# THE BAR REVIEW

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## EVENTS AT A GLANCE

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| 6/28 | SBA Membership Luncheon – 12:00 p.m. - Petroleum Club |
| 9/27 | SBA Membership Luncheon – 12:00 p.m. - Petroleum Club |
| 10/5&6 | Recent Developments by the Judiciary Seminar |
| 10/25 | SBA Membership Luncheon – 12:00 p.m. - Petroleum Club |
| 11/2 | SBA Memorial & Recognition Ceremony |

# From The President

*by Rebecca Edwards, President, redwards@caddoda.com*

A few weeks ago, SBA treasurer Jason Nichols received an email, purportedly from me, notifying him that an outstanding payment had to be made before the close of business that day and asking whether he could take care of it. Though very suspicious, he asked for more information. The next morning, he received this response:

> Hi Jason, just seeing your message. I thought this was taken care of already. Please have this attended to immediately. Attached is the invoice needed to be paid, a wire transfer is more preferable … Can the recipient get credit for this today? Keep me posted once it is done.

Because he was concerned about the attachment containing a virus, Jason made the wise decision not to open it. Both messages were signed "Rebecca" and appeared to have been sent from the email address I used while working at the Second Circuit Court of Appeal. That address had been disabled for over a year.

While email scams have become commonplace, this one was shocking to us both. The scammer made a connection between us and tailored the email to fit that connection. One could easily conclude that an organization's president would ask the treasurer to write a check to pay a bill. Aside from the fact that Jason knew an email from me asking for him to pay something would be unusual, the request for a wire transfer was a big red flag.

Every day we are bombarded with email, legitimate ones and junk. Mostly junk. And every day the scammers devise new schemes to gain access to our personal information and ultimately to steal our money and identities. Because of the persistent threat, it is a good idea to become familiar with the types of scams being used and steps we can take to avoid them.

Common scams include phishing emails, Trojan horse emails, virus-generated emails, and the notorious "Nigerian" or "419" scams that tempt with the promise of a big payout. I am most familiar with phishing emails. These are designed to appear as legitimate communications, such as from a bank or credit card issuer. The email may warn that there is some problem with your account and ask you to verify your identity by providing your personal information, account number or password. After using PayPal recently for a couple of online transactions, I received a number of phishing emails purporting to be from PayPal. The first asked whether I wanted to cancel an eBay purchase, which I had not made. Actually, I've never purchased anything on eBay. I, perhaps unwisely, clicked yes to see what would happen. A bogus PayPal sign-in page came up. This would have been an easy way for scammers to gain access to my PayPal account and attached credit card information, if I had taken the bait. I have also received emails telling me that "Kathleen" and "Denny" have each sent me $3,182 with PayPal. Thanks guys!

Becoming familiar with the types of scam emails being used is one way to avoid falling for them, especially as scammers devise newer and more targeted approaches. Other recommendations for protecting yourself are to use the spam-filtering features associated with your email, as well as to install and update antivirus software. You should be suspicious of any unsolicited email and attachments to such emails. Do not forward chain emails to everyone on your contact list as the emails may contain a virus. No matter what the email says, the universe will not reward you for forwarding the chain email to ***continued page 2***

your contacts within the specified time. For more information on email scams and how to avoid them, check out www.us-cert.gov and www.consumer.ftc.gov/scam-alerts.

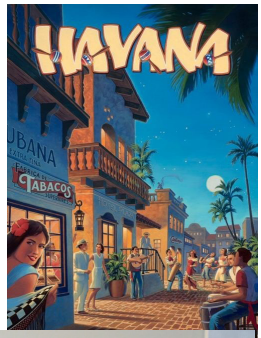
So that's my "PSA" for May. We have one membership luncheon on June 28 before the summer break. It is shaping up to be something special, but plans have not been confirmed as of my writing this message. So, be on the lookout for more information via the SBA Communiqué.

Finally, thank you to all who participated in the SBA golf tournament and the Law Week activities. Active participation by our members is vital to maintaining a strong SBA and a spirit of professionalism and collegiality in our legal community.

# Captain Speaks

*by: Lawrence W. Pettiette Jr., Captain*
*lpettiette@padwbc.com*

It is time to welcome back Cuba. Vintage 1950s automobiles, beautiful beaches, palm trees, Panama hats, white linen suits, and Cuban cigars, as well as the glamour of such hot spots as the Tropicana Club, conjure up images of Cuba and Havana, a land frozen in time since the U.S. embargo. A large group of talented people have already booked venues and auditioned bands, working on decorations for a coronation and Grand Bal that will, in and of themselves, be worth the price of membership. This is the year to join the Krewe of Justinian or to renew your membership. Please get involved in the only legal Krewe in the United States.




## Women's Section

*by Jabrina Edwards,*
*jabrinanclayton@gmail.com*

Our April game night was an absolute blast! Thank you to those who came out and enjoyed a fun ladies' night with the Women's Section. We are now looking forward to another fun social activity this month, but this time it will include an opportunity to give to people in need in our community.

At the end of last year, the Women's Section gave a monetary donation to Hub Urban Ministries, and we are happy to continue a relationship with this awesome organization this year. The Hub has two primary ministries through which they serve the impoverished and victims of human trafficking: The Lovewell Center and Purchased: Not For Sale. Through these ministries, the Hub empowers its participants by giving them hope, friendship, community, and skills they need to become self-sufficient through rescue, resources and recovery. After communicating with the Hub, we have decided to have a sock and underwear drive for its program participants, as these items are a constant need for them.

On May 11, 2017, at 5:30 p.m., please come out and join us for some brew at Red River Brewing at 1200 Marshall Street! We ask that everyone who plans on attending our May social activity at Red River Brewing purchase and bring men's and women's socks and/or underwear to Red River! Red River has agreed to give a free 5-ounce pour to every woman who brings a donation. This social with a purpose will be a great one!

We hope to see you on May 11!

# *Welcome* TO THE SBA

**Daniel Brauner**
***Acadiana Legal Services***

**Justin P. Smith**
***Attorney at Law***

**Tanner C. Woods**
***Flowers and Long LLP***

# BAR BRIEFS

**CHIEF JUDGE CARL E. STEWART INDUCTED INTO THE HONOURABLE SOCIETY OF THE MIDDLE TEMPLE DURING A FORMAL "BENCH CALL" CEREMONY HELD IN LONDON, ENGLAND, ON APRIL 6, 2017.**

*Pictured L to R: Bench Callees: Clive Anderson (Barrister/ Broadcast Media Personality); Bob Neill MP (Member of Parliament); The Honorable Mr. Justice Nicholas Francis (Harmsworth Scholar and High Court Bench Family Division); David Mason (QC Criminal Law); Carl E. Stewart (Chief Judge U. S. Court of Appeals Fifth Judicial Circuit and President of the American Inns of Court, USA); Sir Vernon Ellis (Fellow of the Royal College of Music)*

The Honorable Carl E. Stewart, Chief Judge of the U.S. Fifth Circuit Court of Appeals, and President of the American Inns of Court, was recently elected an Honorary Master of the Bench of the Honourable Society of the Middle Temple in London, England. Following his election by the Middle Temple Parliament, he was "Called to the Bench" in a formal ceremony in the historic Middle Temple Hall on April 6, 2017.

The Middle Temple dates back to 1501 and is one of four Inns of Court in London, along with the Inner Temple, Lincoln's Inn and Gray's Inn. The Masters of the Bench are responsible for governance of the Inn. The Parliament elects Honorary Masters of the Bench who are distinguished individuals from around the world have excelled in their respective professions. Currently, the Inn has 120 Honorary Benchers.

# Spotlight on Professionalism

*by: Pam Mitchell, Pam_Mitchell@lawd.uscourts.gov*

## BETTY MARAK – THE FACE OF PROFESSIONALISM

When the Professionalism Committee met at the beginning of this year, we discussed local attorneys we thought embodied what professionalism means, and many names came to mind. I immediately thought of my friend and colleague in the federal building, Betty Marak, who is Assistant Federal Public Defender for the Western District of Louisiana. Anyone who comes in contact with Betty, whether a judge, lawyer or client, knows that Betty is a person of high integrity, who is knowledgeable in the area of criminal law and who is always an advocate for her clients.

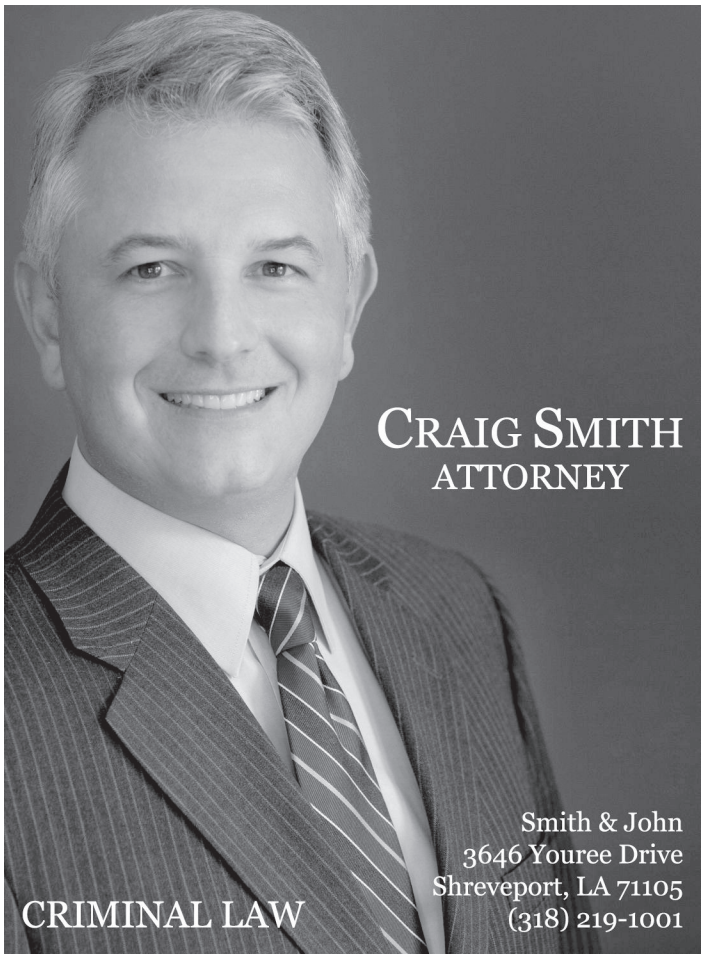
Betty was born and raised in Lafayette, graduating from Acadiana High School in 1980. Betty went on to LSU where she graduated in 1984 with a B. S. degree in criminal justice and in 1987 with a law degree. She began her legal career working for a firm in Alexandria but quickly discovered that "firm life was not for me." She then moved to Shreveport where she opened her own office, sharing space with other attorneys in a building off Shreveport-Barksdale Highway. Betty's career in the criminal law area began in 1991 when she was hired by the Caddo Parish Public Defender's Office. She worked there for three years and then ventured back on her own again. She later went back to work part-time for the Public Defender's Office at the Caddo Parish Juvenile Court while maintaining her own office. In 1995, she was hired as the research and writing attorney for the Federal Public Defender's Office, where she has been ever since. In 2002, when attorney Dan Burt left his position as Assistant Federal Public Defender, Betty was promoted to his position, and she continues to represent criminal defendants who come through federal court.

The Louisiana State Bar Association defines professionalism as "the knowledge and skill of the law faithfully employed in the service of client and public good." Betty and others like her who defend criminal defendants truly do serve the needs of their clients by making sure these clients know what to expect when moving through the judicial system. Betty and her office "make every effort to prepare our clients for everything that is going to happen to them. We visit with them, repeatedly, in the jail or in our office. We answer all their questions. We review discovery with them. We explain the Sentencing Guidelines. We explain their options, plea or trial, and if they are going to trial, we explain their right to testify, or not to testify."

Another common theme that emerges when you read articles on professionalism is "advocacy." Merriam-Webster's dictionary defines advocacy as "the act or process of supporting a cause or proposal." Betty and her office become advocates for their clients in ways that go beyond the courtroom. In essence, they become like social workers who try to meet the needs of the individual, especially when the clients are out on probation or are released from prison. Such help could come in the form of continuing the client's mental health treatment, providing a meal or providing clothing when a client decides to go to trial. Many times this extra help for clients is paid for by the staff. Betty sees "our job as treating every single client as an individual, meeting them where they are, and trying to figure out how they got here (into the system) and what they need to stay out of the system once they have paid their debt to society."

Having a good mentor to guide you in the ways of professionalism and in your career is always advantageous. Betty has been lucky to work with her mentor, Rebecca Hudsmith, Federal Public Defender for the Western District of Louisiana. Betty states that Rebecca "gave me the opportunity to have a job I love, and to work with the most amazing people. She is always, always available to take my call and answer any questions I have. If I have an issue, she is the first person I reach out to. She has an incredible legal mind and is passionate about what we do." Betty too has passed along this mentoring spirit to high school students by teaching a Legal Studies class and by coaching a Mock Trial team, all at Loyola College Prep.

Just as Betty has received good advice from her mentor and others along the way, she offers this advice to new attorneys on how to conduct themselves on a professional level: "Always remember your word is your bond. If you tell people something, it must be the truth. They need to know you have integrity. As my father always said, 'A half-truth is a whole lie.'" Betty lives this advice given by her father, and it has served her well. We appreciate the service and professionalism that Betty has brought to her clients and the local criminal justice system.



# Second Circuit Highlights

*by Hal Odom Jr., rhodom@la2nd.org*

**The stinging truth.** Does anybody remember West Nile virus? It is a mosquito-borne fever that flared up in 2013, with a mild outbreak of cases in Ouachita Parish. An infected mosquito bit Michael Allen in August 2013; he soon started feeling fever and fatigue, sought medical treatment, and eventually suffered memory loss which made him unable to work. Despite the memory loss, he keenly recalled being bitten by a mosquito while sitting in an enclosed break room at his job as an assistant machine operator at a Graphic Packaging International ("GPI") mill in West Monroe, on August 9, 2013. Alleging that the mosquito bite and resultant disability were work-related, he filed a workers' comp claim against GPI.

After a long trial, the WCJ agreed, finding that Allen proved a work-related injury and was permanently, totally disabled. It awarded indemnity, medical and rehabilitation benefits, and assessed a penalty and attorney fee. GPI appealed.

In his final decision for the court, Judge Jay Caraway wrote an 18-page opinion that affirmed the finding of a work-related injury. *Allen v. Graphic Packaging Int'l*, 51,080 (La. App. 2 Cir. 1/11/17), 211 So. 3d 1219. The interesting part of the opinion is the detailed and wide-ranging evidence regarding the spread of West Nile. The director of the Ouachita Parish Mosquito Abatement District described how they set traps and analyzed mosquitos, confirming that they found a high concentration of infected specimens near GPI and near Allen's house. She also testified that mosquito bites are much more common in the early morning and early evening, and not typical during Allen's midday break. An internist from New Orleans, qualified as an expert in epidemiology, also testified that the Southern House Mosquito, the normal West Nile carrier, is not active in the middle of the day. He stated that merely being near a mosquito trap was not significant; the only way to prove that a particular mosquito transmitted the disease was to catch that particular mosquito and test it.

In addition to the expert evidence, there was the usual swarm of conflicting lay testimony: how many mosquitos employees recalled seeing around GPI's facility, and how many were inside the break room; whether a coworker who also contracted West Nile did so at work; and accounts that Allen was mowing his girlfriend's yard and eating at a patio restaurant a few evenings before he got sick. Ultimately, the WCJ opted to credit the claimant's recollection and the circumstantial evidence of the mosquito traps, an analysis that the Second Circuit could not declare plainly wrong.

However, the court found insufficient evidence to support the award of permanent, total disability, La. R.S. 23:1221 (2), as a neuropsychological exam (recommended by the treating physician) and a rehab assessment (required by R.S. 23:1226) had never been performed. The court amended the judgment to temporary, total disability pending test results, R.S. 23:1221 (1). Finally, the court found GPI had reasonably controverted the claim, under R.S. 23:1201 F, and thus reversed the penalty and attorney fee.

The case is instructive. Even though mosquitos may be everywhere, at home, at play, at work, an employee who contracts West Nile may have a viable comp claim if he or she can convince the WCJ (and the appellate court) that an infected mosquito bit him on the job.

**A pain in the back.** Eleven-year-old Da'Veion was a passenger in his godmother's SUV when a following driver tried to pass, "clipped" the bumper of the SUV and caused it to veer off the road, turn over several times, and finally land in a ditch. The grandmother, who was not wearing a seatbelt, was ejected and crushed by the vehicle; she was dead at the scene. Another child in the SUV was seriously injured. Remarkably, Da'Veion suffered fairly minor physical injuries, but significant psychological harm from being spun around in a somersaulting SUV, and from seeing his godmother hurled from (and squashed by) the vehicle. His mother sued the following driver and its insurer, ANPAC. After a lengthy trial, the jury found the other driver 100% at fault and awarded $2,500 for past medical expenses, $5,500 for future medical expenses, $35,000 mental pain and anguish and physical pain and suffering, and $3,500 for loss of enjoyment of life (total, $46,500).

The plaintiff moved for JNOV, additur or new trial. ANPAC consented to a modest additur, but the district court ultimately granted JNOV raising the awards to $22,585.97 for past medicals, $18,705.60 for future medicals, $45,000 for generals, and $10,000 for loss of enjoyment of life (total, $96,291.57). ANPAC appealed.

The Second Circuit affirmed, in a 30-page opinion by Judge Williams, *Terry v. Simmons*, 51,200 (La. App. 2 Cir. 2/15/17), __ So. 3d __. The opinion expansively recited the law of JNOV, La. C. C. P. art. 1811, and had no difficulty finding that the trial judge properly applied it as to general damages; there was also a brief mention of bystander damages, La. C.C. art. 2315.6. More complicated analysis, however, was needed to affirm the district court's decision to accept the testimony of Da'Veion's treating chiropractor, Dr. Holt, whose license was once suspended and whose lavish projections for months and years of manipulations have often been rebuffed, as in *Pratt v. Culpepper*, 49,627 (La. App. 2 Cir. 2/27/15), 162 So. 3d 616, and *Ellis v. Brown*, 50,690 (La. App. 2 Cir. 5/18/16), 196 So. 3d 665. The district court cleverly reasoned that *Pratt* involved a low-impact collision, while Da'Veion's high-speed, violent accident supported accepting the chiropractor's testimony. The Second Circuit found no abuse of discretion. Chiropractors may be controversial, but on occasion they are a valuable part of a plaintiff's case.

**Speaking of bystanders**. Six-year-old Anna got sick after attending an end-of-school-year party in Rayville. Her parents took her to St. Francis, in Monroe, where she stayed for four days and was diagnosed with a strain of E. coli. Her condition worsened, and she was transferred to the PICU at LSU Health Services Center, in Shreveport. Doctors there diagnosed renal failure, low platelet count and possible hemolytic uremic syndrome. The pediatric cardiologist, Dr. Jackson, recommended a pericardiocentesis to drain fluid from around her heart. It was a good plan, but something went wrong during the procedure. A Dr. Bhandare literally ran out

of PICU and into the waiting room, screaming to Anna's parents that her heart had been punctured and they needed to go see her. Anna's dad went in first, but immediately turned around and told her mom, "Don't come inside." The mother didn't see Anna until she was rolled out of PICU, on oxygen. The surgical repair was successful, but the experience with the PICU, the running doctor, the "chaos" in the OR, the helpless little girl hooked to oxygen, all were traumatic for the parents. They filed a malpractice complaint; the medical review panel unanimously found breaches of the standard of care.

This lawsuit followed, culminating in a five-day trial and a judgment of $370,000 against LSU, including $25,000 apiece for Anna's parents for bystander damages. The state appealed, contesting only these $25,000 awards; the Second Circuit affirmed, *Cooper v. Patra*, 51,182 (La. App. 2 Cir. 2/15/17), __ So. 3d __.

The opinion, by Chief Judge Brown, laid out the principles of bystander damages, La. C.C. art. 2315.6. The fourth factor is "emotional distress that is severe, debilitating, and foreseeable." *Trahan v. McManus*, 97-1224 (La. 3/2/99), 728 So. 2d 1273. The opinion then provided a concise yet compelling account of the parents' experiences at LSU that day. It could serve as an outline for anyone trying to recover Art. 2315.6 damages. The court made a technical adjustment to the judgment to comply with La. R.S. 40:1237.1, essentially deferring payment of special damages until the specific services are performed.

**Standard of appellate review.** This should be easy, right? Questions of fact, manifest error; questions of law, de novo review? Then there is that gray area, where the prevailing judicial approach is for manifest error review. *Coleman v. Querbes Co. No. 1*, 51,159 (La. App. 2 Cir. 2/15/17), __ So. 3d __, was a complicated contractual dispute dating back to 1986, when the landowners (various entities connected with the Querbes family) contracted with a developer (U.L. Coleman III) to build One Bellemead Centre, off Youree Drive. A plethora of agreements, disagreements, letters and emails, and other events culminated in Coleman's July 2008 suit to enforce several agreements. The defendants responded with, among other things, exceptions of no cause of action. The matter proceeded to a three-day trial on the exceptions, at which three witnesses testified and some 180 documents were introduced. The district court sustained seven exceptions of no cause. With rulings also sustaining exceptions of no right and of prescription, this dismissed over 90% of the plaintiffs' claims.

The plaintiffs appealed, strongly urging that the exception of no cause presents only a question of law, the sufficiency of the petition, and that review should be strictly de novo. *Badeaux v. Southwest Computer Bureau Inc.*, 2005-0612 (La. 3/17/06), 929 So. 2d 1211. The defendants countered that when the parties voluntarily submit evidence to support the exception, the scope of the pleading is expanded and the factual finding is subject to manifest error review, *Jordan v. Sweeney*, 467 So. 2d 569 (La. App. 1 Cir. 1985).

The Second Circuit, in an opinion by Judge Moore, affirmed, citing the "well-settled exception whereby a court may consider evidence admitted without objection to enlarge the pleadings." *Maw Enters. LLC v. City of Marksville*, 2014-0090 (La. 9/3/14), 149 So. 3d 210. The plaintiffs began the marathon hearing by asking the court to listen to all the evidence, "one by one," and to read the "probably 150 exhibits"; only after three days of testimony did they suggest that the court should consider no evidence on the exception of no cause. The court of appeal found it "disingenuous" for the plaintiffs to contend the judge could not consider the "mountain of evidence introduced over three days' time." The court found no manifest error in the rulings on any of the exceptions of no cause.

One can only speculate whether a separate hearing, much earlier in the proceedings and without the fact-intensive questions of no right and prescription, would have been successful for the plaintiffs. What is clear, though, is that once evidence is admitted, the appellate court will view it through the lens of manifest error and only rarely find grounds to reverse.

# Richard King Memorial Shootout

The Sixth Annual Richard B. King Memorial Shootout was a great success. Four teams participated in the shootout that began after the SBA golf tournament concluded on April 24. The participating teams were Jim Colvin and Todd Benson; Walter Gerhardt and Brad Peace; Kyle Robinson and Zach Shadinger; and Jarred Franklin and Pete Lockwood, who were the winning team.

Trophies were presented to the victorious team. Congratulations Jarred and Pete on a job well done!

## Golf Tournament Winners:

**Overall Low gross was Deryl Medlin's team which included Phillip Medlin, Tyler Williams, and John Ponthie**

**1st Flight, 1st Place was Jimmy Mijalis' team which included Alexander Mijalis, Jimmy Granger and Judge Craig Marcotte**

**1st Flight, 2nd Place was Trey May's team which included David Ballard, Tommy Minter and Steve Hilmer**

**2nd Flight, 1st Place was Jim Colvin's team which included James Manning, George Tigner and Phillip Jordan**

**2nd Flight, 2nd Place was Jarred Franklin's team which included John Shockey, Pete Lockwood and Ben Wright**

**Don Ashworth won Closest to the Hole on hole #13**


Hilton Garden Inn
HOMEWOOD SUITES BY HILTON
Shreveport/Bossier City, LA

# 2017 SBA Golf Tournament

Golf and crawfish were on the agenda at the annual Golf & Tennis tournament held at East Ridge Country Club on April 24. Golf Committee Co-Chairs Jarred Franklin, Curtis Joseph, Jimmy Mijalis and Alexander Mijalis planned the event which was enjoyed by over 150 SBA members and guests.

Thanks to all of our golf teams, sponsors, committee members and volunteers!

## THANK YOU 2017 SBA GOLF TOURNAMENT SPONSORS

## GOLF TOURNAMENT SPONSORS

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### US OPEN

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**Golf Cars of Louisiana**

### THE OPEN

**Moffitt Volkswagen, Porsche, Audi, Mazda**

**Morgan Buick GMC**

**Shreveport Chiropractic Inc.**

**Wilkinson, Carmody & Gilliam**

### THE PGA

**Another Broken Egg**

**Hilton Garden Inn / Homewood Suites Bossier City**

**Pettiette, Armand, Dunkelman, Woodley, Byrd & Cromwell LLP**

**Skrivanos Engineering, Inc.**

# Mark Your Calendar

**JUNE 28**

SBA Member Luncheon

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

**SEPTEMBER 27**

SBA Member Luncheon

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

Speaker: Christy Kane, Executive Director

Louisiana Appleseed

**OCTOBER 5-6**

Recent Developments by the Judiciary CLE

Hilton Garden Inn, Bossier City

**OCTOBER 25**

SBA Member Luncheon

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

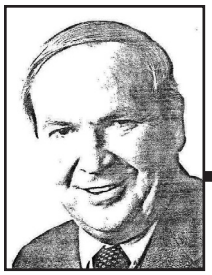
Speaker: Alston Johnson

Professionalism Award Presentation

**NOVEMBER 2**

SBA Memorial & Recognition Ceremony

2:00 p.m. at the Caddo Parish Courthouse



# Legal Hist

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

## DR. WILLIS P. BUTLER, CORONER EXTRAORDINAIRE, PART II

Since 1845, the office of coroner in Louisiana has been derived from constitutional authority. That authority was simple. It was parish-wide, required election and was for a two-year term. It would not be until 1879, when the Democrats took over from the Republicans, that a substantial change was made. The term was increased to four years, by the 1879 La. Const., arts. 119-121.

The 1898 constitution contained a provision which reflected the realities of a sparsely populated agricultural state and provided that the coroner shall be "a doctor of medicine, licensed to practice and ex-officio parish physician," but made no provision for what should be done if there was no such physician available in the parish. This was changed by the prolix Constitution of 1921 where the physician requirement was stricken and no longer applicable. If a vacancy existed, the temporary appointment would be made by the district judge and a permanent one by the governor. This provision is also found in the present Constitution of 1974.

When Dr. Willis P. Butler was elected Caddo's coroner in 1916, it was a parishwide position and his compensation was left to the largesse of the Police Jury. At that time, the doctor was also being compensated on a case-by-case basis for work as City Physician. Over the years, the compensation agreement settled into a relationship where the Police Jury paid 2/3 of the expenses of the office and the City of Shreveport, 1/3. It was not until Dr. Butler's first retirement, in 1961, that this issue would become a flashpoint for the office, resulting in the resignation of the then-coroner and reemployment of Dr. Butler when no one else stepped forward to assume that position.

Dr. Butler attained national recognition for his work as a forensic physician during his first year in office. Five members of a Webster Parish family were found dead at their rural home on Christmas morning 1916, all victims of a brutal ax murder. Because of his experience and increasing reputation, Dr. Butler was called on to lead the investigation. He was one of the handful of physicians in the country with experience in criminalistics. Dr. Butler built a forensic case against the four men who were brought to trial, with two sentenced to capital punishment and the other two to life imprisonment.

The national press recognized Dr. Butler as one of the nation's top medical legal experts and he was soon elected president of the American Coroner's Association. At the beginning of World War I, Butler was serving as president of the local draft board and attempted to resign and join the Army. The Shreveport Medical Society passed a resolution asking that he remain a civilian. Butler protested and wrote his friend, Governor Ruffin G. Pleasant, to overrule the medical society. The governor, friendship notwithstanding, wired back, "Resume your duties on the draft board," and that was that. On the day the war ended, Dr. Butler had the pleasure of announcing this news to the group of 100 Shreveport draftees that he had approved for induction into the military. There were cheers when he told them they could return to their homes.

One of Dr. Butler's many notable contributions was his pioneering work in treatment of drug addiction.

Following the end of World War I, Prohibition was a paramount political and religious issue, which culminated in the Volstead Act, banning the manufacture and consumption of alcohol with excess of 3.5%, all to be enforced by the Treasury Department.

During this same time frame, opiates, which had never been regulated by the federal government, were banned in the Harrison Narcotics Act, approved on December 17, 1914, which would be enforced by the Internal Revenue Service.

The Louisiana State Board of Health brought in an outside drug expert, from New Jersey, who estimated in 1918 that there were 18,000 addicts in Louisiana. This number alarmed state legislators, who enacted a new law in July 1918 that required official narcotics prescription blanks, commitment, and gave new powers to the Board of Health to make sure these laws were enforced.

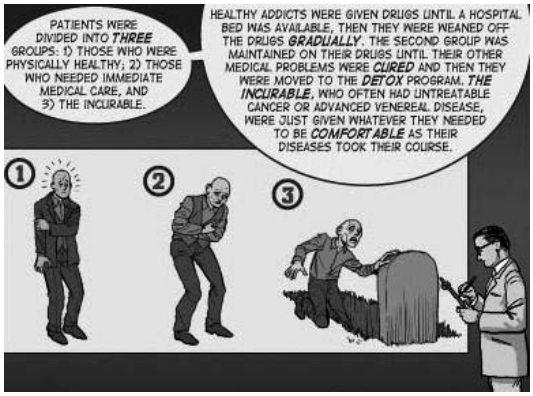
What was there about the years 1919-1920 that created such a large number of opiate addiction clinics in cities throughout the United States, including New York, Los Angeles, Washington, D.C., and smaller communities such as Mobile, Jackson and Shreveport? Some suggest that the large number of veterans returning from World War I who became addicted to opiates during the treatment of their wounds were to blame, or the euphoria of the approaching Roaring '20s, but probably the main reason was that on March 3, 1919 (the exact same day), two important Supreme Court decisions were handed down that had a large impact on addicts and how they were being treated by doctors. In *United States v. Doremus*, 249 U.S. 86, 39 S. Ct. 214 (1919), the Supreme Court ruled that the Harrison Narcotics Act was constitutional, and in *Webb v. United States*, 249 U.S. 96, 39 S. Ct. 217 (1919), the Court held that prescription of narcotics for maintenance treatment of an addict was against the law, unless it was part of a "cure," and thus not privileged under the Harrison Narcotics Act. The facts in *Webb* were overwhelmingly in favor of the prosecution. Dr. Webb was a New York physician who had been prescribing literally hundreds of prescriptions of morphine daily to individuals whom he did not know or treat and was caught red-handed by the investigators. This was a major win for the Treasury.

The effects of these two decisions were immediate. Federal agents

of the Narcotics Bureau of the IRS started immediate indictments against doctors and arrests of addicts in various cities throughout the United States. Exactly 36 days after the decision was rendered, federal agents in New York City arrested six physicians, four druggists and 200 addicts for violation of the Harrison Act (*New York Times*, April 9, 1919). This caused panic among large numbers of doctors it had been their common practice for decades to have a small number of patients to whom they regularly prescribed opiates. More often than not, these were patients who suffered some chronic or terminal illness and were being treated in good faith. Now, this practice fell into question, and doctors were afraid to dispense any opiates. One of the solutions to the havoc caused by the Webb decision were "temporary" clinics or dispensaries to treat and "cure" addicts.

Dr. Butler knew that drug addiction at that time in Shreveport was "beyond description." It was suggested to Butler by local physicians and authorities that he visit the New Orleans addiction treatment center and set one up in Shreveport based on his findings. When Dr. Butler got back to Shreveport, he came up with a triage system that some authorities still consider the best single model of community opiate control and treatment in American history. The Shreveport Clinic was opened in a wing at Schumpert Hospital in May 1919. The local medical society unanimously adopted a resolution that its members would refer all addicts to this clinic for treatment.

During the four years the Shreveport Clinic was open, Butler and his staff admitted some 1200 patients, whom they sorted into three groups: (1) addicts who needed immediate medical care; (2) those




who were physically healthy; and (3) the incurable. It was this third group that ultimately got Butler in trouble with Washington.

Detoxification was a requirement of Butler's program, and also included the requirement that they be employed, if possible. Once a patient's dose had stabilized, everyone who could work was expected to and if he didn't have a job, Butler would find him one, plus a decent place to live. He was aware that in some patients, detoxification was not possible; those cases were treated with minimum maintenance dosages with strict recordkeeping of the procedures followed in each case. "At its height, the clinic treated as many as 250 patients at one time, and more than 1,600 addicts during its brief existence." (New Orleans *Times-Picayune*, August 30, 1979)

Dr. Butler and the local law enforcement authorities agreed that the Shreveport Clinic resulted in a significant decrease in drug-related crimes in the city such as theft, burglary and assaults. Nevertheless, the fact remained that Butler's clinic was using opiates in the treatment of patients, which was a violation of the IRS's enforcement procedures.

Physicians in other locations began to complain that Butler was receiving favored treatment and, in due course, the IRS arranged for a Shreveport inspection. The success of Dr. Butler's clinic was even apparent to narcotics investigators who came to Shreveport to shut him down. Three treasury agents met with Butler, who was accompanied by Federal Judge George Whitfield Jack, U.S. Attorney Philip Mecom and Caddo Sheriff Tom Hughes, all of whom supported and defended the Shreveport Clinic, stating it decreased crime and was achieving successful results and asked that the clinic be allowed to continue. The agents spoke with the city's leading physicians and heard nothing but praise for Butler and his clinic. They checked local drugstores and found no evidence of criminal activity. Investigators were noncommittal when nothing of consequence resulted.

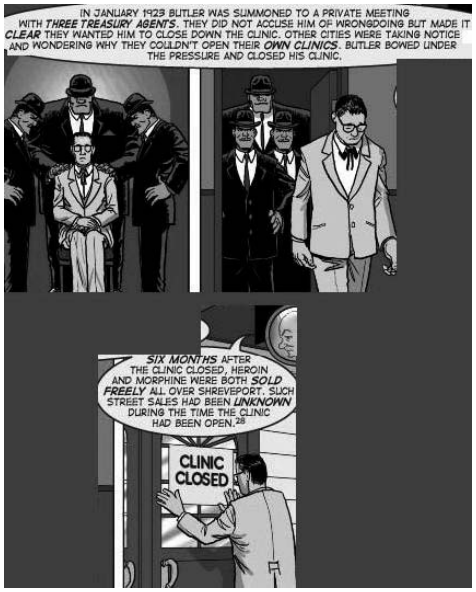
Perhaps out of desperation, the Narcotics Division sent a "hatchet man" named H.H. Wouters to Shreveport, who, along with a group of federal agents, proceeded to build a case against Dr. Butler and his clinic.

During their first visit, Wouters claimed a group of citizens informed him that an illegal peddler was paying off one of the clinic's inspectors to stay in business. Wouters approached District Attorney Mecom with this information, and Mecom told him to go to the sheriff, Dr. Butler, and his investigators with this information. Rather than do this, Wouters became suspicious of the authorities and instead reported it only to his supervisor.

On the second visit, they interviewed 50 of the clinic's 129 patients, trying to show that the patients were simply drug addicts not worthy of being maintained, who did not work and were possibly criminal. Wouters continued trying to build a personal case against Dr. Butler, accusing him of such things as making money out of the clinic, keeping a large staff from the proceeds, and treating prostitutes.

By 1923, Dr. Butler had grown tired of all the battles to keep the clinic open, concluded it was useless to continue to fight the federal government, and allowed the clinic to close. The remaining patients were released to other physicians who were willing to accept them. Following this first federal foray into Shreveport, two local physicians who were prescribing opiates in great quantities to almost any and all addicts resigned from the medical society and left town. The Society voted unanimously to give their addict patients to Dr. Butler.

Six months following the clinic's closing, the *Shreveport Journal* followed up with a story on what had happened since the federal




intervention. It found that while street traffic of opiates such as heroin and morphine had been practically unknown before the clinic was shuttered, both drugs were now being sold freely everywhere.[1]

During the following four summers, Dr. Butler took a position sponsored by Cornell University Medical School and the City of New York as a first assistant pathologist at Bellevue Hospital (the charity hospital in that city) where he performed an average of 15 autopsies a day, working under the premier forensic pathologists at that time.

The mid-1920s was the period in which the new Caddo Parish Courthouse, the one that we have today, was being designed. Dr. Butler's influence is illustrated by the fact that the Marshall Street entrance immediately opened up on two doors on the right-hand side. The first contained an elevator which stopped on only two floors. One had a small holding cell on the second floor behind the large criminal courtroom and the other went directly to the eighth floor, where the jail was located.

Nearby on this floor were the gallows, including the trapdoor used in the hanging process, which required that the coroner or his deputy witness the occasion.

The second door led to Dr. Butler's office and that of his staff on the east side of the courthouse. In the middle was a large, fully-equipped forensic laboratory, similar to the one at Bellevue, in New York, where Dr. Butler had substantial experience. To the west was a new, large, refrigerated morgue.

Butler's conduct of his office and popularity increased during the '20s and '30s, as he continued to win elections by landslide margins or with no opposition at all. His financial relationship with the Police Jury always appeared satisfactory. By 1961, Butler had served 45 years in office, was 73 years old and ready to retire. However, he continued to operate his forensic laboratory in Shreveport which served many law enforcement agencies and courts throughout northwest Louisiana. He recommended that Dr. Stewart DeLee, the first deputy assistant coroner, replace him, and Dr. DeLee was elected uneventfully.

Dr. DeLee served as coroner for 10 years when monetary concerns created a rift between him and the Police Jury. The coroner's office was self-funding, and its fee schedule had been established in 1926. DeLee was being paid $50 per autopsy while the going rate elsewhere was $150. He requested a raise to this latter amount, and the police jury responded with a $15 increase, at which point Dr. DeLee resigned.

Also during that time, there was some movement or pressure to place the coroner's office within the scope of the LSU Medical School which had opened in Shreveport; however, Dr. Ike Muslow, dean of the school at that time and also a strong admirer of Dr. Butler's, apparently not wishing to be involved with the political pressures which were sure to follow, called the proposal "table talk" and thereafter, nothing along those lines ever developed.

Dr. Butler, who had returned to private practice as a forensic consultant, was asked by the Police Jury to return to his former position. He agreed to do so and was reappointed by Gov. Edwin Edwards. On January 7, 1974, the Police Jury approved a fee increase for Dr. Butler, allowing autopsy fees to rise to $100. He stood for reelection the following year and won by a substantial majority.

In August 1976, Dr. Butler notified parish officials that he planned to step down, but he continued until the Police Jury appointed an emergency interim coroner. With the work being long and hard, the pay sparse, and having to "come begging" to the police jury when the allotted money did not pay the bills, there was no physician actively seeking the position. As a result, and perhaps to put pressure on the medical society, the Police Jury appointed popular parish administrator Francis Bickham as the interim coroner.

Since Dr. Butler's time as coroner, the position has been filled by several qualified and popular physicians, principally George McCormick, leading us to the present coroner, Dr. Todd Thoma, elected in 2008, who is well-liked and has served ably.

Following Dr. Butler's final retirement at age 88 in 1976, Dr. Butler and his second wife, Ruth Matthews Adams, whom he had met at a Vanderbilt 50th anniversary class reunion three years after the death of his first wife, moved to their beloved Tennessee and made their home in the shadow of Andrew Jackson's Hermitage outside Nashville. He died in 1991 at the age of 103 and is buried there.

The late Eric Brock, Shreveport's premier historian, wrote that at the time of Dr. Butler's death, he was "the oldest former medical examiner in the world." He also quoted the late Dr. George McCormick from a 1988 interview saying that Dr. Butler "was 75 years ahead of his time. At the time he was in his glory, Shreveport was the mecca of forensic pathology."

Dr. Butler had been known to be prodigious worker, putting in sometimes as many as 12 to 15 hours a day, and some people say he is still coming to work. Many years after his passing, people have reported "seeing" Dr. Butler dutifully working in the courthouse and other public spaces like Municipal Auditorium, which according to local legends may have briefly served as the morgue under Dr. Butler's watch.

In a 2014 KTBS Channel 3 documentary, Sharon Porter, a longtime secretary who worked on the fourth floor where Dr. Butler was housed at one time, reported seeing a man who walked out of the elevator in front of her surveillance camera, but when she looked closely, he had seemingly disappeared. She and several other secretaries in her office have felt someone "brushing" or pushing past them.

In life and in death, Dr. Butler was a remarkable man.

Thanks and Credit:

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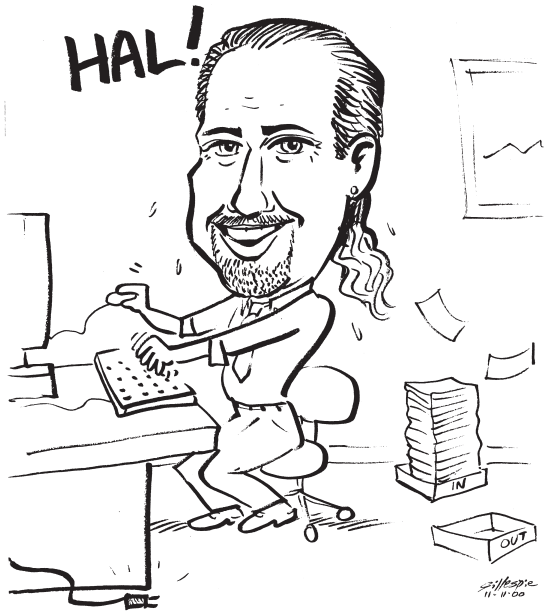
[1] Mike Gray, *DRUG CRAZY: How We Got Into This Mess and How We Can Get Out*. Random House (1998) p. 63.

# How Write You Are

*by Hal Odom Jr., rhodom@la2nd.org*

**A daily dose of grammar**. Can you tell which of the following appearances of a common compound word are wrong?




(1) "Y.M.R. stated during the forensic interview that this was the time period when Francisco would touch her – *everyday* when she came home from school." *State v. Vasquez-Ramirez*, 2016-325 (La. App. 3 Cir. 12/28/16), 210 So. 3d 521.

(2) "Mr. Gordon also stated that he walked through the Inter-Continental *everyday* for his job as a courier and he had previously walked through the revolving door without incident." *Madison v. Inter-Continental Hotels Corp.*, 2014-0717 (La. App. 4 Cir. 8/26/15), 173 So. 3d 1246.

(3) "Incidentally, the Coxes' relationship with Andrew became less professional and increasingly personal as they began assisting Andrew in his *everyday* life." *Succession of Davisson*, 50,830 (La. App. 2 Cir. 12/22/16), 211 So. 3d 597.

(4) "The defendant also made a statement, stating that he prays for forgiveness *everyday* and that he apologized to M.G. and her family at a meeting with Telano." *State v. Linder*, 49,652 (La. App. 2 Cir. 4/8/15), 162 So. 2d 1278.

The word *everyday* is an adjective meaning *routine, typical, ordinary*. The phrase *every day* is an adverb that means *on a daily basis* or *seven times a week*. If you are in doubt which to use, try substituting the two-word phrase *each day*. If this sounds right, you need to use the two-word *every day*. If it sounds wrong, you need to use *everyday*. Also, *everyday* should never be at the end of a sentence or phrase.

By now, the answer should be clear: the right one is (3). The defendant touched the minor victim, the witness walked through the revolving door, and the defendant prayed for forgiveness *every day*. Distinguishing similar terms is an everyday skill, one that you can profitably use every day.

**The fancy word for it.** There is another word for *everyday*. "But even if we accept plaintiffs' allegations as true, all of the possible explanations they offer involve *quotidian*, commonplace New Orleans processes of nature that evolve gradually, imperceptibly, silently, invisibly, unpredictably, and unforeseeably over a long period of time." *Monteleon v. City of New Orleans*, 617 So. 2d 49 (La. App. 4 Cir. 1993). In other words, the homeowners were entitled to summary judgment dismissing the claims of a lady who tripped and fell on an uneven sidewalk in front of their house. This opinion, rendered March 30, 1993, appears to be the most recent use of *quotidian* in a Louisiana judicial opinion.

**The principal homophone.** I was extremely pleased to read the following in a medical malpractice opinion: "As a preliminary matter, we must consider and respond to the Ardoins' contention, ranked in their appellate brief as their 'principle argument,' that the appeal should be reviewed de novo." *Ardoin v. McKay*, 2006-0171 (La. App. 3 Cir. 9/27/06), 939 So. 2d 698. The internal quote marks, which appear in the original opinion, show that the court spotted the error in the appellants' brief.

In spite of this very hopeful sign, a periodic refresher on the granddaddy of all homophones is worthwhile.

**Principle.** This is a noun meaning a *concept, rule* or *source*. The word is always a noun; there are *principles* of solidarity and *principles* of statutory construction. There is no such thing as a "principle argument." The mnemonic device is that *principle* and *rule* both end in *-le*.

**Principal.** This is usually an adjective meaning *most important* or *primary*. The *principal* argument is more important than the *subordinate* one. The mnemonic device is that *principal* is spelled with *a*, like the first letter of *adjective*.

*Principal* is also a noun; here are its principal meanings:

(1) All persons concerned in the commission of a crime, whether present or absent, and whether they directly commit the act constituting the offense, aid and abet in its commission, or directly or indirectly counsel or procure another to commit the crime, are *principals*. La. R.S. 14:24. The other criminal party is accessory after the fact, R.S. 14:25.

(2) A person who confers authority on another person (the mandatary), to transact one or more affairs for the first person, is a *principal*. La. C.C. art. 2299. At common law, the mandatary is called an agent, but principal is correct in both civil and common law.

(3) The key person in an organization is a *principal*. One statute defines such person as "any officer, director, owner, sole proprietor, partner, member, joint venturer, manager, or other person with similar managerial or supervisory responsibilities[.]" La. R.S. 9:3594.2 (6). Likewise, the head of a school is the *principal*. The mnemonic is, "Your *principal* is your *pal*."

(4) Money deposited in a bank is the *principal*, distinguished from *interest*, and the trust corpus is sometimes called the *principal,* as in La. R.S. 9:1847.

Make it your objective never to use the expression "principle argument."

**Stalled on spelling**. A pleading filed in the First JDC was labeled: "*Dilitory* Exception of Unauthorized Use of Summary Proceeding, Peremptory Exception of No Right of Action, or alternatively *Dilatory* Exception of Prematurity." At least they got it right the second time, and did not invoke the *preemptory* exception of no right!

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