The Bar Review

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION Volume XXXII, Number 2 • Feb. 2025

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EVENTS AT A GLANCE

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2/26	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club
3/26	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club

From The President

by Elizabeth M. Carmody, elizabeth.carmody@cookyancey.com

"Music gives a soul to the universe, wings to the mind, flight to the imagination, and life to everything." – Plato

It's Carnival time so what better time to remind everyone to take the time not just to smell the roses but also to enjoy the music and dance!

Music has always played a very important role in my life and continues to do so today. Certain songs just transport you mentally and emotionally.

My connection to music began when I was young with my parents playing John Denver, Neil Diamond, Barbra Streisand and the soundtrack of "Phantom of the Opera" in our home. I was thrilled to check off "seeing Neil Diamond live" from my concert bucket list when I was able to take my mother to his concert in Dallas in 2008. He was still an amazing performer! I remember choreographing my first dance (for no audience) in my grandparents' living room in Lafayette to "Celebration" by Kool & the Gang.

I listened to Madonna, Prince and Duran Duran in the '80s (yes, I'll admit it!). I remember listening to Tracy Chapman's "Fast Car" album when I got my first car. Better Than Ezra and Cowboy Mouth were on repeat during college in the early '90s. And I survived law school by listening to Otis Redding, Annie Lennox, Big Head Todd & the Monsters, and the soundtracks from "When Harry Met Sally" and "Sleepless in Seattle."

I sang "You Are My Sunshine" to my "babies" when they were babies and toddlers. "Life is a Highway" by Rascal Flatts from "Cars" and "Little Wonders" by Rob Thomas from "Meet the Robinsons," among many other songs, will still bring tears to my eyes because they remind me of our twins' childhood, and take me back to our early days of parenthood. Our twins are 19 years old now. I still listen to music when I cook and am not afraid to dance in my kitchen when a good song comes on!

Music feeds the soul! "Without music to decorate it, time is just a bunch of boring production deadlines or dates by which bills must be paid." – Frank Zappa

Take the time to make music a part of your life. Be grateful for the incredible artists who created that music, and use it to find a moment for yourself, your family and those you love, whether it's to cry, dance, laugh, meditate, play or work!

"Music is life itself." – Louis Armstrong

Happy Mardi Gras! Laissez les bon temps rouler!

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FEB 2025

THE SUPREME COURT OF LOUISIANA HISTORICAL SOCIETY

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AND

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The 200th Anniversary of the Louisiana Civil Code of 1825
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Co-Sponsored By The
The Supreme Court of Louisiana Historical Society
Steering Committee To Commemorate The Bicentennial of the 1825 Louisiana Civil Code and The Shreveport Bar Association

Hon. Brady O'Callaghan

Clinton M. Bowers

When: 5:00 PM - 7:00 PM on Thursday, February 20

Where: Abby Singer's Bistro, 617 Texas Street, Shreveport

Presented by: Honorable Brady O'Callaghan, *First Judicial District Court,* and Clinton M. Bowers, *Bowers Law Firm, LLC*

"Tunc Pro Nunc-Modern Cases Through the Lens of the 1825 Civil Code"

This presentation is eligible for 1 hour CLE credit

The 1825 Louisiana Civil Code turns 200 years old this year. To commemorate the Civil Code's bicentennial, Judge Brady O'Callaghan and Clint Bowers will consider how the Louisiana Civil Code of 1825 would provide a framework for deciding modern cases.

Honorable Brady Dennis O'Callaghan received his B.A. with honors in philosophy from Yale University and his J.D. from LSU Law School. He was the 1996 write-on member of the Louisiana Law Review. He spent 2 years in general civil practice in Baton Rouge and 12 years as an assistant district attorney in New Orleans and Shreveport, prosecuting numerous murders and sex crimes. He tried nearly 100 jury trials and argued multiple cases to the Second Circuit Court of Appeal and the Louisiana Supreme Court. Judge O'Callaghan was elected in 2013 as a District Judge for the First Judicial District Court and has served on the criminal, family and civil benches. He is a past president of the Louisiana District Judges Association and past chair of the Louisiana Judiciary Commission. He has served as an instructor for the trial advocacy program at LSU Law School since 2018. Judge O'Callaghan has also lectured to the bar, the judiciary, civic organizations, child advocates, law enforcement and students on topics including judicial ethics, criminal constitutional law, jury selection, civics and capital litigation.

Clinton "Clint" M. Bowers is a 2009 graduate of the LSU Paul M. Hebert Law Center where he earned his Juris Doctor and Diploma of Civil Law, *magna cum laude*. He was also elected to membership in the Order of the Coif. He was admitted to the Louisiana Bar in October 2009. Clint primarily specializes in handling family disputes which includes divorce, child custody, child support, spousal support and division of community property. He also works on general civil litigation cases. He has been trained to work in high conflict cases as a mediator, and he employs those techniques in all cases to get the best outcome in your case. In addition to practicing as a litigator and mediator, Clint is an active member of the Louisiana State Law Institute's Marriage-Persons Committee and the Council of the Law Institute. As a member, he works closely with other attorneys, judges and law professors on legislative projects. Starting in 2021, Clint became a member of the planning committee for the annual LSU Law CLE Department's Family Law Conference. He will serve as planning committee and program chair for 2024 and 2025. Please confirm your reservation(s) by email to admin@shreveportbar.com.

Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

A change for the betterment. Troung was driving his Honda CR-V north on North Market Street when he was rear-ended by a Honda Accord driven by Sanders and insured by Old American Indemnity Co. Because of damage to the exhaust system and drive assembly, the CR-V could not be operated safely so he took it to a shop. Old American did not contest coverage, fault or the cost of necessary repairs, $7,109.48. However, when Troung went to pick up the CR-V, he discovered that Old American had withheld $313.79 on the basis of "betterment," a concept whereby the tortfeasor is entitled to credit if the tort victim's position is improved by the repairs to his damaged property. Old American felt that the new muffler, exhaust system pipes and front-wheel drive components had enhanced the value of Troung's four-year-old CR-V to the tune of $313.79. Unfortunately, Troung didn't have that sum in his pocket and couldn't get his car out of the shop. Ultimately his attorney paid the balance due and filed this suit against Sanders and Old American.

At a bench trial, Troung conceded that La. law said nothing about betterment, yea or nay, but argued that it deviated from the rule of restitution stated in La. C.C. art. 2315. The district court, however, found that no statute, cases or insurance regulation prohibited betterment and, further, nothing prohibited an insurer from applying betterment to a third-party tort victim. The court dismissed Troung's suit; Troung appealed.

The Second Circuit reversed, ***Troung v. Sanders,*** 56,015 (La. App. 2 Cir. 12/18/24), in an opinion by Judge Thompson. Recognizing the issue was res nova, the court did not quote the policy provision authorizing betterment but cited two prior cases that had allowed it: *Eaves v. Norwel Inc.*, 570 So. 2d 123 (La. App. 3 Cir. 1990), and *Littleton v. Colonial Pac. Leasing Corp.*, 35,777 (La. App. 2 Cir. 5/8/02), 818 So. 2d 283. It found, however, that those were *first-party claims*, by an injured party against his own carrier. The insurer may regulate the recovery of its own insured; this is what the policyholder bargained for (at least theoretically). By contrast, for an unrelated claimant, Art. 2315 demands, in the court's words, "*all* costs caused by the tortfeasor are to be repaired or paid by the tortfeasor." The court suggested that any perceived betterment should be charged to the insured, not the faultless plaintiff. The court reversed and awarded Troung the $313.79, plus a penalty of $5,000 under R.S. 22:1892 (I).

Adjustments for betterment probably occur routinely, but this is the first case to challenge the practice. Until the legislature says otherwise, insurers may contractually reduce recovery for their own customers but not for innocent third parties.

Speaking of auto repairs … One week after buying a used Chevy Impala from Enterprise Car Rental, Ms. Wakefield was exiting a parking lot in West Monroe when another driver, "in a hurry," ran into her, damaging her bumper and grille. The tortfeasor, apparently, did not cooperate with his insurer, GEICO, so there was a delay, but eventually she took the Impala to Ryan Chevrolet, which wrote a repair estimate of $3,227; GEICO covered the whole cost, and she got her car back. (No betterment was claimed.) However, she was unhappy with the repair work – the grille was sticking out and the hood had a gap. About a week later she filed a pro se, fill-in-the-blank petition in Monroe City Court against Ryan Chevrolet. She demanded "$5,000 because full return of the Geico check signed for $3,227.42, another rental from Enterprise, another deposit for rental," lost wages and court costs.

At trial, Ms. Wakefield described the damage to her car, the repairs performed by Ryan Chevrolet, and her dissatisfaction with them. She admitted talking to the service manager, who offered to do further repairs at no cost, but she said she'd rather go to another body shop; she did so, getting an estimate of $615. She added that GEICO told her it would not issue any supplemental payment for this; she would have to get the money back from Ryan. Ryan's service manager described the meeting between himself, Ms. Wakefield and the GEICO rep; he added that for each problem Ms. Wakefield raised, Ryan would have attempted to make it right, and would do so at no cost. Finally, he looked at the $615 estimate and testified that this work should cost no more than $298. The city court found Ms. Wakefield credible, the service manager "incredulous [*sic*] at best," and rejected his estimate of $298 for the second round of repairs. The court awarded Ms. Wakefield $4,525, including $1,298 in general damages. Ryan appealed. Even after receiving notice of appeal, Ms. Wakefield did not hire counsel or file a reply brief.

The Second Circuit reversed in part and amended in part, ***Wakefield v. Ryan Chevrolet,*** 55,984 (La. App. 2 Cir. 12/18/24), in an opinion by Judge Stephens. In a straightforward manifest-error analysis, the court found no evidence that Ms. Wakefield sustained any out-of-pocket expenses for repair work, no evidence of the cost of a replacement vehicle, but abundant evidence that she refused Ryan's offer to make further repairs free of charge. On this record, the court amended the special damages to $298, the repair estimate as refined by Ryan's service manager. Further, the court found absolutely no evidence of mental anguish, hardship or anything else to support any general damages.

It was not a good day for the plaintiff, losing over 90% of her judgment, but she can't blame her lawyer.

Are you really an absentee? Ms. Boniello sued her paternal aunt, Ms. Richardson, for the return of $300,000 that she allegedly transferred to Ms. Richardson between May 2019 and December 2021. According to Ms. Boniello, the money was to be held "in trust" or as a deposit and returned to her later; when asked, Ms. Richardson returned $7,300 but not the balance, $292,700. Ms. Boniello filed suit to get that sum back. Crucially, she alleged Ms. Richardson's whereabouts "are currently unknown, therefore necessitating the appointment of a curator ad hoc herein." The district court granted this, and the curator mailed the petition and citation to Ms. Richardson at her last known address (in Shady Grove, in Bossier City); she responded with a "dispute letter" asserting that the money was all gifts, intended to help her with necessary expenses. Some months later, the curator repeated this process, and Ms. Richardson sent a similar letter.

Later, Ms. Boniello moved for summary judgment, requesting service on Ms. Richardson, instead of on the curator; domiciliary service was effected. Ms. Richardson came to court on the appointed day, but Ms. Boniello withdrew the MSJ and moved to proceed with trial. Over Ms. Richardson's objection, a trial was held, after which the district court rejected Ms. Richardson's position that the funds were gifts; he ordered her to return $276,360 to Ms. Boniello. Ms. Richardson appealed.

The Second Circuit reversed and remanded, ***Boniello v. Richardson,*** 56,023 (La. App. 2 Cir. 12/18/24), in an opinion by Judge Stone. The court did not address the merits but instead focused on the appointment of the curator and sufficiency of notice of trial. An absentee is a person "whose whereabouts are unknown, or who cannot be found and served after a diligent effort, though he may

be domiciled or actually present in the state," La. C.C.P. art. 5251 (1). Further, service may be made on a curator if the absentee "has not been served with process, either personally or through an agent for the service of process, and * * * has not waived objection to jurisdiction," La. C.C.P. art. 5091 A(1)(a). Simply put, Ms. Boniello did not make the requisite showing that her aunt was an absentee under Art. 5251; as a result, service on the curator was ineffective, Ms. Richardson was never served with the order setting the case for trial, the curator did not notify her of this, and she got notice from no other source. Finally, the court rejected Ms. Boniello's claim that the two dispute letters waived the objection to invalid service. The court directed the parties to go back and do it right next time.

There is probably much more going on in this intrafamily dispute than appears on the surface of the record. A remand might well be in the interest of justice.

At will means at will. Furlow, an employee of Roberson Trucking, was also a plaintiff in a class-action suit against Petro-Chem Operating Co. alleging conversion of minerals. About three weeks after Furlow filed the class-action suit, Petro-Chem's CEO called Roberson's owner and asked if Furlow still worked there; Roberson said he did. Petro-Chem's CEO, Mr. Trust, replied that if he continued working there, Petro-Chem would discontinue using Roberson as a vendor. Because Roberson did a huge volume of business with Petro-Chem, Roberson terminated him. Furlow sued Petro-Chem and Trust alleging unfair or deceptive trade practices (LUTPA), with damages including past and future lost wages and business opportunities. Petro-Chem and Trust filed a MSJ alleging that Louisiana is an at-will employment state, so Furlow could be terminated for any reason, whether or not accurate, fair or reasonable. The district court denied MSJ, and the defendants took a writ.

The Second Circuit granted the writ and reversed, ***Furlow v. Trust,*** 55,911 (La. App. 2 Cir. 12/18/24), in an opinion by Chief Judge Pitman. The court found that at-will employment, La. C.C. art. 2747, is very broad, limited only by "federal and state laws which proscribe certain reasons for dismissal of an at-will employee." *Quebedeaux v. Dow Chem. Co.*, 01-2297 (La. 6/21/02), 820 So. 2d 542. Moreover, LUTPA, R.S. 51:1405 A, prohibits only "egregious actions involving elements of fraud, misrepresentation, deception or other unethical conduct." *Cheramie Servs. Inc. v. Shell Deepwater Prod. Inc*., 09-1633 (La. 4/23/10), 35 So. 3d 1053. The court found Furlow did not sue his own employer for wrongful termination but, rather, attempted to circumvent the at-will statute by fashioning a LUTPA claim against Petro-Chem and Trust; the MSJ evidence established that they were merely engaged in "sound business practices and permissible business judgment," conduct that did not approach a LUTPA violation.

The case is a reminder of the strength of our at-will employment doctrine.

And peremption means peremption. In 2014, the Bienville Parish School Board sought to upgrade its athletic facility at Gibsland-Coleman H.S. by installing an all-weather track; it awarded a $2.5 million contract to Thrash Construction and work began in early 2015. Within a few months, however, some MSE (mechanically stabilized earth) walls installed by a subcontractor showed serious instability; a professional engineer was called, who said the MSE walls would have to be destroyed. BPSB sued Thrash, its insurer and various subcontractors in early 2018 alleging defective design, construction and workmanship. (It later terminated Thrash's contract.) Thrash and the insurer, however, asserted their binding dispute resolution clause, which elected arbitration and stated that a claim shall "in no event * * * be made after the date when the institution of legal or equitable proceedings * * * would be barred by the applicable statute of limitations." The district court agreed and stayed proceedings "pending completion of arbitration." BPSB, however, never initiated arbitration, and obviously never completed it.

Over five years later, Thrash and the insurer filed peremptory exceptions of peremption asserting the five-year peremptive period of R.S. 32:2189. The district court agreed and rendered judgment dismissing all claims against Thrash and the insurer. BPSB appealed.

The Second Circuit affirmed, ***Bienville Parish Sch. Bd. v. Thrash Constr. Servs. LLC,*** 56,021 (La. App. 2 Cir. 12/18/24), in an opinion by Judge Ellender. The court first noted the five-year period of R.S. 32:2189 is indeed peremptive, not merely prescriptive, *State v. McInnis Bros. Constr.*, 97-0742 (La. 10/21/97), 701 So. 2d 937. It then held that under the contract, the only way one party could assert a claim against another was to make a demand for arbitration "in writing, delivered to the other party * * * and filed with the person or entity administering the arbitration." Filing suit in district court didn't satisfy this. Finally, the contract required any such demand to be made no later than the "date when the institution of legal * * * proceedings * * * would be barred by the applicable statute of limitations," i.e., the five years of R.S. 32:2189. Since five years had passed without such a demand, the claim was extinguished. The court refused to parse the district court's earlier ruling, "pending completion of arbitration," as somehow extending the time limit, and refused to treat the ineffective suit as somehow an "exercise" of BPSB's right. Finally, the court turned away an intricate argument comparing BPSB's situation to that of plaintiffs in certain federal abstention cases. In short, after the peremptive period passes, the claim is dead.

When peremption is involved, the clock is ticking.

The limits of causation. Back in April 2023, I wrote about the claim of a mother whose 11-year-old son had cerebral palsy, was wheelchair-bound and rode to school on a special bus; one day, the bus was out of service, so the mother took him to school in her own vehicle. Lifting him out of the car and trying to get him into the wheelchair, however, she fell backward and landed on her tail, with the boy on top of her. She sued the school board for her injuries alleging failure to provide safe and required transportation, appropriate service and assistance, and disregard of state law for students like him. The school board moved for summary judgment, which the district court granted; this court affirmed, *Green v. E. Carroll Sch. Dist./Bd.*, 54,910 (La. App. 2 Cir. 3/1/23), 357 So. 3d 541. However, the Supreme Court reversed on grounds the MSJ was not timely served on the plaintiff, 23-00466 (La. 5/23/23), 360 So. 3d 833. This sent the case back to the Sixth JDC, where the school board filed another MSJ. The district court again granted the motion, and the plaintiff appealed.

The Second Circuit affirmed, ***Green v. E. Carroll Parish Sch. Dist./Bd.,*** 56,011 (La. App. 2 Cir. 12/18/24), in an opinion by Judge Marcotte. The court bore down heavily on the cherished duty-risk analysis, *Farrell v. Circle K Stores Inc.*, 22-00849 (La. 3/17/23), 359 So. 3d 467, and the definition of duty, *Meany v. Meany*, 94-0251 (La. 7/5/94), 639 So. 2d 229. The school board's failure to provide a special school bus that day was not a cause-in-fact of the injury: per protocol, when the wheelchair lift isn't working, the school board will send a teacher to the kid's house and the kid will not be marked absent. Ms. Green's decision to skip this service and carry the kid to school herself broke the essential chain of causation. The court also found legal cause wanting, as Ms. Green's injury was too attenuated from BPSB's conduct to make an ease of association. Without these essential parts of the duty-risk analysis, there is no claim.

Somehow, I think Ms. Green will be making another trip down to Royal Street, but the Second Circuit's opinion is a full exposition of the duty-risk analysis.

Federal Update

by Chris Slatten, Chris_Slatten@lawd.uscourts.gov

More Time to Get a New Expert?: A truck driver offloading chemicals at IP was overcome by a rotten smell and passed out. He alleged serious health complications caused by exposure to hydrogen sulfide. IP filed an MSJ that challenged the plaintiff's ability to prove medical causation. The motion specifically challenged the adequacy of the testimony offered by the plaintiff's occupational safety expert to satisfy that element.

In his response to IP's motion—nearly eight months after the expert deadline and three months after the close of discovery—the plaintiff moved for additional time to designate a new expert on medical causation. The trial court denied the plaintiff's request and granted summary judgment because the plaintiff could not establish general causation.

The 5CA looked to four factors to review the trial court's discretion to exclude evidence that was not properly designated within the time allowed by the scheduling order: (1) the explanation for the failure to identify the witness; (2) the importance of the testimony; (3) potential prejudice in allowing the testimony; and (4) the availability of a continuance to cure such prejudice.

The plaintiff's sole explanation was that he only "learn[ed] of the potential need for an additional expert" to opine on causation after IP moved for summary judgment. "That is not a sufficient explanation" because mere inadvertence does not establish good cause. As for the importance of the proposed expert's testimony, the 5CA noted that where an expert is crucial to the plaintiff's case, it "only underscores the importance" of the plaintiff's compliance with the court's deadlines. Trial was only weeks away, and a continuance would subject IP to the increased expense of deposing a new expert, potentially preparing rebuttal opinions, and possibly re-drafting dispositive motions. All factors considered, the trial court was well within its discretion to deny the late request to designate a new expert. *Newsome v. Int'l Paper Co.*, 123 F4th 754 (5th Cir. 2024).

Drug Courier Expert on State of Mind: Federal Rule of Evidence 704(a) says that "[a]n opinion is not objectionable just because it embraces an ultimate issue." Rule 704(b) adds one caveat: "Exception: In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone."

In *Diaz v. U.S.*, 144 S.Ct. 1727 (2024) the defendant argued that she lacked the mental state required to convict because she was unaware that drugs were concealed in her car when she drove it across the United States-Mexico border. The Government's expert witness opined that most drug couriers know that they are transporting drugs. The defendant objected that this testimony violated Rule 704(b). The Supremes held (6-3) that because the expert did not state an opinion about whether petitioner herself had a particular mental state—he only said that *most* couriers know—the testimony did not violate Rule 704(b). The dueling opinions discuss the interesting history of the old prohibition on "ultimate issue" testimony and the evolution of Rule 704.

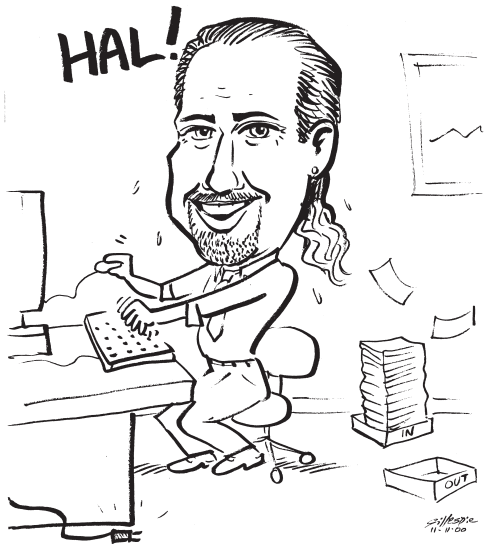
Royalty Clause Interpretation: In Louisiana, a lessor's royalty from an oil-and-gas lease is calculated based on either its market value at the well or gross proceeds. A royalty calculated at the well generally subtracts reasonable post-production marketing costs from the market value at the point of sale. A royalty calculated based on gross proceeds simply multiplies the market price by the quantity sold without subtracting post-production costs. That was the explanation given in *Franklin v. Regions Bank*, __ F.4th __, 2025 WL 32587 (5th Cir. 2025) before the court interpreted the lease at issue.

The lease form stated that "[t]he royalties to be paid by Lessee are ... [calculated using] *the market value at the well.*" But an addendum included limiting language, providing that "[t]here shall be *no cost charged to the royalty interest* created under this lease, except severance and applicable taxes." The addendum said that its terms "shall prevail" over the language in the lease. This was held to be ambiguous, so the court considered parol evidence that included a history of how the lessor paid royalties on a similarly-worded lease/addendum and testimony from persons involved in the negotiations or the industry in general. The 5CA affirmed the trial court's holding that the evidence suggested the parties intended the addendum to prevail over the lease form by providing for a royalty based on gross proceeds.

Insurance and Appraiser/Umpire Provision: A business owner's policy provided coverage for property damage caused by various perils. Owner made a claim for damages after a windstorm/hailstorm. The policy provided for a non-binding appraisal process if both parties agreed. Owner argued that an appraiser/umpire process was nonetheless mandated by La. R.S. 22:1311, which sets forth the "standard fire insurance policy of the State of Louisiana" that allows either party to trigger a mandatory and binding appraisal procedure. Does the "fire policy" statute apply to a multi-peril policy that covers fire and other perils? The local court made an *Erie* guess and said no. *Jacqueline Scott & Assocs., APLC v. Hartford Cas. Ins. Co.*, 2024 WL 4467529 (W.D. La. 2024) (Hornsby, M.J.).

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org



Don't count on this spelling. Every 10 years we hold a big head count called a *census*. This word, however, has nothing to do with scholarly agreement. Consider:

"Insomnia may be characterized by its duration, however there is no universal *concensus* on terminology." Dan J. Tennenhouse, 2 Attys. Med. Deskbook § 24:21 (Dec. 2024 update).

"According to Dr. Maher, a *concensus* of medical opinion believes that this other technique is the best way to reconstruct the bile duct." *Walker v. Corsetti*, 04-784 (La. App. 5 Cir. 3/29/05), 900 So. 2d 991.

"Such standards are either (1) national *concensus* standards on whose adoption affected persons have reached substantial agreement, or (2) Federal standards already established by Federal statutes or regulations." H.R. Compliance ¶ 6601, § 1910.1 Purpose & Scope (Wolters Klower Bus. 2015).

"Seven other witnesses * * * testified as to the parties' respective merits as loving, caring parents; the general *concensus* was that both Mr. and Mrs. Plunkett were fit to exercise custody." *Plunkett v. Plunkett*, 576 So. 2d 100 (La. App. 2 Cir. 1991).

By general agreement, this word is spelled *consensus*. It's related to *consent*. Three of the four passages quoted above predated the modern, spell-check era and would be difficult to create today. The quote from Attorneys Medical Deskbook might be a relic from an earlier printing, with the added bonus of the run-on sentence (did any astute readers notice?). And, contritely, I must accept responsibility for not fixing that *Plunkett* quote back in the prior century!

No punishment for this, but … Sometimes an odd variant of a familiar word catches the eye. "In 1924, the Louisiana supreme court held that the double indemnity and attorney fees provisions of Act No. 310, which were '*punitory*' (*i.e.*, penal) and to be 'strictly construed,' did not apply when a beneficiary sought to recover on an accidental death policy." *Taylor v. Mutual of Omaha*, 697 F. Supp. 3d 552 (E.D. La. 2023).

The less-familiar counterpart of *punitive* seems to have been somewhat current a century ago. "On original hearing in *Dirmeyer* [an 1887 case], this Court discussed a confusion between the differences between actual and exemplary or *punitory* damages[.]" *Adams v. J.E. Merit Constr. Inc.*, 97-2005 (La. 5/19/98), 712 So. 2d 88. "Considering the clause from that perspective, we conclude that its purpose is to establish the right to seek *punitive* damages as a legally enforceable claim for *punitory* damages over and above * * * the right to reparation or compensatory damages arising from the same facts." *Billiot v. B.P. Oil Co.*, 93-1118 (La. 9/29/94), 645 So. 2d 604. Citing *State ex rel. Liversey v. Judge*, an 1882 case: "The Court held that * * * libel and slander were '* * * subjects of *punitory*, and not of merely preventire [*sic*], remedies." *Gulf States Theatres of La. Inc. v. Richardson*, 287 So. 2d 480 (1974).

If you have to quote from an antediluvian case like *Dirmeyer* or *Liversey*, and it uses *punitory*, definitely copy it as written; perhaps, like the Federal court in *Taylor*, you could add a quick word of explanation. Otherwise, use the shorter, simpler and standard *punitive*.

Not meant to be literary. From a brief recently filed in the Second Circuit: "Prior to trial, the State filed a '404B Notice' on February 1, 2023, informing Ruffins of its intent to introduce at trial his 2006 conviction for false *personification* of a police officer[.]"

The word used, *personification*, is a literary device in which the writer attributes human nature or character to animals, inanimate objects or abstract notions. (Consider the dated reference to "Lady Justice.") In maritime law, it is a legal fiction: "[M]aritime tort liens 'rely primarily on the legal fiction that a vessel, personified, is itself the defendant[.]'" *Marmac LLC v. Intermoor Inc.*, 566 F. Supp. 3d 559 (E.D. La. 2021). However, neither concept was in play in the 404B motion quoted above.

No, the crime in question is *false personation of a peace officer or firefighter*, La. R.S. 14:112.1. A federal statute, 18 U.S.C. § 912, proscribes *false personation* of an officer or employee of the United States. In other words, the person is posing as someone he's not, with the purpose of injuring, defrauding or securing a special privilege.

Sometimes it's called *impersonation*. "Rather, in response to a White House official asking Twitter to remove an *impersonation* account of President Biden's granddaughter, Twitter told the official about a portal that he could use to flag similar issues." *Murthy v. Missouri*, 144 S. Ct. 1972, 219 L. Ed. 2d 604, n. 4 (2024). "[D]efendant instructed a bank teller over the phone to wire transfer funds from the account of the person he was *impersonating*." *United States v. Ashley*, 2024 WL 5082068 (5 Cir. 2024).

Although the words *personate* and *impersonate* might appear to be opposites, they actually mean the same thing (rather like the words *flammable* and *inflammable*). And although both R.S. 14:112.1 and 18 U.S.C. § 912 refer to *false personation*, some writers bloat the concept to *false impersonation*. "A January 12th of 1994 arrest by Grant Parish Sheriff's Office for False Impersonation." *State v. Crooks*, 23-218 (La. App. 3 Cir. 11/8/23), 374 So. 3d 241. Just avoid the literary pretension of *false personification*.

Too much talk down there! The state agency that records and regulates mineral resources occasionally gets a name change. "I appreciate your concerns and request that you submit any and all information * * * to the Office of *Conversation* so that it may be reviewed[.]" *State v. Ball*, 12-237 (La. App. 3 Cir. 10/3/12), 99 So. 3d 100. Purporting to quote R.S. 30:29 B(1): "Notwithstanding any law to the contrary, * * * the party filing same shall provide notice to the State of Louisiana through the Department of Natural Resources, commissioner of *conversation* and the attorney general." *M.J. Farms Ltd. v. Exxon Mobil Corp.*, 07-2371 (La. 7/1/08), 998 So. 2d 16. Cut the chatter and just send it to the Office of Conservation!

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JANUARY LUNCHEON *Highlights*

Women's Section Announces New Officers

by Chandler Higgins, SBA Women's Section President, achandlerhiggins@gmail.com

Happy New Year to the members of the Shreveport Bar Association! I am so honored to serve as the 2025 president of the SBA Women's Section. Our officers who will serve with me are: Silver Sanders – Vice-President, Rikkisha Candler – Secretary, Trinity Goines – Treasurer, and Ranee Haynes – Immediate Past President.

Thank you to last year's president, Ranee Haynes. Under Ranee's leadership, the Women's Section hosted a very well-attended CLE in November, a summer pool party hosted by Nikki Buckle, and a Pure Barre workout class where female attorneys were able to connect, network and make new friends. Throughout last year, we sponsored new events and saw and increase in attendance at our Women's Section events, ending with a very successful Christmas Party at Judge Katherine Dorroh's house. We look forward to continuing to grow the size of our group over the next year.

We remain committed to our mission: promoting the empowerment and strengthening of the bond between women lawyers in the Shreveport-Bossier area through social engagement, community involvement and continued legal education. We are excited to continue to host social and networking events, CLE and other activities in the upcoming year. If you would like to see a particular type of event, or if you would like your organization to be involved in helping host a Women's Section event, please reach out to us via email at SBAWomensSection@gmail.com and let us know. We are here to serve you!

The new officers have already begun planning events for 2025, and we will continue sending out information in our newsletter and posting it to our social media sites. If you are not already receiving our newsletter, please visit https://shreveportbar.com/womens-section/ and enter your email address to stay up to date on all the Women's Section events.

We look forward to another great year in 2025!

Silver Sanders
SBA Women's Section
Vice-President

Ranee Haynes
SBA Women's Section
Immediate Past President

Rikkisha Candler
SBA Women's Section
Secretary

Trinity Goines
SBA Women's Section
Treasurer

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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.

Dana Southern
SBA/SBF Executive Director
(318) 222-3643 Ext. 3
dsouthern@shreveportbar.com

Elizabeth Carmody
SBA President
(318) 221-6277
elizabeth.carmody@cookyancey.com

Allison Foster
SBF President
(504) 339-6036
acofoster@gmail.com

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UPCOMING EVENTS

*2025 SBA MEMBERSHIP LUNCHEON

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

FEBRUARY 20
THE 200TH ANNIVERSARY OF THE LOUISIANA CIVIL CODE OF 1825
5:00 - 7:00 p.m.
Abby Singer's Bistro

FEBRUARY 22
KREWE OF CENTAUR PARADE
Krewe of Justinian Participates

***FEBRUARY 26**
SBA MEMBER LUNCHEON
Speaker: Robert T. Mann
Author of *You are My Sunshine and the Biography of a Song*

MARCH 2
KREWE OF HIGHLAND PARADE
Krewe of Justinian Participates

***MARCH 26**
SBA MEMBER LUNCHEON
Speaker: Alexander Mikaberidze, Professor of History, Ruth Herring Noel Endowed Chair for the Curatorship of the James Smith Noel Collection LSU-Shreveport

APRIL 30
LAW DAY LUNCHEON
12:00 Noon at the Petroleum Club (15th Floor)
Speaker: TBD

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.

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DEADLINE FOR MARCH ISSUE: FEBRUARY 15, 2025

SBA Luncheon Meeting – February 26

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.

Robert T. Mann

When: **12:00 Noon on Wednesday, February 26**

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

Featuring: **Robert T. Mann, author of You Are My Sunshine: Jimmie Davis and the Biography of a Song**

This presentation is eligible for 1 hour CLE credit.

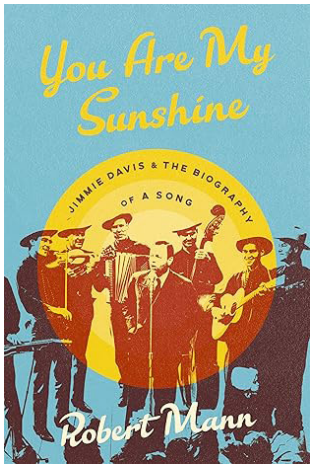
ABOUT THE AUTHOR

Robert "Bob" Mann is a professor emeritus of mass communication at LSU's Manship School of Mass Communication at Louisiana State University. He is the author of ten books, including critically acclaimed political histories of the U.S. civil rights movement, the Vietnam War, American wartime dissent, Ronald Reagan, and the 1964 presidential election. His previous book was *Kingfish U: Huey Long and LSU,* published by LSU Press. His new book, also from LSU Press, is *You Are My Sunshine: Jimmie Davis and the Biography of a Song.*

Mann spent over 20 years in politics as a senior aide to US Senators Russell Long and John Breaux, and Governor Kathleen Blanco. In 2014, he was inducted into the Louisiana Political Hall of Fame.

In *You Are My Sunshine,* Robert Mann weaves together the birth of country music, Louisiana political history, World War II and the American civil rights movement to produce a compelling biography of one of the world's most popular musical compositions. This is the story of a song that, despite its simple, sweet melody and lyrics, holds the weight of history within its chords.

The song's journey to global fame began in 1939, when two obscure "hillbilly" groups recorded it. By the century's end, it was a cultural phenomenon covered by hundreds of artists spanning every genre. It entered the Grammy Hall of Fame in 1999 and the Library of Congress's National Recording Registry in 2012.



At the center of this story is Jimmie Davis, who capitalized on his country music stardom to win two terms as Louisiana's governor. In 1940, Davis became the third artist to record "Sunshine," after he bought it and claimed it as his composition. The song became his anthem and a staple of his political rallies, radiating warmth and wholesomeness. Its sunny tune encouraged listeners to forget Davis's earlier recording career, marked by risqué blues recordings that clashed with the upright, gospel-singing image he later cultivated. As "You Are My Sunshine" grew in popularity, so did its link to Louisiana's "singing governor." In 1977, the Louisiana Legislature made it a state song.

In this biography, equal parts the story of Davis and the odyssey of his song, we discover that "Sunshine" shaped the early rise of country music but became tangled in Davis's pro-segregation policies, briefly overshadowing its legacy. *You Are My Sunshine* explores the song's contested origins, its rise to legendary status and its ongoing resonance with millions. This is more than the story of a simple song; it's a biography of a cultural icon, enduring and ubiquitous as sunshine itself.

Please join us on Wednesday, February 26, as we welcome back Robert Mann, who will discuss his new book, *You Are My Sunshine: Jimmie Davis and the Biography of a Song*. The book, published by LSU Press, is 50 years of country music history and four decades of Louisiana political history through the lens of one iconic song.

We will have a limited number of books for sale at the luncheon for $30. 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.
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