

THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

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EVENTS AT A GLANCE

5/3	Give For Good Campaign
5/4	SBA Law Day Luncheon – 12:00 p.m. - Petroleum Club of Shreveport
5/6	Red Mass- 9:00 a.m. Holy Trinity Catholic Church
5/9	Annual Golf/Tennis Tournament – 12:30 p.m. – Southern Trace Country Club
5/13	Criminal Law for Court Appointed Civil Lawyers Seminar – 9:00 a.m. – Caddo Parish Courthouse
5/15	June Bar Review Deadline



From The President

by Donald E. Hathaway Jr., President, dhathaway@socklaw.com

The Red Mass has a rich history originating centuries ago in Rome, Paris and London.

The Red Mass's traditional name is derived from the color of the vestments worn by the celebrants of the Mass. Over the centuries, the Red Mass has officially opened the judicial year of the Sacred Roman Rota, the Tribunal of the Holy See. During the reign of Louis IX, Saint Louis of France, La Sainte Chapelle was designated as the chapel for the Mass and is now used only once during the year, solely for the Red Mass. In England, the tradition began in the Middle Ages and continued even during World War II when judges and lawyers attended the Red Mass annually in Westminster Cathedral. The tradition was inaugurated in the United States in 1928 in old Saint Andrew's Church in New York City. Since then, the Red Mass has been celebrated annually there and in many cities in the United States.

Since 1993, the Red Mass has been celebrated annually at Holy Trinity Catholic Church during the first week of May, in recognition of National Law Week. Judges, lawyers, governmental officials and persons of all faiths gather for the purpose of invoking God's blessing and guidance in the administration of justice attend the Mass.

In Shreveport, the Red Mass Society of Shreveport has sponsored the Red Mass. Founded in 1993, the Society is dedicated to works of charity and other community projects. The primary purpose of the Society is the enhancement of spiritual, intellectual and social fellowship among its members.

On the occasion of Law Week 2016, the Red Mass Society of Shreveport cordially invites you to attend the 24th annual Votive Mass of the Holy Spirit historically known as the Red Mass to be celebrated at Holy Trinity Catholic Church at the 400 block of Fannin Street in downtown Shreveport on Friday, May 6, at 9:00 a.m. Music begins at 8:30 a.m., provided by the Zion Baptist Church Choir and St. Cecilia's Choral Society.

Most Reverend Michael G. Duca, Bishop of the Diocese of Shreveport, will be the principal celebrant and Most Reverend Shelton Joseph Fabre, Bishop of the Diocese of Houma-Thibodaux, will be the homilist.

Bishop Shelton Joseph Fabre is a native of Louisiana, having been born in New Roads on October 25, 1963. Bishop Fabre attended local schools in New Roads for both primary and secondary school, graduating as valedictorian of Catholic High of Pointe Coupée in 1981. Subsequently he entered Saint Joseph Seminary College in St. Benedict, Louisiana.

Bishop Stanley Joseph Ott ordained Bishop Fabre a priest on August 5, 1989, for the diocese of Baton Rouge. On December 13, 2006, Fabre was appointed Titular Bishop of Pudentiana and auxiliary bishop of New Orleans by Pope Benedict XVI. He was consecrated as bishop on February 28, 2007, in New Orleans.

On September 23, 2013, Pope Francis appointed Bishop Fabre as the new bishop to the Diocese of Houma-Thibodaux. He was installed at the Cathedral of St. Francis de Sales on October 30, 2013. As bishop of the Diocese of Houma-Thibodaux, he leads 125,000 registered Catholics, 39 churches and a number of chapels, missions and communities.

Reverend Monsignor Earl V. Provenza, V.F., will be the Master of Ceremonies.

The Red Mass this year is celebrated in honor of Heart of Hope – A Sanctuary for Women. I hope to see you there.

GET INVOLVED!

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Golf and Tennis TOURNAMENT



May 9, 2016

**Southern Trace Country Club
Shreveport, Louisiana**

SHOTGUN & TENNIS START

12:30 p.m.

ENTRY FEES

Golf:
\$600 per team
4-Man Scramble

Tennis:
\$75 per player

LUNCH

11:00 a.m.
included with registration fee

REGISTER

www.shreveportbar.com
or call
Dana at 222.3643 Ext. 3

PRIZES & CONTESTS

GOLF

**Overall Low Gross
and Low Net Scores
in each flight
Closest to the hole**

TENNIS

**Team Prizes will be awarded
Teams chosen the
morning of May 9**



RICHARD B. KING, JR. MEMORIAL SHOOTOUT!

Enter to have your team represented in this 2-man, alternate shot contest. \$150 per team. Play begins after the scramble. Only one team will be named KING! Limited to the first 8 attorney teams registered. Call Dana at 222-3643 to register or go to www.shreveportbar.com

REGISTRATION

SHREVEPORT BAR ASSOCIATION - 2016 GOLF & TENNIS TOURNAMENT

Monday, May 9, 2016 at Southern Trace Country Club, Shreveport

Lunch Is Included, Serving at 11:00 a.m. – Awards Given Post Play



RICHARD B. KING, JR. MEMORIAL SHOOTOUT

Enter to have your team represented in this 2-man team golf alternate shot contest. \$150 per team. Play begins after the scramble. Only one team will be named KING! Limited to the first 8 attorney teams registered. Call Dana at 222-3643 to register.

GOLF – \$600 per team - Four Person Scramble – Shotgun Start at 12:30 p.m.

REGISTRATION

Captain Name: _____ HDCP/Best Score: _____ Tel: _____

Address: _____ Email: _____

Player 2 Name: _____ HDCP/Best Score: _____ Tel: _____

Address: _____ Email: _____

Player 3 Name: _____ HDCP/Best Score: _____ Tel: _____

Address: _____ Email: _____

Player 4 Name: _____ HDCP/Best Score: _____ Tel: _____

Address: _____ Email: _____

TENNIS – \$75 per player – Play Starts at 12:30 p.m.

NAME: _____ USTA RATING: _____ PHONE: _____

ADDRESS: _____ EMAIL: _____

You will be placed on a Team and Teams will be chosen on Monday morning, May 9

Make check payable to SHREVEPORT BAR ASSOCIATION and mail to:
2016 SBA Golf & Tennis Tournament Registration, 625 Texas Street, Shreveport, LA 71101



Pro Bono Project

by: Nellie Walton, nwalton@shreveportbar.com

REMINDER!! Pro Bono is participating in this year's "Give For Good," a 24-hour online giving challenge led by The Community Foundation of North Louisiana to raise unrestricted dollars for the nonprofits in our community.



On **Tuesday, May 3, from 8:30 a.m.–2:30 p.m.**, come see us at the **new Rhino Coffee**, conveniently located across the street from the Shreveport Bar Center at 624 Texas Street. You can grab your favorite coffee and make your online donation. Your donation will help victims of domestic violence with obtaining protective orders and will

assist the indigent with obtaining legal help for civil matters.

"Give for Good" is a great opportunity to have your donations enhanced and to give to an organization that can provide needed legal representation to those who can't afford to hire legal counsel that only we can provide.

From 12:00 noon – 2:00 p.m. we will have attorney volunteers at the Shreveport Bar Center for an Ask A Lawyer clinic. If someone is in need of free legal advice, please let them know about this event.

Volunteer! If you are interested in volunteering for this event or for any other services the Pro Bono Project provides please contact me at 318-221-8107 or email at nwalton@shreveportbar.com.

The SBF Pro Bono Project and I are very grateful to and thank everyone who has volunteered by taking a Pro Bono case to represent a client, volunteer at our Annual MLK National Day of Service Living Wills Clinic, and volunteered at our monthly Ask A Lawyer Clinic.

Pro Bono Representation

Laura Butler
Ree Casey-Jones
Katherine Evans
Donna Frazier
Spencer Hays
Alex Lyons
Heidi Kemple Martin
John Nickelson
Juliana Parks
Ben Politz
John Settle
Mary Winchell
Joe Woodley

Martin Luther King Day of Service Living Wills Clinic

Laura Butler
Michael Carney
Ree Casey-Jones
Jim McMichael
Zach Moffett
Ben Politz

January Ask A Lawyer Clinic:

Laura Butler
Spencer Hays
John Nickelson
Ben Politz

February Ask A Lawyer Clinic:

Gernine Mailhes
John Settle
Luke Thaxton
Mary Winchell

March Ask A Lawyer Clinic:

Felicia Hamilton
Norman Lafargue
Jim McMichael
Zach Moffett
Ben Politz



GIVE FOR GOOD IS A 24-HOUR ONLINE GIVING CHALLENGE LED BY THE COMMUNITY FOUNDATION OF NORTH LOUISIANA TO RAISE UNRESTRICTED DOLLARS FOR THE NONPROFITS IN OUR COMMUNITY. YOUR DONATION WILL BE ENHANCED BY GIVING THROUGH THIS CHALLENGE.



When you donate to Shreveport Bar Foundation's Pro Bono Project via www.giveforgoodnla.com on May 3, your donation will support victims of domestic violence with obtaining Protective Orders and will assist the indigent with obtaining legal help for civil matters.

GIVE FOR GOOD 2016

SAVE THE DATE

OCTOBER 28, 2016
8 PM - 12 AM

SBF COSTUME PARTY

A FUNDRAISER FOR THE SHREVEPORT BAR FOUNDATION

AT THE SILVER LAKE BALLROOM

SPECIAL PERFORMANCE BY
THE CARAVAN BAND

Red Mass 2016

On the occasion of Law Week 2016
The Red Mass Society of Shreveport
Cordially invites you to attend the
Twenty-Fourth Annual
Votive Mass of the Holy Spirit
to be celebrated at
Holy Trinity Catholic Church
400 Block of Fannin Street, Shreveport, Louisiana
on Friday, the sixth of May
Two thousand and sixteen
At nine o'clock in the morning



The Most Reverend Michael G. Duca
Bishop of the Diocese of Shreveport
Principal Celebrant

The Most Reverend Shelton Joseph Fabre
Bishop of the Diocese of Houma-Thibodaux
Homilist

Reverend Monsignor Earl V. Provenza, V.F.
Master of Ceremonies



The Red Mass this year is celebrated in honor of
Heart of Hope - A Sanctuary for Women



Mark Your Calendar



MAY 3

Give For Good Campaign and
Ask A Lawyer Event, Location TBD

MAY 4

Law Day Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
Speaker: Derwyn Bunton

MAY 6

Red Mass
9:00 a.m. at Holy Trinity Catholic Church

MAY 9

Annual SBA Golf & Tennis Tournament
12:30 p.m. at Southern Trace Country Club

MAY 13

Criminal Law for Court-Appointed Civil Lawyers
Seminar, 9:00 a.m. at Caddo Parish Courthouse

JUNE 22

SBA Member Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
Speaker: TBD

SEPTEMBER 28

SBA Member Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
Speaker: TBD

OCTOBER 26

SBA Member Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
Speaker: Alston Johnson
Professionalism Award Presentation

OCTOBER 13-14

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

OCTOBER 28

SBF Costume Party
Silver Lake Ballroom
900 Market Street

LAW WEEK 2016

APRIL 29 - MAY 6

Law Day 2016

MIRANDA

more than words

In 2016 the nation marks the 50th anniversary of perhaps the nation's best known U.S. Supreme Court case, *Miranda v. Arizona*. This year's Law Day theme — Miranda: More than Words — will explore the procedural protections afforded to all of us by the U.S. Constitution, how these rights are safeguarded by the courts, and why the preservation of these principles is essential to our liberty.

Law Week Chairman Brian Flanagan and his committee are working on several events for this year's Law Week activities. If you are willing to serve on the committee, or help out with the events, please email Brian Flanagan at bflanagan@bwor.com.

Friday, April 29 – Presentation to Constitutional Law class at LSU Shreveport;

Sunday, May 1 - SBA Member/Family Day Crawfish Boil at East Ridge Country Club from 4 p.m. - 7 p.m.;

Monday, May 2 – Young Lawyers go to Walnut Hill Elementary/Middle School and Forest Hill Elementary School to talk about the legal system;

Tuesday, May 3 – Give For Good Campaign at Rhino Coffee and Ask A Lawyer Event at the Shreveport Bar Center from 12 Noon -2 p.m.;

Wednesday, May 4 – Shreveport Bar Association Law Day luncheon at the Petroleum Club of Shreveport with guest speaker Derwyn Bunton, the Chief Public Defender for Orleans Parish;

Thursday, May 5 – High school student event details will be announced soon; and

Friday, May 6 – Red Mass at Holy Trinity Catholic Church



Women's Section

by Janet Silvie, jsilvie@caddoda.com

Hello, Ladies of the Bar Association. Spring is in the air! What a lovely time of year to make a connection with a fellow lawyer in the Women's Section. As stated by Eleanor Roosevelt, "People grow through experience if they meet life honestly and courageously. This is how character is built." As a wealth of knowledge and wisdom, each of us can prove a great asset to one another in our honest and courageous pursuits in the practice of law.

Please take note of future events:



"Spotted" at Artspace

Come and enjoy "Spotted" by artist Nick Cave on **May 5, 2016, at 12 noon**, and dine on Food Truck fare. Since August, Shreveport has been getting to know Soundsuit artist Nick Cave – in raffia Soundsuits rustling along the Mardi Gras parade routes, creating elaborately beaded blankets alongside the residents at Providence House, VOA LightHouse, VOA McAdoo and Mercy Center, and dancing with students at Northwestern State University and the Inter City Row Modern Dance Company. Now you can see this world-renowned artist in a new way – leaping, spinning, dancing and hopping across the silver screen in "Spotted," a capsule exhibition of five films that have become a significant part of the work Cave does to push the boundaries of art and performance.



"Cocktails and Conversation"

At **6 pm on May 26, 2016**, reconnect with fellow lady lawyers during this casual after-work event at Ristorante Giuseppe. Ristorante Giuseppe is a classy, spacious locale with open kitchen and old-world motif, offering sophisticated Italian cuisine. A small tab will be provided.

As always, we welcome all ideas and input on future Women's Section events. Remember to connect with us on Facebook for reminders of upcoming events.

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Spotlight on Professionalism

by J. Marshall Rice, jmrice@ricekendig.com



Jimmy Mijalis

The simple definition of a gentleman from Merriam-Webster is a man who treats other people in a proper and polite way. Jimmy Mijalis fits this definition. I met Jimmy as soon as I began practicing law. He is a partner of Lunn Irion Law Firm and represents many insurance and trucking companies. Jimmy was on the other side of my first case to go to trial. He was kind during the process. He probably did not realize it at the time, but he was one of the first defense

attorneys to offer me advice on how to try a case. I would like to report that I won my first case, but I lost. District Judge Jeanette Garrett did not agree with my client's version of the story. Judge Garrett found in favor of the trucking company and you can now read about my defeat as *Hamilton v. Wild*, 40,410 (La. App. 2 Cir. 12/14/05), 917 So. 2d 695. I also learned valuable lessons about appeals. Jimmy was a gentleman all the way through the process, and his advice has stuck with me.

The one piece of advice I remember most was BE PREPARED. Jimmy told me this as we prepared to try the case. He said when he was a young lawyer being the most prepared gave him an advantage. It also gave him confidence that he knew his case.

When I called him to discuss this article, he was very humble. I asked him about his thoughts on professionalism. He said that professionalism is "The Golden Rule." We should do unto others as we would have them do toward us. Also, civility is important to make the practice of law enjoyable. What great advice! He said, "Professionalism is something we should want to do as lawyers. We have the ethical rules that we must follow, but professionalism is the exercise of those rules without compromise." He also emphasized that being ethical is one side of the equation, but being professional is the other and is equally important in the practice of law.

Jimmy pointed out that the SBA is vital in helping facilitate professionalism. The SBA provides a base for building relationships through events such as Justinian. Having good relationships with other attorneys in the bar promotes professionalism. He attributes much of the SBA's success to the great leadership over the years.

Because Jimmy has influenced my career, I asked him for advice for young lawyers. First, he said, be prepared. Next, "Young lawyers need to know that you only have one reputation. Reputation is very important. Young lawyers should find a

mentor, and the SBA through its mentoring program is a great resource. You ought to know what you don't do. Know your peers and build relationships. Take time to observe and learn how to practice law. When you see it, you can do it and then you can build upon doing it." He believes that developing your own style is a key to confidence in the courtroom.

Jimmy's last words of wisdom came from a reflective question over his career. He said young lawyers need to find balance in personal life and practicing law. Looking back, he wishes he had been better at balancing personal time with family versus work. He worked very hard and knows the balance is difficult to find in our profession, but he believes it is important.

Jimmy, thank you for your contributions to the bar. Your work with the golf tournament, memorial for Richard King, and many CLEs does not go unnoticed. You are a professional attorney and a great friend. Thank you for taking the time to mentor a young lawyer in the beginning of his career.

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Young Lawyers' Section

by Luke Thaxton, Lthaxton4@gmail.com

On behalf of the Young Lawyers' Section, I would like to be the first to thank Gahagan Pugh, Valarie DeLatte and Brian Flanagan for joining the Young Lawyers' Section Executive Committee.



Gahagan Pugh



Valarie DeLatte



Brian Flanagan

Gahagan Pugh was appointed as our new treasurer. Valarie DeLatte joined the Executive Committee as a member-at-large and is our liaison to Teen Court. Valarie was instrumental in organizing the regional high school mock trial event that took place last month. Brian Flanagan joined the Executive Committee as an at-large member and is the young lawyers' liaison to Law Week. Brian has also been instrumental in organizing this week-long event. Brian has been working with the Shreveport Bar Association in planning the events to take place from May 2-6, 2016.

In relation to Law Week, the SBA committee organizing the event is still looking for attorney volunteers at Forest Hill Elementary School on May 2, 2016, at 10 a.m. This activity should last only about 1½ hours. The volunteers will be speaking to 4th and 5th graders about the legal system. A skit based on "The True Story of the Three Little Pigs" will be presented to the kids. A script will be provided for the attorneys and the students who volunteer for the event. If you are interested in volunteering at this event, please contact Sherron Douglas at sherronpdouglas@gmail.com.

Also, don't forget that the Young Lawyers' Section is in the process of updating contact information for all of our young lawyers. I encourage everyone to "like" our Facebook page and visit our webpage linked to the Shreveport Bar Association's website. Anna Brown, our secretary, has been diligently working with Courtney Turner, administrative assistant for the SBA, to rework the YLS's webpage.

Remember, the Young Lawyers' Section is open to all members of the Shreveport Bar Association who are under the age of 40 or who have been engaged in the practice of law for less than five years. If you meet either of these criteria, we would enjoy your company at our next social, to which all summer interns are also invited! The date (sometime in June) and location are yet to be announced ... so please check our Facebook page and emails for more details.

I'd love to see you there!

MEDIATION AND ARBITRATION OF COMPLEX DISPUTES



Ross Foote



Phelps Gay



Thomas Hayes, III



Mike McKay



Pat Ottinger



Mike Patterson



Marta-Ann Schnabel

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for more information and the article, "Getting Your Client and Yourself Ready for Mediation."

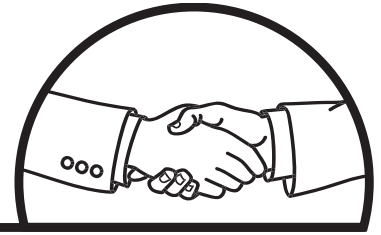
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The Neutral Ground

by Mark Odom, mark@markodamlaw.com



Navigating the Horse Latitudes of Mediation

History tells us that early explorers of the Western Hemisphere followed prevailing winds from Europe to the New World. These trade winds are caused by cyclonic wind patterns in the North and South Atlantic Oceans that create an east-to-west breeze between the 35 and 40 degree latitudes before blowing back eastward at higher latitudes. Ships laden with various goods and livestock bound for the New World followed these routes with anticipation of destinations on the American east coast and in the Caribbean. Occasionally, a ship would drift off course southward into the 30 to 35 degree latitudes where winds would become eerily calm and the sea would appear as glass. Anxious crews, seeing their supplies dwindle after many motionless days, knew they must lighten their loads to have any chance for movement in the event of even a mild breeze. Desperate to salvage their lives, these voyagers willingly jettisoned valuable cargo which sometimes included horses bound for the Americas, pushing them overboard in these tragic tales of commerce. This anecdote is believed to explain the origin of the term "Horse Latitudes" that has been assigned to these regions of the North and South Atlantic.

Mediation is also a journey that the parties to a dispute must set sail upon with some hope of reaching a landfall of settlement. It is important that counsel for the mediating parties be prepared to assist their clients in making difficult decisions during the course of the voyage. Setting sail in the morning usually includes an optimistic forward-looking hope of resolution. However, momentum can sometimes be lost when your client's best positions, couriered through the mediator to the opposing side during the morning caucuses, are rebuffed by equally confident counterpunching reported back to you and your client by the mediator. Confidence may remain during consumption with your clients of the ordered-in lunch. But with the lack of early afternoon movement, your client may express shock that the other side hasn't capitulated already. It is at this point that an experienced attorney must know not to lose heart when his or her client becomes negative or begins to doubt the process as a whole. The morning progress, apparent during exchange of the first few offers, has slowed to a crawl resembling Dallas's North Central Expressway at rush hour. Afternoons during such mediation proceedings can bring the impression that, unless something breaks soon, all will be lost. The unsettling stillness in the proceedings indicates that you have drifted south into the Horse Latitudes of Mediation. In order for the mediation to survive and succeed, courage is required.

A diligent attorney at these latitudes of mediation must, if he or she believes settlement is in the client's best interest,

endeavor to assist the client in a soul-searching process led by the mediator. If movement is to begin again toward a reasonable settlement, both parties must begin to jettison the excesses of their positions that are weighing the case down. This can sometimes be painful, yet a good mediator will diligently but steadily lead both sides in such an exercise. Although you must maintain your client's positions as a zealous advocate, at the same time you can assist the mediator in leading your client to a more objective analysis of the value of his or her cargo. Must all being carried reach the New World of resolution? A thorough knowledge of the facts and legal issues of the case are necessary tools to the introspection required at this point in order to know what must be retained and what can be thrown overboard. It is during these stagnant afternoon hours that the hard work of mediation is done and tough decisions are made. Excess cargo on both sides of the ship must be tossed, keeping the weight of sacrifice balanced and the sails vertical in hopes of catching a breeze. What factors are each party overvaluing that, if not relinquished, may mean the mediation port of call is never reached, resulting in bitterness later on when reading a judge's opinion on that subject? It also helps at this point if the attorneys have not previously oversold their cases to their own clients. Movement may come from taking stock of your case through listing the apparent values of each element of your client's positions, then realistically discounting each based upon an honest acknowledgment of gaps in the evidence and legal authorities accompanying them. Hard work during this period before fatigue sets in can pay dividends toward catching a breeze of renewed momentum.

During these Horse Latitudes of mediation, parties may express that all appears lost and too much ocean remains to be crossed before supplies run out. It is at this point in the mediation that a notable pattern often emerges. After objective self-analysis has been performed by the parties, sails slowly fill again and a wake can be seen where waters were still only moments ago. To the surprise of many clients, it is often only a matter of time before the mediator announces "Land Ho!" This pattern explains why far more mediations are successful than not, despite the sometimes apparent futility of the process during the Horse Latitudes stage. As the final terms of the settlement are reached, your client will hopefully realize that it was far better to have jettisoned some cargo when in the Horse Latitudes than to have the entire ship sink in the New World harbor of court. This illumination to the parties will come only after the sobriety of still seas have caused all concerned to properly select what must go over the side.



Legal Hist

by Arthur R. Carmody, Jr., ACarmody@wcglawfirm.com

THE RULES, CUSTOMS AND HERITAGE OF THE LOUISIANA SUPREME COURT, 1813-1879

This paper is derived from the book entitled *Historic Rules of the Supreme Court of Louisiana, 1813-1879* by Warren Billings, the Distinguished Professor of History Emeritus at the University of New Orleans, from 1982-2005 the court-appointed historian of the Louisiana Supreme Court, and now Distinguished Professor of History at the William & Mary School of Law. This book was published in 1985 by the University of Southwestern Louisiana (now known as University of Louisiana at Lafayette) through its Center for Louisiana Studies.

The origin of the Supreme Court's rules and practices came from the state's first constitution, the Constitution of 1812. It followed those constitutions done elsewhere in the nation, particularly that of Kentucky, which entered the Union in 1810 and was written with the facile pen of Thomas Jefferson.

The Constitution of 1812 created an appellate court which would be staffed by no more than three and no less than five judges. It divided Louisiana into eastern and western judicial districts that required the judges to ride circuit – clearly a hard, onerous and unpleasant assignment – sitting in New Orleans (eastern district), a comfortable, polished, civilized environment, between November and August, and then the remainder of the year in the untamed, barren and uncomfortable Opelousas (western district). In later years, in order to get its way with the Supreme Court, the legislature would introduce bills making it mandatory for the court to meet in Opelousas for six months or so out of the year, directives which were usually abandoned after their purpose had been accomplished. Two judges made up a quorum with the authority to “make and issue all mandates,” as well as the power of punishing “all contempts necessary to perform their duties.” These judges were given appellate jurisdiction in civil cases over \$300 and were appointed for life, but were liable to impeachment. The legislature also gave the Supreme Court the important, essential powers, which it exercises to this day, over who should be admitted to the bar and the right to establish “all needful rules” of the court's procedure.

Immediately after the legislature adjourned, Gov. William C. C. Claiborne sent three names to the senate for its consideration for appointment to the court. One was Dominick Hall, formerly a U.S. District Judge for the Orleans Territory, an experienced, take-charge



George Mathews Jr., justice of La. Supreme Court, 1813-1821, and chief justice, 1821-1836

individual who was later to find Andrew Jackson in contempt of court prior to the Battle of New Orleans. The second was George Mathews, also a former territorial judge, well-versed in the common law. The third was Pierre Derbigny, a native of France, educated in the civilian tradition, who left that country to avoid the Revolution, settling first at Pittsburgh and arriving in New Orleans in 1797, when it was still a Spanish colony. He was an active, successful member of the New Orleans bar, fluent in English, French and Spanish, strongly opposed to the introduction of the common law in Louisiana and, in later life, a governor of this state.

By mid-March 1813, all three had been confirmed by the senate, taking their oath of office and were in business. They soon exercised their authority by naming five preeminent members of the New Orleans bar as a commission to draw up rules and regulations for the governance of the court. One of these members, François-Xavier Martin, would become in two more years a member of the court and one of its most distinguished members. Edward Livingston, of a prominent New York family, had established a reputation as an effective trial lawyer and served ably on the court. The committee used as a guide the rules of the territorial courts, which the majority were familiar with. The rules were quickly put into effect for a court that was ready, willing and able to move forward.



Pierre Derbigny, chief justice of La. Supreme Court 1813-1821

As the years progressed into the 1840s, there were 44 additions to the rules and regulations, one of the more surprising ones being the allowance of unlimited time for oral argument! Presumably, this was to be limited by the court's discretion on the day of argument. Nevertheless, the docket remained so congested that a waiting time for as much as 14 years was not unusual for a case to come to a hearing.

By the mid-1840s, an overhaul was in order. Provisions was made for an appointed chief justice and four associate justices. Three of the justices, getting along in years, resigned their seats, and a new court was sworn in in March 1846. The new constitution provided for the first time for jurisdiction over criminal appeals, and broadened civil jurisdiction over all significant cases. The new rules did away with duplication and unnecessary minutiae and provided for logical flow of cases through the clerk's office. Prior to the Civil War, the court amended the 1847 compilation a number of times

in response to legislative acts and amendments to the constitutions of 1852 and 1861. A court incongruously captioned “A Court of Errors and Appeals,” which had been created by the legislature in 1843, presumably to lighten the burden on the high court, was abolished by the constitution of 1845, having proved unworkable and unpopular with the judiciary.

The Reconstruction issues following the Civil War caused the court in 1869 to recast its rules anew. This proved unsatisfactory, but it was not until 1879, when Reconstruction ended in Louisiana, that the justices rewrote the rules. Strangely enough up to this point, the rules had never provided for the filing of suits, clerical costs, bonds or hearing dates, all of which were now addressed, owing to the difficulties of traveling and holding court in the remote Opelousas division. There were blanket extensions of time awarded in the western division rather than those that prevailed in Orleans, and provision was made for what might be called simpler cases on an expedited docket, including a direction to all clerks to copy the records in a “fair, legible hand.”



The St. Landry Parish courthouse, as it appeared in the Civil War era

The time issue remained a problem as always, and the ultimate solution was to leave it up to the chief justice to state the allotment at the time of trial, but this proved troublesome with the bar, who obviously could not prepare for an effective oral argument without knowing time limits in advance. Requirements for the practice of law were also strengthened, this being a time when there were no accessible law schools in the state. The new rules required two years’ apprenticeship in an approved practitioner’s office and a test, administered by the court, for passage to the bar.

With the encouragement of the court, the legislature established residency and citizenship requirements for lawyers. The court retained authority over attorney fees, professional ethics and how the court would conduct its examination for passage to the bar. One provision added for an examination by a committee of lawyers, which in one form or another remained in effect until the 1910s.

The “French issue” left vestiges that remain to this day. The first constitution, in 1812, established English as the law’s language, although in practice, it quickly became the norm for the state printer and various clerks to publish the legislative acts and other judicial or public documents in French as well. In many of the district courts of south Louisiana, the use of French in trial proceedings was encouraged, a practice that prevailed in some instances until World War II. This of course created a strong minority of French-speaking lawyers, who sanctioned and encouraged this tradition. As time passed, the number of French-speaking judges who allowed the practice slowly fell into decline.

The increasing number of applications from would-be attorneys had begun to be an issue with the court, as 15-17 examinations were being required each year before the Civil War to accommodate the large numbers of applicants. (These numbers apply only to

the New Orleans division, as no records survived for the western district.) There were rising numbers of cases for the individual judges and constant pressures to increase the riding of circuits. There was little help to be gained from the lower courts’ clerical staff, whose members were ordinarily unfamiliar with the high court’s rules and practices. The problem was most acute by 1840 when, in a nine-month period, the court examined 58 candidates for the Orleans district. The court responded by setting up an educational standard requiring a “course of studies,” including familiarity with state statutes, plus knowledge of a dozen books ranging from the theoretical to the practical issues in the practice of law¹. It was noted, but not acted upon, that only three of the 12 books were in any way grounded on the civil law.

The main changes made by the Code of Practice of 1825 were provisions for jury trials in civil cases and that all evidence had to be taken “in open court.” Both of these innovations came from the common law, but there was no particular dispute over putting them into the Code.

As the state grew and prospered during the 19th century, the legislature mandated, and the court approved, sessions in Alexandria and Monroe in the western district, in addition to Opelousas. One can only speculate why Caddo Parish, which of course contains the city of Shreveport – by 1870, and for the next 100 years, the second largest city in the state – was not selected as an additional division for the court.² It may well be that the independent mores of the “Free Parish of Caddo,” which marred or enhanced this area, depending on one’s personal predilections, had something to do with the court’s absence from here.

At any rate, it is clear that the foundation established by Hall, Mathews and Derbigny served as the bedrock of a solid and respected court which has well served Louisiana and its people for over 200 years.

¹ These books were: Joseph Story’s *Commentaries on the Constitution*; *The General Laws of the United States*; Vattel’s *Law of Nations*; *The Louisiana Code*; *The Code of Practice*; *Louisiana Statutes*; the *Institutes of Justinian*; Domat’s *The Civil Law*; Pothier’s *Treatise on the Law of Obligations*; Blackstone’s *Commentaries*; Kent’s *Commentaries*; *Phillips on Evidence*; and *Bailey on Bills and Notes*.

² The Confederate legislature of Louisiana met in Shreveport from 1862 until May 1865. It authorized the move of the Supreme Court from New Orleans to Shreveport, as well as the relocation of several of the judges, but there is no record that any sessions were held here.



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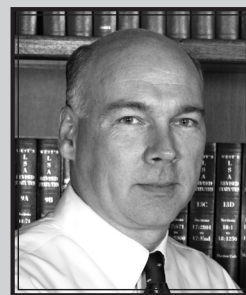
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Monroe Inn of Court Update

by Hal Odom Jr., rhodom@la2nd.org

Evolving Challenges in Cyberspace

The north Louisiana Inns of Court—Judge Fred J. Fudickar Jr. AIC (Monroe) and Harry V. Booth-Judge Henry A. Politz AIC (Shreveport)—held their second annual joint meeting in a festive event on March 17, 2016. Twenty members and guests rode over from Monroe to join 72 members and guests from the Shreveport Inn for the dinner meeting held at Ernest's Orleans Restaurant.

Teams from both Inns presented “Civil Liberties in Cyberspace,” an important and evolving area of legal practice. For the first half of the program, Meredith Hayes and Jessica Thornhill, from the CenturyLink legal department in Monroe, gave an overview of laws and regulations affecting the telecom sector. They enhanced the appeal of a fairly narrow subject by using a fast-paced PowerPoint cleverly arranged in a game show format! The second half, presented by Stacey Williams, of Blanchard Walker, and Nichole Buckle, of Barham Warner, covered identity theft, liability for losing personally identifiable information (“PII”), Louisiana’s relatively new database security law, La. R.S. 51:3071, et seq., and recent jurisprudence in Louisiana and elsewhere. Practice pointers on burden of proof and damages made this information all the more useful.

The presidents of the respective Inns, Cyd Sheree Page and Larry Pettiette, made brief after-dinner remarks, thanking members for their cooperation in making another joint meeting a reality, and Larry particularly complimented Ernest Palmisano Sr., owner of Ernest's, for providing the luxurious venue, not to mention a fine bill of fare at a very attractive price.

Chief Judge Carl E. Stewart, of the Fifth Circuit Court of Appeals and president of AIC, gave the concluding speech, lauding the value of the Inns of Court movement. He related that one south Louisiana Inn had adopted a rule prohibiting the use of a “speaker” for a program, a move that fostered (or enforced) collaboration among members. He also observed that Inns are most vibrant where judges take an active part, and he called out the numerous judges in the audience.

Members in attendance received one hour of CLE credit. The Monroe Inn held one final meeting, its annual crawfish boil, in April, and will resume regular meetings in September. Readers interested in joining the Monroe Inn are encouraged to contact the secretary, Mike Street, street@wmhllp.com, for information. Readers interested in joining the Shreveport Inn should contact its current vice-president, Brian Landry, landry@weems-law.com.



Monroe Inn of Court Update *continued*



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- Conviction and Sentencing Consequences

Presenters:

Honorable Michael Pitman, *Caddo Parish District Court Judge*

Donald Hathaway, *Sockrider, Bolin, Anglin, Batte & Hathaway*

Alan Golden, *Attorney at Law*

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How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

Incredible progress. A U.S. District Court recently wrote, “Spinosa testified that he did not engage in any discussions concerning the rate of chilled water. The Court finds this assertion to be *incredulous*.” The court surely meant *not worthy of belief*, and the word for that is the ordinary, intuitive word *incredible*. It applies to a statement, claim or representation that the reader or listener cannot believe. (It also can mean *remarkable* or *pleasantly surprising*.) The word used, *incredulous*, means *in disbelief*, and describes the reader or listener who simply cannot accept the claim.

Since I last wrote about these words (February 2011), the incidence of the error has pleasantly declined. Note the correct and confident usage in these sentences:

- “Bernstein from DOJ stated her ‘surprise’ at the original allegations against Perricone and that she was ‘flabbergasted’ and *incredulous* about Mann’s involvement.” *United States v. Bowen*, 799 F.3d 336 (5C 2015).
- “Like the trial court, we are *incredulous* that the children of a parent with a demonstrated earning capability as high as Russ’s should be forced to rely upon Medicaid for health care insurance.” *Hogan v. Hogan*, 49,979 (La. App. 2 Cir. 9/30/15), 178 So. 3d 1013.

Even more, some courts have corrected litigants, or other courts, for their misuse:

- “[T]he defendant’s alternative explanation that someone took his truck, constructed secret compartments in it, and filled them with marihuana without his knowledge was ‘*incredulous*’ [sic, presumably should have read ‘*incredible*’].” *United States v. Gil-Cruz*, 808 F. 3d 274 (5C 2015), fn. 9.
- “In his appellate brief, Mr. Ross argues that ‘[t]he *incredulous* [sic] story that four narcotics officers were needed to stop a helmet-less mo-ped rider for a mere traffic violation was the basis of Mr. Ross questioning the officers’ credibility.’” *State v. Ross*, 2013-0500 (La. App. 4 Cir. 3/26/14), 137 So. 3d 759.

Most of the time, the simple word *incredible* is going to be right. Careful legal writers may be *incredulous* at how often others get it wrong.

Daily issues. A reader asks, “If two people were born on the same day but in different years, do they share the same *birthday* or *birth date*?” They share a *birthday*. To share a *birth date*, they must be born in the same year.

Admittedly, some people use the terms interchangeably, as in, “A.N.’s *birthdate* is May 13, 1992, and J.N.’s *birthday* is July 25, 1997. Accordingly, A.N. is almost five years older than his sister.” *State in Interest of A.N.*, 2012-1144 (La. App. 4 Cir. 8/28/13), 123 So. 3d 824,



fn. 1. This is imprecise, as J.N.’s birthday is every July 25.

When you state a precise day, month and year, you are giving a birth date. The difference between this and an annual birthday is beautifully implicit in Michael P. McDonald and Justin Levitt, *Seeing Double Voting: An Extension of the Birthday Problem*, 7 Election L. J. 111 (2008). The authors describe the “Birthday Problem”: the surprisingly high probability that two students in their introductory statistics class (or any class) share the same birthday. The authors then extend this to find the probability that two persons in any given group share an exact *birth date*, and the expected number of birth dates in a group of a certain size. Obviously, the birth date is much more specific than the birthday.

The statutes have very little to say about *day* vs. *date*. FRCP 6 states that time periods “exclude the *day* of the event that triggers the period[,]” while La. C. C. P. art. 5059 provides that the “*date* of the act * * * after which the period begins to run is not to be included.” A few special statutes define *day*, like 45 U.S.C. § 351(k) (“a day of unemployment * * * means a calendar day on which he is able to work”). *New Orleans Firefighters Ass’n Local 632 v. City of New Orleans*, 263 La. 649, 269 So. 2d 194 (1972), held that a firefighter’s “vacation day” is “a calendar day from midnight to midnight,” not an eight-hour work shift.

Choosing between *birthday* and *birth date* is pretty minor compared to remembering somebody’s birthday! But now that we’ve delegated that to Facebook, where is the problem?

Still trailing. One of my favorite typos made a droll reappearance in *MGD Partners LLC v. 5-Z Investments Inc.*, 2012-1521 (La. App. 1 Cir. 6/2/14), 145 So. 3d 1053: “This matter is remanded to the *trail* court for further proceedings.” In at least a dozen other places, the majority correctly used *trial court*, but it serves as a reminder that Spell Check alone will not catch all errors! Consider the unfortunate outcome if you typed *now* instead of *not*, and Spell Check failed to notice.

Going ... going ... went! On April 11, the daily newspaper of a nearby town carried a front-page story with this lead: “The cost of mailing a letter has *went* down.” I could only sputter, “Something *goed* wrong here!” We all know that *go* is one of the most irregular verbs in English: its past tense is *went*, and its past participle is *gone*. As simple as this may seem, the vernacular “has *went*” is common in hasty or uneducated speech. The usual context is apparent in a transcript quote in *State v. Holt*, 08-1276 (La. App. 4 Cir. 5/26/09), 12 So. 3d 502: “Holt told him that ‘if he knowed [sic] what the situation would have occurred [he] wouldn’t have *went* [sic] into that house.’”

In formal writing, always tell us where you *have gone*. Not that other phrase.



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Derwyn Bunton is the Chief District Defender for Orleans Parish (New Orleans) Louisiana, leading the Orleans Public Defenders Office (OPD). Prior to becoming Chief Defender, Derwyn was the Executive Director of Juvenile Regional Services (JRS). JRS is the first stand-alone juvenile defender office in the nation and the first nonprofit law office devoted to juvenile justice reform and front-line juvenile representation. Derwyn is also the former Associate Director of the Juvenile Justice Project of Louisiana (JJPL), a nonprofit juvenile justice reform and advocacy organization. Derwyn graduated from New York University School of Law in 1998. From 2000 to 2005, Derwyn aided in monitoring the settlement agreement between the United States Department of Justice, the Juvenile Justice Project of Louisiana, private plaintiffs and the State of Louisiana regarding Louisiana's juvenile prisons. Derwyn was part of the litigation team that sued Louisiana over the conditions of its juvenile prisons. During Hurricane Katrina, Derwyn was part of a team of advocates and lawyers assisting the Orleans Parish Juvenile Court, the Louisiana Office of Juvenile Justice and the Louisiana Department of Public Safety and Corrections locate and reunite youth and adults evacuated to multiple DOC facilities across the state after being trapped by floodwaters in the Orleans Parish Prison in the wake of Katrina. In 2007, Derwyn was part of a team of lawyers representing the so-called Jena 6 in Jena, Louisiana. Please join us on May 4, as we celebrate Law Day and hear Derwyn's presentation to the SBA.

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