THE BAR REVIEW

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EVENTS AT A GLANCE

2/11	Highland Parade
2/28	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club- Speakers: Allison Jones and Michael Lowe
3/28	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club- Speaker: Emily Maw Director of Innocence Project New Orleans
4/20	North Louisiana Appellate Conference CLE at Second Circuit Court of Appeal
4/23	Annual Golf Tournament – 12:30 p.m. – East Ridge Country Club

From The President

by Jim McMichael, President, jmcmichael@mmw-law.com

VALUING SBA MEMBERSHIP

Late last year, you received from SBA Executive Director Dana Southern a communication urging you to join the SBA or, if you already are a member, to renew your membership for 2018.

Aside from the fact that we have all come to know that it's a good idea to always do what Dana says (where would we be without her calm and consistently wise guidance?), I urge you to renew your SBA membership or to join anew and enjoy the benefits of membership.

I've been a Shreveport Bar Association member for 41 years – since 1976. It has never occurred to me even to consider not joining the SBA. I've always thought that, as a professional, it is obvious that you proudly join and participate in your professional organization.

Nevertheless, the SBA is a voluntary bar – which means that at the top of every bar officer/administrator's list is increasing membership. We are constantly warned in bar conferences and publications that we are at risk of our membership base receding – due to demographics or because of economic pressure that our members face.

As a result, we spend a lot of time discussing how to make the SBA more relevant and improve its members' "value calculation" – or the perception that membership provides a good return on investment. There is a simple answer to that question. We could increase membership by lowering (or dispensing with) our dues or by increasing our member services, or both. A simple answer, yes – but unrealistic. The SBA and its charitable arm, the Shreveport Bar Foundation, already provide SBA members with valuable services at reasonable costs. Those benefits include, for instance, the Shreveport Bar Center, CLE opportunities, the monthly *Bar Review*, bar luncheons and other networking and educational events.

But to define the question of whether to join or renew membership in the SBA in strictly economic terms (or, what's in it for me?) misses an important point about what our duties and responsibilities as lawyers are. Surely, we pursue the practice of law as a livelihood and much of the value of the SBA is in the way it helps us make a better living. But our jobs – our profession – are about more than that. We have a duty to recognize and place the interests of our clients ahead of our own. The Rules of Professional Conduct require us to protect the interests of our clients, the judicial system and the public. They call upon us to provide pro bono public services and to participate in activities to improve the law, legal system and the legal profession.

So, in our efforts to consider whether the SBA is relevant and has value, we have to decide what is relevant and valuable to our profession and not only what is relevant and valuable to our earning a living.

It is clear to me that the SBA has value beyond helping our members to earn a living. It also has value to our profession with its many programs, policies and practices that serve our legal system and the public – Law Day, the Lawyer Referral Service, the Pro Bono Project, the Krewe of Justinian and the many other outreach activities that improve the perception of the legal profession in the community.

We can only do so much as individuals. But together, our collective effort and support makes the good work of the SBA possible. All of these efforts are central to our professional duties and responsibilities, and the wisdom and success of pursuing them collectively as an organized bar have long been recognized by our profession.

We at the SBA understand that it must return real value for your dues investment. I strongly believe that it does and that we members get a lot for our dues dollars. But I also hope that with some reflection, we can all understand that in our "value calculation," membership in the SBA brings many values beyond monetary return.

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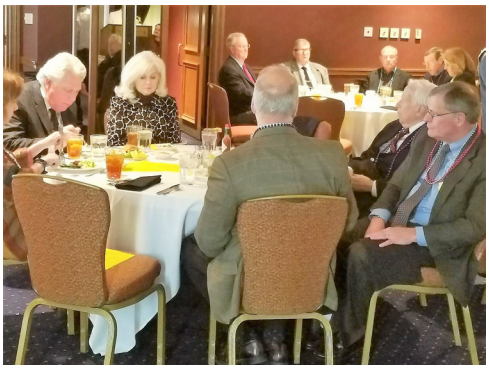

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BAR BRIEFS

Shreveport City Court Judge Sheva M. Sims Elected District Director for National Association of Women Judges, covering Louisiana, Alabama, Mississippi and Tennessee Regions

The Honorable Sheva M. Sims was elected National Association of Women Judges (NAWJ) District 6 Director serving the states of Louisiana, Mississippi, Alabama and Tennessee during the District Director Meetings held at NAWJ's 39th Annual Conference in Atlanta, Georgia, October 11-15, 2017. NAWJ is the nation's leading voice for women jurists. Judge Sims has been an active member of NAWJ since 2012.

Judge Sims said, "It was an honor to be sworn in as District Director of such an influential organization of dynamic and powerful women judges from throughout the United States. I am committed to the goals of the National Association of Women Judges, the promotion and advancement of women jurists and the insistence upon equal access to justice for all members of our society. Thank you to the more than 1,000 NAWJ members for electing me to this exciting, challenging and highly rewarding position."

NAWJ is dedicated to preserving judicial independence, ensuring equal justice and access to the courts for women, minorities and other historically disfavored groups by providing judicial education on cutting-edge issues, and increasing the numbers and advancement of women judges at all levels to accurately reflect their full participation in a democratic society. Its members include federal, state, tribal, military and administrative law judges at both the appellate and trial levels from almost every state in the country.

Judge Sims's term of office as District Director began in October 2017 and extends to October 2019. Judge Sims succeeds Judge Bernadette D'Souza, Orleans Civil District Court, who served from 2015-2017.

For more on the National Association of Women Judges, visit the organization's website at www.nawj.org.

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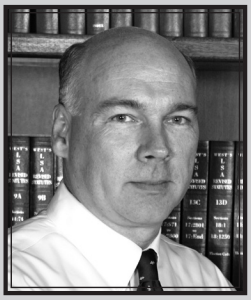
Charles D. Elliott

Pro Bono Project

by: Kelli Sanders, ksanders@shreveportbar.com

Kelli Sanders, New Pro Bono Coordinator

As the new Pro Bono Coordinator, I am honored to be able to bring new and fresh ideas to the Pro Bono Project. It's a New Year with new opportunities, changes and possibilities, and I would like to take a moment and acknowledge a few of the new changes that have occurred in the Pro Bono Project. In January I became the Pro Bono Coordinator. I have been with the Shreveport Bar Foundation since January 2017 as the paralegal for the Legal Representation for Victims of Domestic Violence ("LRVDV") program.

In December we held a Nonprofit Night at Grub Burger, and I am happy to announce that it was a success! Expect to see more events like this in the future. We appreciate your continued support and hope that you will help us spread the word of such events by liking the "Shreveport Bar Foundation Pro Bono Project" Facebook page and sharing the events with your friends and family and coworkers.

We held our annual MLK National Day of Service on January 15. I would like to thank attorneys Laura Peterson Butler, Michael Carney and Spencer Hays for volunteering their time to participate in this event. Without their gracious volunteering of their time we would not have had a team in place to provide a valuable service to our community outreach program. Our first Ask-A-Lawyer for 2018 was held later that same evening, before the snow hit. We weren't expecting a large attendance; however, to our surprise we had a good number of attendees turn out, and it was a great evening. Many of those who came to the event spent the day wondering if we would be open and if we would still hold the event since it was a holiday. Everyone was grateful and relieved that we had such generous attorneys volunteering their time. Again, without the attorneys who generously volunteered their time, we could not have provided a service to the citizens of our community who are seeking help that only attorneys can provide. I would like to acknowledge and thank attorneys Heidi Kemple Martin, Mary Winchell and Valerie DeLatte. I simply cannot say thank you enough.

We are again hosting the 2018 Give for Good fundraising event on May 1 at the downtown Rhino Coffee. I am currently working on "jazzing up" our profile before it goes live on March 1. That is less than 100 days for you to help us get the word out via social media that will help our marketing campaign, which in turn helps raise the outreach, which in turn raises public awareness of the many programs the Shreveport Bar Foundation offers to the local community. We hope to raise more funding with the end result that we are able to continue to provide services through our LRVDV program and the Pro Bono Project. By becoming more visible in the community and assuring the community they have a place to get the help they need, we let them know that we are here to help them.

I want to reach out to you to volunteer. We have many wonderful, great, longtime volunteer attorneys in our local community, and we thank you for your time and commitment. We are always looking for more volunteers. In fact, we NEED you, we want to be a center of resources for the community, and you are the resource. We need attorneys who can volunteer a couple of hours a month at our Ask-A-Lawyer clinic, or accept a pro bono case once a quarter. If you can volunteer, please call me at 221-8104 Ext. 3 or send me an email at ksanders@shreveportbar.com.

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Second Circuit Highlights

by Hal Odom Jr., rhodom@la2nd.org

When someplace freezes over! In February 2015, to elude an ice storm sprawling over northwest Louisiana, James drove from his home, in Minden, to the Eldorado Hotel in Shreveport and checked in for a two-day stay. Early the next morning, however, he got into an argument with a waitress in the casino area, and security accused him of "picking up people's player's cards." Management told him he could either leave voluntarily, be forcibly evicted, or get arrested and tossed in jail. He took the first option, even though State Police had declared I-20 "icy and dangerous" and advised people not to drive on it unless "absolutely necessary." James braved the slush for a few miles, but skidded off the pavement a little past the Haughton-Fillmore exit, crashing into a steel cable barrier in the median.

James filed a pro se suit against Eldorado, claiming that by forcing him to leave the premises in the ice storm, its personnel breached the duty of reasonable care to protect him from hazardous road conditions. Eldorado responded with an exception of no cause of action, urging it had no duty to protect him after he left the premises. The district court sustained the exception, and James appealed. The Second Circuit affirmed, ***James v. Eldorado Casino Shreveport Joint Venture,*** 51,707 (La. App. 2 Cir. 11/15/17), in an opinion by Judge Pitman.

James argued general liability, La. C.C. art. 2315, and, oddly, owner liability, La. C.C. arts. 2317 and 2317.1. Perhaps out of courtesy to the pro se claimant, the court began with a long definition of "cause of action" and then quoted Louisiana's duty/risk doctrine, *Rando v. Anco Insulations Inc.,* 2008-1163 (La. 5/22/09), 16 So. 3d 1065. The court briefly alluded to the problem of cause-in-fact (who really *caused* James to leave the casino?) but settled on the merchant's duty to protect patrons on the premises, not off, *George v. Western Auto Supply Co.,* 527 So. 2d 428 (La. App. 4 Cir. 1988). James's petition made no allegation that Eldorado's premises were defective or unsafe; hence, no cause of action was stated. The court made a final observation: it was James's own decision to undertake the risky drive home. It's probably a good thing that ice events are so rare here.

The versatile MSJ. We ordinarily raise the issue of prescription by the peremptory exception of prescription. Evidence is taken, and appellate review of the trial court's ruling is by manifest error. *Specialized Loan Servicing LLC v. January*, 2012-2668 (La. 6/28/13), 119 So. 3d 582. However, we can also raise prescription by motion for summary judgment. In that event, only the limited "summary judgment evidence" is considered, and review of the trial court's ruling is de novo. *Hogg v. Chevron USA Inc.*, 2009-2632 (La. 7/6/10), 45 So. 3d 991. The defendant must make a strategic decision whether to use the peremptory exception, with its risk of a mini-trial, or the more expeditious MSJ. Bear in mind that if you win the exception, the judgment is protected by manifest error. If you win the MSJ, the appellate court gives no weight to the trial court's "findings."

The distinction is important, but it didn't matter in ***Newsome v. City of Bastrop,*** 51,752 (La. App. 2 Cir. 11/15/17), an opinion by pro tem Judge Bleich. The Newsomes bought a house in Bastrop in 1999, and soon noticed problems with sewage backing up into their plumbing, especially during heavy rainfalls. They finally sued the city, in 2015, for property damage. The city asserted prescription, by MSJ, which the district court granted. On appeal, the Newsomes conceded the normal tort period of one year, La. C.C. art. 3492, and the "public works" period of two years, La. R.S. 9:5624, but argued the recurring instances of sewage backups constituted a continuing tort. The Second Circuit held that this precise argument had already been considered and rejected, in *Pracht v. City of Shreveport*, 36,504 (La. App. 2 Cir. 10/30/02), 830 So. 2d 546, *writ denied*, 2003-0007 (La. 3/14/03), 839 So. 2d 46. The court also cited Mr. Newsome's statement in deposition that the family had had to vacate the house *in 2004* because of a sewer backup, and found that this precluded any genuine issue of constructive knowledge. Arguably, that might have constituted *actual* knowledge of the harm.

What's not a wage? Louisiana has a fairly strong wage recovery law: on discharge of any laborer or employee of any kind, the employer must pay "the amount then due under the terms of employment" within 15 days. La. R.S. 23:631 A(1). Failure to pay subjects the employer to a penalty wage of 90 days' wages, or full wages from date of demand until paid, whichever is less. Attorney fees are mandatory in "any well-founded suit" for unpaid wages. R.S. 23:632 C. In other words, this can add up. However, the employer is exempt from penalty wages (but not attorney fees) if he can dispute the amount of wages in good faith. R.S. 23:632 B. One promising avenue for employers is to argue "in good faith" that what you're paying the person isn't wages – it's something else.

The issue arose in ***U.L. Coleman Co. v. Gosslee,*** 51,396 (La. App. 2 Cir. 11/3/17), an opinion by Judge Moore. Keitha Gosslee had worked as a real estate agent for U.L. Coleman for a number of years, cultivating something of a crackerjack reputation. Among her duties (many of which were litigated), she negotiated commercial leases, receiving a lease commission of 47¼%, plus a 15% bonus commission if she exceeded a volume of $137,500 in a given year; she exceeded it every year. In mid-2001, she left Coleman's employ, while various commercial leases that she had secured were still in force. Coleman later sued Ms. Gosslee for unrelated real estate sales commissions, and conceded that it had withheld over $27,000 in lease commissions owed to her. Ms. Gosslee reconvened for these

lease commissions, and claimed they were unpaid wages subject to the penalty and attorney fee. The district court agreed with Ms. Gosslee, awarding her the $27,875 in unpaid lease commissions, the $3,653 in unpaid bonus commissions, $64,336 in penalty wages, and $16,084 in attorney fees.

Coleman appealed, arguing that lease commissions are not earned until the rent is collected each month; and, at any rate, commissions that accrue after termination of employment cannot be considered wages. The Second Circuit disagreed, noting that courts focus on "what work associated with the sale remained at the time of the employee's discharge," *Schuyten v. Superior Sys. Inc.,* 2005-2358 (La. App. 1 Cir. 12/28/06), 952 So. 2d 98. When only the collection of the rent is outstanding, and collection is beyond the employee's control, the employee is considered to have earned the commission, for purposes of R.S. 23:632. Moreover, Ms. Gosslee's employment agreement with Coleman stated that the commission was divided "when collected," making it effectively her wage. The court therefore agreed that the claimed commissions, $31,578, were wages and subject to the penalty and attorney fee. It turned out to be a very good payday indeed for Ms. Gosslee.

The opinion also highlights the problem of two agents or brokers fighting over a real estate sale commission. The resolution hinges on an issue called "procuring cause," derived from *Creely v. Leisure Living Inc.,* 437 So. 2d 816 (La. 1983). This situation could arise when one broker's listing agreement has expired, but he is still entitled to be compensated for some work. It is an unusual situation, but this case shows that it does occur.

Reading is fundamental. Louisiana also has strong laws about impaired driving. First-offense operating while intoxicated carries a criminal penalty of not less than 10 days or more than 6 months, subject to intricate rules for suspension of sentence, La. R.S. 14:98.1 A. Some clever drivers attempt to "beat the rap" by refusing to blow into the Breathalyzer, but the law has a special surprise for them: suspension of the driver's license (not the criminal sentence!) for one year, La. R.S. 32:667 B(2)(a), and suspension of the commercial driver's license for at least one year, La. R.S. 32:414.2 A(4). In other words, the economic penalty for refusing a breath test is, potentially, twice as long as the criminal penalty for taking the test and failing. Because of these devastating consequences, courts require strict compliance with all the statutes governing suspension of licenses.

In ***State in Matter of Litton*****,** 51,757 (La. App. 2 Cir. 11/15/17), the court focused on a specific portion of R.S. 32:661 A(1) which requires the arresting officer to *read* to the arrestee a standardized form disclosing his rights under *Miranda* and the consequences of refusal to take the test. The mere fact that the arrestee signed the standard form does not satisfy the requirement of reading. A Bossier Parish deputy arrested Litton, a commercial driver, in 2015, took him to maximum security, offered him a breath test and got him to sign the form, but Litton refused the test. The Department of Public Safety and Corrections administratively revoked his CDL for one year. Litton took an administrative appeal, but the ALJ affirmed. Litton then sought judicial review. At the trial de novo in the 26th JDC, the deputy was "unable to remember if he read the entire rights form to Litton," while Litton testified the deputy did not do so. The court reinstated his CDL, and the Second Circuit affirmed, in an opinion by Judge Stone that found no manifest error.

This case simply follows the lead of *State v. Alcazar*, 2000-0536 (La. 5/15/01), 784 So. 2d 1276, and probably reflects the social reality that taking away a driver's livelihood for a year diminishes, rather than enhances, the prospects of rehabilitation. It also raises the evidentiary challenge of proving that the law enforcement officer really "remembers" reading a long form to a particular suspect. We don't really encourage coaching the witness, do we?

The collateral source rule isn't easy. In ***Patterson v. State Farm***, 51,620 (La. App. 2 Cir. 11/15/17), Patterson was in a car wreck in which the other driver was later found by a jury to be 100% at fault. Patterson sought medical attention for his injuries, claiming them on his Blue Cross health insurance policy. Because of Blue Cross's collective bargaining discount, medical expenses totaled $13,632, instead of the "customary" or uninsured amount of $63,072. In short, the providers "wrote off" over $49,000. Patterson sued State Farm (the other driver's liability carrier) and ANPAC (his own UM carrier) for personal injuries. ANPAC filed a motion in limine to limit evidence of Patterson's medical expenses to the discounted rates paid by Blue Cross. The district court granted this motion and rendered judgment accordingly. Patterson appealed.

In an opinion by Chief Judge Brown, the Second Circuit found the district court erred in failing to apply the collateral source rule. The rule means that "a tortfeasor may not benefit, and an injured plaintiff's tort recovery may not be reduced, because of monies received by the plaintiff independent of the tortfeasor's procuration or contribution." *Bozeman v. State*, 2003-1016 (La. 7/2/04), 879 So. 2d 692. The court recognized that a more recent opinion, *Hoffman v. 21st Century N. Am. Ins. Co.,* 2014-2279 (La. 10/2/15), 299 So. 3d 702, revoked the rule for attorney-negotiated medical write-offs or discounts obtained through the litigation process. (The district court used *Hoffman* to justify granting ANPAC's motion.) However, the Second Circuit distinguished *Hoffman* in that Patterson's discount was not procured by an attorney, and his patrimony had been reduced by paying Blue Cross premiums – a distinction already observed by other circuits.

The opinion contains a very concise analysis of this special application of the collateral source rule. Readers' attention is also called to an expansive treatment, putting the whole subject in perspective, in the latest *La. Bar Journal*, Michael J. Moran, "La. Collateral Source Rule," 65 La. B. J. 230 (Dec. 2017/Jan. 2018). It's basically everything you need to know about collateral sources, in a nutshell.

Unfortunately, the favorable finding was not the end of the discussion for Patterson. The Second Circuit found that he had received $110,000 in pretrial settlements "to be credited against any judgment rendered against ANPAC by the jury." Because the jury's total award to Patterson was less than this amount, he was not entitled to anything more from ANPAC. It is a shame to win on the legal issue and then lose on a pretrial stipulation. However, anyone with a personal injury practice needs to know the intricacies of the collateral source rule.

2018 Louisiana Federal Courts
Admission Ceremony

Obtain Admission to the
Eastern, Middle and Western Districts of Louisiana
and U.S. Fifth Circuit Court of Appeals

Thursday, April 5, 2018
3:30 p.m.
Reception following

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Shreveport, Louisiana

Applications must be submitted by: Friday, March 16, 2018
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8:30 a.m. **Brief Writing from A Practitioner's Perspective**
60 Minutes
Kenneth P. Haines, Board Certified Appellate Specialist, Certified by the Louisiana Board of Legal Specialization - Weems, Schimpf, Haines, Landry, Shemwell & Moore

9:30 a.m. **Break**

9:35 a.m. **Clerk's Office Rules and Procedure**
60 Minutes
Lillian Evans Richie, Clerk of Court and Karen McGee, Advanced Certified Paralegal, Chief Deputy Clerk - Second Circuit Court of Appeal

10:35 a.m. **Break**

10:45 a.m. **Trends in Writs, Appeals and Procedure at the Second Circuit**
60 Minutes
Judge Frances Pitman, Molly Able, Staff Director and Jennifer Segner, Assistant Staff Director - Second Circuit Court of Appeal

11:45 a.m. **Lunch with the Second Circuit Court of Appeal Judges**
90 Minutes

1:00 p.m. **Professionalism: Top 10 Do's and Don'ts**
60 Minutes
Judge Panel from the Second Circuit Court of Appeal

2:00 p.m. **Break**

2:10 p.m. **Special Appeals**
60 Minutes
Catherine Crawford and Jessica Lustig - Second Circuit Court of Appeal

3:10 p.m. **Break**

3:25 p.m. **Ethics**
60 Minutes
Judge Brady O'Callaghan - First Judicial District Court

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FEBRUARY 11
Highland Parade
Krewe of Justinian Participates

FEBRUARY 28
SBA Member Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
Speakers: Attorneys Allison Jones
and Michael Lowe
Sexual Harassment in the Law Office
Environment: Don't say that, don't touch there,
or you'll find yourself before the Ethics Chair

MARCH 15
April Bar Review Deadline
For Ad Submission

MARCH 28
SBA Member Luncheon
12:00 Noon at the Petroleum Club (15th Floor
Speaker: Emily Maw, Director of
Innocence Project New Orleans

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For Ad Submission

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North Louisiana Appellate Conference CLE
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APRIL 23
Annual SBA Golf Tournament
12:30 p.m. at East Ridge Country Club

MAY 1
Give For Good Campaign
Rhino Coffee Downtown

MAY 2
Law Day Luncheon
12:00 Noon at the Petroleum Club (15th Floor)

MAY 4
Red Mass
9:00 a.m. at Holy Trinity Catholic Church

MAY 6
SBA Member/Family Day
4-7 p.m. at East Ridge Country Club

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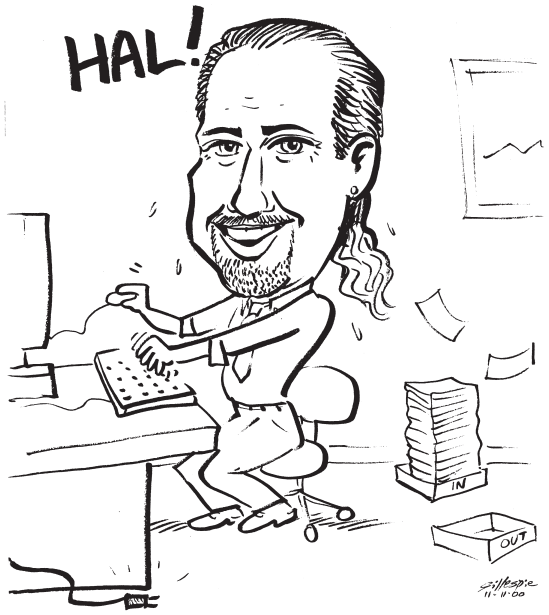
How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

The descent of vocabulary. The people way up your family tree, like your grandmother, your great-grandfather, and earlier generations, are your *ancestors*. You, and people in your age range or younger, are their *descendants*.



The distinction seems hard to muddle, but our local paper (*The Times*, Jan. 8, 2018) ran a very nice front-page story with the unfortunate headline, "Solomon Northup's *ancestors*, others work to keep story alive." Solomon Northup, the author of *Twelve Years a Slave*, lived in the mid-1800s. His *ancestors* would have lived in the late 1700s and earlier, and are no longer around to keep his story alive. The story identifies Vera Williams, his great-great-great-granddaughter, as a frequent speaker on Northup's life. However, she is clearly a *descendant*, as a cutline under a photo correctly stated, and not an *ancestor*, as the headline bumbled.

Legal writers are unlikely to make this error, steeped as we are in our succession law (not to mention the Civil Code's preference for *ascendants* over *ancestors*). However, *The Times*' misusage shows that even educated people can confound fairly intuitive words. Try not to let it happen to you.

"Bear" with me. A synonym for *ancestors* is *forebears* – emphasis on the first syllable, and *fore-* spelled as in *before*. It is not to be confused with *forbear* – emphasis on the second syllable – which means to *refrain* or *hold back* from doing something you would be entitled to do. These near-homophones are frequently confused. "A 'credit agreement' is an agreement to lend money, to *forebear* repayment of money, or to make any other financial accommodation. La. R.S. 6:1121(1)." *King v. Parish Nat'l Bank*, 2004-0337 (La. 10/19/04), 885 So. 2d 540. "The trial court decided to *forebear* rendering a final judgment and allowed defendant to present the promised accounting." *M. Tahir Qayyum M.D. v. Morehouse Parish Hosp. Serv. Dist.*, 47,324 (La. App. 2 Cir. 8/15/12), 104 So. 3d 505. These should be to *forbear* repayment (as it is correctly spelled in the cited statute) and *forbear* rendering judgment. The mnemonic is that your *forebears* came *before* you.

Judge Per Curiam got it right in *Wallace v. Strain*, 2016-0682 (La. 4/7/17), 215 So. 3d 210: "This provision [R.S. 15:32] places no obligation on the owner to *forbear* five years before seeking the return of the money seized and used as evidence."

The other word appears correctly in a somewhat hyperbolic discussion of the petitory action, written in the era of our forebears:

> According to the doctrine advocated by plaintiff, if a trespasser were to gain possession of some old homestead and hold it for one year, and thereby acquire a right of possession, the previous possessors of this homestead could not maintain the petitory action to recover it, although, before losing possession of it to this trespasser, they and their *forebears* had occupied it as their home for over 1,000 years, and had had title to it by the prescription of 30 years for more than 970 years.
>
> *Leonard v. Garrett*, 128 La. 535, 54 So. 984 (1911). (Perhaps if Justice Provosty had said *100 years* of possession, the point would have been just as strong, but 1,000 seems more consistent with *forebears*.)

Legal jargon. Jargon means "words and phrases used almost exclusively by lawyers in place of plain-English words and phrases that express the same thought." Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges,* St. Paul, Minn.: Thomson/West, ©2008. How much of this infects our legal writing?

The authors condemn jargon as adding nothing more than "a phony air of expertise": a nexus is simply a link or connection; hereinbefore is more intuitively expressed as earlier. They single out this cherished air-filler: *the instant case*. "What is *the instant case*? Does it have anything to do with instant coffee?" If so, dump it!

The list is probably endless, but here are some tempting bits of jargon that can be easily and beautifully converted to simple English:

- subsequent to, prior to: *after, before*
- implement, effectuate: *begin, carry out*
- transpire: *happen*. It's a pet peeve of mine that *transpire* literally means *come to light* or *be discovered*, so the vernacular use as a synonym for *occur* is potentially ambiguous and often wrong.
- transmit: *send*
- envisage: *think, see*. If you mean imagine or dream up, use envision.

The Latin inflection. Since instances of the erroneous de minimus are on the wane, other inflection errors can be considered. Sickness of the stomach is called *nausea*. Copied from Latin, it ends in -a. The pithy expression for *to (the point of causing) nausea* is *ad nauseam*. Be careful not to change the terminal *-am* to *-um*, as can happen. "[E]ach and every one of you went through *ad nauseum* the Voir Dire on capital sentence." *State v. Kennedy*, 2005-1981 (La. 5/22/07), 957 So. 2d 757 (quoting trial transcript).

Sometimes a court recognizes the error, as in *State v. Murphy,* 463 So. 2d 812 (La. App. 2 Cir. 1986): "Defendant contends that the court told the jury that they would be questioned 'ad nauseum' as to their qualifications to serve on the jury." This is a neat alignment of the word for *sick* and the editorial *sic*.

Captain Speaks

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Justinian's Mission

During the early years of working to establish the only non-for-profit legal Mardi Gras Krewe, Don Miller, past Shreveport Bar President and King Justinian VIII, asked Royals to visit Holy Angels residential facility, wear their crowns and sashes, and distribute beads, cups and stuffed animals to the residents. With jazz music and a Second Line, Royals sashayed around the auditorium. Queen Janey reported that she had not been kissed so many times in one day in years! This event was scheduled on Fat Tuesday. The reception from the residents was overwhelming. One of the Dukes who had graciously donated his time all season carped about losing business day hours. After we had completed our visit, I was in the parking lot preparing to leave and noticed the Duke in his car trunk retrieving more beads before running back to the children! A typical Justinian moment. Shriners Hospital was also visited in the early years. This year's Royalty will visit schools and nursing homes throughout the month of February.

After the Mardi Gras season, money will be given to the Shreveport Bar Foundation to assist its many community projects and the Bar Center's maintenance and debt retirement. Through the dedication of our current Royals, assisted by over 200 Krewe members, plans for Justinian's 25th (Silver) Anniversary have started under the direction of Tribune Lyn Lawrence. Our goal is to raise money for the Shreveport Bar Foundation, to entertain in the Louisiana Mardi Gras tradition, and to do good for our community along the way.

Consider joining today!

Laissez les bon temps rouler,

Larry Pettiette

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DEADLINE FOR MARCH ISSUE: FEBRUARY 15, 2018

SBA LUNCHEON MEETING – FEBRUARY 28

Petroleum Club (15th Floor) – Buffet opens at 11:30 a.m. Program and Speaker begins at 12:00 Noon
$30.00 for SBA members includes lunch with advance reservation
$35.00 for Late Reservations (after 5:00 pm the Monday prior to the luncheon)

"DON'T SAY THAT, DON'T TOUCH THERE, OR YOU'LL FIND YOURSELF BEFORE THE ETHICS CHAIR"

When: Wednesday, Febraury 28 from 12:00 Noon to 1:00 p.m.

Where: Petroleum Club (15th floor)

Featuring: Allison A. Jones and Michael Lowe

This presentation has been approved for 1 hour ethics CLE credit

Over the past several months there have been reports of politicians, news reporters to top-level executives accused of sexual harassment. On Wednesday, February 28, we will hear from fellow SBA members Allison Jones, of Downer, Jones Marino & Wilhite LLC, and Michael Lowe, of Kean Miller LLP who will address the issues that are at the forefront of today's headlines. They will talk about how to recognize and prevent sexual harassment in the workplace. The topic of this discussion is "Don't Say That, Don't Touch There, or You'll Find Yourself Before the Ethics Chair." Allison has litigated, settled and mediated hundreds of employment law cases. Michael represents clients in the areas of labor and employment law, construction litigation and commercial litigation. His employment practice involves all aspects of labor and employment litigation. These speakers will review ABA Model Rule 8.4(g), the status of adoption of the same or similar rules in Louisiana, and best practices for employers and employees in the legal profession.

YES, I'M ATTENDING

You may confirm your reservation(s) by email, telephone, or fax.
Email: dsouthern@shreveportbar.com Phone: 222-3643 Ext 3 Fax: 222-9272

I plan to attend the February luncheon. Attorney:_____

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