

Louisiana Law Review

Volume 75 | Number 4
Summer 2015

Foreword: Volume 75—Of Legal Scholarship and the Louisiana Law Review

Paul R. Baier
Louisiana State University Law Center

Repository Citation

Paul R. Baier, *Foreword: Volume 75—Of Legal Scholarship and the Louisiana Law Review*, 75 La. L. Rev. (2015)
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol75/iss4/7>

This Front Matter is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact kayla.reed@law.lsu.edu.

Foreword: Volume 75—Of Legal Scholarship and the *Louisiana Law Review**

Paul R. Baier**

George Holmes, Articles Editor of Volume 75, invited me to render a screed in celebration of the *Louisiana Law Review* at age 75 (I mean the *Review*, not yours truly). I turned George down. I was too busy litigating the constitutionality of Louisiana's prohibition of same-gender marriage in the Louisiana Supreme Court. Briefs were due; oral argument was set for January 29, 2015. The reader may recall the celebrated *Baier Baby Case*,¹ an earlier foray into court. As usually happens when I practice what I teach, I lost the case at trial and on appeal, only to win it in the court of experience.

All of which means I have been ensconced in "Professor Baier's Museum" at the Paul M. Hebert Law Center for over 40 years. Apropos of the *Law Review* let me say that I have nursed student scholarship in my "acclaimed Constitutional Law Seminar" (I borrow from Yiannopoulos's trumpeting of his Civil Law Seminar at Tulane). Allison Kingsmill is the latest seminarian to suffer what Oliver Wendell Holmes, Jr., called, "A good case of lead poisoning," that is, publication in the golden anniversary of Volume 75, Issue 3—*Of Butchers, Bakers, and Casket Makers: St. Joseph Abbey v. Castille and the Fifth Circuit's Rejection of Economic Protectionism as a Legitimate State Interest*.²

Copyright 2015, by PAUL R. BAIER.

* To the memory of James Winfield Bowers, born of Montana, 1942, and of the Yale Law School, 1967. He taught, *inter alia*, Bankruptcy Law and the Legal Scholarship Seminar. It was in the Legal Scholarship Seminar that our Captain Jim was at his best—"brainfire." In his kitchen at home with Lucy McGough and his students at his side, he was Chef Paul stirring a big pot of gumbo. He was a magnificent man, friend, and colleague.

** George M. Armstrong, Jr., Judge Henry A. Politz Professor of Law, Paul M. Hebert Law Center, Louisiana State University. Member of the Louisiana Bar. Judicial Fellow, Supreme Court of the United States, 1975–1976. Executive Director, Louisiana Bicentennial Commission of the U.S. Constitution, 1987–1991. Scholar-in-Residence, Louisiana Bar Foundation, 1990–1992; Distinguished Professor, Louisiana Bar Foundation, 2004. Law Professor of the Year, LSU Student Bar Association, 2010. Playwright and proud contributor to the *Louisiana Law Review*. See, e.g., "Father Chief Justice": *E.D. White and the Constitution*, 58 LA. L. REV. 423 (1998) (including a facing photograph of the Great Bronze statue of Chief Justice White that guards the portals of the Louisiana Supreme Court in New Orleans).

1. *Baier v. Woman's Hospital*, 340 So. 2d 360 (1976), *writ denied*, 342 So. 2d 224 (1977).

2. Allison B. Kingsmill, Note, *Of Butchers, Bakers, and Casket Makers: St. Joseph Abbey v. Castille and the Fifth Circuit's Rejection of Pure Economic Protectionism as a Legitimate State Interest*, 75 LA. L. REV. 933 (2015).

I claim four members of the Louisiana Supreme Court as my students—“Professor Baier’s Alumni”: Justice John Weimer,³ Justice Greg Guidry,⁴ Justice Marcus Clark,⁵ and, of late, Justice Jefferson D. Hughes III (“Jeff”).⁶ This, to their teacher’s great joy. “A teacher affects eternity; he can never tell where his influence stops.”⁷

I. A PAST ROOTED IN THE CIVILIAN TRADITION

I start with Dean Paul M. Hebert, the Commander-in-Chief of the Law School in 1938. He was present at the creation of the *Louisiana Law Review*. His pediatric note is online at <http://lawreview.law.lsu.edu/about/>. Let me toot Dean Hebert’s founding horn anew in this hard copy golden anniversary salute to the *Review*:

[I]t is perhaps not too much to say that with common law influences pressing on us from every side, the very existence

Kingsmill’s critique of Judge Patrick Higginbotham’s opinion for the Fifth Circuit so impressed me that I sent a copy of her paper to Judge Higginbotham by way of congratulating him for standing up to the State Board of Embalmers and Funeral Directors. Judge Higginbotham’s constitutional grasp is on display in this *St. Joseph Abbey v. Castille*, 712 F.3d 215 (2013). The Supreme Court denied certiorari. *Castille v. St. Joseph Abbey*, 134 S. Ct. 423 (2014). Judge Higginbotham, by way of return, complimented Kingsmill’s *Louisiana Law Review* scholarship.

3. J.D., 1980. While a student at the LSU Paul M. Hebert Law Center, John L. Weimer drafted a digest of an enduring First Amendment precedent, *Jenkins v. Georgia*, 418 U.S. 153 (1974), later published in his teacher’s *parvum opus*. See PAUL R. BAIER, THE POCKET CONSTITUTIONALIST 263 (7th ed. 2013). Justice John L. Weimer authored the Foreword: “With the publication of this microscopic labor of love, my former teacher and friend reaps the great joy of a dedicated teacher—parental pride in the accomplishments of his students.” Indeed.

4. J.D., 1985. Member, *Louisiana Law Review*, Volume 44 (1984); Greg Gerard Guidry, Note, *The Louisiana Supreme Court and the Physician-Patient Privilege: Arsenaux v. Arsenaux*, 44 LA. L. REV. 1813 (1984).

5. J.D., 1985.

6. J.D., 1978. Member, *Louisiana Law Review*, Volume 38 (1978). One of Jefferson Hughes’ earliest publications is his digest of *Coates v. Cincinnati*, 402 U.S. 611 (1972), published in *The Pocket Constitutionalist*. See BAIER, *supra* note 3, at 309. Hughes’ scholarly acumen while a mere student is visible in his *Review* Comment, which takes us all the way back to *Hopkin Huggett’s Case*, 84 Eng. Rep. 1082 (K.B. 1666), and *The Queen v. Tooley*, 92 Eng. Rep. 349 (K.B. 1710). See Jefferson D. Hughes III, Note, *The Right to Resist Unlawful Arrest*, 38 LA. L. REV. 840 (1978). What erudition. Now, I know him as “Mr. Justice Hughes.”

7. HENRY ADAMS, THE EDUCATION OF HENRY ADAMS 300 (1931).

of the juridical method of the civil law in Louisiana is seriously threatened and its survival would appear to depend upon the ability of the law schools and the legal profession to develop and make available the essential doctrinal materials dealing with modern civil law. With this end in view, it will be the policy of the Louisiana Law Review to place special emphasis on matters pertaining to civil and comparative law.⁸

Dean Hebert's vision for the *Review* has been richly fulfilled. As an example, let me point to one civil law treasure in the *Louisiana Law Review* that is a favorite of mine. It is pure gold. This was 15 years ago, from my erstwhile civilian colleague A.N. Yiannopoulos: *Of Immovables, Component Parts, Societal Expectations, and the Forehead of Zeus*.⁹ Read it. I do not mean to slight Symeon Symeonides's *One Hundred Footnotes*¹⁰ or Benjamin West Janke's *Revisiting Contra Non Valentem*,¹¹ a rich piece of civilian scholarship that took Janke to France. You can read about Ben's success, as well as other mighty achievements of members of the *Review*, online.

Just the other day the Law Faculty voted to hoist the Civil Law Pennon of our Law Center even higher in the 21st century, to reemphasize to the world the proud civilian tradition that is ours, to reach out to prospective students from every state of the Union and every corner of the Globe, inviting them to share the treasure of LSU's bi-jural education, either as juris doctor or masters of law candidates. I give away no secret when I say that Chancellor Jack Weiss so advised our student body and faculty in a recent memorandum.

Moreover, the Russell B. Long Eminent Scholars Academic Chair, Professor Olivier Moréteau, has broadcast the work of our Center of Civil Law Studies globally.¹² Olivier and his civilian

8. Paul M. Hebert, Editorial, *The Law Review and the Law School*, 1 LA. L. REV. 157, 158 (1938).

9. A.N. Yiannopoulos, *Of Immovables, Component Parts, Societal Expectations, and the Forehead of Zeus*, 60 LA. L. REV. 1379 (2000).

10. Symeon Symeonides, *One Hundred Footnotes to the New Law of Possession and Acquisitive Prescription*, 44 LA. L. REV. 69 (1983).

11. Benjamin West Janke, *Revisiting Contra Non Valentem in Light of Hurricanes Katrina and Rita*, 68 LA. L. REV. 497 (2008); Benjamin West Janke & François-Xavier Licari, *Contra Non Valentem in France and Louisiana: Revealing the Parenthood, Breaking the Myth*, 71 LA. L. REV. 503 (2011).

12. Cf. Olivier Moréteau, *Opening Remarks*, 67 LA. L. REV. 1015 (2007). Ten years ago in 2005, Moréteau took command of our Center of Civil Law Studies, following Joseph Dainow, 1965–1975, and Saúl Litvinoff, 1975–2005. Moréteau's *jardin de fleurs juridiques* now includes the *Journal of Civil Law*

colleagues urge the *Louisiana Law Review* to continue its publication of civilian scholarship, with respect to Louisiana's private law and, indeed, with respect to both private and public civil law worldwide.

The civil law is a doorway to global jobs. Take Max Marx, a former research assistant of mine and editor of *The Civilian*, as an example. Max went to New York City, passed the New York bar exam, and then lightning struck: He was invited to join Mori Hamada & Matsumoto, a giant international law firm in Tokyo, Japan. Max flew to Tokyo, learned Japanese, and practiced international corporate law at Mori Hamada & Matsumoto, and later as legal counsel to Sumitomo Corporation, Tokyo. Max is now back in Baton Rouge as Assistant General Counsel with Turner Industries. I am very proud of Max Marx, esq. Max is a golden exemplar of Dean Hebert's dream come true.

II. A PROMISING FUTURE: PROPOSED SCHOLARSHIP

Members of Volume 76 approached me seeking "hot topics" worthy of discussion in the *Louisiana Law Review*. I provided a copy of Judge James L. Dennis's Fifth Circuit opinion in *Bell v. Itawamba County School Board*,¹³ which is garnering national attention in the blogosphere. Judge Dennis is one of us—LSU Law Center class of 1962; Associate Editor of Volume 22 of the *Louisiana Law Review*;¹⁴ Associate Justice, Louisiana Supreme

Studies, which broadcasts the scholarship of the Center of Civil Law Studies around the globe, especially to Québec, Europe, and Latin America, where Moréteau, Professor Alain Levasseur, and other of our civilian colleagues are well known. And Moréteau's Blog "LSU Law Worldwide" is another of his creative flowerings. Serendipitously, 2015 marks the Silver Anniversary of the Center of Civil Law Studies—another Paul M. Hebert dream come true.

13. 774 F.3d 280 (5th Cir. 2014).

14. James L. Dennis's best scholarship on the *Review*, if I may judge it, is his Comment, *State Involvement in Private Discrimination Under the Fourteenth Amendment*, which is a compact piece of research, writing, and reflection: "But it would seem that when a sufficient amount of jurisprudence has been developed, the formulation of rules is desirable and even necessary if justice is to be done." See 21 LA. L. REV. 433, 448 (1961). Next in line is his Note, *Evidence—Unreasonable Search and Seizure—Pretrial Motion to Suppress*, written under the tutelage of Professor George W. Pugh and sensibly advocating adoption of pretrial challenges to unconstitutionally seized evidence: "Without some compulsion to dispose of the issue before trial, it would seem that the result might be undue interruption and prolongation of criminal trials." See 22 LA. L. REV. 842, 845 (1962).

Court, 1975–1995;¹⁵ Judge, United States Court of Appeals for the Fifth Circuit, appointed by President Clinton, confirmed by the Senate, 1995. That’s 20 years of writing the law of the Constitution from his chambers.

Here, briefly, are the facts of Taylor Bell’s case. “*Ex facto jus oritur*” (“From the facts arises the law”) as Brandeis used to say.¹⁶ An aspiring student rapper, Taylor Bell, gets himself into trouble with the School Board for his off-campus Internet posting during non-school hours of a rap song recorded at an off-campus studio unaffiliated with his school criticizing with vulgar and violent lyrics two named male athletic coaches for sexually harassing female students at the school.¹⁷ Bell posts his song on his Facebook page and on YouTube using his personal computer.¹⁸ The Board disciplines Bell.¹⁹ He turns around and sues the School Board for violating his First Amendment rights.²⁰ Query, is this *Tinker v. Des Moines Independent Community School District*²¹ revisited? Is it *Morse v. Frederick*?²² Or, is this something new at the cutting edge of the Internet?

You can read the facts and Judge Dennis’s conclusions of law in favor of Taylor Bell in his panel opinion, 2–1.²³ The Fifth Circuit has granted rehearing en banc²⁴ and is likely to reverse. Whatever the outcome on rehearing en banc in Taylor Bell’s case,

15. Justice Dennis, then an Associate Justice of the Louisiana Supreme Court, wrote a letter (Dec. 5, 1990) to the Articles Editor of the *Louisiana Law Review* congratulating the *Review* “on fifty years of excellence.” His letter was later published in Volume 51 of the *Louisiana Law Review*. He quotes Dean Erwin N. Griswold, apropos of the *Harvard Law Review* and of our own *Louisiana Law Review*: “The zeal and zest of youth, continuing year by year, have undoubtedly brought benefits to the *Review* far exceeding any loss that may have come from inexperience.” Judge Dennis adds: “Indeed, any author would be fortunate to have had the editorship of F. Hodge O’Neal, Alvin B. Rubin, Jr., George Pugh, or Henry Politz, to mention only a few whose works are familiar to the bench and bar.” James L. Dennis, *Remarks*, 51 LA. L. REV. (1991) (on file with author).

16. *Adams v. Tanner*, 244 U.S. 590, 600 (1917) (Brandeis, J., dissenting) (“That ancient rule must prevail in order that we may have a system of living law.”).

17. *Bell v. Itawamba Cnty. Sch. Bd.*, 774 F.3d 280, 283 (5th Cir. 2014).

18. *Id.* at 285.

19. *Id.* at 286.

20. *Id.* at 289.

21. 393 U.S. 503 (1969).

22. 551 U.S. 993 (2007).

23. *Bell*, 774 F.3d 280.

24. *Bell v. Itawamba Cnty. Sch. Bd.*, No. 12–60264 (5th Cir. Feb. 19, 2015) (granting rehearing en banc).

it suffices here to say that Judge Dennis's panel opinion is worthy of a Comment in the *Louisiana Law Review*.

One new feature of the *Review* is its recently renamed online journal, the "LLR Lagniappe."²⁵ The posts are from both students and faculty. Here is instant scholarship on "hot potatoes." I like metaphor. It keeps your reader awake, assuming you have one. Don't forget the classic division of cases among lawyers: There are the "interesting cases," and then there are "the other fellow's cases." This sage dichotomy is the wit and wisdom of Colonel Frederick Bernays Wiener, Note Editor of the *Harvard Law Review*, 1929–1930. You can read about him online, a feature of the LLR Lagniappe.²⁶

III. THE LAW REVIEW HONORS ITS OWN

I asked Christopher Ulfers, Editor-in-Chief of Volume 75 of the *Louisiana Law Review*, what subjects belonged in my Screed 75. He suggested a listing of members of the *Louisiana Law Review* who had gone on to "live greatly in the law."²⁷

The list is endless, so Ulfers and I agreed on one alone, and that one being Alvin B. Rubin—Class of 1942; Editor-in-Chief, Volume 4 of the *Louisiana Law Review*.²⁸ You can see his visage and Janice G. Rubin's on the bronze plaque announcing the Alvin B. Rubin and Janice G. Rubin Endowed Visiting Professorship. The likenesses are true to life. This is on the fourth floor corridor leading to the Chancellor's Suite. The walls are covered with our bronze benefactors—our *di Medici*. We are not Florence's Uffizi Museum. We are Bologna's Law School—our flowering from 1906 to 2006. It continues. There are inscriptions preserving

25. *LLR Lagniappe*, LOUISIANA LAW REVIEW, <http://lawreview.law.lsu.edu/>, archived at <http://perma.cc/KF9L-WJU7> (last visited Apr. 14, 2015). The change of name is the creative touch of Volume 75's Online Editor, Michael J. Lambert.

26. Paul R. Baier & Jacob A. Stein, *The Book of Peppercorns*, LOUISIANA LAW REVIEW (May 31, 2013), <http://lawreview.law.lsu.edu/2013/05/31/the-book-of-peppercorns/>, archived at <http://perma.cc/EFG2-YWTD>.

27. "[A] man may live greatly in the law as well as elsewhere; that there his thought may find its unity in an infinite perspective; that there as well as elsewhere he may drink the bitter cup of heroism, may wear out his heart after the unattainable." Oliver Wendell Holmes, Jr., *The Profession of Law*, in SPEECHES 22, 23 (Boston: Little, Brown, & Co. 1891).

28. An entire issue of the *Louisiana Law Review* features essays from Justice Byron R. White, Judge John Minor Wisdom, Judge Charles Clark, Judge Fred Cassibry, Judge Henry Politz, to say nothing of Judge Rubin's law partners, academic admirers, law clerks, and of course Janice Ginsburg Rubin. Neil C. Abramson, Editor-in-Chief of Volume 56, dedicated Volume 56, Issue 6, plainly and simply: "To Judge Alvin Benjamin Rubin: Thank you."

memory on these bas-reliefs.²⁹ My favorite is an excerpt from one of Janice Rubin's poems. It adorns her bas-relief, next to her husband's³⁰:

“On Reading Law”
 “Stretch across the reaching dark:
 here, scholars chat across the centuries;
 pull up a chair.”

Janice Rubin is thinking of the chairs of the *Louisiana Law Review*.

Albert Tate, Jr., who convinced Dean Hebert to hire me³¹ and Chancellor Hawkland to keep me, loved the LSU Law Center and the *Louisiana Law Review*. Judge Tate—Yale Law School, 1947—understood judging and the pursuit of justice as an art form beautifully canvassed by Benjamin Nathan Cardozo in his immortal classic *The Nature of the Judicial Process* (Yale University Press, 1921). Judge Tate's own prolific writings on the judicial process in the *Louisiana Law Review* have had a profound impact on my understanding of juridical science. He appears in Volumes 16,³² 19,³³ 20,³⁴ 22,³⁵ 25,³⁶ and 28.³⁷ The *Louisiana Law Review* remembers him here: *In Memoriam*, Volume 47, Issue 5 (1987).³⁸

29. *E.g.*, “The Civil Law is beautiful.” This from a mighty bas-relief celebrating the endowment of the A.N. Yiannopoulos Professorship of Law, courtesy of the generous donations of Richard J. Dodson, Esq., a former Paul M. Hebert Law Center student of Dr. Yiannopoulos, circa 1960s, thereafter a lifelong admirer and friend.

30. Here is Judge Rubin's: “This feeling that justice is a supreme goal, this sense that it is a predicate to organized society is no mere yearning, for it is only in a fair proceeding, one that comports with our sense of justice, that we can with any legitimacy call another human being to account.” *United States v. McDaniels*, 379 F. Supp. 1243, 1249 (E.D. La. 1974).

31. “Judge Tate urged me to come to LSU Law School. ‘You’ll have fun,’ he told me. Al Tate was right.” Paul R. Baier, *100 Years of LSU Law, 1906–2006*, 67 LA. L. REV. 297, 297 (2007).

32. Albert Tate, Jr., *Forum Juridicum: The Role of the Judge in the American Republic*, 16 LA. L. REV. 386 (1956).

33. Albert Tate, Jr., *Forum Juridicum: The Judge as a Person*, 19 LA. L. REV. 488 (1959).

34. Albert Tate, Jr., “Policy” in *Judicial Decisions*, 20 LA. L. REV. 62 (1959).

35. Albert Tate, Jr., *Techniques of Judicial Interpretation in Louisiana*, 22 LA. L. REV. 727 (1962).

36. Albert Tate, Jr., *Method of Interpretation and Sources of Private Positive Law*, 25 LA. L. REV. 577 (1965) (book review).

37. Albert Tate, Jr., *The Law-Making Function of the Judge*, 28 LA. L. REV. 211 (1968).

38. “Of all the judges I have known, Al had the largest heart for mankind as well as for each and every human being. He really cared.” Mack E. Barham, *In Memoriam: Albert Tate, Jr.*, 47 LA. L. REV. 921, 921 (1987).

As for living alums, Judge Dennis gets my vote. His Member scholarship shows up in Volumes 21 (1961) and 22 (1962).³⁹

I have heard rumors that Volume 76 will honor the Law Center's civilian tradition in a Symposium issue, prompted by the retirement of Professor Alain Levasseur, the Law Center's *Empereur Napoleon*. Alain is "*mon cher professeur de français* who straightens up my French when I mumble something like "*libre recherche scientifique*" or, worse, the title of François Gény's great book "*Méthode d'interprétation et sources en droit privé positif*."

Alain is Director of our Center for European Studies. He richly deserves such a tribute. Of course, there must be a regal portrait "*Monsieur A. Levasseur*" as frontispiece, rendered by Jacques Louis David.⁴⁰

I hope the Members of Volume 76 will invite me to contribute to their *mélanges* Levasseur. I have my tribute planned: "The Constitution as Code," which is inspired by Levasseur's *Code Napoleon or Code Portalis*?⁴¹ This was written at a time when Alain was at Tulane Law School. He jumped ship, *bonne chance*, and joined our *Faculté de Droit* circa 1977. A *Festschrift* Levasseur—*Excusez-moi, des mélanges Levasseur*—in the *Louisiana Law Review* would certainly hoist our Civil Law Pennon even higher in Alain's native France where he is "New Pothier." Of equal importance, our Hebert Law Center's civilian glory, like Napoleon's army, would be spread out far and wide.

IV. A GLOBAL REACH

What else? The *Review* is distributed in hard copy to law offices and law libraries across America. It is read all over the globe on the Internet. How many times has it been cited by the Supreme Court of the United States? Ulfers did the research for me, instantly—26 citations⁴² to my great delight. This accolade belongs to others,⁴³ not to me.

39. For titles of James L. Dennis's *Louisiana Law Review* scholarship, see *supra* note 14.

40. Jacques Louis David, First Painter to the Emperor Napoleon Bonaparte. *L'empereur* commissioned several grand megalomaniac machines from the legendary icon-maker Jacques Louis David to celebrate his imperial achievements with regal pomp and circumstance, such as *Napoleon crossing the Alps*, 1800, *Napoleon's Coronation*, 1807. See David, Jacques Louis, in INTERNATIONAL DICTIONARY OF ART AND ARTISTS 215, 217 (James Vinson, ed., St. James Press, 1990).

41. Alain A. Levasseur, *Code Napoleon or Code Portalis?*, 43 TUL. L. REV. 762 (1969).

42. Here are Professor Baier's favorite United States Supreme Court citations to the legal scholarship of *Louisiana Law Review*: *Garner v.*

The Louisiana Supreme Court and the *Louisiana Law Review* are symbiotic. The Court has relied on the scholarship of the *Review* in over 1,000 cases, shaping the path of Louisiana law for three-quarters of a century. It has even been bold enough to rely on me, *eo nomine*, a brilliant insight to be sure: “As Professor Paul R. Baier of Louisiana State University Law Center reflected, ‘[i]t would seem that the Teacher’s Tenure Law was not meant to guarantee job security where there were no jobs.’”⁴⁴ How do you like that?

Louisiana, 368 U.S. 157, 161 n.6 (1961) (citing Joseph G. Hebert, Comment, *Appellate Review on Facts in a Criminal Case—How Much Evidence is “Some” Evidence*, 19 LA. L. REV. 843 (1959)); *Baldwin v. New York*, 399 U.S. 66, 71 n.14 (1970) (citing Judith M. Arnette, Comment, *Jury Trial in Louisiana—Implications of Duncan*, 29 LA. L. REV. 118, 130 (1968) (concluding: “Unanimity through the imposition of a federal standard should not be required; rather the states should be allowed to develop their own jury procedures. It would be a better course to allow the concepts of practicality and evolutionary progress to prevail in this instance, rather than to force the states to conform to a historical jury pattern.”)); *Brown v. Louisiana*, 447 U.S. 323, 336 n.14 (1980) (citing Arnette, *supra*); *Norfolk & Western Ry. Co. v. Liepelt*, 444 U.S. 490, 502 (1980) (Blackmun, J., dissenting) (citing Paul H. Spaht, Comment, *Income Tax Effects on Personal Injury Recoveries*, 30 LA. L. REV. 672 (1970)); *Ohio v. Roberts*, 448 U.S. 56, 66 n.8 (1980) (quoting J. Broocks Greer, III, Comment, *Hearsay, the Confrontation Guarantee and Related Problems*, 30 LA. L. REV. 651, 668 (1970) (“Properly administered the business and public records exceptions would seem to be among the safest of the hearsay exceptions.”)).

43. We start our list of LSU Law Faculty who, by virtue of United States Supreme Court citation to their *Louisiana Law Review* scholarship, are justly crowned Volume 75 gold medalists by going all the way back to Volume 1—J. Denson Smith, *Coercion of Third Parties in Labor Disputes*, 1 LA. L. REV. 277 (1939) (cited in *Woodwork Manufacturers v. NLRB*, 386 U.S. 612, 623 n.10 (1967)); Dale E. Bennett, *The Louisiana Criminal Code: A Comparison with Prior Louisiana Criminal Law*, 5 LA. L. REV. 6 (1942) (cited in *Garrison v. Louisiana*, 379 U.S. 64, 78 (1964)); George Willard Pugh, *Historical Approach to the Doctrine of Sovereign Immunity*, 13 LA. L. REV. 476 (1953) (cited in *United States v. Nordic Vill., Inc.*, 503 U.S. 30, 43 n.11 (1992) (Stevens, J., dissenting)). Here is our beloved Professor Pugh’s opening—“Generations have genuflected before the divine alter of sovereign immunity, and as a result, countless litigants have been stunned by the rigorous application of the dead but lethal residuum of an outmoded doctrine”—pure George Pugh. *Nordic Village*, 503 U.S. at 43 n.11. For additional LSU Law Faculty citations, see *infra* Appendix B—“SCOTUS Citations.”

44. *Rousselle v. Plaquemines Parish Sch. Bd.*, 633 So. 2d 1235, 1243 (La. 1994) (citing Paul R. Baier, *Work of the Appellate Courts 1974–1975: Administrative Law and Procedure*, 36 LA. L. REV. 464, 469 (1976)).

Publication of its Members' scholarship is the golden gift of the *Louisiana Law Review*. So it is; so it has always been.⁴⁵ Each new issue of the *Review* is politely delivered to me or silently tucked into my faculty mailbox. The waft of fresh printer's ink is intoxicating. I pass over lead articles that don't interest me—"the other fellow's cases"—let's say a Symposium on the latest developments in bankruptcy law—bankruptcy, I try to avoid. But I always inspect the table of contents to see whether any of my students is published. If so, I pen a note of condolence on their having suffered a good case of lead poisoning.

Bon 75^e anniversaire! Yours, Richard Henry Jesse.^[**]

APPENDIX A: "BLACK INK"

*O fearful meditation, where alack,
Shall times best Jewell from times chest lie hid?
O none, unless this miracle have might,
That in black ink my love may still shine bright.*

"[T]he law review is an indispensable part of the American system of legal education. The training in research and legal writing under faculty supervision which is made possible for the students through the medium of the law review serves inevitably as a stimulus to a higher standard of scholarship—experience in original and independent work can hardly be provided as effectively through any other means."⁴⁶

45. For a listing of "interesting" student scholarship of the *Louisiana Law Review*, Volume 1 (1938–1939) and Volume 75 (2014–2015), see *infra* Appendix A—"Black Ink."

[**] Editor's Note: Professor Baier plays Richard Henry Jesse in his nationally acclaimed theater production, "*Father Chief Justice*": *Edward Douglass White and the Constitution*, which premiered in the theater of the John Lafitte National Historic Park, March 8 (Justice Oliver Wendell Holmes' birthday), 1997, Thibodaux, Louisiana, and played most recently on November 9, 2012, at the Social Law Library, John Adams Courthouse, Pemberton Square, Boston, featuring four members of the Massachusetts Supreme Judicial Court playing the parts of Chief Justice White (Justice Ralph Gants, now Chief Justice Gants), Justice Brandeis (Justice Francis Spina), Fanny Holmes (Justice Margo Botsford), and Justice Oliver Wendell Holmes (Justice Robert Cordy). Richard Henry Jesse (Baier's role) was the first academic Dean of the University of Louisiana, now Tulane University, and a close personal friend of E.D. White. Our bard professor's play written from history has been in production for fifteen years. Editor-in-Chief Christopher Ulfers, Articles Editor George Holmes, and the entire membership of Volume 75 thank Professor Baier for what he calls his "Screed 75." It is a vibrant keepsake of 75 years of the *Louisiana Law Review*.

46. Hebert, *supra* note 8, at 158.

Remembering that “the interesting cases” count the most, here are the student notes from Volume 1 that are “interesting”—H. M. S., *Constitutional Law – Due Process – Fixing of Minimum Prices in Barbering Business*,⁴⁷ F. S., *Constitutional Law – Eminent Domain – State Slum Clearance Housing Projects*,⁴⁸ F. S. C. Jr., *Constitutional Law – Intergovernmental Immunity from Taxation – State Income Tax on Salary of Employee of Federal Instrumentality*.⁴⁹ Notice how the student authors are identified in Volume 1 only by their initials, not their names. This has changed. In the interest of full disclosure, I know that F. S. C. Jr. is Frank S. Craig, Jr. How do I know this? Frank S. Craig III took Contracts and Constitutional Law at my feet. And the son, like the father, was a Member of the *Louisiana Law Review*. He wrote about nasty door-to-door sales practices and the constitutionality of a proposed federal Door-to-Door Sales Act.⁵⁰ Frank S. Craig III wore a green baseball cap to my classes; he was memorable then and now. For the sake of a complete record, it should be noted that Frank S. Craig I graduated from the LSU Law Center in 1912 when the Law School was located in downtown Baton Rouge.

To Allison Kingsmill’s lead poisoning in Volume 75, *Of Butchers, Bakers, and Casket Makers: St. Joseph Abbey v. Castille and the Fifth Circuit’s Rejection of Economic Protectionism as a Legitimate State Interest*,⁵¹ I should add three other pieces of “interesting” constitutional commentary—J. Benjamin Aguiñaga, Comment, *Confronting Confrontation in a FaceTime Generation: A Substantial Public Policy Standard to Determine the Constitutionality of Two-Way Live Video Testimony in Criminal Trials*,⁵² Mallory Chatelain, Comment, *Same-Sex Marriages Are Not Created Equal: United States v. Windsor and Its Legal Aftermath in Louisiana*,⁵³ Michael J. Lambert, Comment, *A Gunman’s Paradise: How Louisiana Shields Concealed Handgun Permit Holders While Targeting Free Speech and Why Other States Should Avoid the Same Misfire*.⁵⁴ I congratulate these four authors for their radiant legal scholarship in constitutional law.

47. 1 LA. L. REV. 218 (1938).

48. 1 LA. L. REV. 221 (1938).

49. 1 LA. L. REV. 846 (1939).

50. See Frank S. Craig, III, *Limitations on Agreements and Practices*, 34 LA. L. REV. 609 (1974).

51. Kingsmill, *supra* note 2.

52. 75 LA. L. REV. 175 (2014).

53. 75 LA. L. REV. 303 (2014).

54. 75 LA. L. REV. 543 (2014).

APPENDIX B: SCOTUS CITATIONS

Citation of one's scholarship by the Supreme Court of the United States is thought by some to be the *ne plus ultra* of academic achievement, worthy of a gold medal. Here then are other LSU Law faculty members whose scholarship is mentioned in the *United States Reports*—Melvin G. Dakin, *The Protective Cloak of the Export-Import Clause: Immunity for the Goods or Immunity for the Process*;⁵⁵ Donald H. Wollett, *Race Relations*;⁵⁶ W. Lee Hargrave, *The Declaration of Rights of the Louisiana Constitution of 1974*;⁵⁷ H. Alston Johnson III, *Death on the Callais Coach: The Mystery of Louisiana Wrongful Death and Survival Actions*;⁵⁸ and Thomas C. Galligan, Jr., *Augmented Awards: The Efficient Evolution of Punitive Damages*.⁵⁹

55. 19 LA. L. REV. 747 (1959) (cited in *Michelin Tire Corp. v. Wages*, 423 U.S. 276, 283 (1976)).

56. 21 LA. L. REV. 85 (1960) (cited in *Anderson v. Martin*, 375 U.S. 399, 403 n.4 (1964)).

57. 35 LA. L. REV. 1 (1974) (cited in *Burch v. Louisiana*, 441 U.S. 130, 134 (1979)).

58. 37 LA. L. REV. 1 (1976) (cited in *Robertson v. Wegmann*, 436 U.S. 584, 591 n.6 (1978)).

59. 51 LA. L. REV. 3 (1990) (cited in *BMW of N. Am. v. Gore*, 517 U.S. 559, 593 (1996) (Breyer, J., concurring)).