

THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

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EVENTS AT A GLANCE

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
11/2	5th Annual Midway to Mardi Gras "5K, 10K, and Fun Run
11/6	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club



From The President

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

MAY IT PLEASE THE COURT: THE ANCIENT ART OF STORYTELLING

I recall the very first time I walked into the Second Circuit Court of Appeal. It was the fall of 2002, and I was preparing for my first appellate argument. I represented the plaintiff, who'd sustained a terrible injury as the consequence of a dog bite. I convinced my mentor, Wellborn Jack Jr., that, in light of changes to the code articles governing damages caused by dogs, I thought we could win liability on summary judgment. He indulged my exuberance and allowed me to proceed pursuant to my plan. I ultimately prevailed on the motion, and the adverse insurance carrier took the matter up on appeal.

During my preparation for the appellate argument, Wellborn advised me to contact the court to determine when my particular panel would be taking oral argument. He thought it would be a good idea for me to see my panel in action in order to get a feel for the judges on the panel prior to my argument. So, there I was. As I sat in the courtroom, it struck me. Although much focus is placed upon the technical aspects of what we do as lawyers, at its essence, we are basically storytellers. By that, once the layers of complexity are peeled back, at the kernel of the issue lies a story to be told. But, prior to telling their stories, each of the lawyers in the courtroom that morning uttered the time-honored phrase: "May it please the court."

To that point, a few years ago, I came across a box set of cassette tapes titled *May It Please the Court*. The set includes 23 landmark cases that were argued before the United States Supreme Court. Given that I was born in the '70s and came of age in the '80s, I actually possess a device that plays the tapes. However, in order to maintain my marriage and the perception of cool as it regards my children, I recorded the material to CD and imported it into my iTunes, which allows me to listen to the arguments within the confines of my car. In any event, the cases provide a glimpse of history, and they also provide an opportunity to hear a few of the giants in our profession unfurl the stories that have made law and shaped our lives for decades.

Among the recordings are the following cases: *Gideon v. Wainwright* (right to counsel), *Abington School District v. Schempp* (school prayer), *Miranda v. Arizona* (the right to remain silent), *Roe v. Wade* (abortion rights), *Edwards v. Aguillard* (teaching creationism), *Regents v. Bakke* (reverse discrimination), *Wisconsin v. Yoder* (compulsory schooling for the Amish), *Tinker v. Des Moines* (Vietnam protest in schools), *Texas v. Johnson* (flag burning), *New York Times v. United States* (Pentagon Papers), *Cox v. Louisiana* (civil rights demonstrations), *Terry v. Ohio* (stop and frisk), *Cooper v. Aaron* (Little Rock school desegregation), *Heart of Atlanta Hotel v. United States* (public accommodations), *Palmer v. Thompson* (swimming pool integration), *Loving v. Virginia* (interracial marriage), *San Antonio v. Rodriguez* (equal funding for public schools), *Bowers v. Hardwick* (homosexual rights), *Baker v. Carr* (one person, one vote) and *United States v. Nixon* (Watergate tapes).

The aforementioned cases involve stories that transpired in the 1950s and thereafter. However, the art of storytelling predates the written word and has existed for as long as human language itself. Imagine our ancestors gathered around the evening fires as they

continued on page 3

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September Luncheon Highlights



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relayed oral history and also sought to understand the cosmos. They entertained and educated themselves through the telling and retelling of stories. Both the storyteller and the listener were engaged in a symbiotic relationship, with each being connected to the other. To that end, as it relates to the legal profession, in 1831, former Supreme Court Justice Joseph Story (September 18, 1779 – September 10, 1845) gave the following advice to young lawyers as it regarded the way in which they should tell their clients' stories:

Be brief, be pointed; let your matter stand
Lucid in order, solid and at hand;
Spend not your words on trifles but condense;
Strike with the mass of thought, not drops of sense;
Press to close with vigor, once begun,
And leave, (how hard the task!) leave off, when done.

"Advice to a Young Lawyer," 5 *The American Jurist and Law Magazine* 298 (1831).

Although Justice Story served on the Supreme Court from 1811 to 1845, his advice remains pertinent. The act of storytelling is so very central to what we do in terms of representing our clients. Stories focus attention and communicate ideas in a way that resonates with the listener. This is true across all demographics. In fact, it has been reported that legendary bebop saxophonist Charlie Parker was notorious for filling Harlem jukeboxes with nickels as he punched in requests for Hank Williams tunes. Many of his contemporaries failed to share the same appreciation for country music and, in fact, they joked with him, asking how he could listen to such corny music. He simply replied, "Listen to the words, man; do you listen to the words?"

As members of the bar, we've been placed in the unique position of being able to share our clients' stories before the court. From time to time, we find ourselves in the untenable position of representing a client with a less than desirable story to tell. Yet, it is incumbent upon us to suit up, show up and tell the story anyway. That said, if you get two lawyers together for five minutes, trust that you will be treated to an endless barrage of war stories, each representing battles fought, lessons learned, and clients served. For there is something about the telling of a story. And, how wondrous it is that this ancient art is an integral part of our chosen profession.

My kindest regards,

Curtis

The Bar Review, September 2019 Volume XXVI, Number 7

The President Message (front page) article heading read ***Be An Inspiration*** was the article heading from the June 2019 *Bar Review* article and the September 2019 *Bar Review* article heading should have read ***E Pluribus Unum — "Out of many, one"***

CFNLA Announces Community Reads Book Club



Kristi Gustavson

The Community Foundation of North Louisiana invites any and all in the community to join Community Reads, a book club led by CFNLA. We encourage community members to join us as we read about issues like poverty, education, addiction, mental health, blight, and criminal justice reform. Each quarter CFNLA will announce a new book selection, with the first book announcement on September 1, 2019.

At the end of the quarter, we will invite up to 25 community members to participate in a group discussion and dialogue about the book. The discussion, which will be moderated by local experts, will also be broadcast live on Facebook to give all in the community the opportunity to listen and participate in the discussion. Interested community members may join the book club or simply sign up to receive Community Reads information here: <https://cfnla.org/bookclub/>



Community Reads

A book club led by Community Foundation of North Louisiana

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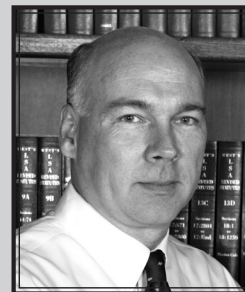
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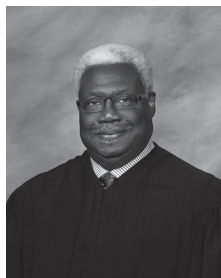
Elizabeth W. Middleton



Charles D. Elliott

BAR BRIEFS

Chief Judge Carl E. Stewart to Receive the 2019 Devitt Award



Chief Judge Carl E. Stewart, United States Fifth Circuit Court of Appeals, was selected as the 2019 Edward J. Devitt Distinguished Service to Justice Award recipient. The award will formally be presented to Chief Judge Stewart on October 17, 2019, at the United States Supreme Court in Washington, D.C. The prestigious Devitt Award honors an Article III judge who has achieved a distinguished career and made significant contributions to the administration of justice, the advancement of the rule of law, and the improvement of society as a whole.

Judge Karelia R. Stewart receives National Bar Association Women Lawyers Division 2019 Excellence in the Judiciary Award



Judge Karelia R. Stewart, of the First Judicial District Court of Caddo Parish, received the 2019 excellence in the judiciary award by the women's lawyer division of the National Bar Association. The award was presented at the National Bar Association's 94th annual meeting in New York City on July 23, 2019. Among a national selection committee, Judge Stewart was one of three judges to receive the award for excellence due to civility and fairness, contributions to her community and for her commitment to justice under the law. She also received recognition as an active member of the National Bar Association's Judicial Council.

The National Bar Association is the oldest and largest national network of predominantly African-American attorneys and judges. It represents the interest of approximately 65,000 lawyers, judges, law professors and law students. The National Bar Association judicial council is an independent autonomous section of the National Bar Association, formed in 1971 to eradicate racial and class bias from every aspect of the judicial and law enforcement process.

The District Public Defender Selection Committee for the 1st Judicial District (Caddo) will be accepting résumés for the position of Chief District Public Defender. Qualifications shall be in accordance with La. R.S. 15:150(B) and 15:161(B). Salary commensurate with experience and qualifications. Full job description available at www.lpdb.la.gov. Resumes should be mailed to the attention of Herschel E. Richard, Jr., P.O. Box 22260, Shreveport, LA 71120, or email to herschel.richard@cookyancey.com. Application deadline is 10/18/19.



September Trial Advocacy Summer Series Lunch & Learn

Pictured L-R are Liz Wong, Judge Karelia R. Stewart, Jim McMichael and Valerie DeLatte

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Memorial & Recognition Ceremony

Members of the Shreveport Bar Association are encouraged to participate in the annual Memorial & Recognition Ceremony to be held Tuesday, October 29 at 2:00 p.m. at the Caddo Parish Courthouse in Courtroom G. It is an opportunity for SBA members to honor the deceased and celebrate their contributions to the profession and to the sanctity of law. Their families are also invited and truly appreciate this show of honor and respect. The memorial service is followed by the introduction of new lawyers, which is an important and meaningful kickoff tradition for those just starting to serve the legal profession.

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

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

Attention All Attorneys!

**New Attorneys will be honored on October 29.
Please pass this information along to anyone who
passed the Louisiana Bar Exam in 2019.**

In connection with the SBA's Memorial & Recognition Ceremony being held on Tuesday, October 29, 2019, the following events have been planned for area new attorneys:

8:00 AM – 1:30 PM New Attorney Seminar – Petroleum Club (15th Floor) – Energy “A” Room (includes lunch). All new attorneys who have passed the Louisiana Bar Exam in 2019 are invited to attend the seminar.

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

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

All attorneys who have passed the Louisiana Bar Exam in 2019 will be recognized during the ceremony. Attorneys and judicial offices are asked to turn in any names of attorneys who have passed the bar to Dana at the SBA Office either by email: dsouthern@shreveportbar.com, telephone (222-3643 Ext. 3) or fax (222-9272).



In Memory of:

Ben E. Coleman

Twain “T.K.” Giddens Jr.

Arlen Jack Williams



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

Memorial & Recognition Ceremony

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

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Spotlight on Professionalism

by William Edwards, bedwards@caddoda.com



This month's professionalism spotlight shines on an exceptional young lawyer – Sarah Giglio. Sarah is a Texan who got her undergraduate degree in political science from Texas A&M and her law degree from Southern Methodist University. She practiced law in Dallas for a year until marriage to a local fellow (Vincent “Trey” Giglio III) brought her to Shreveport in 2015. Since arriving here, Sarah has made her mark in our legal community.

As a prosecutor, I first got to know Sarah through the Caddo criminal courts. I recall waiting while a preliminary hearing for a relatively minor theft offense was conducted prior to a matter that I had on the docket. I was ready to get going, but my matter waited while Sarah and her law partner, Katherine Gilmer, conducted a cross-examination that would have been fit for a murder trial. They recognized that what I considered to be a minor offense was something of paramount importance to their client, and they treated the preliminary examination accordingly. Their level of skill and dedication in defending their client made a definite impression on me.

Since moving to Shreveport, Sarah's criminal defense practice has continued to grow. In 2017, she and Katherine Gilmer opened their own practice, Gilmer & Giglio LLC. Those who handle cases against Sarah consider her a consummate professional. Recalling a case he tried against Sarah, Assistant District Attorney Sam Crichton observed, “She is open and treats the court, as well as her fellow attorneys, with great candor – which makes achieving a fair and just outcome far easier. Sarah works very hard for her clients, and that comes across in the courtroom.”

Outside the courtroom, Sarah's professionalism is evident in her very active involvement in the Shreveport Bar Association (“SBA”). She is the current president of the Women's Section and was nominated as Secretary-Treasurer-elect for the SBA in 2020. She has also been active in the Krewe of Justinian, serving as a Duchess XXIV and now a member of the Senate.

Asked about what professionalism means to her, Sarah explained, “We are fortunate to have such a wonderful, friendly bar here in Shreveport. It's entirely possible to be a zealous advocate for your client and also have a collegial relationship with opposing counsel. I've personally always found that the preferable way to practice law.” I can attest that Sarah is both a zealous advocate and a pleasant colleague. In my opinion, lawyers like Sarah are the backbone of our legal profession and bar.

Young Lawyers' Section

CALLING ALL LAWYERS WHO HAVE RECENTLY BEEN ADMITTED TO THE PRACTICE OF LAW!

Congratulations to all of the newly admitted attorneys! The Young Lawyers' Section will host a New Lawyers Orientation & Luncheon at the Petroleum Club on October 29, 2019. The event is free to all 2019 newly admitted attorneys and will include presentations which will count toward your Continuing Legal Education. The schedule is as follows:

<u>TIME</u>	<u>TOPICS</u>
7:30 – 8:00	Registration
8:00 – 9:00	Professionalism: presentation by M. Thomas Arceneaux, <i>Blanchard, Walker, O'Quin & Roberts</i>
9:00 – 10:00	Ethics: presentation by the Justice Scott Crichton, <i>Louisiana Supreme Court</i>
10:00 – 11:30	Introduction to the Local Courts: presentation by Honorable Frances Pitman, <i>Second Circuit Court of Appeal</i> ; Honorable Michael Pitman, <i>First Judicial District Court</i> ; Honorable Parker Self, <i>Twenty-sixth Judicial District Court</i> ; Mike Spence, <i>Caddo Parish Clerk of Court</i> ; and Melissa Fox, <i>Bossier Parish Court Administrator</i>
11:30 – Noon	Lunch Buffet lunch will be served
Noon – 1:30	Trial Advocacy: presentation by James C. McMichael, <i>McMichael, Medlin, D'Anna, Wedgeworth & Lafargue</i>

Following the CLE, we will adjourn to Courtroom G, Caddo Parish Courthouse for the Memorial and Recognition Ceremony. Following the ceremony, the Shreveport Bar Association will host a reception for the newly admitted lawyers at the Shreveport Bar Center. For more information on the events of October 29, 2019, or to reserve your place, please contact Dana Southern at 222-3643 Ext. 3.



The Captain Speaks

by Captain XXVI Rebecca Edwards, redwards@caddoda.com

Two super events are on the horizon for the Krewe of Justinian. First up is our annual Midway to Mardi Gras celebration on Saturday, October 19, from 7 to 10 pm at the Petroleum Club. We are calling all superheroes and villains to join us for the party! If you have been a villain and not joined the Krewe of Justinian, tickets are \$45.

But you still have time to change your villainous ways and become a superhero of the Justinian League by joining the Krewe at www.kreweofjustinian.com. You'll be getting three fabulous parties (Midway, the Grand Bal and the Royalty Brunch). You'll be helping the Krewe to have a successful year. And you'll be a member of the most spectacular krewe of "super" lawyers in the world!

Second up for the Krewe of Justinian is Run for the Beads on Saturday, November 2, 2019, at 8:00 a.m. Captain XXII Susie Stinson began Run for the Beads to help the Krewe in its mission to raise funds for a donation at the end of Mardi Gras to benefit the SBF. We are now sponsoring our

fifth annual run, and we're making it bigger and better than ever with a new location and new run options. We're staging at Red River Brewing Company. You can register for the fun run, the 5K or the 10K. You can even support the run and the Krewe with a \$25 sleep-in entry. Nothing could be easier! At the post-party, there will be beer (of course) and/or mimosas for participants with a race bib, and food will be available for purchase. You may not be faster than Flash, but you can quickly get in on Run for the Beads by registering at <https://runsignup.com/Race/LA/Shreveport/RunForTheBeads> today!

As always, thanks for supporting the Krewe of Justinian!



Morris & Dewett

INJURY LAWYERS

Morris & Dewett, LLC, a North Louisiana firm handling personal injury litigation in Louisiana and Texas, is accepting applications to add an attorney to their team in Shreveport. Candidates should be self-motivated and eager to gain courtroom experience. Must be licensed in Louisiana. Starting salary of \$100,000 plus benefits, with potential to earn performance bonuses. Interested applicants should contact Darbi Rice at drice@shreveportlaw.net.

Captain Rebecca Edwards and the Krewe of Justinian XXVI are...

CALLING ALL SUPERHEROES & VILLAINS

Midway to Mardi Gras

October 19, 2019 ☆ 7pm - 10pm

Petroleum Club

416 Travis St, 16th Floor
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Cash Bar ☆ Eats & Treats Provided

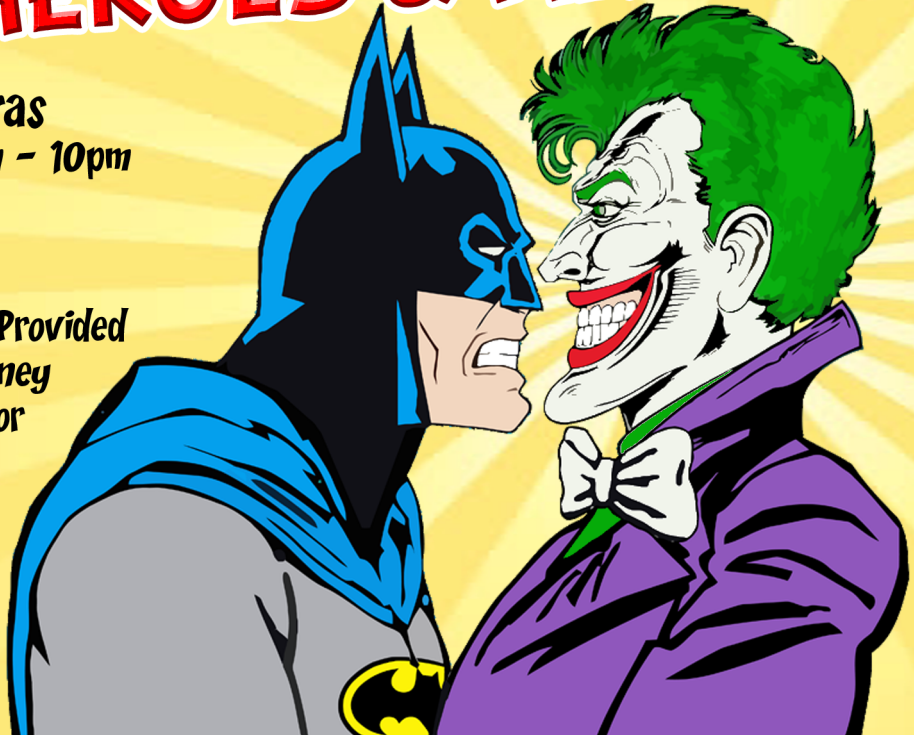
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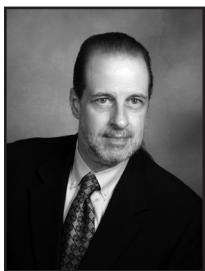
VETERANS DAY PROGRAM

The Shreveport Bar Association 2019
Veterans Day program will be held on
Wednesday, November 7 beginning at 12:00
Noon at the Petroleum Club (15th floor).

Our Veterans Day Program special guest speaker
will be Adrian Perkins, City of Shreveport Mayor.

Whether you have served or not, please
join us on Wednesday, November 6
as we honor our SBA Veterans.





Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

Readers might wonder, does the Court of Appeal do anything but affirm? Does it ever grant any relief, or reverse a judgment? On a recent rendering date (August 14), the court reversed, at least in part, the judgments in six out of 16 civil appeals rendered. Although the relief granted in some of them is narrow, we will take a look at some of these successful appeals.

In December 2014, the Caddo Parish Sheriff's Office and Shreveport Police Department were trying to catch a suspect, Damian Pea, on outstanding warrants from Oklahoma. Pea had been in an abusive relationship with a Ms. Pipkins, who fled to Shreveport with Pea pursuing her. Fearing for her safety, Ms. Pipkins called a friend, Dep. Jackson, of CPSO, who referred her to Sgt. Scott, of SPD. As a result of their discussion, Ms. Pipkins agreed to go pick up Pea and drive him to the Circle K on West 70th at Linwood, where officers could arrest him. However, when Ms. Pipkins pulled up at the Circle K and exited her truck, she left the keys in the ignition. Pea saw officers and deputies about to pounce, so he hopped into the driver's seat of the truck and sped off. A high-speed chase ensued, topping 90 mph at times through neighborhoods and in the dark and rain. Ultimately, Pea crossed the centerline on Jewella, just north of Meriwether, and struck an oncoming midsize car head-on. The elderly couple in the car, the Weavers, suffered fatal injuries. (Pea was pronounced dead at the scene.)

The Weavers' children sued the City of Shreveport, the Caddo Parish Sheriff, the officers and deputies involved in the incident, and their respective insurers, alleging the joint operation was negligently planned and executed. They also alleged that the City and Sheriff were vicariously liable for Ms. Pipkins's actions, as she was "operating as an employee, representative, agent and/or volunteer" for them. The City moved for partial summary judgment on grounds that no master-servant relationship existed between it and Ms. Pipkins. The district court granted this, and the Weavers appealed.

The Second Circuit reversed, **Weaver v. City of Shreveport**, 52,869 (La. App. 2 Cir. 8/14/19), __ So. 3d __, in an opinion by Judge Stephens. The court cited the plaintiff's statutory burden to show that a master-servant relationship existed, La. C.C. art. 2320, and jurisprudence holding that an unpaid volunteer may be deemed a servant of an organization based on the latter's right to control the volunteer's activities, *Cason v. Saniford*, 2013-1825 (La. App. 1 Cir. 6/6/14), 148 So. 3d 8, *Whetstone v. Dixon*, 616 So. 2d 764 (La. App. 1 Cir. 1993). The court then quoted Ms. Pipkins's deposition testimony that an SPD sergeant "asked her to volunteer" to pick up Pea to effectuate his arrest, gave her directions which she followed "precisely," and did not explicitly tell her to take the key out of the ignition. Although this somewhat contradicted the police officers' testimony, the discrepancy was enough to create a genuine issue of material fact. Finally, the court noted that the district court had previously *denied* the MSJ filed by CPSO's insurer, Columbia Casualty, finding a genuine issue whether Ms. Pipkins was an "authorized volunteer of the law enforcement agency" and thus covered by the policy. In short, Ms. Pipkins's status would require a trial on the merits. This case might give law enforcement some pause before soliciting citizens to assist in vehicle takedown operations.

Another summary judgment bit the dust in **Estis v. Mills**, 52,820 (La. App. 2 Cir. 8/14/19), __ So. 3d __, in an opinion by Judge Thompson. The Estises owned a 10-month-old German Shepherd puppy, Bella, which turned up missing; they later received an anonymous phone call that their neighbor, Mills, had shot Bella and dumped her remains in Bayou Lafourche, over 10 miles away. Mills then admitted that he did it, but insisted it was because Bella was attacking his horses. The Estises sued Mills for loss of the dog and for violations of property restrictions. Mills answered and filed an exception of prescription as to the property restrictions claim; this was granted, and that claim dismissed. Later, Mills filed a MSJ asserting the immunity of La. R.S. 3:2654, under which any person may kill a dog "not on the premises of its owner * * * which is harassing, wounding, or killing livestock," without "damages against the person killing the dog." The district court granted this, and the Estises appealed.

The Second Circuit found that R.S. 3:2654 is an immunity statute, and immunity is an affirmative defense that must be specially pleaded by a defendant or it is deemed waived, La. C.C.P. art. 1005, *Moresi v. State*, 567 So. 2d 1081 (La. 1990). Mills never amended his pleadings to assert 3:2654 specifically; counsel conceded, "At that point I did not know the statute existed." Because of this technical failing, the summary judgment was reversed. Also, the Second Circuit did not have to address whether Bella's actions warranted the invocation of 3:2654. Presumably, the district court will address this on remand, but that court has already signaled its inclination.

The defendant successfully annulled a default judgment in **Wood v. Hackler**, 52,791 (La. App. 2 Cir. 8/14/19), __ So. 3d __, in an opinion by Judge McCallum. The Woods were executors of an estate that owned property on Professional Drive in Shreveport, and they signed an agreement to sell it to Hackler, subject to the condition that Hackler could get a liquor permit and run a bar on the premises. Even though Hackler's real estate agent thought he could get the permit, he couldn't, so Hackler told him to back out of the agreement. The agent did so, not mentioning the permit issue, but only saying that the deal cost too much. The Woods sued for breach of contract, but they encountered a problem: Hackler's address was nowhere on the buy-sell agreement. They knew, however, that he lived in Texas, so they "turned for assistance to the ubiquitous Internet," using "nuwber.com" to find an address for him on Gardenia Street in Longview. They used Long-Arm service, R.S. 13:3201, to that address, but the certified mail was returned as unclaimed. One of the returned envelopes bore a yellow USPS sticker to "Notify Sender of New Address," on Pegues Place, Longview. The record did not show that the Woods tried a new long-arm to the Pegues Place address. Regardless, Hackler never responded.

The Woods took two preliminary defaults, offering affidavits that they got the Gardenia Street address off the Internet. They confirmed the second default and obtained a money judgment for \$114,282. A month later, Hackler filed a motion to annul the default judgment for lack of proof of service: there was no "green card" attached to the affidavit of service. The Woods countered that all they needed to prove was that the mail was returned "unclaimed." The district court

denied the motion to annul.

The Second Circuit cited the requirement of certified mailing, La. R.S. 13:3204, and jurisprudence that a defendant cannot defeat it merely “refusing to claim a certified letter,” *McFarland v. Dippel*, 1999-0584 (La. App. 1 Cir. 3/31/00), 756 So. 2d 618. However, it also noted the paramount importance of service to invoke personal jurisdiction, *Clay v. Clay*, 389 So. 2d 31 (La. 1979), and the absolute necessity of certified mailing to the defendant’s correct address, *Folse v. St. Rose Farms*, 14-436 (La. App. 5 Cir. 11/25/14), 165 So. 3d 104. The court found the Woods’ proof lacked, first, “any evidence as to the credibility, verity or sufficiency” of nuwber.com, and second, evidence that they ever tried to mail to the Pegues Place address provided by USPS. Even though the Woods argued strenuously that postal notations on the returned mail proved that USPS “forwarded” the citation to the Pegues Place address and “notified” Hackler that it was holding an item for him, the court could not infer this from the envelopes. The court concluded the finding of sufficient service was plainly wrong, and the default judgment was annulled.

It is a reasonable question whether you can prove the truth of anything you pull off the Internet, but if the USPS gives you somebody’s new address, you probably need to use that one.

One of the odder cases resulting in a remand arose from a squabble between a judge of the 42nd JDC and the DeSoto Parish Police Jury. The judge had previously used certain offices in the courthouse as his private entrance and as a secure entrance for deputies and criminal defendants. The Police Jury, wielding its authority over district courthouses, La. R.S. 47:13, reallocated this space to the DA’s office, for meetings with witnesses and victims, folks who do not have security clearance. Feeling this change made the entrance unsecure, the judge invoked his authority under URDC 5.2 to issue an order enjoining the implementation of the new system. The Police Jury and the DA filed a motion for appeal, which the district judge denied, and then a writ of mandamus, which the Second Circuit granted, ordering the judge to authorize the appeal.

Once the appeal got to Fannin Street, the Second Circuit found there was no proceeding in the district court: no record, no evidence, no findings of fact, nothing to review. The court therefore remanded the matter with instructions for the Police Jury and DA to file an action for declaratory judgment. ***In re Courthouse Security***, 52,787 (La. App. 2 Cir. 8/14/19), __ So. 3d __, an opinion by Judge Stone.

For a rare finding of manifest error, see ***Port City Ventures LLC v. Angle***, 52,745 (La. App. 2 Cir. 8/14/19), __ So. 3d __, an opinion by Judge Stephens. The facts are pretty intricate; in essence, the plaintiff, Port City Ventures, invested \$250,000 to get a 10% equity interest in Port City Armory, an LLC that was making and marketing the “FS30,” a high-capacity magazine (30 rounds) to fit on an AR-15 rifle. The market was extremely hot in late 2012, as gun lovers feared the senseless massacre at Sandy Hook Elementary would finally prompt Congress to restrict semiautomatic weapons. In fact, Armory secured six purchase orders for 50,000 FS30s, at \$11.00 apiece. Even though one of Armory’s members, Angle, advised Port City that sales were “subject to change” and “the quantity [sold] will be less,” Port City went ahead with the investment. Unfortunately for everyone, gun control fizzled, the purchase orders were not fulfilled, and Armory could not sell many of its magazines. Port City wanted its money back, and filed suit alleging that Armory misrepresented and fraudulently induced the investment. After a bench trial, the district court found that Armory suppressed the truth with the intent of obtaining an unfair advantage over Port City. It awarded Port City \$250,000 for the investment, and \$100,000 in attorney fees. Armory appealed.

The Second Circuit laid out the basic law of fraud, La. C.C. arts. 1948, 1953, 1957; the jurisprudence that when fraud is based on

silence or inaction, the plaintiff must prove a duty to speak or disclose information, *Greene v. Gulf Coast Bank*, 593 So. 2d 630 (La. 1992); and the law that fraud does not vitiate consent when the plaintiff could have ascertained the truth without difficulty, inconvenience, or special skill, although this exception does not apply if there is a relation of confidence between the parties, La. C.C. art. 1954. The court found no evidence that Armory had a duty to disclose, as there was no enduring family relationship, long-term business relationship, or fiduciary relationship between the parties. Also, Port City could have ascertained the true state of affairs by merely asking to examine those purchase orders. The court therefore found manifest error and reversed the \$350,000 judgment.

Aside from the obvious importance of due diligence, the message might be that if you’re investing in the arms industry, you’re playing with a loaded gun.

By contrast, the Second Circuit affirmed a judgment that rejected a claim of fraud in ***Murray v. Bostwick***, 52,802 (La. App. 2 Cir. 8/14/19), __ So. 3d __, in an opinion by Judge Thompson. The case involved the sale of a house “as is,” in which the sellers allegedly failed to disclose the presence of pinhole leaks in the plumbing system. The Second Circuit held that the record supported the district court’s finding of no willful misrepresentation.

The court affirmed a summary judgment in ***Grimsley v. Liberty Mutual Ins. Co.***, 52,872 (La. App. 2 Cir. 8/14/19), __ So. 3d __, an opinion by Judge Stephens. The case shows a fairly routine application of La. R.S. 9:2771, which exempts a contractor from liability for defects in any work constructed if he or she performed the work “according to plans or specifications furnished.” The court observed that there was “no dispute that [the contractor] followed the plans and specifications for the intersection site without deviation.”

Finally, the court affirmed the dismissal of a nullity claim in ***Cariere v. The Kroger Store***, 52,846 (La. App. 2 Cir. 8/14/19), __ So. 3d __, in an opinion by Judge Pitman. The plaintiff, pro se, had alleged all manner of damages after being detained and arrested for shoplifting from a Kroger store; charges were later dismissed. All claims, except for battery, were rejected by MSJ; at trial on the merits for battery, the court granted Kroger’s motion for involuntary dismissal. The plaintiff sued to annul the dismissal, weaving a web of misconduct by Kroger’s employees and lawyers, police officers, city employees, public officials and officers of the court. While concocting this vast conspiracy, the plaintiff neglected to notice the time limit on a nullity action, La. C.C.P. art. 2004 B. The district court rejected the nullity claim on an exception of prescription, but graciously allowed the plaintiff to retain his pauper status. The Second Circuit affirmed straight up, but the case surely illustrates the challenges of practicing against an unrepresented party!

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Mark Your Calendar



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: Mayor Adrian Perkins
[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

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How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

A swift kick in the pants. An appellate court recently quoted the petition filed by the clerk of a district court: “Defendant, City of New Orleans, * * * after paying a Judgment for breach [sic] of defendant’s 2012 ministerial duty to fund Morrell’s 90.5 employees, again breach [sic] their ministerial duty of funding[.]” The Fourth Circuit recognized what the clerk of court’s attorney did not: a *breach* is the bottom part of something, or an animal’s behind; *breaches*, familiarly called *britches*, are the article of clothing that covers one’s backside.

Breach also means the *back* part of a gun barrel, and is correctly used in *State v. Eaglin*, 2017-657 (La. App. 3 Cir. 3/28/18), 239 So. 3d 1001: “She examined the *breach*, chamber, extractor, ejector, and feed marks.”

The word intended was *breach*, to act contrary to an agreement or law; as a noun, it means a *gap in the defenses*. “Breach of duty” and “breach of contract” are so fundamental to the law, and so frequent in legal writing, that it is surprising to see it misspelled. That writer really showed his *breach* – his posterior.

Meanwhile, on the coast ... The “Holdings” and West Headnotes supplied by Thomson Reuters in a recent case both recited, “Parties in landlord’s summary eviction proceeding against tenant were the same as in tenant’s preceding *beach* of lease action[.]” To be sure, the opinion itself correctly referred to it as a *breach of lease action*, *TMF Hotel Props. LLC v. Crescent City Connections*, 2018-0079 (La. App. 4 Cir. 11/28/18), __ So. 3d __. Yes, the second action was subject to *lis pendens*, and no, the leased premises were nowhere near the waterfront or intended for use by surfers and sunbathers.

Do titles need commas? Some time back, I advised a colleague (who may or may not have solicited my input) to strike the comma in front of the title *Jr.* The colleague was not impressed, and in fact was rather indignant that anyone could write *Martin Luther King Jr.* (or *Hal Odom Jr.*) without that comma!

I understand the perplexity. Older style manuals, like *The New York Public Library Writer’s Guide to Style and Usage* (©1994), considered it normal and customary to place a comma between the person’s name and *Jr.* or *Sr.*, while acknowledging that “individual preference should be followed.” When Congress passed the MLK holiday in 1983, it referred to “The Birthday of Martin Luther King, Jr.,” following the old style.

Things change, however, and the current trend is to use less punctuation. I surveyed some (relatively) current reference books:

The Chicago Manual of Style, 16th ed. (©2010), § 6.47: “Commas are not required around *Jr.* and *Sr.*, and they are never used to set off



II, III, and the like when these are used as part of a name. * * * If commas must be used with *Jr.* or *Sr.*, rephrase as needed to avoid the possessive.”

Harbrace College Handbook, 18th ed. (©2013), ¶ 11a states that “Abbreviations such as *Jr.*, *Sr.*, and *MD* appear after names,” gives as examples “Samuel Levy Jr., Mark Ngo Sr.,” and adds: “Although MLA still follows the convention of calling for commas to set off *Jr.* or *Sr.*, these abbreviations are increasingly considered part of the names they follow and thus need not be set off by commas unless you are following MLA style.” This is a notable change from the 13th edition (1998), which recommended using the comma.

The Associated Press Stylebook 2011, entry for “junior, senior”: “Abbreviate as *Jr.* and *Sr.* only with full names of persons or animals. Do not precede by a comma: Martin Luther King Jr.”

The Gregg Reference Manual, 9th ed. (©2001), ¶ 156: “Do not use commas to set off *Jr.*, *Sr.*, or roman or Arabic numerals following a person’s name unless you know that the person in question prefers to do so. * * * When a person prefers to use commas in his name, observe the following style:

Peter Passaro, Jr. (Use one comma when the name is displayed on a line by itself.)

Peter Passaro, Jr., director of ... (Use two commas when other copy follows.)

Peter Passaro, Jr.’s promotion ... (Drop the second comma when a possessive ending is attached.)”

The better rule, by consensus, is to kill the comma before *Jr.* and *Sr.* However, honor the preference of the named person, if that pref

A dangerous legacy. From a memo filed in the Second Circuit: “At trial she should have been called as a witness to assist the factfinder regarding * * * the *danger inherit* when a battered woman attempts to ultimately leave the abuser[.]” This strange phrasing is surely the result of hasty drafting, careless typing, or other factors, but it occasionally pops up even in curated writing. Consider: “This example shows the *inherit danger* of a ‘race to the bottom’” (20 Tulane Eur. & Civ. L. F. 73 (2005)); “As she carries out her own investigation of the case, the audience sees the *dangers inherit* in the attorney’s representation of a family member or close friend” (25 U. Ark. L. Rev. 503 (Spring 2003)); “The risks involved are severe but on a marginal basis they are similar to the *risks already inherit* in homeownership” (47 Real Est. L. J. 142 (Fall 2018)).

Try not to bequeath any danger, risks or peril. A quality that is *built-in* or *preexisting* is inherent. Your readers will appreciate it.



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- 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 LUNCHEON MEETING - OCTOBER 23

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\$35.00 for SBA members includes lunch with advance reservation and \$40.00 for Late Reservations
(after 5:00 pm the Monday prior to the luncheon) and Non-SBA Members*



2019 LEGISLATIVE UPDATES

When: Wednesday, October 23 from 12:00 Noon to 1:00 p.m.

Where: Petroleum Club (15th floor)

Featuring: H. Alston Johnson III

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

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

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

2019 SBA Professionalism Award will be announced at October Membership Luncheon

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