

THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

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INSIDE | MAY

President's Message	1&3
Judicial College Seminar	2
Captain Speaks	4-5
Bar Briefs	6
Pro Bono Project	7
Golf Tournament	8-10
Women's Section	11
Monroe Inn of Court	12
Calendar of Events.....	13
How Write You Are.....	14
NLA Appellate Conference	15
Luncheon Highlights	16

EVENTS AT A GLANCE

6/27	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club
9/26	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club
10/11-12	Recent Developments by the Judiciary Seminar
10/24	SBA Membership Luncheon – 12:00 p.m. - Petroleum Club
10/30	SBA Memorial & Recognition Ceremony



From The President

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

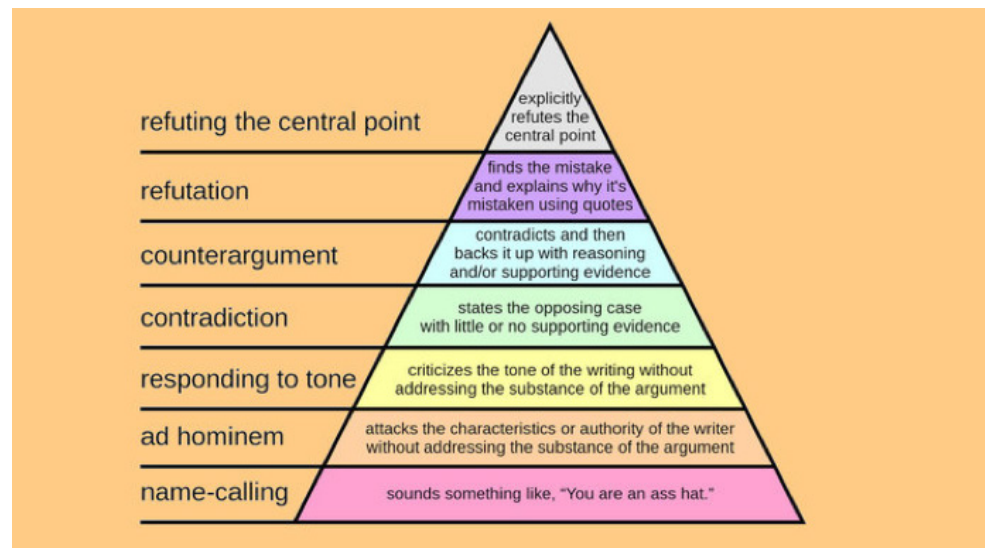
HOW WE ARGUE

As a profession, we lawyers are always disagreeing and arguing – with judges, with opposing counsel, with clients. Many times, I've heard people say to me about a someone, "He would be a great lawyer – because he'll argue with a fence post!" And, given the ability of anyone with a smartphone to express themselves on the Internet in these turbulent political times, we are surrounded by disagreement and conflict in our daily nonprofessional lives as well.

The structural changes in the way we communicate, through email, text and on the Internet, make it easy to say things to each other that we would never say face to face. The result is not only is there a lot more disagreeing going on, but people seem to be getting angrier doing it.

So, with disagreeing being in our professional DNA and becoming more and more prevalent elsewhere in our lives, shouldn't we try to be more careful to do it well? And with more civility? What does it mean to disagree well? Sure, we can all tell the difference between mean-spirited name-calling and a carefully reasoned refuting argument, but there are plenty of intermediate stages between the two extremes.

Here's an attempt to outline a disagreement hierarchy by Paul Graham, an English-born Harvard-educated computer programmer, entrepreneur, venture capitalist and writer, in his now-famous essay, "How to Argue."



Name-calling is the lowest form of disagreement, and unfortunately has become more common in the highest political circles. We've all seen comments like "You're a knucklehead!" But more articulate name-calling is just as unpersuasive and nothing more than a pretentious version of "You're a knucklehead!"

Ad hominem is stronger than mere name-calling but is still a very weak form of disagreement. It might actually carry some weight. For example, if an opponent writes in a brief that all plaintiffs should be awarded attorney fees, you might respond, "Of course he would say that. He's representing a plaintiff." That wouldn't refute the argument, but it at least may be relevant

continued on page 3

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continued from page 1

to the case. It's still a very weak form of disagreement, though. If there's something wrong with the argument, you should say what it is; and if there isn't, what difference does it make?

Responding to tone. The next level up we start to see responses to the argument, rather than the person arguing. The lowest form of these is to disagree with the author's tone. For example, "I can't believe my opponent dismisses the defense of failure to mitigate damages in such a cavalier fashion." Though better than directly attacking the opponent, this is still a weak form of disagreement. It matters much more whether the author is wrong or right than what his tone is.

Contradiction. Now we are finally getting responses to what was said, rather than how or by whom. The lowest form of response to an argument is simply to state the opposing case, with little or no supporting evidence. Contradiction often carries some weight if the opposing view is stated explicitly enough to show that it's right. But usually evidence will help.

Counterargument. Counterargument is contradiction plus reasoning and/or evidence. When aimed squarely at the original argument, it can be convincing. But it can often be convincing if it is directed at something slightly different from what your opponent said, perhaps because you believe your opponent has missed the central point of the argument. When you do that, you should explain why you're doing it.

Refutation and refuting the central point. These are the most convincing forms of argument and also the rarest, because they are the most work. Indeed, the illustration of the pyramid suggests that the higher you go up the argument hierarchy, the fewer instances you find. To refute someone's argument in general or to refute their central point, it is often necessary to quote something in their argument that you disagree with and that you feel is mistaken, and then explain why it's mistaken.

What good is classifying forms of argument and disagreement? It will not always result in picking a winner in an argument. These classifications merely describe the form of a statement, not whether it's correct. A refutation response in an argument can be completely mistaken and unconvincing; name-calling and ad hominem are always unconvincing.

The most obvious advantage of classifying the forms of argument is that it can help us to evaluate how we respond to our opponents and how to recognize (and avoid) intellectually dishonest and unprofessional means of argument. Many times, intellectual dishonesty is unintentional. Someone may believe he's really saying something by arguing against the tone of something he disagrees with, but upon reflection he can realize that moving up the hierarchy pyramid to counterargument or refutation is far more persuasive.

But the other benefit of arguing and disagreeing well may not just be that it will make our arguments more convincing, but that it will make them more civil and professional as well. Eliminating personal attacks and intellectual dishonesty in our arguments helps our own relationships with our fellow lawyers, and also enhances our profession. Discrediting our opponent's arguments rather than discrediting the opponent himself should be our goal.

If not, well – we're all just knuckleheads.

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Captain Speaks

by H. Lyn Lawrence Jr., Captain, lyn@lynlawrence.com

While Mardi Gras seems (and probably is) a bit far away for most, the Krewe of Justinian has already been working feverishly to ensure a fantastic 25th season. That's right!!! This year is the Silver Anniversary of the Krewe of Justinian, and what a fabulous year it promises to be.

Our theme this year is DERBY DAYS and events begin as soon as Saturday, May 5 at Louisiana Downs, which is also Kentucky Derby Day. Hold August 17 for Coronation, Nov. 10 for Midway to Mardi Gras (which will include a bourbon trail tasting tour – ala the Kentucky Bourbon Trail) and Feb. 1 for the Grand Bal at the Horseshoe Riverdome!!! The bands will be fantastic, and the attitude befitting our unofficial theme – THERE ARE NO RULES!!

It is time to begin our big membership push! All SBA members should soon receive a letter and membership application from me in the mail. We make it easy for you to join – complete and send in your application with your check (payable to the Krewe of Justinian) to Dana Southern at the SBA office, or join online at www.kreweofjustinian.com/join-now. A membership application is also included in this issue of the *Bar Review*.

Remember, Krewe membership gives you and a guest access to four great events throughout the year – the Coronation Bal, Midway to Mardi Gras Party, Grand Bal, and Royalty Brunch. This is an exciting time for Justinian, and we want you to be a part of it. The time to join the Krewe is now! I look forward to seeing you at all Krewe events this year. *Laissez les bons temps rouler!*

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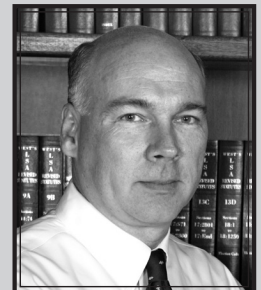
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BAR BRIEFS

SECOND CIRCUIT ATTORNEYS AND STAFF RECOGNIZED

The Second Circuit Court of Appeal recently honored employees who reached five-year anniversaries in their employment with the court. Chief Judge Henry Brown presided over an awards ceremony in the courtroom on April 5.

Ellen Davis received a rosewood pencil holder for her 30-year award. Ellen came to the court in 1987 as a law clerk for Judge Charles Lindsay, and continued with his successors, Judge Gay Gaskins in 1995 and Judge Jeanette Garrett in 2013. Ellen is a graduate of First Baptist Church HS, LSUS (BA-journalism, 1981) and LSU Law Center (JD, 1984). Judge Garrett spoke glowingly and at length about Ellen's organizational skills and work habits, and also presented her with a number of personalized, whimsical gifts.

Jennifer Brown received a rosewood picture frame for her 25-year award. A graduate of Mansfield HS, LSU (BS-secondary ed., 1988) and LSU Law Center (JD, 1992), Jennifer has worked for Chief Judge Brown continuously since August 1992, shortly after finishing law school. In addition to her work at the court, Jennifer teaches legal research and writing at the LSUS Continuing Education Dept.'s paralegal certification program.

David Tullis received a rosewood pen and pencil set for his 20-year award. David is a proud native of New Orleans, a lifelong Fighting Blue Jay of Jesuit HS, a graduate of LSU (BA-history, 1992) and LSU Law Center (JD, 1995), and has worked at the Second Circuit since 1997, when he was hired by the late Chief Judge Charles A. Marvin. David's wife, Kim, is also an attorney, and they have two daughters, ages 18 and 14.

Jessica Lustig received a brass coaster for her five-year award. She is a graduate of Parkway HS, La. Tech (BS-finance, 2009) and Loyola University (JD, 2012). She has worked on the court's Central Staff since September 2012. Staff Director Molly Able complimented Jessica's hard work under three successive staff directors.

Also receiving awards were Jackie Johnson, judicial assistant to Judge Felicia Toney Williams for 25 years; Brenda Baker, judicial assistant for 15 years, first to Judge Harmon Drew, and recently to Judge Jay McCallum; Vicki Rigdon, judicial assistant to Judge D. Milton Moore III for 15 years; and Jack Hartman, IT programmer for 5 years.

A brief reception with cake and cookies was held after the awards were presented.



Jennifer Brown (25 years), Ellen Davis (30 years), David Tullis (20 years) and Jessica Lustig (5 years) were recognized for their service as attorneys at the Second Circuit on April 5

SBA MILITARY AFFAIRS COMMITTEE

On March 20, the SBA Military Affairs committee, led this year by **Elizabeth Hancock**, met for breakfast at the home of Ted and Barbara Cox to discuss plans for the 2018 Veterans Program. Our Veterans Program will be held on Wednesday, November 7.



Pictured above are Ted Cox, Dana Southern, James Graves, Judge Bill Kelly, John Odom, Charles Grubb, James Campbell and Jim McMichael.

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Richard King Memorial Shootout

The Seventh Annual Richard B. King Memorial Shootout was again a great success. Five teams participated in the shootout that began immediately following the SBA golf tournament on April 23. The participating teams were Jim Colvin and Cole Smith; Walter Gerhardt and Todd Benson; David White and Ray Kethley; Jarred Franklin and Jimmy Mijalis; and Kyle Robinson and Justin Dewett, who were the winning team.

Trophies were presented by Jett King, son of Richard and Renee King, to the victorious team. Congratulations Kyle and Justin on a job well done!



Golf Tournament Winners:

Overall Low Gross was Trey May's team which included Danny Mortimer, J.T. Clendenin and David Ballard

1st Flight, 1st Place was Jarred Franklin's team which included Brad Wright, Pete Lockwood and Matt Greer

1st Flight, 2nd Place was Tom Bordelon's team which included Barry Simmons, Kevin Odom and Kathy Davis

2nd Flight, 1st Place was Schuyler Marvin's team which included Lyn Lawrence, Buddy Mondello and Jeff Cormany

2nd Flight, 2nd Place was Zach Shadinger's team which included Justin Dewett, Kyle Robinson and Chris Netherton

Issac Howell won Closest to the Hole on hole #13



2018 SBA Golf Tournament

The annual Golf tournament was held at East Ridge Country Club on April 23. Golf Committee Co-Chairs Jarred Franklin, Curtis Joseph, Jimmy Mijalis and Alexander Mijalis, along with committee members Thomas Cook, Walter Gerhardt, Judge Craig Marcotte, Trey May and Woody Nesbitt, planned the event which was enjoyed by over 100 SBA members, sponsors and guests.

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

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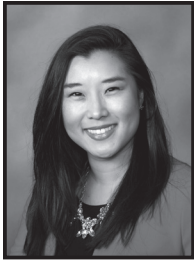
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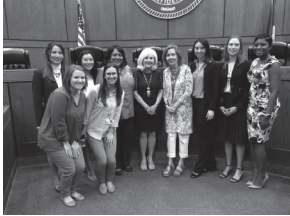
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Women's Section

by Anna Brown Priestley, President
anna.priestley@regions.com



"Spring is nature's way of saying,
'Let's party!'" - Robin

Thank you to the Second Circuit Court of Appeal for hosting our second "Coffee with the Court." We had a great turn out, and I hope to see everyone at our next event!

The Women's Section has decided to continue our fun into the summer months. We will host our third "Coffee with the Court" on June 12 from 8 - 9:30 AM at Shreveport City Court (1244 Texas Avenue). We are excited to feature Judge Lattier and Judge Sims! The event will be on the Second Floor in Courtroom 4. There is metered parking available in the parking lot directly in front of the court building, as well as free parking on Murphy Street.

Again, if you're not receiving our MailChimp Newsletter, please subscribe by visiting www.shreveportbar.com/womens-section/ and fill out the sign-up form. Also, if you haven't done so already, please "like" and follow our Facebook page at www.facebook.com/sbawomenssection.

Have a marvelous May!

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Monroe Inn of Court Update

by Hal Odom Jr., rhodom@la2nd.org

The Judge Fred Fudickar Jr. AIC (Monroe, La.) held its final regular meeting of the 2017-'18 season on April 9, 2018. Max Cox, general counsel at CenturyLink, and assisted by four members of CenturyLink's in-house counsel, presented "The Work of In-House Counsel." Although much of the information was unique to CenturyLink, and somewhat promotional, the purpose was to show the structure and climate of a large in-house operation.

Max began with a handout of the top 10 things about being a successful in-house counsel, by Sterling Miller, former general counsel at Travelocity.com and currently senior counsel at Hilgers Graben PLLC, in Dallas. "Number One is to learn the business. Talk with your client, really understand what it is your company does. If you know how your company makes money, you can draft, defend and advise much better." Max then jumped down to No. 10: "There's never enough money, time or people. Get used to it!" This elicited a murmur of agreement from the audience. Max also related that since he joined CenturyLink, in 2004, the company had exploded in size, having 10 times more customers, employees and revenue.

Lisa Eckert, who works in the public relations group, said that her overriding mission is to align all the company's external advocacy in "one national voice," navigating the problem areas of privacy, regulatory law and various national issues. Lisa also outlined CenturyLink's business, including the recent acquisition of Level 3 Communications, and offered the fun fact that the new company has enough fiber to wrap the earth 17 times.

James Butler gave additional statistics about CenturyLink's in-house operation, which grew from four attorneys in the Monroe office in 2005 to 110 today. With expansion came specialization,

and James commented that he had recently spent six months working exclusively on animal litigation in Wisconsin. Jessica Thornhill, formerly of Pettiette Armand, here in Shreveport, is now in CenturyLink's commercial law group. Her in-house focus has been on indemnification, limitations of liability, billing issues (with larger customers) and data security. She laughed, "I don't miss the billable hours," but regretted that without them, the "customer" had no incentive to limit the emails and phone calls! Michael Spencer, who spent 14½ years at Proskauer Rose LLP in New Orleans, is in the labor and employment group. At CenturyLink, he has concentrated on discipline and termination claims, policy changes and changes to the law, such as adjusting for a potential new FLSA salary threshold. He advised, however, "We do not draft policy and procedure manuals for clients."

In a short Q&A, a member asked about CenturyLink's future in Monroe, with the recent announcement that longtime CEO Glen Post would be retiring in May. The new CEO, Jeff Storey, has strong ties to Tulsa, and if he decided to move the corporate HQ, it would be a massive blow to Monroe's economy – the company's payroll exceeds \$200 million statewide. Max said the plan was to keep the HQ in Monroe, and the company was actually in the process of adding an outbound sales center on Forsythe Ave., with 150 new employees.

The 16 members in attendance received one hour of CLE credit. Inn President James Carroll announced that the final meeting of the year, in May, would be the annual crawfish boil. He also extended a warm invitation to members of the CenturyLink in-house team to join the Inn next year.



Lisa Eckert, Jessica Thornhill, Michael Spencer and James Butler, all of CenturyLink in Monroe, described the organization and work of the company's in-house counsel. (Photos by Hal Odom Jr.)

Judge Stephens Winters, Fourth JDC, Lisa Sumrall and Cyd Page were among the attendees at the Inn's April meeting

Hal Odom met with Inn president James Carroll and James Butler, of CenturyLink, in the lounge of the Lotus Club before the meeting.

Mark Your Calendar



JUNE 27

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

SEPTEMBER 26

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

OCTOBER 11-12

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

OCTOBER 24

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

OCTOBER 30

SBA Memorial & Recognition Ceremony
2:00 p.m. at the Caddo Parish Courthouse

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adventure begins...*



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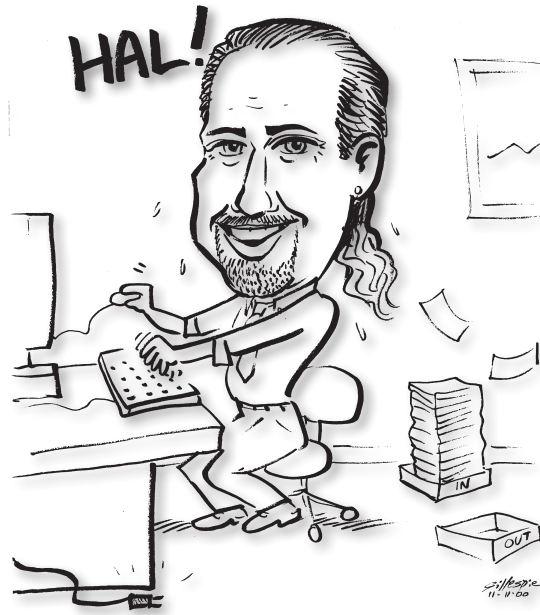
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How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

I can't get used to this. One of Louisiana's leading political journalists recently reported a change at the top of the House Democratic Caucus: Rep. Robert Johnson, of Marksville, "was elected by *acclamation*," replacing Rep. Gene Reynolds, of Minden, who resigned.

The word used, *acclimation*, means getting used to the climate or adapting to a new situation. It is often used in discussions about child custody: "The CASA report detailed R.A.'s successful *acclimation* in the foster home and concluded it is an extremely different environment from the group home he is used to and his behavior has improved dramatically." *State in Interest of R.A.*, 2006-2380 (La. 12/15/06), 944 So. 2d 1262 (Knoll, J, dissenting). *Climate* is obviously the root of this word.



Perhaps Rep. Johnson is still *acclimating* to his new chairmanship, but the intended word was *acclamation*, which in this context means *by voice vote without formal balloting*. It's not a common word in legal writing, as we normally require an official tally of votes, but it is related to *acclaim*, a very familiar word for *loud praise*. In fact, *acclaim* would probably work better in a sentence like, "He has professional experience with the U.S. Fish and Wildlife Service, as a refuge and research biologist, and has garnered significant *acclamation* for his work and publishing on marsh ecology and management." *St. Martin v. Mobil Expl. & Prod. U.S. Inc.*, 224 F. 3d 4002 (5 Cir. 2000).

It's acclimation. Get used to it.

Writing with consequences. It was disheartening to read, in a fairly recent opinion, that a doctor "testified that the two units of frozen plasma had the initial *desired affects*" on the patient. *Gaffney v. Giles*, 2014-0483 (La. App. 4 Cir. 4/29/15), 165 So. 3d 1100. But it was reassuring to see a different court tag almost the same error: "The trial court further commented that defendant's suggestion that 'at the time that he gave the statements there were adverse affects [sic] from, maybe, being on heroin, is nothing but speculation or conjecture.'" *State v. Savage*, 16-511 (La. App. 5 Cir. 4/12/17), 218 So. 3d 714 (sic in original).

To clear up further confusion, it's time for a refresher on that old bane of legal writers, *affect* and *effect*.

Effect (noun) = *result* or *consequence*. Think of special *effects* in movies and the side *effects* of medicine. In the plural, *effects* refers to one's *belongings*, defined in the Fourth Amendment's sphere of privacy: "persons, houses, papers, and effects[.]" In *Gaffney*, the doctor, the court reporter and the appellate court all meant the plasma had the desired *effects*.

Effect (verb), a much less common word, = *bring about* or *cause to occur*. The most familiar phrase is to *effect* changes, or, in the criminal context, "An officer *effects* an arrest of a person whom

he has authority to arrest, by laying his hands on him for the purpose of arresting him, though he may not succeed in stopping and holding him." *California v. Hodari D*, 499 U.S. 621, 111 S. Ct. 1547 (1991). A synonym for this is *effectuate*, which also contains the word *effect*.

Affect (verb) = *wield influence* or *cause consequences*. Legal errors are prejudicial when they *affect* the outcome and deprive a litigant of substantial rights. "When questioned by defense counsel about her ability to be fair, she stated that she might 'get a little emotional,' but that it would not *affect her ability* to serve on the jury." *State v. Payton*, 51,709 (La. App. 2 Cir. 11/15/17), __ So. 3d __. Less commonly, *affect* also means *pretend* or *put on airs*, as in, "She's just from Haughton but she *affects* a British accent."

Affect (noun), the least common of all = *state of mind* or *emotion attached to an idea or thing* (mostly in psychology). "[H]e was being treated with an antipsychotic medication that could cause him to exhibit flat *affect* and a stiff demeanor." *State v. Tyler*, 2013-0913 (La. 11/6/15), 181 So. 3d 678. Pronounced with a strong accent on the first syllable, this one will not often vex legal writers.

For all others, consider the effects of homophones on your writing.

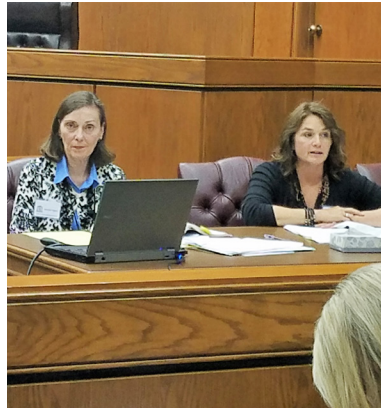
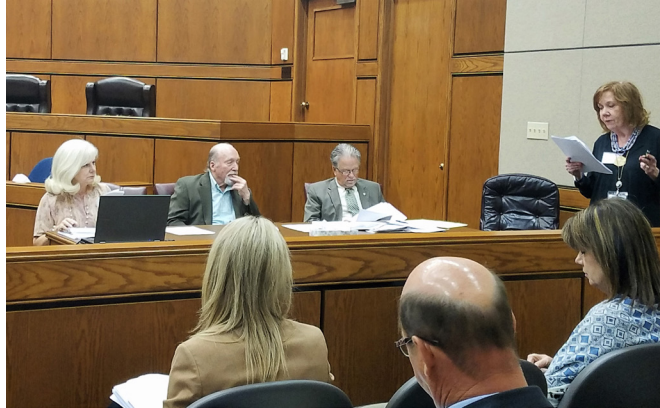
Final, really final, notice. From a memorandum filed in the First JDC: "There is a great deal of factual dispute among the parties regarding just about every critical liability question in this case, including the *penultimate* question of how or by what the fire was even ignited in the first place." The brief writer is not alone. A workers' comp judge joined him: "And if that's the case, and it looks to be, the *penultimate* question is what exactly did the adjuster have in his hands in the way of medical evidence[?]" *DeBarge v. LFI of Lake Charles*, 2014-747 (La. App. 3 Cir. 12/23/14), 154 So. 3d 1279.

So, if something is the *penultimate* question, then what is the ultimate one? *Ultimate* means *final*, *last in series* or *most important*. The word *penultimate* literally means *next to last*, and should be reserved for very literal applications like these: "The *penultimate* phrase of the above-mentioned indemnity clause provides the requirements * * * for indemnification to be triggered." *Johnson v. Hamp's Const. LLC*, 2017-0033 (La. App. 4 Cir. 6/7/17), 221 So. 3d 222. "The word 'due' in the *penultimate* sentence of [Art. 3351] means 'payable,' in our opinion." *Succession of McLean*, 26,566 (La. App. 2 Cir. 3/1/96), 651 So. 2d 920.

No, adding a prefix or suffix to a common word does not make it stronger. Just look at *pluperfect*, *infinitesimal* and the ludicrous *irregardless*. If something is the decisive question, it's *ultimate*, and that's final.

First Annual North Louisiana Appellate Conference

The Shreveport Bar Association and Second Circuit Court of Appeal co-sponsored the First Annual North Louisiana Appellate Conference on April 20 at the Second Circuit Court of Appeal. Approved for six hours of Appellate and Family Law Specialization CLE credit, there was overwhelming positive response from attorneys who attended this conference. We are looking at holding this conference again next year.

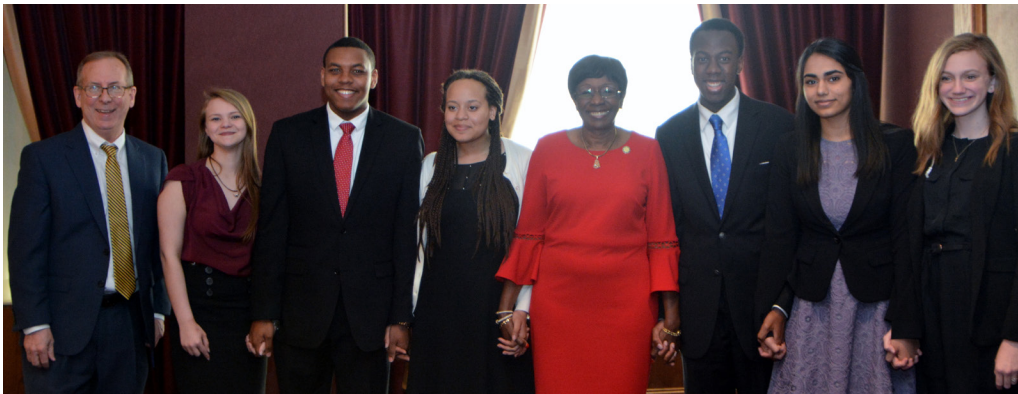




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