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Gunfire outside terrifies class

Bystander hurt; 3 suspects caught

By Walt Philbin
Staff writer

A bystander was shot in the foot and a class of first-graders forced to take cover as a gunfight between rival groups erupted near Oretha Castle Haley Elementary School Monday, police said.

"It was like the Wild West out there, with bullets flying and cars crashing and people running."
ROSLYN SMITH
principal of Oretha Castle Haley Elementary

A group on foot traded bursts of gunfire with a group in a car, hitting a 77-year-old woman in the heel and piercing a classroom window with a stray bullet.

Teacher Novyse Francisco told the 25 children in her class to huddle under tables and hold hands. Principal Roslyn Smith, following a rehearsed procedure called a "Code Red," used the public address system to call for each classroom to be locked from the inside.

The call for the lockdown came after Smith heard eight or nine shots. It lasted about 15 minutes.

"It was like the Wild West out there, with bullets flying and cars crashing and people running," she said.

The group in the car escaped after careening wildly down the street, striking three parked cars, all of them belonging to teachers at the school.

Police responded quickly, Smith said, rounding up a 20-year-old in the next block and two teen-agers who tried to hide in the neighborhood. One of the teens was found by a police dog under a house on North Derbigny Street and the other was found inside a relative's home on Painters Street. The three were booked with negligent injuring in the shooting of the woman, who was treated and released from Charity Hos-

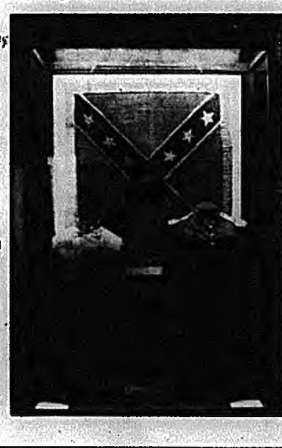
See SHOOTING, A-10

Faced with possible eviction, the Confederate Museum is digging in for a fight against its building's new owner: the Ogden Museum of Southern Art

ART VS. ARTIFACTS

STAFF PHOTOS BY G. ANDREW BOYD

The Confederate Museum is dwarfed by the Ogden Museum, right, going up beside it on Camp Street. The former Howard Memorial Library, now owned by the Ogden, is on the other side of the Confederate Museum. Originally, the Ogden Museum just wanted to construct a passageway to connect its two structures, but it ended up buying the entire building.



The Confederate Museum contains thousands of items that belonged to or tell the story of Confederate soldiers and civilians; only the Museum of the Confederacy in Richmond, Va., boasts a larger collection of Civil War memorabilia. See story, A-11

By Doug MacCash
Staff writer

At one time, the building at 929 Camp St., a short block from Lee Circle, was almost a sacred site for many New Orleanians. In 1893, a reported 60,000 mourners filed past the casket of former Confederate President Jefferson Davis.

But in recent years, the Confederate Museum has had trouble drawing 15,000 visitors a year. Despite some modest attempts to update and broaden its point of view on the epic events it commemorates, many city leaders regard it as an embarrassing relic of another era.

"We wanted to dig the Channel, and we ended up buying the English Channel."
Ogden Director
RICHARD GRUBER

Now, after more than 100 years of celebrating the central event in Southern history, the museum is in danger of being evicted by, of all things, another museum celebrating the South.

The adversary is the Ogden Museum

See MUSEUM, A-11

Judge finds herself on trial

Tulane case prompts conflict-of-interest call

By Susan Finch
Staff writer

One federal magistrate was an adjunct professor at Tulane Law School. Another magistrate's wife was a doctor at Tulane Medical Center.

U.S. District Judge Ginger Berrigan
'It was a pure legal issue, not involving factual findings or credibility calls'

And the district judge a few years earlier had taught at Tulane Law School and sat on the board of the Amistad Research Center, which is housed on the university's Uptown campus.

So when former Tulane Medical School biochemistry professor Carl Bernofsky filed a lawsuit in mid-1998 accusing the university of maligning him to prospective employers after it fired him three years earlier, should any of them have stepped aside?

Citing potential conflicts, or at least the appearance of them, Magistrates Joseph Wilkinson and Lance Africk recused themselves.

U.S. District Judge Ginger Berrigan did not.

See JUDGE, A-10

Spending on drugs skyrockets

Tab is up 40 percent in 2 years, study says

By Robert Pear
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WASHINGTON — As an aging population copes with arthritis, diabetes and high cholesterol, spending on prescription drugs shot up 18.8 percent last year, to $131.9 billion, a new study shows.

Two dozen products accounted for half the increase, which occurred not just because drugs are becoming more expensive, but because doctors are writing many more prescriptions for higher-cost drugs, according to the study issued Monday by the National Institute for Health Care Management Foundation. The institute is a nonprofit, nonpartisan group that conducts research on health care issues.

The trend will probably increase political pressure for new government benefits to help elderly people buy prescription drugs, but it also makes clear

See DRUGS, A-10

Mom sees life pass by in police car, ambulance

By Walt Philbin and Wayne Knabb
Staff writers

Driving home from work Monday, Vickie Jordan noticed an ambulance speeding past her on North Rampart Street. Her heart sank when she spotted her husband riding in a police car right behind the ambulance.

Turning around, she followed the ambulance to Charity Hospital, where she learned a short time later that her 7-year-old son, Anthony Cooper, had died after being hit by a car.

The youngster was struck trying to cross St. Claude Avenue in the 3900 block just before 6 p.m., police said.

Anthony was returning from the New Orleans Public Library at 913 Alvar St., a block from St. Claude, with his 11-year-old sister, Brisha, and a 13-year-old cousin, said family members and police.

Anthony Cooper
Was killed trying to cross St. Claude Avenue

The trio had darted across the eastbound lanes of St. Claude and onto the median, police said. Then the girls crossed the westbound lanes, but Anthony didn't make it; he was struck by a white 1997 Pathfinder driven

See STRUCK, A-10

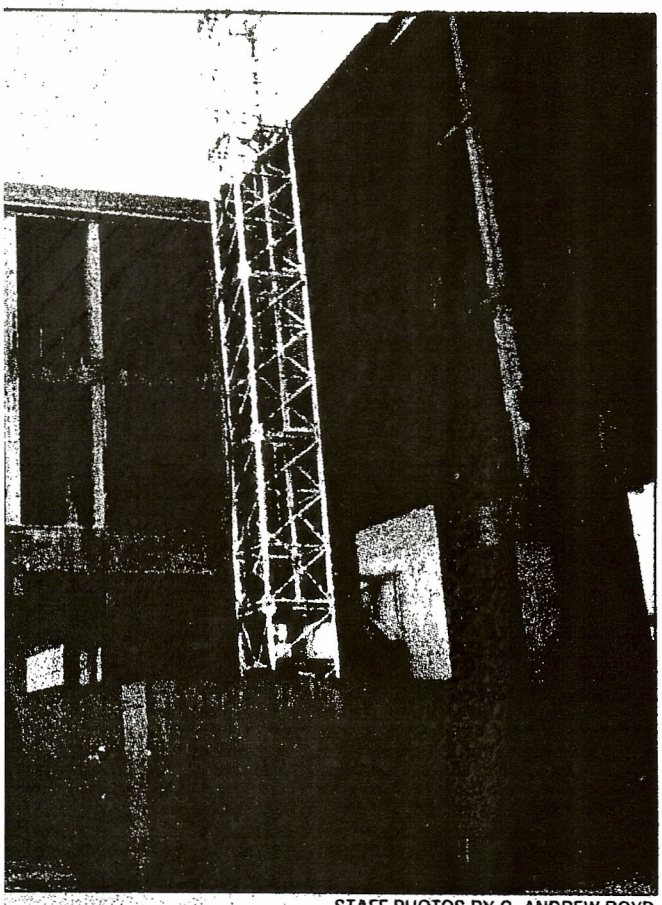
FEELING FRUSTRATED

AP PHOTO

A protester plops down in the middle of Cincinnati's Main Street on Monday. The city was tense after a grand jury returned two misdemeanor charges against a white police officer who shot an unarmed black man to death last month. Some residents had urged felony homicide charges against the officer. See story, A-4

be Confederate Museum its building's new owner: of Southern Art

RTIFACTS



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See **JUDGE,** *A-10*

MAY 8

CONTINUED

Professor didn't receive salary

JUDGE, *from A-1*

Although a divided federal appeals court recently backed Berrigan's decision, Bernofsky plans to pursue the matter. The case spotlights the ethical calls federal judges must make on whether their professional, personal or financial ties warrant stepping aside in a case to avoid conflicts of interest or the appearance of impropriety.

In keeping the case, Berrigan said her Tulane teaching stint was as a temporary, unpaid volunteer substituting for a fellow judge, and her association with Amistad, which is legally separate from Tulane, ended in 1994.

Before ruling last spring on Tulane's motion to throw out the Bernofsky case, however, Berrigan was picked to teach a three-week course in Greece for Tulane Law School's Summer School Abroad 2000, a job that carried a $5,500 stipend. Citing this development, Bernofsky again asked Berrigan to disqualify herself.

She declined, and two weeks later Berrigan threw out all the professor's claims against the university, just as she had done with an earlier suit in which he charged his firing was the result of anti-Semitic discrimination by his department chairman.

A judge's dissent

Tulane, which had succeeded in getting Bernofsky's other cases dismissed, accused the former professor of "judge shopping."

But last month, a week after hearing arguments on Bernofsky's appeal, a panel of the 5th U.S. Circuit Court of Appeals upheld Berrigan's dismissal of his case.

On whether Berrigan should have recused herself, the panel divided 2-1. In a sharp dissent, 5th Circuit Chief Judge Carolyn Dineen King said a reasonable person would have viewed the summer teaching assignment and pay that went with it "as something of a plum."

"She accepted the assignment in the midst of this litigation against the Administrators of the Tulane Educational Fund, indeed on the eve of her decision to grant summary judgment in favor of the Fund," King's dissent said.

Under the circumstances, and with no evidence of any change in the relationship between the fund and the law school, "I think that a reasonable person might question her impartiality," King said, adding that she would have reversed Berrigan's judgment and sent the case back to the district court for assignment to another judge.

In light of King's dissent, Bernofsky's attorney has asked the full appeals court to reconsider its April 10 ruling.

Lawyer Victor Farrugia said the standard is whether a person on the street would think the poses a potential conflict. "People on the street, they're appalled the judge decided the case and took the money to go to Greece at the same time," he said.

Lawyer Dane Ciolino, who teachers legal and judicial ethics at Loyola Law School, called the case "a close call."

"I could see that to a lay person, Tulane is Tulane is Tulane," Ciolino said. "But to a reasonably educated person, you can realize Tulane Law School is distinct from parts of Tulane involved in this suit.

"There is nothing about being an adjunct professor that would render her biased toward the larger university," he said, adding that in most cases such jobs are for no pay. "But I could see how a lay person might be concerned."

Federal rules give guidance

Judges routinely struggle with such issues. Last year, for example, U.S. District Judge Morey Sear stepped aside in an Internet gambling case because he owned stock in one of the defendants, a bank that issues credit cards and accepted charges from offshore "virtual" gambling parlors.

Also last year, the 5th Circuit said U.S. District Judge Carl Barbier abused his discretion in refusing to disqualify himself from a suit filed by the Republic of Panama against the tobacco industry.

The appeals court said "a reasonable person might harbor doubts" about Barbier's impartiality because as president of the Louisiana Trial Lawyers Association, before he was appointed to the bench, his name was included on a motion to file a friend-of-the-court brief on behalf of the Panamanian plaintiffs in a suit against the tobacco companies.

Federal rules governing judges offer some guidance. In 1975, a new rule took effect requiring recusal in any proceeding in which a judge's impartiality "might reasonably be questioned."

Thirteen years later, in a Louisiana case, the U.S. Supreme Court elaborated and said even the appearance of a conflict of interest is grounds for a judge to be disqualified.

In that decision, the high court said New Orleans District Judge Robert Collins should not have presided over a court battle between a Kenner pharmacist and a company that wanted to build a hospital in Kenner on land owned by Loyola University. Collins sat on the university's board but claimed he had not remembered the board was involved in negotiations over the land. Even after the relationship was brought to his attention, he did not step aside, the court noted in ruling against him.

Federal law requires judges to disqualify themselves when they have a financial interest in the subject matter of a case. Financial interest is defined as "ownership of a legal or equitable interest, however small, or a relationship as director, adviser or other active participant in the affairs of a party."

Even then, reasonable people can differ over how to apply such definitions.

Case study

In the Tulane case, for example, Berrigan in written rulings said she had no financial interest in the case or in Tulane because the $5,500 summer school stipend was repayment for cost and expenses, not a salary.

She also noted that although the Code of Conduct for United States Judges requires judges who teach at a law school to recuse themselves from all cases involving that institution as a party, the rule doesn't distinguish between paid and unpaid teaching positions.

Berrigan also said that Bernofsky's suit was similar to an earlier case he filed, which she also threw out on summary judgment.

"Knowledge of the history of the previous litigation was essential to evaluating the merits of the current litigation, a knowledge this court already had but which would require a new judge to independently amass," Berrigan wrote. "This frankly was a factor in this court's decision to 'keep' the case at this juncture rather than recuse."

At the appeals court hearing, Judge Thomas Reavley asked whether U.S. Supreme Court justices who have taught at Tulane's summer abroad program would have to be recused if Bernofsky sought review of his case in their court. Justice Antonin Scalia, for example, has taken part in Tulane's program three times and is scheduled to go to Greece this summer in the spot Berrigan held last year, Farrugia said.

"I think if the case ever got to the Supreme Court, and it was Justice Scalia, who has gone four times on Tulane's nickel, and a case came up with Tulane, I think Justice Scalia probably should recuse himself, yes," he said.

In the end, though, the 5th Circuit ruled with unusual speed in Berrigan's favor, though not along any obvious ideological lines. Reavley, elevated to the bench by President Carter, and Judge Edith H. Jones, appointed by President Reagan, backed Berrigan, a Clinton appointee. King was named to the bench by President Carter.

Berrigan, in her rulings and written explanations to the appeals court, signaled the call was a close one. She also told the 5th Circuit that under case law, she had an obligation not to recuse herself but welcomed guidance from a higher court.

"It was a pure legal issue, not involving factual findings or credibility calls," Berrigan said. "And the appellate court looks at it afresh."

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