for the purpose of a disclosure to the parties of the chance contact.

The body of the opinion is a steadier relation of the facts and history of the ordinance. But apparently believing the true

essence of the case could best be expressed in footnotes, Judge Bowen gives us Footnote Two, which could serve as a history of the feline or the genesis of the musical “CATS,” and reads:

That a talking cat could generate interest and income is not surprising. Man’s fascination with the domestic feline is perennial. People of western cultures usually fall into two categories. Generally, they are ailurophiles or ailurophobes. Cats are ubiquitous in the literature, lore and fiber of our society and language. The ruthless Garfield commands the comic strips, the Cat in the Hat exasperates even Dr. Seuss, and who hasn’t heard of Heathcliff, Felix or Sylvester? Historically, calico cats have eaten gingham dogs, we are taught that “a cat can look at a king” and at least one cat has “been to London to see the Queen.

For hundreds, perhaps thousands of years, people have carried on conversations with cats. Most often, these are one-sided and range from cloying, mawkish nonsense to topics of science and the liberal arts. Apparently Blackie’s pride does not prevent him from making an occasional response to this great gush of human verbiage, much to the satisfaction and benefit of his “owners.” Apparently, some cats do talk. Others just grin.

The opinion rejects plaintiffs’ challenge to the ordinance and Blackie lost.

Blackie and owners reached the 11th Circuit in August of 1983 (710 F.2d 1542). Obviously intrigued by Blackie’s story, it added some history not evident in Judge Bowen’s footnotes. The appellate court added:

The partnership between Blackie and the Mileses began somewhat auspiciously in a South Carolina rooming house. According to the deposition of Carl Miles:

“Well, a girl come around with a box of kittens, and she asked us did we want one. I said no, that we did not want one. As I was walking away from the box of kittens, a voice spoke to me and said, “Take the black kitten.” I took the black kitten, knowing nothing else unusual or nothing else strange about the black kitten. When Blackie was about five months old, I had him on my lap playing with him, talking to him, saying I love you. The voice spoke to me saying, “the cat is trying to talk to you.” To me, the voice was the voice of God.

Mr. Miles set out to fulfill his divination by developing a rigorous course of speech therapy.

But Blackie’s fame was short-lived. The ordinance passed muster and Blackie faded into the sunset.

The late Judge Alvin B. Rubin, one of the finest intellects to grace the Louisiana bar and the federal bench, was not above an occasional stroke of humor. He opened a Fifth Circuit opinion, striking down a local ordinance for prohibiting “conduct prejudicial to good order,” which resulted in the termination of several firefighters, as being vague and overbroad, with these telling words extracted from Dr. Seuss’s *Yertle the Turtle and Other Stories*, thus:

“Silence,” the King of the Turtles barked back,  
“I’m king, and you’re only a turtle named Mack.”

*Davis v. Williams*, 598 F.2d 916 (5 Cir. 1979), at 917.

Judge Rubin was not the only member of the Fifth Circuit to show a poetical bent. The late Judge Irving Goldberg had star qualities of expression, as exemplified by his opinion in a case holding that a decision in a case called Clements Wire required a reversal and remand. His lyrics were scant music to the appellees:

Our decision in Robbins Tire,  
Interpreting Congresses' reported desires,  
Exposed workers to their bosses' ire.  
The High Court, avoiding this sticky quagmire,  
And fearing employers would threaten to fire,  
Sent our holding to the funeral pyre.  
Then along came Clements Wire,  
Soon after its venerable sire.  
To elections, Wire extended Tire,  
Leaving app'lees arguments higher and drier.  
Now to colors our focus must shift,  
To Green wood and stores that are Red.  
We hope this attempt at a rhyme, perhaps two,  
Has not left this audience feeling too blue.  
Remanded."

*Anderson Greenwood & Co. v. N.L.R.B.*, 604 F.2d 322 (5 Cir. 1979).

About a year later, Judge Goldberg again waxed lyrical with this opening stanza in a case challenging a scam cotton set-aside program:

Some farmers from Gaines had a plan.  
It amounted to quite a big scam.  
But the payments for cotton  
began to smell rotten.  
Twas a mugging of poor Uncle Sam

The ASCS and its crew  
uncovered this fraudulent stew.  
After quite a few hearings,  
the end is now nearing—  
It awaits our judicial review.

*United States v. Batson*, 782 F.2d 1307 (5 Cir. 1986), cert. denied, 477 U.S. 906, 106 S. Ct. 3277 (1986).

#### CONCLUSION

Humorous judicial opinions are legal curiosities. Actually they are few and far between, for the great majority of them, including practically all in Louisiana, follow the path of walking slowly in areas where angels fear to tread and we find few traces of humor in the published reports. But it happens. Judicial humor runs the full gamut of human experience. Most judges avoid it because in nearly every case, especially those making the reporters, real people, with serious legal issues, are involved and a sense of propriety should prevail, or so it seems.

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# How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

**Don't get ahead of yourself.** The marvelous thing about homophones is that each like-sounding word is can be correctly spelled, yet perfectly wrong. Worst of all, because it's a legitimate word, Spell Check will not tag it. Consider the following passages:

"[A] continuance was not specifically sought either at the May 1, 2017 hearing or in the *proceeding weeks* leading up to trial." *State v. Hicks*, 17-419 (La. App. 5 Cir. 10/17/18), 258 So. 3d 1031.

"Under the jurisprudence, a greater burden of care is required for a motorist changing lanes than is demanded of a driver *preceding* at a lawful rate on a straight line in a marked lane." *McDowell v. Diggs*, 2017-0755 (La. App. 1 Cir. 10/3/18), 264 So. 3d 489.

"A court may take judicial cognizance of any prior *preceding* which was a part of the same case it had previously decided." *State v. Meadows*, 51,980 (La. App. 2 Cir. 4/11/18), 247 So. 3d 1018.

"The clear language of the statute provides: 'no parish school system ... shall pay ... an annual salary which amounts to less than the amount that was paid by such school system to that employee in the immediately *preceding year*.'" *Baldwin v. New Orleans Parish Sch. Bd.*, 2000-1555 (La. App. 4 Cir. 4/11/01), 784 So. 2d 803.

The running theme here is the confusion between *preceding*, an adjective that means *before* or *prior*, and *proceeding*, a noun that means a *court hearing* or an adjective that means *following its normal course*. In the first passage, the court obviously meant *preceding weeks*, as amplified by the tailing "leading up to trial"; in the second, the court meant the driver was *proceeding* at a lawful rate of speed.

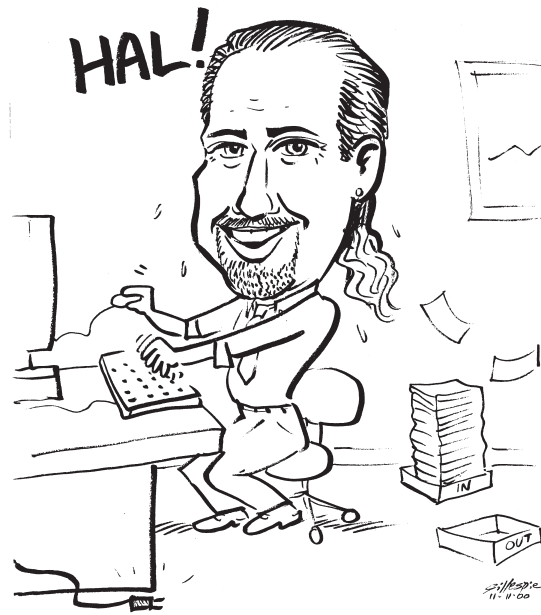
The third passage is a purported quote from an earlier case, *State v. Roland*, 49,660 (La. App. 2 Cir. 2/27/15), 162 So. 2d 558, but *Roland* actually (and correctly!) refers to "any prior *proceeding* that was part of the same case." The fourth is a purported quote from a statute, the former La. R.S. 17:431, which actually (and correctly!) said "the immediately *preceding year*." In these instances, somebody dropped the baton in the handoff from original to quotation.

Then, there is the remedial approach, as in this recent quotation from a trial transcript: "There must be some time – some delay between the actual notice of the preceding [sic] and the actual trial of the proceeding." *State v. Dubroc*, 2018-143 (La. App. 3 Cir. 11/21/18), 261 So. 3d 832. I hope the court reporter saw this!

**Could be politically incorrect.** Consider these wrenching passages:

"[T]he plaintiff is entitled to a return of the equipment described \* \* \* that being a Gale Fox Seahorse *Wench*, DD125 and an Intercon *Wench* Model DW-200[.]" *F&M Mafco Inc. v. Ocean Marine Contractors LLC*, 18-5621 (E.D. La. 1/9/19) (quoting an Ohio state court judgment).

"The ROV's 'handling system, *wench*, A-frame, hydraulic power



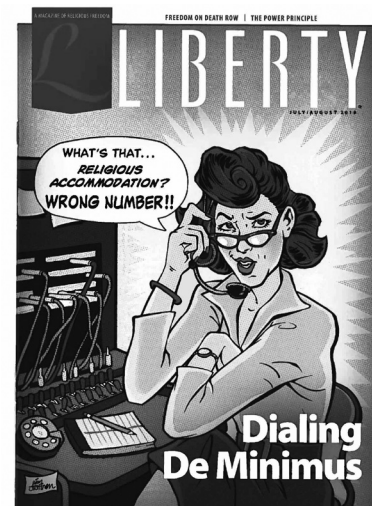
unit, vans, and control system' are all welded to the support vessel." *Halle v. Galliano Marine Serv. LLC*, 855 F. 3d 290 (5 Cir. 2017) (quoting an affidavit in support of MSJ).

"[H]e was injured after he slipped and fell in hydraulic oil which had leaked from a starboard *wench* on the vessel." *McKean v. Skipper Hydraulic Inc.*, 592 So. 2d 433 (La. App. 5 Cir. 1991).

Alas, the word used is an archaic and derogatory term for a *full-figured* or *promiscuous woman*, and should probably never appear anywhere except in a facetious description of a Renaissance Faire. An early authority on these matters advises, "If you mean prostitute, use prostitute." Rosalie Maggio, *The Nonsexist Word Finder: A Dictionary of Gender-Free Usage* (Boston: Beacon Press, © 1988), 152.

The correct and intended word is properly deployed in a recent mesothelioma case: "Mr. Craft testified that he worked as a cargo handler and *winch* operator and either handled or worked in close proximity to \* \* \* asbestos-containing products." *Craft v. Ports America Gulfport Inc.*, 2018-0814 (La. App. 4 Cir. 5/8/19), 273 So. 3d 517. The mnemonic is that a *winch* is a device you *wind* (same first three letters) or crank to operate. Stay away from that other word!

**It just keeps coming.** In the very first installment of this column, October 2000, I talked about a useful Latin phrase, *de minimis*, which means *insignificant* or *trifling*, but is often misspelled with a "u" as the last vowel. (If you took Latin in high school, you know that *de minimus* is grammatically wrong.) Nineteen years running, it's a gift that keeps on giving. Today's mail brought a screaming 48-point caption on the cover of *Liberty*, a magazine published by the General Conference of Seventh-Day Adventists and, apparently, distributed gratis to judges' chambers. To the editors' credit, the actual story is titled "Dialing De Minimis: Protecting workplace religious accommodation," the correct spelling. Somebody just missed the cover – the only part of a magazine most people ever read!





Recent Developments By the Judiciary  
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- 7:30 A.M. Registration & Continental Breakfast**
- 8:30 A.M. Bankruptcy**  
60 minutes *Judge John Hodge - United States Bankruptcy Court*
- 9:30 A.M. Successions**  
60 minutes *Bennett L. Politz - Booth, Lockard, Politz & LeSage*
- 10:30 A.M. Sponsor Break (Refreshments)**
- 10:45 A.M. Helpful Hints from A to Z from Fannin Street**  
75 minutes *Judge Jeanette Garrett - Second Circuit Court of Appeal*
- 12:00 Noon Lunch (included with full registration)**
- 1:00 P.M. The Boys Have Come to Town: Meet the New Second Circuit Court of Appeal Judges**  
60 minutes *Judge Jay McCallum, Judge James "Jimbo" Stephens, and Judge Jeff Thompson (Moderated by Judge Frances Pitman and Judge Jeanette Garrett)*
- 2:00 P.M. Appellate Practice**  
60 minutes *Kenneth Haines - Weems, Schimpf, Haines, Shemwell & Moore*
- 3:00 P.M. Sponsor Break (Refreshments)**
- 3:15 P.M. Federal Procedure**  
60 minutes *Magistrate Judge Mark Hornsby - U.S. District Court, Western District of Louisiana*

Thursday, October 17, 2019

- 7:30 A.M. Registration & Continental Breakfast**
- 8:30 A.M. The North Louisiana Forensic Sciences Center- New Home of the North Louisiana Crime Lab**  
60 minutes *Jimmy Barnhill - Director, North Louisiana Crime Lab*
- 9:30 A.M. Technology in the Courts: 2019 Update**  
60 minutes *Attorney Melissa Allen - United States Fifth Circuit Court of Appeals*
- 10:30 A.M. Sponsor Break (Refreshments)**
- 10:45 A.M. Professionalism: Adapting to the Changes in the Practice of Law: Trials v. Motion Practice**  
90 minutes *Reginald Abrams – Attorney at Law, Ted Casten – Casten & Pearce, Lyn Lawrence-Attorney at Law, Jim McMichael -McMichael, Medlin, D’Anna, Wedgeworth & Lafargue, Ronald Miciotto – Attorney at Law, Jimmy Mijalis— Lunn Irion Law Firm, Trey Morris – Morris & Dewett, and Robert Pugh – Pugh, Pugh & Pugh (Moderated by Judge Frances Pitman and Judge Michael Pitman)*
- 12:15 P.M. Lunch (included with full registration)**
- 1:00 P.M. Ethics**  
60 minutes *Justice Scott J. Crichton - Louisiana Supreme Court*
- 2:00 P.M. Sponsor Break (Refreshments)**
- 2:15 P.M. Of Bear Paws, Burning Wells, Burnt Remains and Bath Forms: An Erratic Journey Through the Evolution of the Law of Louisiana on Mineral Leases, With a Lot of Detours**  
60 minutes *Patrick Ottinger – Ottinger Hebert, Lafayette*
- 3:15 P.M. Let Us Pray-Anti-Vaxxers, Conscientious Objectors, and Other True Believers: Dealing with Religion in the Workplace**  
60 minutes *Allison Jones - Downer, Jones, Marino & Wilhite*

# Recent Developments By the Judiciary

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**SBA AND BOOTH-POLITZ INN OF COURT LUNCHEON MEETING - SEPTEMBER 25**

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



**LOUISIANA HOUSE CONCURRENT  
 RESOLUTION 24**

**When:** Wednesday, September 25 from 12:00 Noon to 1:00 p.m.

**Where:** Petroleum Club (15th floor)

**Featuring:** Elaine Goldenberg,  
 Law Office of Munger, Tolles & Olson, Washington, D.C.

On September 25, the Shreveport Bar Association and Harry V. Booth-Judge Henry A. Politz American Inn of Court will hold a joint meeting luncheon to welcome Elaine Goldenberg, who will talk about the trends and transformations at the United States Supreme Court. Ms. Goldenberg earned her J.D., magna cum laude, from Harvard Law School, where she was executive editor of the Harvard Law Review. She earned an A.B., summa cum laude, in history and literature from Harvard College. She is a partner at the Washington, D.C. office of Munger, Tolles & Olson. Prior to joining the firm in 2017, she served as an assistant to the Solicitor General. She has argued 12 cases at the United States Supreme Court. During her five-year tenure in the Solicitor General’s Office, she briefed 20 Supreme Court cases at the merits stage and more than 100 cases at the certiorari stage, as well as helping to formulate the government’s positions and appellate strategy in the lower courts.

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