The Bar Review

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2/3 Krewe of Centaur Parade

2/11 Krewe of Highland Parade

2/28 SBA Membership Luncheon – 12:00 p.m. - Petroleum Club

From The President

by Kenneth P. Haines, kenny@weems-law.com

As we embark on a new year in the Shreveport Bar Association, I am both honored and humbled to have been chosen to lead this esteemed bar. We have overcome great challenges in the past few years and we face more in the coming year and beyond. I hope to lead a great team on the Executive Council in fulfilling all of the goals of our local bar.

No team achieves great success without great encouragement, support and assistance. Anyone who has had a loyal and trusted support person knows how difficult it is to transition if you lose them. Our team is so lucky and fortunate to have Dana Southern as its Executive Director. It would be, without a doubt, monstrously difficult to accomplish the many tasks and goals of the Shreveport Bar Association without her.

My team and I would be lost without my longtime assistant and our office manager, Ms. Sonia Orgeron. For over 25 years, she's helped me and the Weems, Schimpf, Haines & Moore law firm accomplish the hard work it takes to operate a successful law practice.

Lately, there has been a trend, not only locally and about the state, but also nationally, of a diminishing pool of capable and competent legal assistants. The Bureau of Labor Statistics projects there will be 43,000 openings for paralegals and legal assistants each year on average from 2020 to 2030, resulting in 12% growth during the decade. That's faster than the average of all occupations. We as a bar need to prepare for the coming reality that many of us will be in need of and looking for capable assistants in the years to come.

There was a day when Shreveport/Bossier enjoyed a pool of candidates looking for work in the legal profession. Carol Paga was the "go-to" person to call when seeking a candidate. Those days seem like a distant memory and that is why I, along with the counsel of Dana Southern, decided that a great focus for 2024 would be to revive and increase the availability of support staff in our local bar. The President's theme for 2024 is Reestablish a Strong Foundation of the Association of Legal Assistants, Paralegals and Support Staff Professionals

Brenda and Kenny Haines

We have planned to reach out to our

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local education resources, LSUS, BPCC and Southern University, in an attempt to revive the paralegal programs. We would have a goal of increasing enrollment and graduating capable assistants to fill needed roles in our local bar.

Further, we hope to revitalize the local paralegal and legal assistant association. There was a time when this group met regularly as a committee of the SBA. The group was a resource for local lawyers looking to hire. We need that committee to return to its former status. I will be looking for someone to chair such a committee to help organize the local legal paraprofessionals.

Finally, we hope to offer an opportunity for local firms and practitioners to post their job openings. Showing a need for assistants should help us in revitalizing the education and support programs and supply the human resources needed to fill those positions.

As I said in the beginning, it is truly an honor to lead your SBA. With great honor comes great expectations. I pledge to work hard for you toward fulfilling the aspirations of the SBA.

SBA Membership Renewal Forms have been mailed. Please renew by February 28, 2024

Federal Update

by Chris Slatten, Chris_Slatten@lawd.uscourts.gov

Title VII and *de minimis* Acts: The 5CA recently scrapped its requirement that a Title VII plaintiff demonstrate that they suffered an "ultimate employment decision." *Hamilton v. Dallas Cnty.*, 79 F.4th 494 (5th Cir. 2023) (en banc). But it left open what it takes to amount to discrimination with respect to "terms, conditions, or privileges" of employment. The first panel to explore the new standard adopted a *de minimis* standard from the 6CA and held that a black educator stated a plausible claim when she alleged that her employer paid for white males to attend a training program for prospective superintendents but declined to pay her $2,000 fee. *Harrison v. Brookhaven Sch. Dist.*, 82 F.4th 427 (5th Cir. 2023).

Annuity or Insurance Payments after First Beneficiary Dies: PI cases are sometimes resolved by a structured settlement that is funded by an annuity. The annuity contract may list a first, second, or third beneficiary or contingent payee to receive payments in the event of the death of the original payee. But what happens if the payee dies, the first beneficiary starts collecting, and the first beneficiary then dies? Do future payments go to (A) the estate of the first beneficiary or (B) the living second beneficiary? It depends.

This scenario arose in *Genworth v. Bagley*, 2023 WL 7930076 (W.D. La. 2023), an interpleader that pitted the estate of mama (first beneficiary) against claims of brother (contingent beneficiary). The general rule is that ownership of proceeds under an annuity or insurance instrument is determined at the time of the death of the original payee or insured. Absent express language in the annuity to the contrary, if a primary beneficiary dies after the insured, but before all proceeds are paid to her, the estate of the primary beneficiary, not a secondary or tertiary beneficiary, is entitled to the proceeds. There was no such express language in the *Genworth* annuity contract, so mama's estate was entitled to all remaining payments due under the annuity.

A Louisiana decision says that if a structured settlement agreement and the related annuity have different beneficiary language, the annuity controls. *In re Succession of Tilley*, 742 So.2d 9 (La. App. 3 Cir. 1999). So make sure that any carefully crafted beneficiary provision in the settlement makes its way into the annuity contract that is issued by the insurance company.

Cops Destroy Home; No Takings Claim: A fugitive with a teen hostage holed up inside an innocent woman's home. Police used armored vehicles, grenades, gas, etc. to rescue the hostage and resolve the situation. The house and contents were wrecked, and the owner's dog was left blind and deaf.

The homeowner's insurer denied a claim, and her city denied responsibility. She filed a Takings Claim suit under § 1983, and a jury awarded about $60,000 in damages. The 5CA, after surveying common law from the early days of our nation, vacated the award. It held that "the Takings Clause does not require compensation for damaged or destroyed property when it was objectively necessary for officers to damage or destroy that property in an active emergency to prevent imminent harm to persons." *Baker v. City of McKinney*, 84 F.4th 378 (5th Cir. 2023).

Supervised Release Revocation; Confrontation Clause: The feds abolished parole in the '80s, but a sentence can include imprisonment followed by a period of supervised release (SR). If the defendant messes up, his SR can be revoked.

The Confrontation Clause does not apply in a SR revocation hearing, but because a person's liberty is at stake due process entitles the defendant to a qualified right to confront and cross-examine adverse witnesses. The confrontation of a witness may be denied on a finding of good cause.

Mr. Kersee's SR was revoked based on documents such as complaints filed in state criminal cases that included statements of witnesses as reported by police officers. The defense offered an affidavit from the victim who recanted and said she was intoxicated when she spoke to the police. On these facts, where there was a credibility choice to be made and a hearing built on hearsay, the trial court did not make a showing of good cause to deny the right to confront the witnesses. The 5CA granted a request to expedite the appeal, vacated the revocation, and ordered a new hearing. *U.S. v. Kersee*, 86 F.4th 1095 (5th Cir. 2023).

Subpoena, 100-mile rule, and Zoom: Under FRCP 45(c), a court may subpoena a witness to attend trial only (a) "within 100 miles of where the person resides, is employed, or regularly transacts business in person"; or (b) "within the state where the person resides, is employed, or regularly transacts business in person, if the person ... is commanded to attend a trial and would not incur substantial expense." Rule 43 says that testimony at trial is to be in open court, but on a proper showing the court may permit testimony by contemporaneous transmission from a different location.

Does the 100-mile limit apply when a witness in the U.S. Virgin Islands is issued a subpoena that commands him to testify in a California trial by Zoom or similar remote transmission? The 9CA, in the first circuit court opinion to address the issue, said the 100-mile limit applies even if the subpoena allows for remote testimony. Subpoena quashed. *In re Kirkland*, 75 F.4th 1030 (9th Cir. 2023). District courts are split on the issue.

Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

No "safe space" off the road. In April 2009, Ms. Noland went to J&H Cookin, a roadside diner on La. Hwy. 4 (also called Shell Road) in Chatham, in Jackson Parish. While waiting for her food to be prepared, she sat in her Ford pickup in the parking area, which was adjacent to the highway. At that moment a speeding 1990 Old Cutlass came tearing down the road at high speed, lost control and slammed into a string of vehicles parked next to the highway, including Ms. Noland's truck; she was injured. Ms. Noland and her husband initially sued the owner of J&H and the Town of Chatham, and later amended their petition to add DOTD as a defendant. The Nolands eventually settled with J&H and the town. In 2022, DOTD moved for summary judgment urging there was no evidence of an unreasonably dangerous condition or negligence. In support, DOTD attached the affidavit of a civil engineer, who confirmed that Hwy. 4 met all design, construction and traffic standards, policies and regulations; rather, the only cause of the accident was the speeding driver. The Nolands countered that DOTD was negligent for allowing parking within the highway's right-of-way. The district court granted DOTD's motion, dismissing all claims. The Nolands appealed.

The Second Circuit affirmed, ***Noland v. Lenard,*** 55,342 (La. App. 2 Cir. 11/15/23), in an opinion by Chief Judge Pitman. The court reviewed the elements of a negligence claim against a public entity, La. R.S. 9:2800 C; and DOTD's statutory duties, La. R.S. 48:21 A (to study, administer, construct, improve, maintain, repair and regulate the use of public transportation) and jurisprudential duty, *Netecke v. State*, 98-1182 (La. 10/19/99), 747 So. 2d 489 (maintain roadways in a condition that is reasonably safe and poses no unreasonable risk of harm). The court noted that the affidavit of the Nolands' expert engineer did not create a genuine issue that J&H's parking area was unreasonably dangerous, and implicitly rejected the claim that DOTD owed a duty to "designate safe zones" along state highways.

DOTD owes a duty to provide a safe roadway, but once you leave the roadway you might be on your own.

Don't forget the burden of proof. Briggs was driving his 2006 Pontiac west on Louisville Avenue, a main road in Monroe, when he was struck from behind by a 2014 Chevy Cruze driven by Silas. Briggs filed a pro se suit in Monroe City Court. At trial, Briggs testified that he was minding his own business, riding in the right lane, slowed down because traffic ahead of him was backed up, and then, suddenly, the Cruze hit him from behind. However, the police officer who worked the accident determined that Briggs had actually made a sudden lane change, from the left to the right lane, directly in front of Silas; Silas testified that because of Briggs's sudden lane shift, he had to stomp on his brakes and could not avoid striking the Pontiac; a witness who was behind Silas's Cruze confirmed that she also saw Briggs dart directly into Silas's way. The City Court stated that it accepted Briggs's version over that of the cop, who failed to interview the witnesses; over that of Silas, because he moved his Cruze off the road after the impact; and over that of the witness. Declaring it could not find Briggs was the "at-fault driver," it awarded $10,250 in general and $7,542 in special damages. Silas and his insurer appealed.

The Second Circuit reversed, ***Briggs v. Silas,*** 55,344 (La. App. 2 Cir. 11/15/23), in an opinion by Judge Cox. The court recognized the very heavy burden of reversing any factual finding based on a trial court's assessments of credibility, *Cole v. State*, 01-2123 (La. 9/4/02), 825 So. 2d 1134, but then found that the cop did in fact interview the witnesses, and that whether Silas moved the vehicle after the impact was irrelevant, so the court's findings were suspect. The court then addressed the normal burden of proof in rear-end collisions: the following driver is presumptively at fault, but if he establishes the unpredictable driving of the leading driver, the burden shifts, *Bloxham v. HDI-Gerling Am. Ins. Co.*, 52,177 (La. App. 2 Cir. 6/27/18), 251 So. 3d 601. Considering the overwhelming evidence that Briggs shifted lanes recklessly, and the various credibility problems he exhibited (detailed in the opinion), the court had no alternative but to find that the City Court improperly failed to apply the correct burden of proof. The court further found insufficient evidence to support any of the damage awards. Briggs went home empty-handed. But, for a pro se plaintiff, he had a pleasant (if illusory) run.

The great diapering debate. Ms. Patterson placed her mother, Ms. Carey, in Claiborne Rehab Center, a nursing home/long-term care facility in Homer, in May 2021. Ms. Carey's stay was not favorable; she was taken to the hospital in late October with infected Stage IV pressure injury with inflammation, infection, dehydration (to the point of renal failure and brain damage), malnutrition and sepsis. It was all too much for her; she died in December. Ms. Patterson filed a request for Medical Review Panel in early May 2022; two weeks later, she filed a petition for damages, alleging that certain of Claiborne's acts were not covered by the Medical Malpractice Act. Claiborne filed an exception of prematurity urging that all the plaintiff's claims were for healthcare; the district court agreed, sustained the exception and dismissed the petition without prejudice. The plaintiff appealed.

The Second Circuit affirmed in part and reversed in part, ***Patterson v. Claiborne Oper. Group LLC,*** 55,264 (La. App. 2 Cir. 11/15/23), in an opinion by Judge Stephens. The court began with the definition of malpractice, La. R.S. 49:1231.1 A(13), and the seminal case of *Coleman v. Deno*, 01-1517 (La. 1/25/02), 813 So. 2d 303, which set out the factors to use in deciding whether something that happens in a healthcare environment is actually healthcare. The court rejected the argument that injuries attributable to underfunding and inadequate staffing are intentional conduct and gross negligence (which would put them outside the Act). The court then analyzed each portion of the claim, agreeing that most of them did indeed qualify as healthcare and should proceed through the MRP process. However, the claim of negligent diapering has been recognized as permitting "dignity-type or tort damages," *Wendling v. Riverview Care Ctr. LLC*, 54,958 (La. App. 2 Cir. 4/5/23), 361 So. 3d 557, *Randall v. Concordia Nursing Home*, 07-101 (La. App. 3 Cir. 8/22/07), 965 So. 2d 559; as this informed part of the suit, the court reversed in part and remanded for the plaintiff to amend her petition to state a cause of action outside medical malpractice, if possible.

I am not aware of the ultimate outcomes of cases like *Wendling*, *Randall* and, now, *Patterson*, but they hold that ignoring a resident's dirty diaper for prolonged periods is not healthcare, and such claims can circumvent the MRP process. This area of the law is probably ripe

for refinement by the Supreme Court or, better yet, by the legislature.

A valued nonemployee. Little Grayson was born in 2013 to a troubled and drug-addicted mother; the authorities intervened, had Grayson declared a child in need of care and assigned him to the care of a Ms. Gafford. Unfortunately, about six weeks later, Ms. Gafford brought Grayson to Willis-Knighton South with serious head injuries, bite marks and other problems associated with shaken-infant syndrome and deemed "non-accidental." Grayson's mother sued Ms. Gafford and the Dept. of Children and Family Services, alleging inter alia that DCFS owed a nondelegable duty as custodian of the child, citing *Miller v. Martin*, 02-0670 (La. 1/28/03), 838 So. 2d 761: it employed Ms. Gafford as a foster parent and thus was vicariously liable for her intentional acts against Grayson. DCFS filed an exception of no cause urging that *Miller* was inconsistent with a special statute limiting state liability to acts of officials, officers or employees, R.S. 42:1441.1, and should be overruled; the district court denied this, as did the Second Circuit and the Supremes; however, the Supremes commented that DCFS would be liable only on a showing that Ms. Gafford was "a state office holder, employed by the state," under R.S. 13:5108.1; the case was remanded. *Kunath v. Gafford*, 20-01266 (La. 9/30/21), 330 So. 3d 161.

Back in district court, DCFS filed a motion for summary judgment to establish that Ms. Gafford was *not* an employee. It attached an affidavit from a child welfare specialist saying Ms. Gafford was just a foster parent, never employed by DCFS, compensated or paid wages. Grayson's mother opposed, attaching some answers to interrogatories and a Foster Parent Handbook, which DCFS attacked as not verified. The district court sustained the objection to the exhibits, granted summary judgment and dismissed the claim. Grayson's mother appealed.

The Second Circuit affirmed, ***Howe v. Gafford,*** 55,343 (La. App. 2 Cir. 11/15/23), in an opinion by Judge Marcotte. The court considered the child welfare specialist's affidavit, which denied any employment status; La. R.S. 46:51 (8), which authorizes DCFS to *contract* with private individuals to be foster parents; and jurisprudence that treated foster parents and "state employees" as separate groups, e.g., *Scott v. Brewer*, 31,279 (La. App. 2 Cir. 12/11/98), 722 So. 2d 1186. It found none of the established characteristics of the employer-employee relationship. It also rejected the claim of liability under § 1441.1.

The opinion does not address DCFS's fervent argument that *Kunath* overruled *Miller*, but shows that proof of the employment relationship is absolutely essential to liability. And, unsurprisingly, the unverified Foster Parent Handbook is subject to exclusion on MSJ. Who, I wonder, would verify this document?

You know it when, or do you? Ms. Fuller was an elderly woman with growing cognitive impairment; an acquaintance induced her to donate to him some land in DeSoto Parish, with valuable mineral interests, and he then evicted her from her home. Ms. Fuller's great-niece secured legal advice to revoke the donations, under a standard contingency agreement; the attorneys filed a petition to revoke the donations and were successful. They also filed an interdiction against Ms. Fuller, resulting in the great-niece being named curatrix; the judgment directed her to pay off the legal fees from the revocation action. However, the attorneys agreed to defer collection, lest Ms. Fuller need the money for her expenses and care. Ms. Fuller died in October 2020, and a different relative, Kelly, was appointed administrator. The attorneys filed credit claims demanding their one-third, or $169,051 each; after a hearing in April 2021, the court awarded them $129,381 each, which Kelly paid.

Kelly apparently had misgivings about the outcome, however. She retained new counsel and, in May 2022, sued the first attorneys to annul their contingency fee agreement. The first attorneys filed an exception of prescription, which the district court granted. Kelly appealed.

The Second Circuit affirmed, ***Fuller v. Pittard,*** 55,336 (La. App. 2 Cir. 11/15/23), in an opinion by Judge Hunter. The court roundly rejected the contention that a contingency fee in "an interdiction case" is absolutely null; such a fee is often approved in probate cases, *Skannal v. Jones Odom Davis & Politz LLP*, 48,016 (La. App. 2 Cir. 9/25/13), 124 So. 3d 500; *Marshall v. Wells*, 381 So. 2d 551 (La. App. 2 Cir. 1980). The court then addressed prescription: the great-niece signed the contingency agreement in January 2015; the judgment authorizing her to comply with it was in April 2021; but Kelly didn't file this suit until May 2022, more than one year later. On the record presented, Kelly had enough information in April 2021, but waited over one year to file this suit.

The details of the initial litigation, to revoke Ms. Fuller's donations, are not discussed, but they must have been substantial enough to support the fees of $258,762 total; on the other hand, the Second Circuit denied the attorneys' request for additional damages for frivolous appeal.

Lis pendens and res judicata. Ms. Peddy ran a C-store and gas station in Jamestown, in Bienville Parish. Her gasoline supplier was Lott Oil, domiciled in Natchitoches Parish. In February 2021, Lott came to make a delivery at the store; according to Ms. Peddy, the driver let the fuel overflow, damaging her premises with gasoline and causing all manner of other harm; she also claimed that when Lott looked at her surveillance video to try to establish how the incident happened, they destroyed the video. (The matter has not yet been to trial, so we don't really know.) However, Lott insisted that she pay for fuel delivered; the parties tried to negotiate, but Ms. Peddy's demands rose to $275,000. Apparently sensing no prospect of resolution, Lott filed suit in Natchitoches Parish for the balance on her open account, $3,663. About a month later, Ms. Peddy filed suit in Bienville Parish for her alleged damages. Lott responded with an exception of lis pendens, which the district court (Bienville Parish) granted. Ms. Peddy appealed.

The Second Circuit affirmed, ***Peddy v. Lott Oil Co.,*** 55,320 (La. App. 2 Cir. 11/15/23), in an opinion by Judge Ellender. The court cited the rule of lis pendens, La. C.C.P. art. 531, and its application, which parallels res judicata, R.S. 13:4231. The court then showed that the defendant in the first suit can't defeat lis pendens by adding the original plaintiff's insurer as a defendant in the second suit. Further, it is immaterial that one suit is labeled "open account" and the other labeled "property damage," as long as they arose from the same transaction or occurrence. This claim will have to wait.

Courts don't like to encourage a mad dash to the courthouse, but in a case like this, the first party to sue gets to choose venue and gets an earlier trial of its claims. Still, this seems preferable to holding two separate trials in different courts over essentially the same case.

Shreveport Bar Association Christmas Party

The Shreveport Bar Association hosted its annual Christmas party for its members and local law students at Silver Star Grille on Sunday, December 10, 2023.

Attendees gathered to visit with one another and enjoyed a spread of delicious food. It was great to see those that could come, and we understand for the ones who could not and look forward to seeing you at next year's party.

Harry V. Booth – Judge Henry A. Politz American Inn of Court

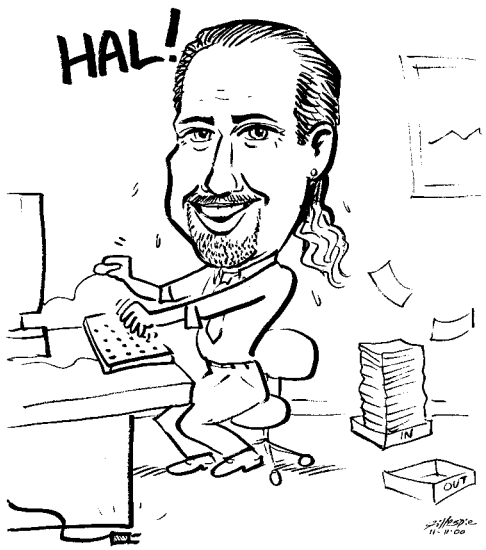
by Jerry Edwards, President, jerry.edwards.jr@gmail.com

The Booth-Politz Inn of Court had its holiday meeting on Thursday evening, December 14, 2023, at the Petroleum Club of Shreveport. The presenting team of Inn members facilitated Ethics Trivia, quizzing Inn members on ethical issues that are commonly faced by lawyers. The presenting team members were Judge Jeff Cox, Judge Amy McCartney, Garrett Hill, Julia Todd, Gahagan Pugh, John Bokenfohr, Clinton Bowers, Sara Brandon, Jasmine Cooper, Michael Enright, Matthew Lee, Briana Spivey, Ebonee Norris and Courtney Ray.

Christmas magic is in the air!

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org



Spoiled writing. Transposed letters can spoil the reading experience. "She made no argument regarding *spoilation* of evidence, bad faith on the part of the State, or an inability to prepare a defense." *State v. Craft*, 22-553 (La. App. 3 Cir. 2/1/23), 355 So. 3d 1237. "We see no reason why the court could not have treated the agreement * * * as bogus because of its loss – akin to a *spoilation* instruction – and proceeded to the merits[.]" *Vikas WSP Ltd. v. Economy Mud Prods. Co.*, 23 F. 4th 442 (5 Cir. 2022).

The common word *spoil* is a verb that means, in modern usage, to *treat with overindulgence*, to *pollute* or to *lose freshness and become uneatable*. There is no such word as *spoilation*. The legal term *spoliation* is etymologically related but means to *destroy* or to *make totally useless*. In the quotations above, no one was *overindulging* the evidence but, rather, discussing the presumption that arises when a party *destroys* the evidence.

Courts usually get this right, or correct litigants who don't. "The first discovery-related motion * * * is a motion to establish *spoliation* and sanctions[.]" *Military Dept. v. Explo Sys. Inc.*, 54,015 (La. App. 2 Cir. 5/18/22), 339 So. 3d 1252. "By his first assignment, 'Intentional *Spoilation* [*sic*] of the Evidence,' Fobbs argues that he made a request to CompuCom * * * but this was 'totally ignored.'" *Fobbs v. CompuCom Sys. Inc.*, 55,173 (La. App. 2 Cir. 9/27/23), 371 So. 3d 1146. Spell Check will not only insert its squiggly red line under *spoilation* but instantly correct it, so instances of this misspelling should vanish as if by spoliation.

Foiled writing. A similar typo has gone totally extinct, perhaps owing to the advent of Spell Check. "Photographs taken during optimum conditions, introduced into evidence, establish that it is almost impossible to locate the bridge due to the *foilage* and the layout of the road." *Michel v. Ascension Parish Police Jury*, 524 So. 2d 1369 (La. App. 1 Cir. 1988). "The trees separating the two greens were approximately 25 feet high and somewhat dense. Therefore the *foilage* was reasonable for the circumstances." *Baker v. Thibodaux*, 470 So. 2d 245 (La. App. 4 Cir. 1985). "[P]olice jury's failure to trim roadside *foilage* was not cause-in-fact of accident[.]" *Holt v. Rapides Parish Police Jury*, 574 So. 2d 525 (La. App. 3 Cir. 1991) (case summary supplied by West Pub. Co.). I would not expect any regrowth of this error.

To bodily go. These words differ in a tangible way, though only by one letter. "To receive the promotion to senior *corporeal* and the six percent pay increase, an officer must have served as a *corporeal* for six consecutive years[.]" *Aphaiyarath v. Lafayette City-Parish Consol. Gov't*, 20-571 (La. App. 3 Cir. 6/16/21), 2021 WL 2451938. "Also of particular concern were patterned marks suggesting contact with similar shaped objects, especially [located in] a common place where *corporeal punishment* is administered." *State v. Brown*, 13-0268 (La. App. 4 Cir. 7/24/13), 163 So. 3d 1. "The possessor must have corporeal possession, or civil possession preceded by *corporal* possession, to acquire the thing by prescription." *Stelly v. Bergeron*, 19-102 (La. App. 3 Cir. 10/30/19), 283 So. 3d 536. Is there some confusion here?

To take the easy one first: the police rank between a patrol officer and a sergeant is *corporal*, always, in every department. This word indirectly comes from the Latin *caput*, = *head*, meaning the officer has supervision over others. (The rank of *captain* comes from it directly.)

Distinguishing the other two is more nuanced. Both *corporal* and *corporeal* come from the Latin *corpus*, = *body*, and mean *pertaining to the body*. Normally, *corporeal* means *physical* or *actual*, as opposed to *imaginary* or *spiritual*. This is why the Civil Code refers to "corporeal possession, or civil possession preceded by corporeal possession" as a requisite for acquisitive prescription, in Art. 3476 (but misquoted in *Stelly*). In police procedure, it means *not by photographs*. "Pursley identified Reed as her assailant in a *corporeal lineup*." *Reed v. Quarterman*, 555 F. 3d 364 (5 Cir. 2009).

The other word, *corporal*, means *pertaining to or affecting one's body*, and it usually implies force or violence, such as punishment or torture. Cautious readers would confine this to the phrase *corporal punishment*, as in La. R.S. 17:416.1 B(1): "The use of any form of *corporal punishment* is prohibited in any public school unless the student's parent or legal guardian provides written consent for the use of *corporal punishment* in a document created by the Department of Education solely for such purpose."

True, older sources use the two interchangeably. Macbeth famously told Banquo, about the Three Witches: "Into the air, and what seemed *corporal* melted / As breath into the wind." *Macbeth*, act 1, sc. 3, lines 76-77. Or, as the U.S. Supreme Court recently quoted from an 1812 criminal law digest: "There must be a *corporal* seizing, or touching the defendant's person; or, what is tantamount, a power of taking immediate possession of the body[.]" *Torres v. Madrid*, 592 U.S. 306, 141 S. Ct. 989 (2021). Somehow, I think the seizing or touching practiced in 1812 encompassed corporal punishment in the modern sense, but that is just a guess.

Careful writers will have to remember that in the area of real property, prescription is based on *corporeal possession*, in the area of education, physically striking a child is *corporal punishment*, and a police officer after the first promotion is a *corporal*.

Onward and outward. An email from one of the state's leading law schools invited lawyers to a Recent Developments seminar in Monroe in November 2023. Local speakers included "The Honorable Alvin R. Sharp – *Forth* Judicial District Court." For those keeping count, Ouachita and Morehouse are the *Fourth* (ordinal) JDC, not that other word. At least the writer didn't serve up *froth*.

Monroe Inn of Court

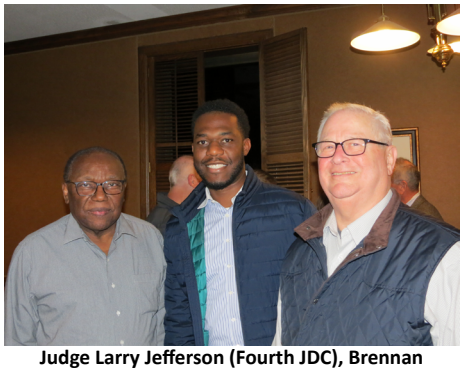
by Hal Odom Jr., rhodom@la2nd.org

Recent Developments in Torts, Civil Procedure & Evidence

Recent developments in torts, and in civil procedure and evidence, were on the agenda for the December meeting of the Judge Fred Fudickar Jr. AIC, in Monroe.

Charlen Campbell (Attorney General's Office), Prof. Corbett and Lynette Gregory (sole practice, Monroe) posed for this shot before the meeting.

Professor William R. "Bill" Corbett, of LSU's Paul M. Hebert Law Center, made a much-anticipated return to Monroe to present an information-packed program. He began with topics in torts, gratefully acknowledging input from his LSU colleagues Tom Galligan, Thomas Flanagan and Alston Johnston, and from La. Supreme Court Justice Piper Griffin.



Judge Larry Jefferson (Fourth JDC), Brennan Manning (The Manning Law Firm, Monroe) and David Verlander were also in attendance.

He began with *Amedee v. Aimbridge Hospitality LLC*, 21-1906 (La. 10/21/22), 351 So. 3d 321, which resolved a split *within the Third Circuit* to allow a defendant to appeal the allocation of fault against a codefendant who was dismissed by summary judgment, when the plaintiff does not appeal; Prof. Corbett considered the Supreme Court's decision "clearly right." He moved to *Pete v. Boland Marine & Mfg. Co.*, 23-00170 (La. 10/20/23), which changed the standard of review of general damage awards: previously, "abuse of discretion" was a prerequisite to considering prior awards, but with *Pete*, review of prior awards must come first and inform the review of discretion. "That's the beauty of the law," Prof. Corbett remarked. "We never get done!" Another important case was *Farrell v. Circle K Stores*, 22-849 (La. 3/17/23), 359 So. 3d 467, which has, for the moment, officially removed "open and obvious" from the "duty" element of duty-risk and placed it solidly in "likelihood and magnitude of harm." Prof. Corbett noted that, because the Supreme Court reversed the denial of summary judgment and granted such judgment, it is still possible for the defendant to win summary judgment when the issue is "open and obvious."

After covering other relevant tort opinions, Prof. Corbett moved to civil procedure and evidence, using an innovative multiple-choice-test format, homing in on amendments to the Code of Civil Procedure. A representative question will illustrate:

A hearing on a defendant's motion for summary judgment is set for Friday, Dec. 8, 2023. What is the last day on which the defendant may file a reply memorandum?

A. Monday, Dec. 4, four days before the hearing, because the fifth day is Sunday, Dec. 3, which is a legal holiday.

B. Friday, Dec. 1, because the fifth day before the hearing is Sunday, Dec. 3, and under La. C.C.P. art. 5059 B(3), when a period of time is less than 7 days, legal holidays are not included.

C. Tuesday, Dec. 5.

D. Sunday, Dec. 3, because that is the fifth day before the hearing, and the reply can be fax filed.

Breanna Buffington (Hammons Sills, Monroe) and Riley Brister (research attorney, Second Circuit) were among the attendees.

Owing to the recent (2023 La. Acts, No. 317, effective 8/1/23) amendment to Art. 5059 B(3), a reply memo must be filed and served "not less than five days inclusive of legal holidays notwithstanding Art. 5059 B(3) prior to the hearing on the motion." In short, the answer is **A.** Many of the questions focused on MSJ deadlines, but other tricky areas got attention, such as the 2023 amendment to Art. 928 B that provides that once the exception of lack of subject matter jurisdiction is raised, the court must rule on it *first*.

Professor Corbett, Cyd Page (Voorhies & Labbé, Monroe) and Judge Danny Ellender (Second Circuit) gathered at the social hour before the meeting.

Prof. Corbett is the Frank L. Maraist, Wex S. Malone & Rosemary Neal Hawkland Professor of Law at LSU Law School. He has been on the faculty since 1991. This year marks his third annual presentation to the Inn. He was warmly greeted and enthusiastically applauded by the 20 members in attendance. The meeting was Monday, December 11, 2023, at the Lotus Club, in the historic Vantage ONB Tower on DeSiard Street in downtown Monroe. Members received one hour's CLE for this really practical and enjoyable session. The Inn will take a break in January and resume meetings in February.

Semester in Shreveport: Empowering Legal Education in Northwest Louisiana

by Shayla Johnson, shayla.johnson02@sulc.edu

I am absolutely thrilled to have the opportunity to return to Shreveport, a place that holds a special place in my heart. When I initially embarked on my journey to law school in South Louisiana, it came with significant sacrifices. I had no choice but to uproot my life and move miles away from Shreveport to pursue my legal education. This was a dream I had nurtured since I was a young girl, and I was determined to achieve it. However, I couldn't help but wonder why there was a lack of legal education opportunities for northwest Louisiana residents. Not everyone can leave their homes and families behind to pursue their dreams, especially when they have spouses, children and other responsibilities to consider.

Fortunately, the Southern University Law Center introduced the Semester in Shreveport ("SIS") initiative, a program designed to increase legal education capacity in northwest Louisiana. The idea of a satellite campus in Shreveport filled me with excitement. It warmed my heart seeing the overwhelming support from the Shreveport legal community for this program. Knowing that future students will be able to pursue a legal education without the stress of leaving their home area is an unbelievable feeling. As a law student who had to relocate to Baton Rouge, with no family in the vicinity, work full-time during the day and attend school part-time in the evenings, I understand the challenges all too well.

The Semester in Shreveport initiative is taking a significant step toward making legal education more accessible to those who call this area home. While there is undoubtedly more work to be done, I eagerly anticipate my return to Shreveport to complete this incredibly rewarding journey. This opportunity represents not only a personal achievement but a chance to contribute to the legal education landscape in Northwest Louisiana and provide a path for others to follow their dreams.

Shreveport Community Support. The Shreveport legal community provides robust support for students, fostering an environment that encourages them to return. The Shreveport Bar Association, Shreveport Bar Foundation, Krewe of Justinian and various legal sections offer a plethora of resources, including pro bono projects, CLEs and networking opportunities. Notable figures like Trey Morris, Eddie Clark and Judge Shonda D. Stone actively contribute to this supportive atmosphere. The engagement of judges from the Second Circuit Court of Appeal, First Judicial District Court and Shreveport City Court, along with community leaders and organizations, further enhances the wealth of mentorship and guidance available. The overwhelming support fosters an environment that draws students back to pursue successful legal careers in Shreveport. I anticipate the chance to meet numerous role models within the Shreveport legal community. This experience will undoubtedly contribute to molding me into a capable future attorney, ready to navigate and conquer the challenges of legal practice.

Supplemental Instruction. The Spring 2024 Supplemental Instruction Programs are a game-changer for law students, providing invaluable support during this critical academic period. Departing from the familiar grounds of Baton Rouge can instill uncertainty during what is perceived as the most pivotal semester. The centralized focus on bar prep classes on the main campus often leaves satellite campus students questioning whether they will receive sufficient initial bar preparation.

Fortunately, Chancellor John Pierre, Professor Deleso Alford and community liaison Tiberlee Barnum are actively collaborating to establish supplemental instruction avenues for students participating in the program. Among the offerings for the SIS Spring 2024 Supplemental Instruction is the Bar Reality Program. This immersive program is designed to simulate the bar exam conditions, offering early exposure and insight into bar prep strategies. In addition, the Specialized Bar Prep Bootcamp, a program led by seasoned legal practitioners and bar exam graders, is tailored for SIS participants. Its primary objective is to significantly enhance bar passage rates and overall exam success for students. The inclusion of legal practitioners and experienced bar exam graders as instructors ensures a level of expertise that directly aligns with the unique challenges faced by SIS participants.

SIS Alumni Insights. Since its start, the SIS program has hosted two cohorts: the first, known as the "Sagacious Seven," and the second, the "Superlative Six." I spoke with students from both groups, including Tiberlee Barnum, the community liaison and a member of the first cohort. Barnum, who served as a judicial extern for the Second Circuit Court of Appeal under the guidance of Judge Shonda Stone, engaged in numerous legal research assignments and assisted in drafting legal opinions. She expressed gratitude for gaining such valuable experience.

As the community liaison, Barnum highlighted changes in funding between cohorts. The first cohort, including Barnum, resided at the Hilton in downtown Shreveport, while the second cohort benefited from donations from alumni and community stakeholders, allowing them to stay at The Willows Apartments. Each cohort's students enjoyed the perk of residing in their designated housing without any charges, courtesy of federal funding and donations that covered all expenses – a delightful aspect of the program. Notably, funding for the second cohort continued through bar prep, in contrast to the first cohort. Ms. Barnum attributes this positive shift to a mindset focused on long-term impact. She encourages prospective participants to enjoy their time in the program while recognizing its enduring contribution to the community, as they become integral parts of a legacy extending beyond their individual tenures.

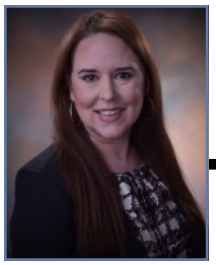
Let's take a moment to highlight the reflections of former student participants provided below:

Jakira Gibson: "The networking opportunities in the Shreveport program were beneficial. I got to meet judges and attorneys who were incredibly supportive. Now, my personal life was a rollercoaster. Financial aid got cut, I missed out on Baton Rouge events, but my internship was a bright spot, especially working for an African American female judge. One standout moment? Attending a Human Sex Trafficking conference, meeting Cyntoia Brown Long – surreal! The local legal community's support was crucial; I've got lasting contacts. Being from Monroe, I think bringing a law school to north Louisiana is a great move. Some folks don't want to venture too far from home. Looking back, my advice to new students is to weigh your options. The Sagacious Seven made sacrifices, and the program has improved since. Oh, and we could use more bar prep resources!"

Alexis Calhoun: "My time at the Second Circuit Court of Appeal was thoroughly enjoyable. Beyond gaining valuable knowledge, I met delightful people. The majority of my time was spent working under Judges Stone, Cox, Robinson and Hunter. Thanks to the guidance of Southern Law Center alumni, I had hands-on learning, understanding appellate-level opinions, writ submission and processing. I also observed oral arguments. Law school doesn't cover these intricacies, making this experience exceptionally valuable."

Tyresia Earls: "I cherished my time in the Semester in Shreveport program, immersing myself in the legal community. Networking with influential figures like Judge Shonda Stone and District Attorney James Stewart provided valuable insights. Visiting partner sites broadened my legal perspective, creating a fulfilling experience. Contributing to my school's expansion in my hometown felt like a full circle moment. Shreveport's growth, vision and abundant opportunities make it an excellent place for the talent nurtured by SULC, and I recommend this program."

The SIS program's continuous success fuels anticipation for future participation. Gratitude to SULC and Shreveport's legal community for recognizing its benefits and impact.



The Captain Speaks

Amy Gardner Day, *amy@cbbd.law*

At a recent CLE presentation, hosted by the Harry V. Booth-Judge Henry A. Politz American Inn Court, professionalism and the need for work-life balance were featured. The Shreveport Bar Association is certainly not lacking in professionalism. In working with attorneys across the state, I am always proud of the professionalism that is extended between opposing counsel in this area. That professionalism stems, in part, from the relationships that have been built among us.

The Krewe of Justinian prides itself on both serving our clients and greater community, as well as bringing our local community of attorneys together in a social, fun-loving atmosphere that encourages camaraderie and civility as we work together to support and serve our clients. I invite you to join that community at the Krewe of Justinian's 30th Grand Bal, "Straight on 'til Morning," on January 13, 2024, at 6:30 pm. Visit www.kreweofjustinian.org for tickets!

Laissez Les Bon Temps Rouler!

Captain Justinian XXX, Amy Gardner Day

CLASSIFIEDS

Wanted: Staff Attorney for ALSC Disaster Unit

Acadiana Legal Service Corporation (ALSC) seeks a full-time, Louisiana-licensed Staff Attorney to aid survivors of 2020-2021 FEMA-declared disasters. Able to handle civil law matters like title clearing, successions, estate planning, contractor fraud, and landlord/tenant disputes. Join us in making a meaningful impact, providing justice, and supporting vulnerable communities. If you are an attorney eager to assist disaster survivors, apply online today at www.la-law.org/careers.

Brief writing/legal research

Columbia Law School graduate; former U.S. 5th Circuit staff attorney; former U.S. District Court, Western District of Louisiana, law clerk; more than 20 years of legal experience; available for brief writing and legal research; references and résumé available on request. Appellate Practice specialist, certified by the Louisiana Board of Legal Specialization. Douglas Lee Harville, lee.harville@theharvillelawfirm.com, (318)470-9582.

Wanted: Staff Attorney to Join ALSC Disaster Unit!

We are seeking a full-time, Louisiana-licensed Staff Attorney to represent disaster survivors of the 2020-2021 FEMA-declared disasters. Must be able to handle matters including title clearing, successions, contractor fraud landlord/tenant disputes and more.

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Being involved in Pro Bono is a rewarding experience as you give back to the community, gain experience in the court room, and earn CLE credit. Contact the SBF office to get involved.
Lucy Espree, Pro Bono Coordinator,
lucy@shreveportbar.com | 318.703.8381.

DECEMBER CLE BY THE HOUR

Thanks For Your Valuable Contribution!

The planners and speakers of the SBA December CLE By The Hour Seminar CLE seminar are volunteers. Their gift of time and talent make this event successful. We acknowledge and greatly appreciate their work.

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Honorable Edwin Byrd
Honorable Elizabeth Foote
Meg Frazier
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Drew Martin
Honorable Jay McCallum
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December CLE By The Hour

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DECEMBER CLE BY THE HOUR Highlights

YOUR LEGAL LEGACY

BE IT BIG OR SMALL, YOUR ACTIONS MATTER!

Your gift to the Shreveport Bar Association or the Shreveport Bar Foundation can ensure the long-term sustainability of these organizations and allow them to serve the local bar and community for years to come. The SBA is heavily dependent on CLE revenue, and competition from free classes puts that at risk. Your generous donation or bequest will help the SBA and SBF maintain an executive director, publish The Bar Review, and provide pro bono legal services to domestic violence victims and other deserving clients.

Please remember the SBA and SBF in your planned giving to show your support for our organizations and the services they provide. Your generosity is appreciated.

Contact any of us if you would like to discuss ways to best help our organizations.

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Ryan York
First Judicial District Court, Law Clerk

*2024 SBA MEMBERSHIP LUNCHEONS

12:00 Noon at the Petroleum Club (15th Floor)

JANUARY 13
KREWE OF JUSTINIAN BAL
Horseshoe Casino Riverdome

***JANUARY 24**
Speaker: Peter S. Canellos
Author of The Great Dissenter

FEBRUARY 3
KREWE OF CENTAUR PARADE
Krewe of Justinian Participates

FEBRUARY 11
KREWE OF HIGHLAND PARADE
Krewe of Justinian Participates

***FEBRUARY 28**
Speaker: Robert T. Mann
Author of Kingfish U: Huey Long and LSU

***MARCH 27**
Speaker: Chief Geoffrey Standing Bear, Principal Chief of the Osage Nation and source for the book Killers of the Flower Moon

AMAZON WISH LIST

The Shreveport Bar Foundation is excited to announce the launch of its Wish List program for the Pro Bono Project, Legal Representation for Victims of Domestic Violence programs, and the Shreveport Bar Center through Amazon. This new wish list program allows our supporters to purchase supplies and other items needed to run our programs. This can range from pens (for the AAL clinics) to soap and paper products (for the building)! **Check out the full list of options!**

https://www.amazon.com/hz/wishlist/ls/3EW9JTZSJNVEZ?ref_=wl_share

Or scan the QR code.

amazon wishlist

SBA Luncheon Meeting – January 24

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

$50.00 for SBA members includes lunch and one hour of CLE credit or $30 for lunch only.

$60.00 for non-SBA members includes lunch one hour of CLE credit or $35 for lunch only.

Peter S. Canellos

When: 12:00 Noon on Wednesday, January 24

Where: Petroleum Club (15th floor)

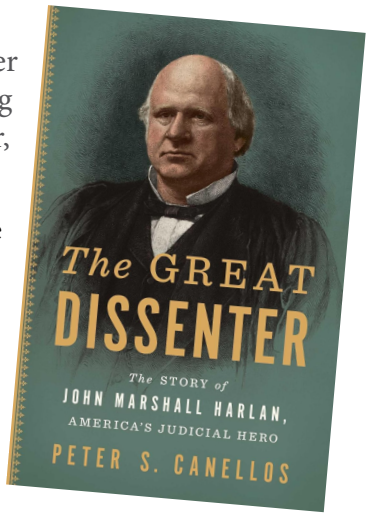
Featuring: Peter S. Canellos, author of

The Great Dissenter: The Story of John Marshall Harlan, America's Judicial Hero

This presentation is eligible for 1 hour CLE credit.

ABOUT THE AUTHOR

Peter S. Canellos is an award-winning writer and former Editorial Page Editor of *The Boston Globe* and currently Managing Editor of *Politico*. He is the editor of the *New York Times* bestseller, *Last Lion: The Fall and Rise of Ted Kennedy.*



Please join us on Wednesday, January 24, for the first SBA meeting of 2024 to explore the roots of judicial wisdom and the power of dissent. Learn how personal values and experiences inspire leadership. Hear how a voice in the wilderness won the battle of history – with best-selling and award-winning journalist Peter S. Canellos, author of "*The Great Dissenter: The Story of John Marshall Harlan, America's Judicial Hero*". "In the history of the Supreme Court, there is no parallel to Harlan's career. There have been other passionate dissenters and other famous dissents. But no one stood so consistently against his brethren, only to be vindicated in later times. . ." – from *The Great Dissenter: The Story of John Marshall Harlan,* America's Judicial Hero, named one of the top 20 Best Nonfiction Books of 2021 by Publishers Weekly In "The Great Dissenter,"

Peter S. Canellos tells the profound tale of how a former slave owner – with the help of a once-enslaved man who grew up alongside him and was believed to be his half-brother – changed American law. A current editor at *POLITICO*, former editorial page editor of *The Boston Globe*, and editor of the *New York Times* bestseller "Last Lion: The Fall and Rise of Ted Kennedy," Canellos has harbored an interest in Harlan since his days at Columbia Law School three decades ago. Published in 2021 to universally positive reviews, "The Great Dissenter" has been the subject of speeches and events including keynotes at the Sixth Circuit Judicial Conference in Louisville, the Ohio Judicial Conference in Columbus and a special private briefing for judges and magistrates of the Second Circuit in New York City.

Spanning from the Civil War to the Civil Rights movement and beyond, The Great Dissenter is a "magnificent" (Douglas Brinkley) and "thoroughly researched" (The *New York Times*) rendering of the American legal system's most significant failures and most inspiring successes.

We will have a limited number of books for sale at the luncheon. Paperbacks $25, hardback $35. Books will be sold and signed by the author after the presentation.

Confirm your reservation(s) by email at **dsouthern@shreveportbar.com** or by phone at **703-8372.**
Please remember to call and cancel if you can't attend.
The SBA pays for each reservation made. No-shows will be invoiced.