The Bar Review

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EVENTS AT A GLANCE

4/25	Legal Technology Lunch & Learn Series– 12:00 p.m. – Shreveport Bar Center
5/1	SBA Law Day Membership Luncheon – 12:00 p.m. - Petroleum Club
5/3	30th Annual Red Mass – 8:30 a.m.- Music and 9:00 a.m. Mass – Holy Trinity Catholic Church
5/7	Give for Good Campaign – 7:30 a.m. – Lowder Baking Company; 11:00 a.m. – The Glass Hat; 5:00 p.m. – Casa Jimador
5/17	SBA Pickleball Tournament – 10:00 a.m. – Southern Hills Pickleball Courts

From The President

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

Did you know that the United States Constitution guarantees to every State in the Union a Republican form of government? U.S. Const., Art. IV, Sec. 4. That section provides in particular for a variety of duties owed to the States, as follows:

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

The United States Supreme Court has spoken very little on the extent of this constitutional guarantee to the states; however, in *Duncan v. McCall*, 139 U.S. 449, 461, 11 S. Ct. 573, 577 (1891), they said:

[T]he distinguishing feature of that form is the right of the people to choose their own officers for governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves[.]

Daniel Webster is noted as describing the American system of government as one where "the people are the source of all political power, but that, as the exercise of governmental powers immediately by the people themselves is impracticable, they must be exercised by representatives of the people; [and] the basis of the representation is suffrage." *Id*. at 461, 11 S. Ct. at 577.

In November of 2024, the United States of America will conduct its 60th presidential election. This year will mark the unusual event of a "rematch" between President Joe Biden and former President Donald J. Trump. Millions of Americans will exercise their right to vote and choose the person they desire to "represent" them as the leader of this country. Elections will be the topic at the Shreveport Bar Association's Law Day luncheon on May 1, 2024.

The theme for the 2024 Law Day is "Voices of Democracy." This year Law Day recognizes that in democracies, the people rule. To speak on the topic, we have extended the invitation to our mayor of Shreveport, and fellow bar member, Tom Arceneaux. He will deliver his address at this year's Law Day program. Also announced will be this year's Liberty Bell Award winner.

I hope that you will turn out in large numbers to hear our mayor, as he encourages us to participate in the 2024 elections by deepening the public's understanding of the electoral process; discussing issues in honest and civil ways; turning out to vote; and, finally, helping to move the country forward after free and fair elections.

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APR 2024

Save the Dates 2024

Shreveport Bar Association's
Continuing Legal Education

APR 25
Lunch & Learn
Session I
Legal Technology Update

AUG 22
Lunch & Learn
Session II
Legal Technology Update

SEPT 18-19
Recent Developments
by the Judiciary
Seminar

OCT 3-4
SBA
Trial Academy

OCT 18
North Louisiana
Criminal Law
Seminar

DEC 18-19
December CLE
By the Hour

DEC 30
Lunch & Learn
Session III
Ethics & Professionalism
Last Chance

Shreveport Bar Center

625 Texas Street, Shreveport, LA

LUNCH & LEARN SERIES

Join us for one or more of our Lunch & Learn sessions in 2024!

12 pm - 1 pm

April 25

Aug 22

11am - 1pm

Dec 30

Approved for 4 Louisiana CLE Credit Hours

April 25

Legal Technology Update –Session I

Presented by Katherine Gilmer and Sarah Giglio — Gilmer & Giglio LLC

August 22

Legal Technology Update-Session II

Presented by Melissa Allen –U.S. Fifth Circuit Court of Appeals

December 30

Ethics & Professionalism –Session III

Last Chance to get your ethics and professionalism hours before the clock runs out. Presenters to be announced

To register visit:

https://shreveportbar.com/lunch-learn-2024/

Federal Update

by Chris Slatten, Chris_Slatten@lawd.uscourts.gov

Insurance Proceeds; Bankruptcy Preference: Trucking company accident killed Tellez and Ortiz. The Ortiz family demanded the trucking company's $1M policy limits, and the insurer paid. The insurer then informed the Tellez family that the policy was exhausted. The Tellez family commenced an involuntary bankruptcy against the trucking company, and the trustee filed an adversary action against the Ortiz family and their lawyers seeking to avoid and recover the policy proceeds as an avoidable preference under § 547.

The purpose of the preference statute is to preserve the property of the estate that is available for distribution to creditors. If the debtor distributes estate property to a creditor while the debtor is insolvent and within 90 days before the filing of bankruptcy, the trustee may be able to void that transfer and recoup the money for an equitable distribution to all creditors.

Was the payment of the insurance proceeds by the *insurer* a transfer of an interest of the *trucking company/debtor* that is subject to a § 547 action? Whether policy proceeds are property of the estate must be analyzed in light of the facts of each case. *In re OGA Charters* held that where a siege of tort claimants threatens the estate over and above policy limits, the proceeds are property of the estate. The case at hand fit that precedent, so the trustee properly alleged a preferential transfer of the trucking company's property. *Law Off. of Rogelio Solis PLLC v. Curtis*, 83 F.4th 409 (5th Cir. 2023).

§ 1983 and Prescription: Congress did not pass a limitation period for claims under 42 U.S.C. § 1983. *Owens v. Okure*, 109 S.Ct. 573 (1989) held that, in a state with more than one limitation period, we borrow the state's general limitation period for personal injury actions. In Louisiana, that is CC art. 3492's one-year period. Only Kentucky, Tennessee, and Puerto Rico join Louisiana in allowing just one year to file a § 1983 claim.

The plaintiff in a local case brought a § 1983 excessive force claim, but he filed it almost two years after the event. The defendants moved to dismiss it as untimely. The plaintiff argued that his claim should be governed by Article 3493.10 (two years to file a claim based on a crime of violence). He also argued that one year is so short as to be inconsistent with the federal interests protected by § 1983. Judge Foote rejected his arguments based on precedent that the general one-year tort period applies. The plaintiff appealed, with a focus on the "too short for federal interests" argument. The 5CA affirmed. *Brown v. Pouncy*, 93 F.4th 331 (5th Cir. 2024). Look for the plaintiff, who has the support of civil rights advocacy groups, to petition the Supreme Court for review.

LA Law; Agreement to Agree: A entered a contract with B to license certain designs to B in return for royalty payments based on sales. After the parties signed the contract, B asked A if it could use the same factories and artisans that A used to produce the licensed products. A was reluctant to share the identities of the factories and artisans. A alleged that B then orally promised that B would not use the same artisans to produce any designs that were not part of the agreement without first seeking A's permission and entering into a separate agreement to further compensate A for any use of the artisans.

You guessed it. A learned that B was using A's artisans to make a non-licensed product. B denied making any promises about such use of the artisans. A sued for breach of contract. The 5CA reviewed Louisiana law, which provides that where an agreement leaves key terms open for future negotiation, such an agreement is not enforceable. Because the alleged agreement left the terms of compensation to A wide open to future negotiation, the parties did not enter into an enforceable contract. *Shaw v. Restoration Hardware, Inc.*, 93 F.4th 284 (5th Cir. 2024). The district court's dismissal of claims for unjust enrichment and detrimental reliance were also affirmed.

General Personal Jurisdiction; Consent-by-Registration: A Pennsylvania statute requires out-of-state corporations to consent to personal jurisdiction in state courts as a condition of registering to do business. The SCT held that this requirement does not violate Due Process. *Mallory v. Norfolk S. Ry. Co.*, 143 S. Ct. 2028 (2023).

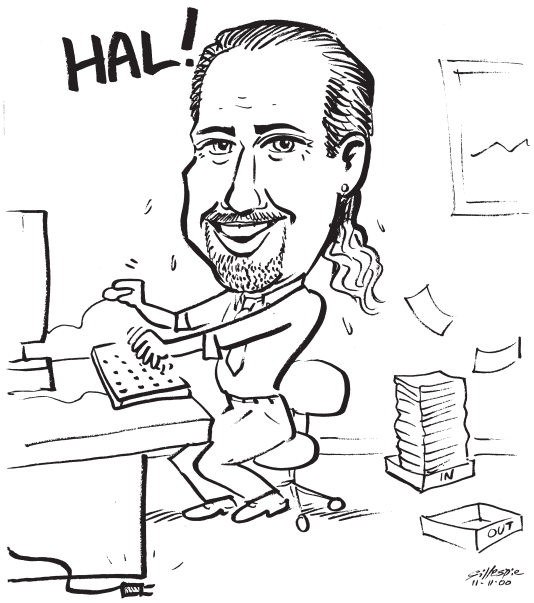
It was just a matter of time before someone argued that a corporation that registers to do business in any state has consented to jurisdiction in that state's courts. Of course, that is not what *Mallory* held, and the argument was shot down in *Pace v. Cirrus Design Corp.*, 93 F.4th 879 (5th Cir. 2024) because Mississippi is not a consent-by-registration state. And at last report, "Louisiana law … does not require a foreign entity to consent to jurisdiction as a condition of doing business in the state." *Gulf Coast Bank & Tr. Co. v. Designed Conveyor Sys., L.L.C.*, 717 Fed. Appx. 394 (5th Cir. 2017).

QI for Killing Man Who *Might* Pull a Gun: Police initiated a traffic stop, and video showed the driver quickly exit his car, turn his left side toward the officers, and run away toward a vacant lot with his right arm and hand not visible as he kept them pressed against his side. A cop said he was concerned that he could not, if necessary, react with his handgun in time to stop an attack, so he fired two shots at the man's back and killed him. It turned out that the man did have a gun in his right hand, but the cops never saw it before shooting, and the man never moved as if to draw it. A panel 2-1 held that the cop had qualified immunity. En banc rehearing was denied 7-10. *Argueta v. Jaradi*, 86 F.4th 1084 (5th Cir. 2023).

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

Cut with care. This homophone error sometimes does not get clipped out. "A simple assault would be the only responsive verdict, just for the *shear fact* you look at * * * art. 214[.]" *State v. McDowell*, 22-692 (La. App. 3 Cir. 3/8/23), 358 So. 3d 277 (quoting transcript). "The allegation itself amounts to *shear speculation*, so cannot be the basis for a showing of irreparable injury." *Dantzler v. Ardoin*, 2018 WL 6046152 (E.D. La. 2018). "Faced with the apparent dilemma of educating trial judges compounded by the *shear number* of cases tainted by such erroneous instructions[.]" *State v. Sam*, 623 So. 2d 1 (La. 1993) (dissent).



The word used, *shear*, most commonly means *cut or clip with a sharp implement*; in the plural, it means *large scissors*. The word intended is *sheer*, which means *transparently thin*, *pure*, *unmitigated*. It's the *sheer fact* that Art. 214 lists only one responsive verdict, rank rumor is *sheer speculation*, and the overwhelming quantity is a *sheer number* of cases. Sometimes courts catch the error. "Hicks saw fit to pull out a gun and shoot * * * [and] missed just by *shear* [*sic*] luck." *State v. Hicks*, 18-46 (La. App. 5 Cir. 10/17/18) 257 So. 3d 1283 (correcting trial transcript).

The hidden twist is that *shear* also means to *break from torsion or oblique force*, usually along a fault line. This description of an accident reconstruction expert's testimony is correct: "From this information, he was able to calculate the *shear force* placed on the neck and the bending movement of the neck." *Durkheimer v. Landry*, 22-418 (La. App. 3 Cir. 5/10/23), 366 So. 3d 674. And, a rapid change of wind speed or direction affecting an aircraft is a *wind shear*. It is sometimes misspelled: "crew's state of mind * * * was also relevant, given first officer's statement that he did not hear second *wind sheer* alert." 51 Am. Jur. Proof of Facts 3d 81 (Feb. 2024 update). Please note, the source case correctly referred to the *wind shear alert*.

Avoiding this confusion will make your writing a sheer pleasure for readers.

They can be trailing. A recurring topic in legal writing is the "rule of the last antecedent," an interpretive guide holding that "a limiting clause or phrase should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Lockhart v. United States*, 577 U.S. 347, 136 S. Ct. 958 (2016). *Lockhart* involved a complicated criminal statute, 18 U.S.C. § 2252(b)(2), which imposed an enhanced sentence if the person has, inter alia, a prior state law conviction "relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward[.]" The issue was, does the phrase *involving a minor or ward* apply just to *abusive sexual conduct*, or also to the first two items in the list, *aggravated sexual abuse* and *sexual abuse*? The defendant's state conviction was sexual abuse involving an adult, so he claimed the enhancement didn't apply to him.

Needless to say, the Supreme Court didn't buy the defendant's argument; it applied the rule of the last antecedent and found the defendant's state law conviction, involving an adult, qualified him for the enhanced federal sentence. However, the court has also said the rule is "context dependent": it does not apply "where * * * the modifying clause appears after an integrated list." *Facebook Inc. v. Duguid*, 592 U.S. 395, 141 S. Ct. 1163 (2021). That case involved a statute, 47 U.S.C. § 227(a)(1)(A), that defined an "autodialer" as "equipment which has the capacity — (A) to store or produce telephone numbers to be called, using a random or sequential number generator; and (B) to dial such numbers." The Court accepted Facebook's argument that *using random or sequential number generator* applied both to *store* and *produce*, and not just to *produce*.

The Louisiana Supreme Court has said application of the "rule" depends on the use of commas in the list. *La. Assoc. Gen'l Contractors Inc. v. La. Dept. of Agric. & Forestry*, 05-0131 (La. 2/22/06), 924 So. 2d 90. The Second Circuit has also taken a flexible approach, as in *Reg'l Urology LLC v. Price*, 42,789 (La. App. 2 Cir. 9/26/07), 966 So. 2d 1087.

The best advice is to draft your agreements, wills, bylaws, etc., with explicit references. Write that the modifier applies to every item in the list, if that is the intent: "any state law conviction involving a minor or ward, for offenses of aggravated sexual abuse, sexual abuse, or abusive sexual conduct." If not (as *Lockhart* held), consider "a state law conviction for an offense of aggravated sexual abuse or sexual abuse involving any victim, or for abusive sexual conduct involving a minor or ward." A little clearer, right? Or, suppose the legislature had written in R.S. 3:266 (14) the agency may do "any of the following, with or without public bidding: own, hold, clear, improve, lease, construct, or rehabilitate * * *, at public or private sale." Make it clear when you write it, and the ambiguity will not arise later.

They can also be leading. Occasionally, the unclear modifier can come in front of the list. Consider the former phrasing of FRCP 72(a): "The district judge * * * shall modify or set aside any portion of the magistrate judge's order found to be *clearly* erroneous or contrary to law." Query: does *clearly* also refer to *contrary to law*? The current rule says the district court "must * * * modify or set aside any part of the order that is clearly erroneous or is contrary to law." (This cite is taken from Joseph Kimble, "Avoiding Syntactic Ambiguity," Scribes — The Amer. Soc. of Legal Writers © 2024). Good editing has resolved the ambiguity.

Does the same apply to a provision of the Public Finance Law, R.S. 39:1630? "The determinations required by R.S. 39:1568 * * * are final and conclusive unless they are *clearly* erroneous, arbitrary, capricious, or contrary to law." Does a tiny, minuscule degree of "arbitrary, capricious, or contrary to law" warrant throwing out the determination, or must it be, like "erroneous," *clearly* so? (Fortunately, this statute is fairly obscure, so it may never become an issue!)

It's not jury selection. Long before the advent of Spell Check, this could happen. "These factors alone are insufficient to constitute a joint *venure*." *Roberson v. Maris*, 266 So. 2d 488 (La. App. 4 Cir. 1972). "Secondly, all parties must share in the losses as well as the profits of the *venure*." *Ogden v. Ogden*, 331 So. 2d 592 (La. App. 1 Cir. 1976). This typo is not likely to venture out again.

Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

Who said that? Ms. Arnold, a homeowner in West Monroe, sustained significant damage to her house when, during Hurricane Laura (August 27, 2020), high winds knocked over a large pine tree on her neighbors' lot. The tree fell on Ms. Arnold's roof, lying over her bedroom, washroom and sitting room. She called her homeowners' insurer, ANPAC, which sent an adjuster. The adjuster wrote an estimate and ANPAC paid her $23,255. After repairs began and she discovered further damage, she called again and the adjuster gave her an additional $3,723. Unhappy with the repairs and after firing her contractor, she called ANPAC a third time; the adjuster gave her an additional $6,535, representing all recoverable depreciation, $5,625 for tree removal and $2,486 for water mitigation.

Still dissatisfied, she sued ANPAC alleging it had tendered only partial payment. ANPAC moved for summary judgment, which Ms. Arnold opposed. In support, she offered her affidavit, which alleged that she'd called (1) the adjuster, who told her "the insurance company had paid an amount sufficient to cover the cost of repairing my house"; (2) an expert who examined the house and "said he is concerned about the integrity of the moisture barriers" and "tells me there is no way to know [if they are] intact"; and (3) "several a/c companies * * * but all of them told me * * * the cage or casing cannot be replaced." ANPAC filed a motion to strike these portions of the affidavit. After a hearing, the district court granted the motion to strike and the MSJ, and dismissed all claims. Ms. Arnold appealed.

The Second Circuit affirmed, ***Arnold v. ANPAC La. Ins. Co.,*** 55,381 (La. App. 2 Cir. 2/28/24), in an opinion by Judge Stephens. The analysis was fairly straightforward: supporting and opposing affidavits must be based on personal knowledge, La. C.C.P. art. 967 A, and hearsay is a statement, other than one made by the declarant while testifying at trial, offered in evidence to prove the truth of the matter asserted, La. C.E. art. 801 C. Ms. Arnold's attempt to pipe in what the adjuster, an unnamed expert and "several" A/C contractors told her was the very definition of hearsay. My guess is that counsel intended to supplement Ms. Arnold's affidavit with those of the persons she quoted, but never got around to it.

The opinion also affirmed the denial of the claim for loss of use, as the policy confined this recovery to when the premises are "uninhabitable," but Ms. Arnold admitted in affidavit that she had never vacated the house. Unfortunately, she will have to manage on the $41,625 that ANPAC has already paid.

What, exactly, did they say? Thomas was an epilepsy patient with intractable seizures; in 2002, his neurologist, Dr. Shelat, installed a vagal nerve stimulator ("VNS"), but the device required revisions (installation of new batteries) periodically. These had occurred in 2009, 2011 and 2013, and in July 2015 Thomas returned to Dr. Shelat complaining of falls and loss of consciousness. Dr. Shelat tested the VNS, found it had a low charge (about 8-18% power left), and referred Thomas to a neurosurgeon, Dr. Alvernia, to perform this revision. About two weeks later, Thomas went to Dr. Alvernia, and they arranged to perform the revision in 8-10 days. Unfortunately, seven days later Thomas had a major seizure and died. His father applied for a medical review panel, and later filed suit, against both doctors; the claim against Dr. Shelat was dismissed by MSJ, *Nelson v. Shelat*, 54,009 (La. App. 2 Cir. 8/18/21), 325 So. 3d 1170, *writ denied*, 21-01354 (La. 11/17/21), 327 So. 3d 997.

Dr. Alvernia also moved for summary judgment arguing Thomas could not prove any breach of the standard of care. Thomas opposed, attaching the deposition and affidavit of an expert neurosurgeon from California, Dr. Kaloostian. Dr. Kaloostian stated that Thomas's VNS was "dead" and "nonfunctioning" when the patient came to Dr. Alvernia's office on August 7, and thus the standard of care was to replace the battery immediately, not 8-10 days hence. Dr. Alvernia countered with this own affidavit, and the MRP report, all saying that for Thomas's make and model of VNS, at 8-18%, the standard of care calls for "close monitoring" which is satisfied by scheduling a revision within 8-10 days. The district court granted MSJ, and Thomas appealed.

The Second Circuit affirmed, ***Nelson v. Shelat,*** 55,434 (La. App. 2 Cir. 2/28/24), in an opinion by Judge Ellender. Critically, the court refused Thomas's argument that rejecting Dr. Kaloostian's view amounted to a credibility assessment. Instead, the court focused on the MRP's finding, and on Dr. Alvernia's affidavit, that when he tested the VNS on August 7 it still had 8-18% power left and was emphatically *not* dead and nonfunctioning. This misreading of the medical record undermined the "factual support" required by La. C.C.P. art. 966 D(1), and justified the dismissal of Dr. Kaloostian's ultimate opinion.

Thomas's counsel did not offer any expert who was familiar with the make and model of this VNS and could contradict the evidence that this battery was still good for 8-10 days. Conceivably, a VNS battery might not be like a modern cellphone battery (runs fine until it's totally out of juice) but more like a flashlight or an old-fashioned car battery (starts to perform badly on low power). However, nothing in the MSJ evidence addressed this potential argument.

The utmost discretion. Unlike motions for summary judgment, cases that proceed to full trial are reviewed for manifest error, with the trial court's findings entitled to great discretion. Perhaps no area calls for greater discretion than domestic matters such as child custody.

In ***Tripp v. Gener,*** 55,654 (La. App. 2 Cir. 2/28/24), Geisha was a Venezuelan national who met her husband, Whitney, on the website "Latin American Cupid"; they got married and had a child in Miami; Whitney moved back home to Claiborne Parish, taking the child with him, and then sued for divorce and custody. The 26th JDC initially gave the parents alternating six-month custody, which the

Second Circuit vacated on first appeal, *Tripp v. Gener*, 55,132 (La. App. 2 Cir. 4/26/23), 362 So. 3d 1265. On remand, the district court gave Geisha domiciliary custody with Whitney to receive significant visitation. He appealed, and the Second Circuit affirmed. Observing the facts were "intensive" and the matter "fiercely contested," the court ran down the Art. 134 factors and found no abuse of discretion. The opinion is by Judge Thompson.

In ***Simpson-Mitchell v. Mitchell,*** 55,653 (La. App. 2 Cir. 2/28/24), Tameka and Danny got married in Shreveport and had a child; Tameka later filed for divorce and custody, which Danny opposed on grounds that Tameka was traveling a lot, principally in Kansas City, where she worked as a bank auditor, and was "interfering" with members of the church where Danny worked. The district court appointed a mental health professional to evaluate the parties and the child; she wrote two very detailed reports, changing her view to recommend that the child should stay in Shreveport with Danny. After trial, the court denied the relocation to Kansas City, awarded domiciliary custody to Danny and granted Tameka detailed visitation. Tameka appealed. The Second Circuit affirmed, closely following the Art. 134 factors and recounting the intricate testimony almost blow-by-blow. In such circumstances, an abuse of discretion would be very hard to prove. The opinion is by Judge Marcotte.

In ***In re: Fowler,*** 55,622 (La. App. 2 Cir. 2/28/24), Rebecca and Derek filed for stepparent adoption, showing that Rebecca is the biological mother of the child and Derek is her husband; Derek wished to adopt, and Rebecca consented. They showed that Nicholas, the biological father, was over $17,000 in arrears of child support, had not paid support or visited the child in over six months, and in fact pled guilty to nonsupport. Nicholas, however, opposed the adoption, admitting that he missed *only* 13 months' payments. After trial, the district court, in West Carroll Parish, found that Nicholas's consent could be dispensed with, under La. Ch.C. art. 1245 C (failure to pay court-ordered support or communicate with the child for six months), and granted the adoption. Nicholas appealed. The Second Circuit affirmed, finding no abuse of discretion in the district court's determinations. The opinion is by Chief Judge Pitman.

When in doubt, read the deed. GAP Farms owns a tract of land on Hwy. 151, near the exit onto I-20 in Arcadia, where it operates a gas station, C-store and Burger King. In 2009, GAP Farms granted the Town of Arcadia a servitude to build Gap Farms Road, "this dedication being for the use of said property for road and utility purpose only[.]" At some point (not specified in the opinion), Kiran of Monroe bought an adjacent tract and started to build a competing C-store. There was a strip of land between Gap Farms Road and the southern border of Kiran's property, on which Kiran wanted to build a driveway to access its store; Kiran sued GAP Farms to obtain, inter alia, access to Gap Farms Road via the servitude. Before this was resolved, Kiran obtained a permit from the Town of Arcadia to build its road; GAP Farms reconvened to declare this permit illegal. After trial, the district court found Kiran had no authority to use the servitude as a right-of-way, and the town lacked authority to permit the driveway across it. Kiran appealed.

The Second Circuit affirmed, ***Kiran of Monroe LLC v. GAP Farms LLC,*** 55,417 (La. App. 2 Cir. 2/28/24), in an opinion by Judge Hunter. The court acknowledged that any doubt as to the existence, extent or manner of exercise of a predial servitude must be resolved in favor of the servient estate, La. C.C. art. 730; however, this servitude was limited to "road and utility purpose only," and the court would not expand it to include motorized ingress and egress.

There is probably no love lost between these neighboring competitors, but the outcome of this dispute shows that in a property dispute, the courts will always read the deed … or, in this case, the servitude dedication.

The lessor who learned. Ms. Gix had a difficult time holding onto housing. In 2019 she was renting a small Section 8 house in the Lamyville area of Monroe, but fell behind on her rent. The landlord sued to evict her and obtained a judgment. Ms. Gix appealed, in proper person, and the Second Circuit reversed on a finding that the landlord, after serving a notice to vacate (La. C.C.P. art. 4701), graciously accepted a partial payment; under the jurisprudence, this vitiates the notice and maintains the lessee's possession. *Fort Miro Subdivision P'Ship v. Gix*, 53,591 (La. App. 2 Cir. 4/14/21), 316 So. 3d 185. Ms. Gix then prudently got out of the Lamyville house and rented a condo townhouse in the Monroe Garden District, but ran into similar financial problems. Her lessor, Dung Pham, tried to evict her twice. The facts of the first are not stated in the opinion, but in the second, he obtained a judgment, which Ms. Gix appealed; while this was pending, she obtained public rental assistance, Pham accepted the late payment, and the appeal was dismissed.

He then allowed her to sign a new lease, for the six months July 2022 to January 2023. She made full payments for the first three months and a partial payment for the fourth. Pham, however, got wise and turned over management of the condos to an attorney (State Senator Katrina Jackson, in fact). The attorney tried to collect from Ms. Gix, with no success. In January 2023, the attorney filed a notice to vacate; Ms. Gix then offered a partial payment, which the attorney cannily refused. They went to a hearing in City Court in February 2023, resulting in an eviction judgment. Ms. Gix appealed.

The Second Circuit affirmed, ***Pham v. Gix,*** 55,414 (La. App. 2 Cir. 2/28/24), in an opinion by Judge Robinson. The court reiterated that acceptance of rent after notice to vacate constitutes a waiver and forgiveness as to any and all previously committed infractions, and effectively reinstates the lease. *Canal Realty & Imp. Co. v. Pailet*, 217 La. 376, 46 So. 2d 303 (1950); *Landis v. Smith*, 227 So. 2d 190 (La. App. 2 Cir. 1969). However, if the lessor *refuses* to accept partial payment, there is no forgiveness; it's a simple matter of proving nonpayment. Ms. Gix had made no payments since October. Sadly for her, by January the gig was up.

If you are the tenant, try to persuade the landlord to accept partial rent payments. If you are the landlord, after you serve notice to vacate, it's up to you. If you accept, you've totally waived your eviction claim.

Monroe Inn of Court

by Hal Odom Jr., rhodom@la2nd.org

AI and Ethics in Legal Practice

Hal Odom Jr., Ashley Herring, of the Chapter 13 office, and Leah Sumrall, of LaSalle Corrections, had a nice visit before sampling the fried catfish fingers.

"AI and the Practice of Law" was the topic of the March 2024 meeting of the Judge Fred Fudickar Jr. AIC (Monroe, La.). Judge Danny Ellender, of the Second Circuit, gave a program ranging from AI basics to AI benefits, challenges and concerns.

"AI has become a buzzword in society, and in the legal practice," Judge Ellender began, "and it'll engender more questions than answers." He offered a basic definition of artificial intelligence, "a machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments," and gave some everyday examples, such as Siri, Alexa, Google Drive, Dropbox and ChatGPT. The benefits are undeniable, as "we've all used it for legal research, with Casetext, CARA and Judicata," and for document review. "It's even given the public more access to legal services."

The challenges are new and intriguing, with detection algorithms and source verification becoming critical. AI can interface with the rules of evidence, like Art. 602 (personal knowledge required for a witness), Art. 702 (experts) and Art. 901 (authentication). Although cases have not yet come up in Louisiana courts, Judge Ellender discussed a D.C. case holding that AI-generated work created without human involvement is ineligible for copyright protection, *Thaler v. Perlmutter*, 2023 WL 5333236 (D.-D.C. 2023). He also mentioned a case in which an attorney suing an airline used ChatGPT to prepare a brief, which was laden with errors, including a made-up case! *Mata v. Avianca Inc.*, 2023 WL 4114965 (S.D.-N.Y. 2023). A judge in the N.D.-Tex. is requiring attorneys to certify that either no portion of any document they filed was generated by AI, or that a human has checked any AI-generated text.

Judge Ellender then led a group discussion about various uses of AI that might violate the Rules of Professional Conduct, especially Rule 1.1 (competence), Rule 1.4 (communication), Rule 1.6 (confidentiality), Rule 3.3 (candor toward the tribunal) and Rule 5.3 (responsibility regarding nonlawyer assistance). Audience members shared their experiences and ideas about how to avoid the ethical traps.

The talk with slide show was punctuated with bits of Louisiana trivia and video clips illustrating humanity's early experiences with AI. Detecting which of these were genuine, and which were faked, was entertaining, but it's a real-life skill that will be crucial to legal practice.

The meeting was Monday evening, March 11, at the Lotus Club, on the ninth floor of the historic Vantage-ONB Building in downtown Monroe. The social hour, with heavy hors d'oeuvres and open bar, preceded the meeting. The 18 members in attendance received their one-hour ethics CLE. The next meeting, on professionalism, is slated for April 8. The annual crawfish boil is tentatively set for May, though owing to current conditions it may be rebranded as a shrimp boil!

Before the meeting, Judge Larry Jefferson, of the Fourth JDC, and Kiante Carter and Charlen Campbell, of the La. AG's office, paused for a group shot.

Judge Ellender touched on problems of authentication in the new world of AI, as Stacy Guice, of the Chapter 13 office, and Judge Larry Jefferson, of the Fourth JDC, looked on.

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

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

Members of the Booth-Politz Inn of Court gathered on February 27 for friendly competition in Legal Trivia. Inn members Elizabeth Carmody, Graham Todd, Kenny Haines, Curtis Joseph, Meredith Bro, Kristina Douglas, Dan Farris, Dakota Hawkins, Brian Landry, Taunton Melville and Sarah Smith prepared the questions, facilitated the trivia and played live music.

There were three rounds of ten questions, followed by three bonus questions. The first round focused on Constitutional Law, the second round focused on Louisiana Legislative Updates and Civil Law and the third round focused on random Louisiana trivia.

A small sampling of questions from each round are below:

Round 1 Question: In *Students for Fair Admissions v. President and Fellows of Harvard College* and *Students for Fair Admissions v. University of North Carolina*, the U.S. Supreme Court held affirmative-action admissions processes could not be reconciled with the guarantees in which Clause of the Constitution?

Round 2 Question: How many days must a person wait to file a motion to expunge a record of arrest and misdemeanor conviction of a first offense possession of marijuana? Is it 30, 60, 90, or 120 days?

Round 3 Question: Name the state drink of Louisiana. (Hint: no, it is not beer).

You can learn more about Inns of Court at innsofcourt.org.

Round 1 Answer: Equal Protection (*Students for Fair Admissions v. President and Fellows of Harvard College* and *Students for Fair Admissions v. University of North Carolina*, 600 U.S. 181 (2023))

Round 2 Answer: 90 days (2023 La. Acts No. 342 (Regular Session, HB 286)

Round 3 Answer: Milk (La. R.S. 49:170)

Robin McCoy, Elizabeth Carmody, Graham Todd, Meredith Bro and Curtis Joseph

Shreveport Bar Association Archives A Look Back

Herschel Richard, herschel.richard@cookyancey.com

In looking back over more than 50 years of law practice in Shreveport, it seems to me that we do not have the colorful characters in the Bar as we seemed to have 50 years ago. Some of these that come to mind include Stacy Freeman, Maynard Cush, George Anderson, Irvin Greenberg, Leon Planter, Ed Bailey, Joe Bethard, and last but not least, David Klotz. I am sure there are others, but these are the ones that came to my mind.

L-R Herschel Richard, Ben Politz, Chris Slatten, Zelda Tucker, Larry Pettiette, Matt Smith and Taunton Melville

I was involved in a case with George Anderson in which he represented Mrs. Effie Humphrey. Mrs. Humphrey sued her neighbors because she contended that they were shooting rays at her house. In order to protect herself, she abandoned her home, bought an Airstream trailer, and parked it in the front yard. She then lived in the Airstream with the protection of the metal exterior of the trailer. When her neighbors had her committed, she responded by suing them.

Irvin Greenberg handled a variety of matters, including personal injury cases involving neck and back strains. In those days, one could not send that kind of case to a chiropractor because, as you know, Louisiana's only shame was failure to license chiropractors. Irvin referred his patients to Dr. Albert I. Clark who officed in the Slattery Building. Dr. Clark was the possessor of the Mioflex machine. After daily treatments of three to four weeks on the Mioflex the cases were usually ready to settle.

The lawyer who may have been as colorful as any in the Bar was Joe Bethard. Joe handled personal injury cases and was the conflicts lawyer for claims against Travelers Insurance Company. If he was not defending Travelers, he was often representing the plaintiff. Joe told me on one occasion: "Herschel, I have lost every kind of case you can lose from the plaintiff's side. I have lost left turn oncoming, I have lost left turn overtaking, why, I've even lost a guest passenger case." I asked Joe how in the world he could lose a guest passenger case and he responded:

"My client was riding with his good friend Williford. When they reached an intersection, Williford stopped and Joe's client proclaimed, 'All clear Williford' and Williford proceeded into the intersection where the collision occurred." That story has been known for years as the "all clear Williford" story.

Two other lawyers in the "colorful" category were Mike Maroon and Ike Abramson. Ray Hanrahan, who was the court reporter in Shreveport for many years, told me the story of the demise of the firm of Abramson and Maroon. Mike Maroon was Carlos Marcello's lawyer. When Marcello was deported to Central America, Mike went to be with him and to assist him in getting back into the country. Mike was gone for several months on this engagement. When Mike returned to Shreveport, and a couple of months went by, Ike

The 2024 Archives Committee members are Chairman Larry Pettiette, Herschel Richard, Tommy Johnson, Ben Politz, Zelda Tucker, Mark Odom, Chris Slatten, Taunton Melville, Matt Smith and Valerie DeLatte Gilmore.

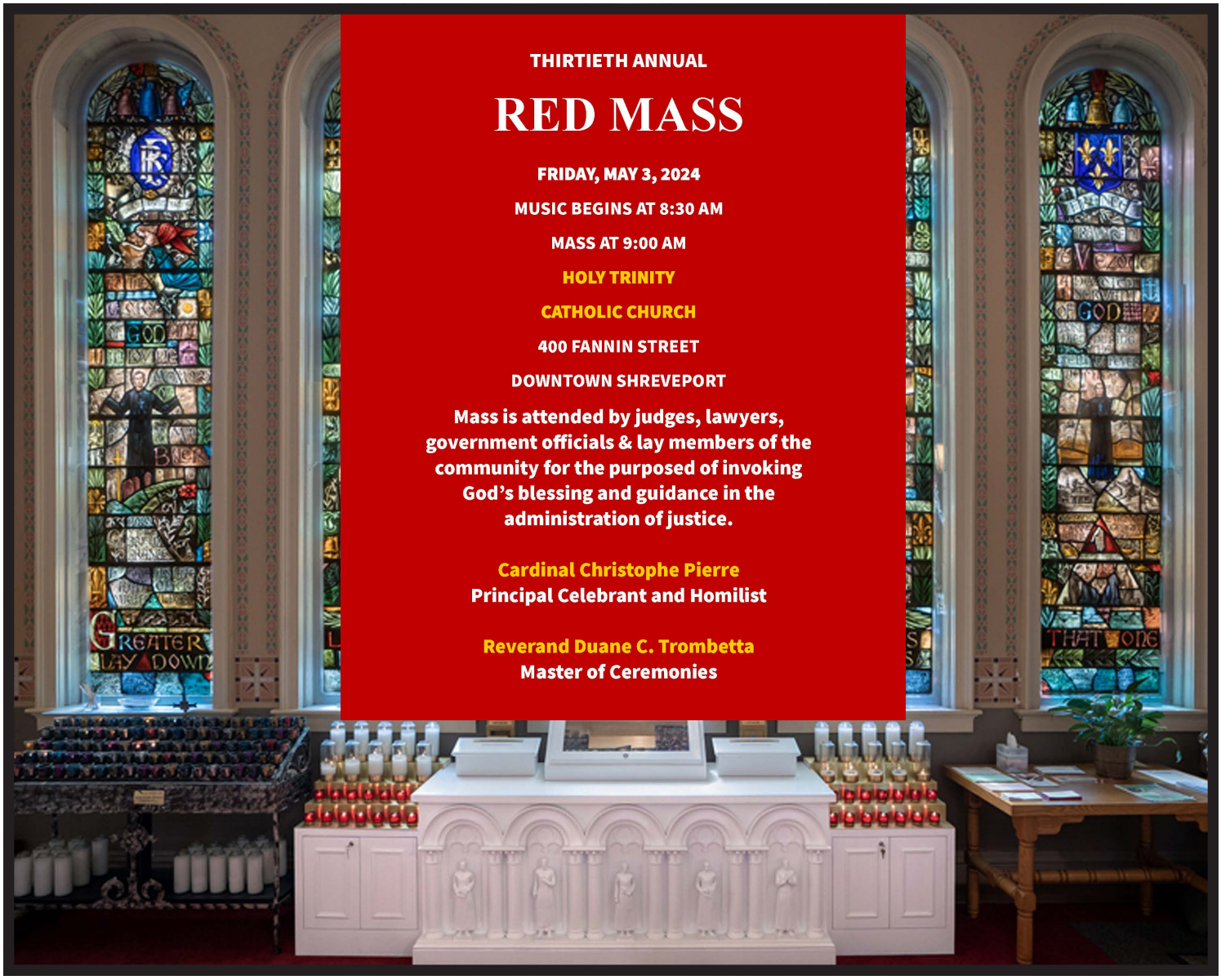
L-R Ben Politz, Chris Slatten, Herschel Richard, Zelda Tucker, Larry Pettiette, Matt Smith and Taunton Melville

said to Mike, "Where are the fees that we earned when you were working for Carlos?" Mike responded, "Well, Ike, I thought you understood that our partnership agreement only applied to fees earned in the United States." According to Ray, that was the end of the partnership.

These stories could go on and on, but I will end with one of the better ones that I have ever heard. David Klotz was a huge LSU fan. On this particular game weekend, David's wife was out of town. On Friday night, David went to the Bossier strip and had a little difficulty, and his car was impounded. He went home and, unfortunately, was late in awakening and was not able to catch the train to Baton Rouge. David, always resourceful, decided he would catch the train in Minden, the next stop. That was unsuccessful, so it was on to Coushatta, where David was just a little bit late. Finally, David was able to catch the train in Alexandria and where he left his wife's car. On the return trip, David was heavily involved in a poker game. As the train neared Alexandria, David was down and decided that he must stay in to get his money back. When he arrived in Shreveport, he was faced with the dilemma of going home and telling his wife that she must drive with him to Alexandria to pick up her car. There is no question that David had much explaining to do.

It should also be noted that the Shreveport Bar Association was a much different organization 50 years ago. First, there were fewer than a half dozen women in the association, the highlight of the year was the annual Bar party which was held at either the 40 and 8 Club or the American Legion Club on Cross Lake. Following drinks and dinner, the evening was concluded with a well-attended craps game. There was no thought of fundraising for entities like the Gingerbread House.

This is not to say that times were better back then, but there certainly were a lot of grins.



MARCH LUNCHEON HIGHLIGHTS

Prinicipal Chief StandingBear, Craig Harris and Kristi Gustavson

Allison Jones, Principal Chief Geoffrey StandingBear and Kenny Haines

Chandler Higgins, Principal Chief Geoffrey StandingBear, Ranee Haynes and Kenny Haines

Principal Chief Geoffrey StandingBear

Callie Jones, Principal Chief StandingBear, Veronica Brown, Johnny Mouser, Mary Mouser and Aaron Mouser

SHREVEPORT BAR FOUNDATION

SBF

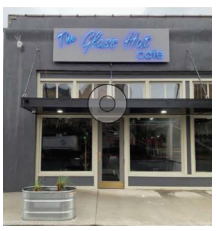
Tuesday, May 7, please join us in giving for good. We will be set up at the following locations and times: Lowder Baking Company from 7:30 - 11:00 a.m., The Glass Hat from 11:00 a.m. - 1:00 p.m., and Casa Jimador Mexican Restaurant from 5:00 p.m. - 7:00 p.m. Please stop by these locations for breakfast, lunch, and dinner. These venues will donate a percentage of the sales during these specified times.

www.giveforgoodnla.org/organization/sbfprobono

JOIN US FOR THE SHREVEPORT BAR FOUNDATION'S BREAKFAST, LUNCH AND DINNER FUNDRAISER

Shreveport, Louisiana
Lowder
Since MMXIX
Baking Company

7:00 a.m. - 11:00 a.m.
The Shoppes at Madison Park
4019 Fern Avenue



11:00 a.m. - 1:00 p.m.
The Glass Hat
423 Crockett Street

CASA JIMADOR
MEXICAN RESTAURANT

5:00 p.m. - 7:00 p.m.
4801 Line Avenue

SHREVEPORT BAR ASSOCIATION PICKLEBALL TOURNAMENT
REGISTRATION FORM:

Registration fee includes the following:

Entry fee into the tournament

Player gift

Lunch, snacks and beverages

Gold, Bronze and Silver Medals will be awarded immediately after the tournament

Name: _____ **Skill Level: (please circle): Beginner Advanced**

Name: _____ **Skill Level: (please circle): Beginner Advanced**

Email Address: _____ **Phone:** _____

Registration Fee: $150 Per Team or $75 Per Person Make check payable to SHREVEPORT BAR ASSOCIATION and mail to: 2024 SBA Pickleball Tournament, 625 Texas Street, Shreveport, LA 71101

Email questions to Dana at dsouthern@shreveportbar.com or call 318 703-8373.

Renewal Forms
have been mailed.
Please renew by
April 28, 2024

Welcome New Members

Allison Melton
Melton Law Firm

Brooke Reedy
Bradley Murchison Kelly & Shea

2024 SBA MEMERSHIP DIRECTORY

AVAILABLE JULY 2024!

ORDER YOUR COPY NOW!

$30.00 EACH

ORDER YOURS TODAY!

This will be the most valuable resource tool you will have in your office! A must for all attorneys, secretaries, paralegals office managers and court personnel.

I am ordering ____ copies of the 2024 SBA Membership Directory

You will be notified when the directories are available for pick up at the Shreveport Bar Center.

Name:_____ **Firm:**_____

Contact Phone:_____ **Email:**_____

Mail your check payable to: Shreveport Bar Association
625 Texas Street, Shreveport, LA 71101

or

Please charge to my _____Visa _____ MasterCard Charge Amount_____

Card No. _____ SIC_____ Exp. Date_____

Name on Card _____ Phone No. _____

Billing Address for Credit Card_____

Signature _____

CLASSIFIEDS

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.

LAW DAY 2024
VOICES OF DEMOCRACY

UPCOMING EVENTS

*2024 SBA MEMBERSHIP LUNCHEONS

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

***APRIL 25**
Legal Technology Lunch & Learn Series
12:00 Noon at Shreveport Bar Center
Presenters: Katherine Gilmer & Sara Giglio

***MAY 1**
LAW DAY LUNCHEON
Speaker: Mayor Tom Arceneaux

MAY 3
30TH ANNUAL RED MASS
Music 8:30 a.m. Mass 9:00 a.m.
Holy Trinity Catholic Church

MAY 7
Give *for* Good Campaign Event
Locations: 7:30-11:30 am
@ Lowder Baking Company,
11:00am-1:00 pm @ The Glass Hat,
5:00-7:00 pm @ Casa Jimador

MAY 17
SBA Pickleball Tournament
10:00 am – 4:00 pm
Southern Hills Pickleball Courts

***JUNE 26**
Speaker: TBD

***SEPTEMBER 25**
Speaker: Mike Rubin, McGlinchey Stafford PLLC

***OCTOBER 23**
Speaker: H. Alston Johnson

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 Law Day Luncheon – May 1

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

$30.00 for SBA members and $35.00 for non-SBA members.
Advance reservations are required by 5 p.m. Monday, April 29.

Hon M. Thomas Arceneaux

When: **12:00 Noon on Wednesday, May 1**

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

Featuring: **Shreveport Mayor, Hon M. Thomas Arceneaux**

"VOICES OF DEMOCRACY"

The 2024 Liberty Bell recipient will be announced at the luncheon.

Tom Arceneaux was elected as Shreveport's 57th mayor in December 2022 and started a four-year term in January 2023. He graduated from Captain Shreve High School in Shreveport and attended college at Louisiana State University in Baton Rouge, graduating with a bachelor's degree in business administration. He then attended LSU Law Center and has practiced law in Louisiana and Texas for more than forty years. From 1982 through 1990, he represented District C on the Shreveport City Council and served as the Council Chairman from 1986-1987. After his tenure with the City Council, he continued to be involved with public service in Shreveport by working with organizations such as United Way of Northwest Louisiana, Norwela Council of the Boy Scouts of America, the Highland Restoration Association, Northwest Louisiana Legal Services, the Shreveport Little Theatre, Holy Angels Residential Facility, AMIKids and the Rotary Club of Shreveport. He is an active advocate for the Highland neighborhood, where he calls home and continues to encourage others to be a part of helping to improve communities throughout the area. He is the proud father of three grown children and loves spending time with his seven grandchildren. With his wife, Elizabeth, he enjoys traveling and learning about different places. Please join us on May 1, as we celebrate Law Day.

LAW DAY 2024
VOICES OF DEMOCRACY

You may confirm your reservation(s) by email to **dsouthern@shreveportbar.com**
or by calling **222-3643 Ext 2. Please remember to call and cancel if you're unable to attend.**
The SBA pays for each reservation made.
No-shows will be invoiced.