

THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

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INSIDE | MARCH

President's Message	1 & 3
Golf Tournament	2
Women's Section	3
Spotlight on Professionalism.....	4-5
Pro Bono Project.....	6
Welcome New Members.....	6
Bar Briefs	6
N.B.	7
Mock Trial.....	8-9
KOJ Parade Highlights.....	10-11
KOJ Queen's Tea	12
Law Week.....	13
Calendar of Events.....	14
Monroe Inn of Court Update.....	15
Membership Renewal	16
Legal Hist.....	17
How Write You Are.....	18
February Luncheon Highlights	19
Luncheon Series.....	20

EVENTS AT A GLANCE

3/22	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club- Speaker: Darrel J. Papillion, LSBA President
4/24	Annual Golf Tournament – 12:30 p.m. – East Ridge Country Club
5/2	Give For Good Campaign
5/3	Law Day Luncheon – 12:00 p.m. - Petroleum Club-Speaker: James E. Stewart, Caddo Parish District Attorney



From The President

by Rebecca Edwards, President, redwards@caddoda.com

"Change is the law of life. And those who look only to the past or present are certain to miss the future." John F. Kennedy

I came across President Kennedy's quote while looking for inspiration for this month's president's message. It caught my attention because those simple sentences have powerful meaning. They also express something I agree with and something I disagree with.

My agreement is with the first part. Change is the law of life, and that law is uncontrollable and unpredictable. Life can be unfolding seamlessly when change strikes. We can try to write our futures by making plans and taking steps that we hope will lead us to where we want to be one day, but these plans are always contingent. Change will rear its head. Change is the one thing we can count on in life.

Change has affected our profession in numerous ways. Two particularly come to mind. First is technology. I recall learning in law school how to research using the books. What a chore that was! I think most of you would agree with me that online research is a tremendous improvement and timesaver. Second is diversity. Change has brought about more diversity in our profession and will continue to do so. That is something to be welcomed and celebrated.

Our profession thrives on change because change creates problems and conflicts that require resolution under the rules of law that govern our society. At our best, lawyers can help restore order to a disorderly world. At our worst, we can be agents of disorder. Following the Rules of Professional Conduct ensures we perform at our best and uphold the honor of our profession, no matter what change may bring.

While I wholeheartedly agree with the first part of President Kennedy's quote, I disagree with the second part. I say that those who look only to the past or future are sure to miss the present. Now, in the present, is all that we really have. We can and should learn from the past, but dwelling on the past will not change anything and does nothing for today. While we can make plans and have hopes for the future, it remains an uncertainty. Today – the present – is what we have and where our focus must be.

The present is where we can make a difference in our own lives and in the lives of others. Today we can make good choices for ourselves. We can treat others with kindness and respect. We can love our spouses, families and friends. We can be generous and understanding with our coworkers. We can greet a stranger and share a smile. We can do good work. We can participate in activities with the SBA that promote our profession and make our legal community more vibrant. The actions we take and choices we make each day, in the present, are the things that matter most. Don't let the past or the uncertain future rob you of today.

Live in the present!

continued page 3

Golf TOURNAMENT

SHOTGUN START

12:30 p.m.

ENTRY FEES

\$600 per team
4-Man Scramble

LUNCH

11:00 a.m.
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Lunch and Crawfish Boil is Included – Awards Given Post Play

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Make check payable to SHREVEPORT BAR ASSOCIATION and mail:
2017 SBA Golf Tournament Registration, 625 Texas Street, Shreveport, LA 71101

Upcoming and Noteworthy

While flipping through the February/March issue of the *Louisiana Bar Journal*, I was delighted to find two items relating to our legal community. First, Thomas Pressly, president of the SBA's young lawyers' section and co-chair of the membership committee, was featured in the "Young Lawyers Spotlight." Second, there was an item about our Memorial and Recognition Ceremony held in November 2016 and chaired by Marcus Edwards. Mr. Edwards and Mr. Pressly, both young attorneys, are great assets to the SBA. Congratulations on the well-deserved recognition!

Thank you to all who volunteered for the 2017 High School Mock Trial competition and to Valerie DeLatte, who did an outstanding job organizing the event. This is a worthwhile project for the SBA and a great benefit to the students who participate.

Finally, I am pleased that the Louisiana State Bar Association president, Darrel Papillion, will be our guest speaker at the SBA luncheon on March 22, 2017. I expect that Mr. Papillion will address current happenings in the LSBA, his time as president, and membership demographics. His presentation is sure to be relevant to us all as mandatory LSBA members. I hope you will join me in welcoming Mr. Papillion to our bar luncheon.



Women's Section

by Jabrina Edwards, jabrinanclayton@gmail.com

The Women's Section is off to a great start! Our bowling social at Holiday Lanes on Thursday, February 16, was a fun way to kick off the year. Thank you to all of those who came out to participate. If you were not able to make it, you missed a treat; but we look forward to seeing you at our next event!

This month, we are teaming up with Volunteers of America (VOA) to give back to our community. On Saturday, March 18, 2017, from 9 – 11 a.m., we will be visiting the residents at VOA's Greenwood Lodge assisted-living facility, providing them with a light breakfast and entertaining them with fun activities. Afterwards, we will catch up over brunch at Another Broken Egg! This activity is sure to be fun and fulfilling.

On March 14, 2017, as part of the Celebration of Women Month sponsored by the Shreveport and Bossier Mayors' Women's Commissions, our very own Wendy Horton will present a noon workshop entitled "Women's Rights & Their Money" at the YWCA. This workshop will include important information that will benefit many women in our community, so please spread the word. We look forward to partnering with the YWCA in the future.



If you have not done so already, please "like" our Facebook page to stay updated, and sign up for our electronic newsletter by either clicking the "Sign Up For Our Newsletter" link on our Facebook page, or by emailing us at sbawomenssection@gmail.com. Again, be sure to let us in on big announcements and accomplishments so that we can include them in the newsletter.

I look forward to seeing you on March 18!

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Spotlight on Professionalism

by: Valerie DeLatte, vdelatte@la2nd.org

When I was asked to join the Professionalism Committee for the Shreveport Bar Association, I immediately said yes, and I set off on a quest to determine the answer to the question I think we all silently ask ourselves sometimes, “Professionalism? What does that even mean?”



As members of the legal profession, we are all, of course, professionals by definition, having gone through years of training and testing to achieve entrance to the legal field. Can we quantify our “professional” points by CLE credits, cases won, briefs filed, motions made, et cetera, or is professionalism a distinction attained over time derived from the esteemed respect of our colleagues and community? My initial reasoning had me leaning toward the latter, and through my research I have found that the best way to become more “professional” is to attempt to acquire some of the qualities possessed by those who have acquired this distinguished designation. I turned to Hal Odom for some pointers on professionalism.

Hal has a reputation for being knowledgeable on matters of law and language. I do not think he would be surprised to learn that he is often thought of as a grammar fanatic by those who must face his critique. Even as I write this article, I wonder just how many red marks I will receive.

Hal is a Louisiana native, born in Baton Rouge. His father was in the U.S. Air Force, which took the family to McConnell AFB in Wichita, Kansas, for a short stint before returning to Louisiana. Hal attended Catholic High School in Baton Rouge. He received a BA in Philosophy from Louisiana State University, and graduated from LSU Law School in 1983. After law school, Hal accepted a position with Judge Bill Norris, at the Louisiana Second Circuit Court of Appeal. He lived in West Monroe until 1990, when Judge Norris closed his chambers there and moved to Shreveport. Hal was a charter member of the Judge Fred Fudickar American Inn of Court, formed in Monroe in 1990, and he is still a member. He continues to work at the Second Circuit and is currently the Senior Research Attorney for Judge Milton Moore.

I have heard many stories from Hal referencing Judge Norris, aka King Willie, so I was not surprised that Hal credits Judge Norris as a having a major impact on his development

as a professional, stating “[King Willie] was a model of poise, professionalism, and hard work. After working with him for so long I hope to have absorbed some part of that.” Hal described his initial move from Baton Rouge to North Louisiana as “a bit of a culture shock,” but “King Willie made sure I met and knew his network of friends and cronies, and on the whole it was pretty welcoming.”

Hal believes that as attorneys we should be held to a higher standard. “Although we have spent a lot of money and time to get where we are, and have worked hard to achieve this status, we cannot forget that it is a privilege to serve clients and the public. Be helpful when interacting with others. Try to assist people who are not lawyers by giving small amounts of legal information with plain explanation. Part of professionalism is showing others how to make better decisions in their lives.” Another important function of a professional, as Hal explains, is interaction with interns and new graduates. He stated, “Shreveport isn’t like New Orleans. We get maybe 12 new lawyers a year. It is important to get to know them and to try to make them feel like, yes, it is a good decision to come into this field.”

I pretty much consider Hal to be the historian of the Second Circuit. He is full of stories and has dubbed his special talent “telling shaggy dog tales.” When I first moved to Shreveport (right after law school to begin working at the Second Circuit), Hal was one of the first characters I met. He reached out to me and invited me to go to an SBA luncheon. He even paid for me and another one of the new law clerks to attend. I heard many shaggy dog tales that day, and when interviewing Hal for this professionalism article, I realized that Hal’s integrity is what makes him a true professional. He has been an attorney for far longer than I have, but he still remembers what it felt like to be a newly minted young lawyer with a new job in a new town, and it meant a lot to me that he would go out of his way to be so welcoming and kind.

You may know Hal for his crossword puzzles or his column, “How Write You Are,” which are published in *The Bar Review* monthly, but he is also an avid coin collector and has been president of the Shreveport Coin Club for 25 years. The contents of the crossword puzzles designed by Hal is a window into his psyche. Everyone who reads *The Bar Review* ought to have a fairly good idea what is on his mind. He also has a passion for music, and has played piano since the age of five. When asked if professionalism were an animal, what kind of animal would it be? Hal stated, “I like the industriousness and coordination of bees. Like the beautiful honeycombs they

build and delicious honey they produce. I do not like that they sting. They work together cooperatively and seem to make a uniformly useful product.”

By Hal’s definition, professionalism is “**treating other attorneys with courtesy, and treating people who are not attorneys with even more courtesy.**” He stated generally that a professional is helpful, willing to guide others through the legal process, and he does not take advantage of others unfairly. Being thought of as a professional is a consequence of your actions. It comes from something within you, and it is also something you must strain and aspire to do, which will require you to balance your impulses. At times, you will get aggravated or frustrated, but professionalism is found in how you respond to these situations. It will take determination, but professionalism must be your first line of conduct.

Sometimes this field can be frustrating, aggravating, and challenging. Even though there are different levels of professionalism based on the audience, we must always maintain a certain measure of professionalism and make it a part of our personality. Being a professional means being understanding, considerate, and cooperating (like bees) to make this whole process run a lot smoother. Shreveport is a small community, which means, as legal professionals, we have a unique opportunity to develop a close knit connection with our colleagues. Hal named some easy ways to become more involved, “Volunteer for ask-a-lawyer, join the Inns of

Court, or attend other bar sponsored events.”

Hal stated, that he only hoped to have absorbed some of King Willies great attributes, but in my opinion he most certainly has. The advice Hal has given me has made an impact in my life and pushed me to improve my writing skills. His encouragement to be involved in the legal community is the reason I am writing this article, which I will end by saying—I hope I have absorbed a little bit of what makes Hal Odom a model professional, and one day I hope to have the opportunity to pass his advice on to other young lawyers.

BILLY J. GUIN, JR.

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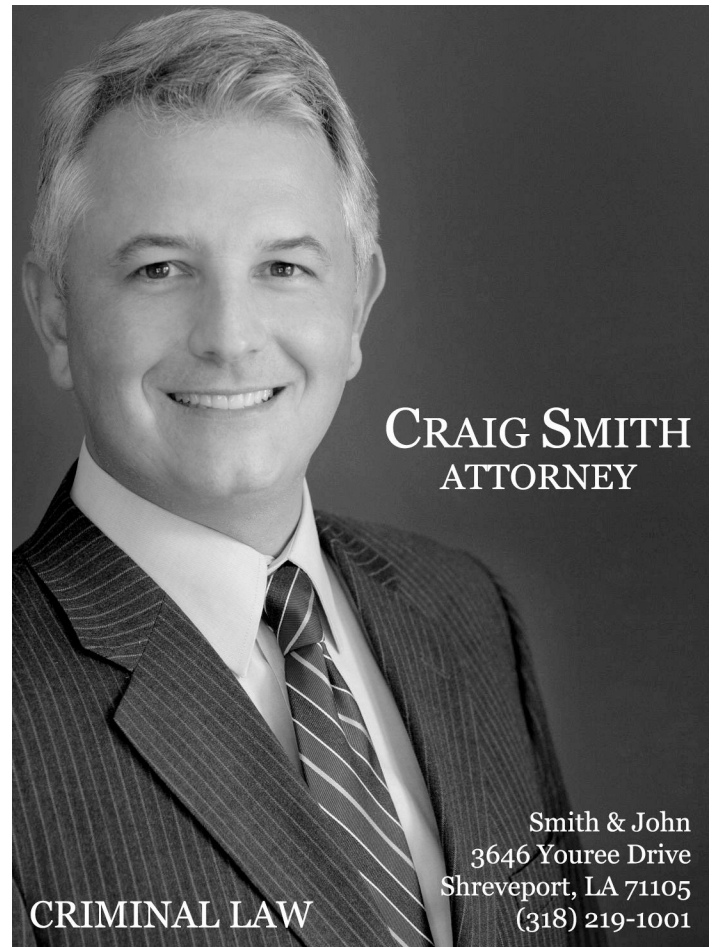
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Pro Bono Project

by Nellie Walton
nwalton@shreveportbar.com

I hope everyone had a safe and fun Mardi Gras! On January 16 we held our annual MLK Clinic and assisted 12 people in obtaining living wills and medical POAs. This year it was hosted at Willow Chute Baptist Church. Special thanks to our volunteer attorneys, Mike Carney, Laura Butler and Aaron Wilson!

Our Protective Order Program has been going very well. We have assisted many victims of domestic violence with obtaining protective orders through our part-time staff attorney Heidi Kemple Martin. We are excited to announce we will be beginning our subgrant agreement with Legal Aid of North Louisiana! This will enable us to continue servicing many of the indigent clients within our local community.



SAVE THE DATE! You can set up and pre schedule your gift for Give for Good, beginning April 18. We will also be hosting an event at the new downtown Rhino Coffee location. Pro Bono staff and Law Day committee members will be there to take donations from 8:00 a.m. - 4:00 p.m. So, come by and support one

of your favorite nonprofit organizations and get some amazing coffee!

Last but definitely not least a HUGE thank you again to all of our wonderful volunteers this quarter!

Heidi Kemple Martin
Ben Politz
Spencer Hays
Hon. Ree Casey-Jones
Harry Johnson
John Settle
Donald Hathaway

Aaron Wilson
Stacey Williams
Nyle Politz
David White
Earlnisha Williams
Drew Martin
Gernine Mailhes

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



Correction

In the February *Bar Review* the wrong person was listed for the Military Affairs Committee. The correct chair is **Judge (Ret.) Andrew Gallagher, 865-1874.**

Welcome TO THE SBA

Andolyn Johnson
Dept of Justice USAO-WDLA

Stephanie M. Lott
Second Circuit Court of Appeal

BAR BRIEFS

Judge Curtis A. Calloway, of Baton Rouge, has been appointed supernumerary judge pro tem for the First Circuit Court of Appeal for the period of November 11, 2016, through April 30, 2017, subject to the completion of any unfinished business. Many readers will recall that Judge Calloway previously served on the Second Circuit Court of Appeal as a pro tem judge from August 2015 through February 2016, in the seat vacated when James E. Stewart Sr. was elected District Attorney. The Supreme Court obviously values Judge Calloway's willingness to come out of retirement and continue serving the judicial branch. Judge Calloway is a veteran of the Marine Corps (with Purple Heart), and sat on the 19th JDC from 1992 through 2008, presiding as its chief judge from 1998 until his retirement.

On January 31 the SBA Military Affairs committee, led by Chairman Judge Andrew Gallagher, met for breakfast at the home of Ted and Barbara Cox to discuss plans for the 2017 Veterans Program. This year our Veterans Program will be held on Wednesday, November 8.



Rebecca Edwards, James Graves, Judge Bill Kelly, Judge Andrew Gallagher, James Campbell, Kyle McCotter, Charles Grubb, Barbara Cox, Ted Cox and Penny Nowell

N.B.

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



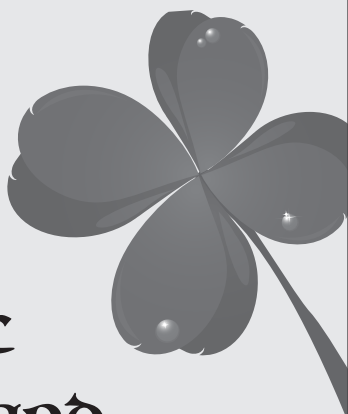
From time to time, in addition to my Legal Hist article, I would like to share an example of first-rate judicial writing that has captured my attention.

Today's words come from U.S. Supreme Court nominee Neil Gorsuch, and include the following:

"Can you win damages in a defamation suit for being called a member of the Aryan Brotherhood prison gang on cable television when, as it happens, you have merely conspired with the Brotherhood in a criminal enterprise?" Judge Gorsuch wrote. "The answer is no. While the statement may cause you a world of trouble, while it may not be precisely true, it is substantially true. And that is enough to call an end to this litigation as a matter of law."

Judge Gorsuch's writing is courteous, direct, amusing and makes the point. It is milder than the words our own Judge Ben C. Dawkins Jr. used in dismissing a repetitive and frivolous suit when he wrote: "Any lawyer with \$15 [the federal court filing fee in those days], a typewriter and a piece of paper can file a lawsuit and this unworthy complaint is now dismissed."

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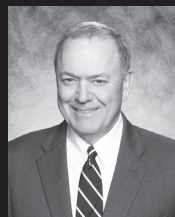
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Caddo Magnet takes 2017 High School Mock Trial Region 1 Title

by: Valerie DeLatte - HSMT Region 1 Coordinator, SBA Young Lawyers' Section, vdelatte@la2nd.org

Last month, seven teams from local high schools competed for the title of 2017 Judge Richard N. Ware, IV, Memorial High School Mock Trial Region 1 Competition. The Shreveport Bar Association Young Lawyers' Section partners with the Louisiana State Bar Association to host the regional competition in North Louisiana. This year's event was also hosted by the U.S. District Court for the Western District of Louisiana. Amy Greenwald, Chief Deputy, and her staff were instrumental in providing student competitors a courtroom experience they will not soon forget. Schools competing included Caddo Magnet, which sent three teams, and West Monroe and Byrd High School, which sent two each.

This year's hypothetical trial problem focused on free speech in presidential races, destruction of school property, institutional corruption and unfair bias. Competitors, on teams consisting of three attorneys and three witnesses, represented either the defendant, Riviere Rapide School District, or plaintiff, Hayden Harrison, who was suspended from school after giving a speech which incited a riot. Harrison, who was running for president of the Oakley High School Student Council, highlighted faculty corruption and unfair profiling in his speech. When he was pulled off stage by security at the direction of the principal, the frenzied student body began to riot. Three teachers were injured, bleachers were broken, and Hayden was suspended from school for two weeks.

Volunteer attorneys scored competitors on opening statements, questioning witnesses, entering evidence, making objections and presenting closing arguments. After two morning rounds, three teams remained undefeated, and a tie-breaker round was held to determine who would advance to the Finals.

The final began with Judge Maurice Hicks, of the U.S. Western District of Louisiana, addressing a packed courtroom full of excited spectators. After an almost two-hour long battle, Caddo Magnet High School defeated West Monroe High School by a mere five points average differential. Both the first-place team and runner-up will compete in the State Competition, scheduled to take place at the 4th Judicial District Court in Monroe, Louisiana, on March 11, 2017.

Special thanks to the sponsors of this year's event:

Thomas, Soileau, Jackson, Baker & Cole, LLP; Blanchard, Walker, O'Quin & Roberts; The Law Offices of Trina Chu;

and Rhino Coffee.

We would also like to thank all our wonderful volunteers who dedicated their time and helped to make this event a huge success: Judge Maurice Hicks, Judge Jeff Cox, Judge Karelia Stewart, Tom Arceneaux, John Bokenfohr, Thomas Pressly, Joe Woodley, Danielle Brown, Luke Whetstone, Jake Bailey, Paul Gillespie, Claude-Michael Comeau, Kyle Moore, Joe and Theresa Lingenfelter, Felicia Hamilton, Megan Davenport, Senae D. Hall, Marcus and Jabrina Edwards, Anna Brown Priestley, Trina Chu, Kevin McCrary, Robin Jones, Neely Morin, Paul Manco, Verity Bell, Drew Burnham and Matthew Rich.

CADDO COURTHOUSE PRINTS AND NOTE CARDS AVAILABLE FOR PURCHASE

The Shreveport Bar Association has a limited number of prints of a sketch done of the Caddo Parish Courthouse approximately 35 years ago, along with note cards and envelopes.

12X18 PRINTS

\$15.00

NOTE CARD SET

25 note cards with envelopes

\$20.00

COMBO

one print and one note card set

\$30.00.

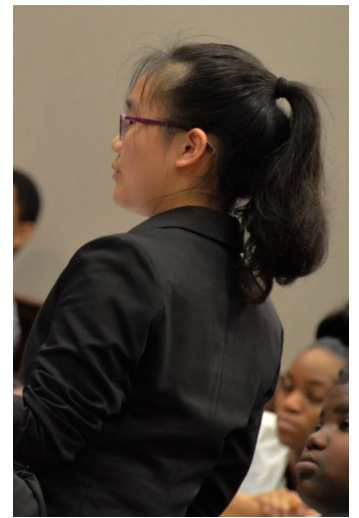


*Caddo Parish Courthouse
Shreveport, LA 71101*

If you are interested in purchasing a print and/or note cards, please contact the SBA Office at 222-3643



Attorneys from Caddo Magnet and West Monroe with Judge Maurice Hicks.



Shubhneet Warar, Caddo Magnet High School, voted "Best Attorney" at the competition, gives his closing argument in the final round



Competitors from Byrd High School pose for a photo after the morning rounds.



Dalia El-Giar, West Monroe High School, voted "Best Witness" at the competition, testifies during direct examination.



Krewe of Justinian

Parade Highlights







Queen's Tea



Give For Good



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Shreveport Bar Foundation's
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www.giveforgoodnla.com

on May 2nd your donation
will support victims of
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SAVE THE DATE

SBA Members, Spouses, Significant Other,
Children and Grandchildren
are invited to

Shreveport Bar Association's Sunday Fun Day

Presented by the
Shreveport-Bossier Bar Auxiliary

Sunday, May 7 from 4:00 to 7:00 p.m.
at East Ridge Country Club

Event Sponsored by



The 2017 theme provides the opportunity to explore the many ways that the Fourteenth Amendment has reshaped American law and society. Through its Citizenship, Due Process and Equal Protection clauses, this transformative amendment advanced the rights of all Americans. It also played a pivotal role in extending the reach of the Bill of Rights to the states. Ratified during Reconstruction a century and a half ago, the Fourteenth Amendment serves as the cornerstone of landmark civil rights legislation, the foundation for numerous federal court decisions protecting fundamental rights, and a source of inspiration for all those who advocate for equal justice under law.

This year's SBA Law Week Co-Chairs Sherron Douglas and Drew Burnham and their committee are working on several Law Week activities. If you are willing to serve on the committee, or help out with the events, please email Sherron at sherron.douglas@shreveportla.gov or Drew at drew.burnham@cookyancey.com.

Friday, April 28 – Presentation to Constitutional Law class at LSU Shreveport;

Monday, May 1 – Young Lawyers go to Walnut Hill Elementary/Middle School and Forest Hill Elementary School to talk about the legal system;

Tuesday, May 2 – Give For Good Campaign at Downtown Rhino Coffee from 8:00 a.m.—4:00 p.m. and Ask A Lawyer Event at the Shreveport Bar Center from 5:30 p.m.—7:30 p.m.;

Wednesday, May 3 – Shreveport Bar Association Law Day luncheon at the Petroleum Club of Shreveport with guest speaker, Caddo District Attorney James E. Stewart;

Thursday, May 5 – A program for area high school students will take place at the Robinson Film Center where students will watch a film centered around the Fourteenth Amendment, participate in a workshop on the interpretation of the equal protection clause, hear from and engage with a panel of area judges and attorneys about pathways into and careers in law, and draft as teams their own proposed constitutional amendments;

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

Sunday, May 7 - SBA Sunday Fun Day Crawfish Boil at East Ridge Country Club from 4 p.m. - 7 p.m.

ELIZABETH W. MIDDLETON MEDIATION SERVICES

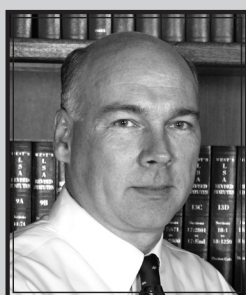
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Mark Your Calendar



MARCH 15

May Bar Review Deadline
For Ad Submission

MARCH 22

SBA Member Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
Speaker: Darrel J. Papillion
LSBA President

APRIL 15

May Bar Review Deadline
For Ad Submission

APRIL 24

Annual SBA Golf Tournament
12:30 p.m. at East Ridge Country Club

MAY 2

Give For Good Campaign
Rhino Coffee Downtown

MAY 3

Law Day Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
Speaker: James E. Stewart
Caddo Parish District Attorney

MAY 5

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

MAY 7

SBA Sunday Fun Day
4-7 p.m. at East Ridge Country Club



Monroe Inn of Court Update

by Hal Odom Jr., rhodom@la2nd.org

The Fred Fudickar Jr. AIC (Monroe) held its first meeting of the new year on February 13, 2017. A team headed by Thomas Hayes III, of Hayes Harkey Smith & Cascio, and David Verlander III, of McLeod Verlander, presented “Ethical Quandaries in Courtroom Situations,” a set of videotaped skits depicting scenarios in the normal course of a case from initial conference with the client through post-trial motions. Each video was followed by discussion moderated by a team member, and posed ethical questions ranging from the obvious to the more subtle.

The first scenario featured an initial interview with the client, a building contractor who has just been sued by a supplier on open account. The client candidly admitted that all allegations in the petition were true; in response to somewhat leading questions by one of the lawyers, he also admitted that all the materials he received were exactly as requested, on time and not defective in any way, thus negating most avenues of defense. The client felt that all he needed was “more time” to pay the invoices; when one of the attorneys suggested that they could “stall” long enough to answer the petition, the client insisted he probably needed eight or nine months. More complications followed.

Discussion was led by team member Shereba Diaz. “Is it ethical to file a general denial, knowing that every allegation in the petition was true?” Members instantly recognized that this entailed RPC 3.1, “Meritorious claims and contentions,” and La. C. C. P. art. 863 B(4), factual assertions warranted by the evidence, but no one had ever heard of an ethical complaint arising from a general denial. The notion of tactical delay (some called it “stalling”) entailed RPC 3.2, “Expediting litigation,” and Art. 863 B(1), improper purpose such as delay, and most members agreed that violating these principles would place the lawyer on much shakier ground.

Other scenarios, covering voir dire, conversations with jurors and communications with the trial judge, were followed by discussion led by team members Leah Sumrall (Crigler LeBeau & Sumrall), Kerry Cahill (Escamilla Poneck) and David Verlander. Audience participation was very lively, sometimes digressing into “war stories,” but always ranged back to core concepts of the RPC.

The meeting was held at The Lotus Club, on the ninth floor of Monroe’s historic Vantage-ONB Building. The 23 members in attendance received Ethics CLE. Before the presentation, a social hour (actually 30 minutes!) was held with an open

bar and heavy hors d’œuvres. At the top of the meeting, Tom thanked his associate Brandon Creekbaum for his technical assistance in exporting the videos from laptop to the big TV screen. The Inn’s next meeting will be shortly after the start of daylight saving time, March 13.

Photos by Hal Odom Jr.



Kerry Cahill, Leah Sumrall and Shereba Diaz led the discussion and handed out copies of the applicable portions of the Rules of Professional Conduct



Tom Hayes pondered what to do about a prospective juror who’s dishonest but would favor your side, while David Verlander riffed through the RPC



Audience members were tickled at answers that might come out at voir dire



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Legal Hist

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

FREEDOM OF THE PRESS THE TRIAL OF PETER ZENGER

The name most commonly associated with Freedom of the Press in American legal and political history is that of John Peter Zenger (1697–1746), an illiterate German immigrant who printed a weekly newspaper in New York, who was charged with libel and acquitted. Zenger was the eldest of three children who immigrated to the New World. Hard times began when his father died at sea. At the age of 13 he was apprenticed to William Bradford, a well-known and established printer in New York. Following his eight years' apprenticeship he married and moved to Maryland, where his wife died. He soon returned to New York and, at the age of 28, he formed a partnership with his ex-master, Mr. Bradford, and shortly afterward he went into business for himself with limited success, publishing mostly German and Dutch poetry and religious sermons. In 1730 he printed the first arithmetic book used in the New York colony. He later became the publisher and editor of the *New York Weekly Journal*, an anti-administration paper which was opposed to Bradford's *New York Gazette*, the organ of the political establishment. Most of the writing in the *Journal* was done by former Chief Justice Lewis Morris, who wrote critically of Governor Cosby and his policies, including poems making fun of him and his administration.



In the law as it existed in the 1730s, the publisher was responsible for what appeared in the writing. Governor Cosby, arguing that government depended on the constant, unflagging loyalty of its subjects, ordered the *Journal* suppressed and earlier editions burned. Zenger, who never became fluent in English and was somewhat on the sideline while political use was made of his paper, found himself arrested, a high bail set and was to remain in prison for nearly 10 months until his trial was concluded. During this time his paper was published by his second wife and mother of his five daughters. Meanwhile the political infighting continued. Several lawyers, led by the well-established James Alexander, enrolled as his counsel but Governor Cosby was successful in having all of the Zenger attorneys recused on grounds of personal privilege – a right never claimed before or after by any governor of this country.

At this point an independent and successful Philadelphia lawyer, by the name of Andrew Hamilton, entered the picture on Zenger's side. He was a former member of the Pennsylvania Assembly and had served as Attorney General of that state. He owned 150 acres in what is now the very heart of Philadelphia and donated the site on which Independence Hall is located today. He had every reason to be independent, outspoken and self-confident, and indeed he was.

Hamilton admitted that Zenger was the author of the articles, which under the common law was equivalent to saying that he was guilty as charged, but he went beyond that and pleaded for the right

of a jury to inquire into the truth or falsity of the libel, arguing that truth is the best defense against the charge. His opening statement, memorialized and worthy of note, was:

The question before the Court and you Gentlemen of the jury, is not of small nor private Concern, it is not the Cause of the poor Printer, nor of New York alone which you are now trying. No! It may in its consequence affect every Freeman that lives under a British Government on the mainland of America. It is the best Cause. It is the Cause of Liberty. And I make no Doubt but your upright conduct this day will entitle you to the Love and esteem of your Fellow-Citizens, but every Man who prefers Freedom to a life of slavery will bless and

honor you as Men who have baffled the Attempt of Tyranny, and by an impartial and uncorrupt verdict, have laid a noble foundation for security to ourselves, our posterity, and our Neighbors, that to which Nature and the Laws of our Country have given us a Right – the Liberty both of exposing opposing arbitrary Power by speaking and writing Truth.

This eloquent and dramatic presentation to the jury contradicted established legal precedent. Hamilton argued that the truth of the charges was critical in deciding whether or not what had been said was unlawful. Customarily, judges charged the jury that the law was that harsh and overly critical attacks on the government were seditious even if true, but Hamilton carried the day and Zenger was freed.

His paper was published by his wife all during his imprisonment and continued following his death in 1746. In prison he served as a martyr for the Morris forces in New York who began to champion freedom of the press. New York would later enact a new libel law admitting truth as a defense and this soon became part of the common law applied in all of the colonies.

Following the trial Zenger began to receive a good deal of patronage printing, including the public printing for New York and New Jersey, but remained a rather obscure personality, not realizing that the trial that bore his name would become synonymous with freedom of the press.

In a way the Zenger case was an isolated example of early political infighting in one of the colonies. In another it foreshadowed the future developments of a specific freedom in America and the provision of the jury, ignoring the strictures of English law, to determine where the truth lay.

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

The “Y” and wherefore. A solicitation letter from a mediation firm lamented, “Unfortunately, the designation ‘mediator’ does not *guaranty* a good result.” Alas, it is also no *guarantee* of correct spelling! The occasion is ripe to note the fine distinction between *guarantee* and its rare partner, *guaranty*.

Guarantee (verb). This is the standard verb meaning to *promise to perform somebody else’s obligation*. A surety is said “to *guarantee* the performance of such obligations,” La. C.C. art. 3037; a person “who *guarantees* a signature of an indorser” makes certain promises, La. R.S. 10:8-306. In a broader sense, it also means *promise to provide*, as in comprehensive care should “*guarantee* a fair appeals process when health plans deny care,” La. R.S. 22:971. The author of the letter meant that merely calling onself a mediator does not *guarantee* a good result.

Guarantee (noun). This is the standard noun for the *promise to perform or provide*. There is the “customary manufacturer’s warranty, or *guarantee*,” La. R.S. 22:363; the “*guarantee* and warranty period of all construction contracts” starts on the date of substantial completion, La. R.S. 9:2774. If you spell it this way, you have my *guarantee* that it will not be wrong.

Guaranty (noun). This is a specialized term, in banking and finance, for the *promise to answer for the debt of another*. There is the Louisiana Insurance *Guaranty* Association (“LIGA”) and “any plan, pool, association, or *guaranty fund* or insolvency fund,” La. R.S. 40:1231.4 A(1)(c). The section of the UCC governing the effect of *guaranteeing* a signature later states, “An issuer may not require a special *guaranty* of signature, a *guaranty* of indorsement, or a *guaranty* of instruction,” R.S. 10:8-306 (g). This is financial; never refer to a used car *guaranty*.

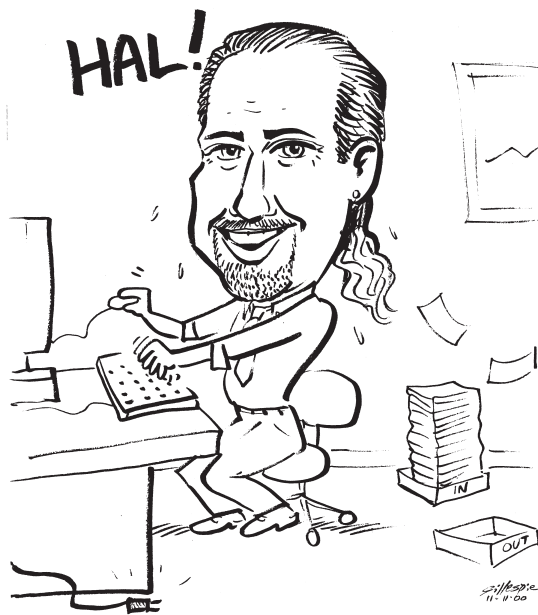
Guaranty (verb). The dictionary permits this, but only as an obsolete alternative. Don’t use it.

“Y” not more? A few similar word pairs are much easier to analyze.

Warranty. This is the promise that the thing sold has the qualities the seller said it has, or that the seller actually has valid title to convey. La. C.C. arts. 2520, 2500.

Warranty. This is a rare word meaning the *person to whom a warranty is extended*. According to Westlaw, it has not appeared in a Louisiana opinion since Judge William (King Willie) Norris’s opinion in *James Harvey Ramsey Estate v. Pace*, 467 So. 2d 1202 (La. App. 2 Cir. 1985), and it does not need to be revived.

Trustee. This is a person “to whom title to the trust property is transferred to be administered by him as a fiduciary,” La. R.S. 9:1781; at common law, the *legal owner* of property subject to trust. It



truthful.

The implication of it all. I recently received a research tip from Scribes (The American Society of Legal Writers), of which I am a proud member, entitled *Presumption Against Repeals by Implication*: “All or virtually all jurisdictions recognize a presumption against construing later statutes to repeal earlier statutes by implication. E.g., *National Ass’n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 662-63 (2007); *State v. Piazza*, 596 So. 2d 817, 819 (La. 1992) [.]” The Louisiana citation piqued my interest, as the author of the research tip, Ann Taylor Schwing, is based in California, and Scribes is based in Waco, Texas.

My interest was also piqued because the rule seemed to contradict a plain statement at the beginning of the Civil Code: “A repeal may be express or implied. * * * It is implied when the new law contains provisions that are contrary to, or irreconcilable with, those of the former law.” La. C.C. art. 8. Could this be a situation where our cherished Civil Code benevolently overrules a commonlaw principle?

Not so fast, trusted reader. I have searched and searched, but have yet to locate a case that actually found a repeal by implication. Recent cases have rejected this result, without so much as mentioning Art. 8. *Church Mutual Ins. Co. v. Dardar*, 2013-2351 (La. 5/7/14), 145 So. 3d 271; *Silver Dollar Liquor Inc. v. Red River Parish Police Jury*, 2010-2776 (La. 9/7/11), 74 So. 3d 641; cf. *City of New Orleans v. La. Assessors’ Ret. & Relief Fund*, 2005-2548 (La. 10/1/07), 986 So. 2d 1 (citing Art. 8 but finding no implied repeal). A bankruptcy judge recently called such a repeal “a rare bird.” *In re Robinson*, 554 B.R. 800 (W.D. La. 2016). Just because the provision is in the Civil Code doesn’t mean there is a single instance of it out there.

However, if any reader has an example of a valid repeal by implication, please let me know. I will gladly compare it with the mountain of contrary jurisprudence, and give all credit to the contributor!

February Luncheon Highlights



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SBA LUNCHEON MEETING — MARCH 22

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

\$20.00 for SBA members includes lunch with advance reservation

\$25.00 for Late Reservations (after 5:00 pm the Monday prior to the luncheon)



THE CURRENT STATE OF THE LOUISIANA STATE BAR ASSOCIATION

When: Wednesday, March 22 from 12:00 Noon to 1:00 p.m.

Where: Petroleum Club (15th floor)

Featuring: Darrel J. Papillion, President
Louisiana State Bar Association

Mr. Darrel Papillion is the 2016-2017 President of the Louisiana State Bar Association. He is a partner at Walters, Papillion, Thomas, Cullens, LLC in Baton Rouge, where he handles complicated wrongful death and serious personal injury cases. He has been an adjunct law professor at the Paul M. Hebert Law Center, Louisiana State University, for over 15 years. He served as the 2014 president of the Baton Rouge Bar Association and is a past president of the Rotary Club of Baton Rouge and the Wex Malone Inn of Court. He is a graduate of Louisiana State University (B.A., 1990) and the Paul M. Hebert Law Center, Louisiana State University (J.D., 1994). He served as a law clerk to Justice Catherine D. Kimball, former Chief Justice of the Louisiana Supreme Court, in 1994-1995.

YES, I'M
ATTENDING

You may confirm your reservation(s) by email, telephone, or fax.
Email: bgreen@shreveportbar.com Phone: 222-3643 Fax: 222-9272

I plan to attend the March luncheon. Attorney: _____

Please remember to call and cancel if you're unable to attend. The SBA pays for each reservation made. Thank You!