

THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION

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EVENTS AT A GLANCE

Date	Event
1/16	Krewe of Justinian Grand Bal 6:30 p.m. at Horseshoe Casino
1/19	MLK Community Service Event from 2 to 4 p.m. at St. Paul United Methodist Church, Shreveport
1/2	SBA Membership Luncheon – 12:00 Noon - Petroleum Club of Shreveport (15th floor)
2/7	Centaur Parade (Krewe of Justinian participates)
2/15	Highland Parade (Krewe of Justinian participates)
2/25	SBA Membership Luncheon – 12:00 Noon – Petroleum Club of Shreveport (15th floor)



From The President

by Bennett L. Politz, SBA President

First, I would like to wish all colleagues of the Shreveport Bar Association, some 700 strong, a happy and prosperous new year. Quite frankly, I never contemplated being president of the Shreveport Bar Association. Over the years, when I was asked to serve on local bar committees, I did so because it was an honor to be asked. I did my best to fulfill the duties. Now I am making those phone calls asking for lawyers to serve their bar association. I am not surprised by the response of lawyers in this community. Friends and colleagues have offered, "Ben, if you need me, call me." This is a fine bar association. It is the highest professional honor to serve as the SBA president.

Special thanks to Larry W. Pettiette for his leadership this past year.

"It ain't broke" as the saying goes, but we do have challenges which we will work on together. Our own SBA member Larry Shea, who currently serves as the Louisiana State Bar Association president, mentioned the crisis in funding for civil legal aid at the November Memorial and Recognition Ceremony. Please excuse me if I bring that discussion to your attention in a tangible way in the months ahead.

There has been a Politz involved in the Shreveport Bar Association for 55 years. Henry A. Politz served as SBA President in 1977 before assuming a position on the U.S. Fifth Circuit Court of Appeals in 1979. It seems appropriate to reflect on his legacy since his children lawyers have been following him all our lives. Hank Politz was a role model as a trial lawyer not only for his three children and grandson lawyers but also for many other lawyers in the community because of his bar association, civic, political and church activities. He was engaged in the community. He believed that lawyers should be engaged in the community. Lawyers play a vital role because of training and perspective. We should be challenged to be more engaged in this community. It will not hurt the lawyer image.

Judge Politz served as chief judge of the U.S. Fifth Circuit from 1992 to 1999. He was the first native-born Louisianan to hold that distinction. The rare occasion when he was in town on Saturdays, we would have lunch. Invariably, when he dropped me off at the office after lunch he would remark, "Do good work." What he meant by "do good work" was certainly be proficient in the lawyering tasks for clients but also perform pro bono work. Suffice to say, the unmet civil legal needs in our country are staggering. The Shreveport Bar Foundation's Pro Bono Project is designed to address a need. Please consider joining the effort to "do good work," as my father would say.

I find those good words to live by.

Ben

SBA Holiday Reception Highlights



Welcome TO THE SBA

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Women's Section

by Elizabeth Aycock, eaycock@wcglawfirm.com

A new year is underway, and in the new year come new executives. I am excited to serve as this year's president of the Women's Section of the Shreveport Bar Association. I am also excited to announce the new vice-president of this section, Ms. Janet Silvie. Janet and I, along with secretary Natalie Howell and treasurer Pa Moser, are very much looking forward to offering a year full of fun events for the ladies of the local bar, offering networking opportunities and some CLE credits as well. Please be sure to keep an eye out for upcoming events in your *Shreveport Bar Review* and via email from Ms. Natalie Howell.

I would like to again thank Mrs. Marie Curry Vanderlick for opening up her home during the holidays for our annual Women's Section Christmas Party. We had a wonderful turnout, and everyone was so generous in bring donations for the Geaux Bags charity, which provides basic items to children "For the First Night in Foster Care."

I am very much looking forward to serving the women of this section in the coming year, and I welcome questions, concerns and suggestions. Please feel free to email me at eaycock@wcglawfirm.com. Finally, I want to announce that the first event for the section this year, which I hope everyone will attend, will be at **6:00 pm January 28, 2015, at W's Steakhouse**, since we all want to go check this place out. Happy New Year, and I hope to see you at W's.

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The Neutral Ground



by Gay Gaskins, ggaskinsmediation@bellsouth.net

Speak Your Peace

Nationwide, and worldwide, we are seeing conflicts which are divisive and seemingly impassable. In Shreveport, organizations are implementing the Speak Your Peace pledge, which may avert many of these difficulties, or resolve them when they do arise.

As lawyers, we are familiar with using alternative dispute resolution methods to resolve our litigation disputes. One aspect of conflict resolution concerns methods for navigating difficult conversations. That is the basis for the Speak Your Peace (SYP) initiative, which fosters civil discourse.



Lindy Broderick

The main moving forces of this program are the Shreveport Chamber of Commerce's Lindy Broderick and Paula Hickman, the Executive Director of The Community Foundation of North Louisiana. Lindy is a familiar figure in this area, having been at the Chamber for 28 years, most of that time as its lobbyist in Baton Rouge. She is the executive vice-president of the Chamber, but also wears another hat as well. Lindy has a Masters in Human Relations, and in recent years has embarked on the path to be an ordained deacon for the Methodist Church. She is already a minister in the church, and her proper title is Reverend Broderick. While her appointment is at Broadmoor United Methodist, her assignment is at the Chamber of Commerce. Lindy's focus



Paula Hickman

for her ministry is conflict resolution. Knowing this, Paula Hickman, executive director of the Community Foundation of North Louisiana, shared with Lindy about the Speak Your Peace program that Duluth, Minnesota, adopted. That conversation led to the Chamber's embracing the program, as did several other organizations in Shreveport. Lindy has presented this program not only locally, but also to a national chamber group which included attendees from foreign countries.

Lindy jokingly calls the tenets of this program, "sand-box rules." That is because the 10 rules are ones we learned long ago, and intuitively know, but sometimes veer from practicing. Lindy has noticed that those who have heard the presentation have incorporated the principles of SYP in their discussions

and negotiations with others. Even the Chamber's board meetings are now more collegial, Lindy reports.

Right after adopting this program, a group of Shreveport business people who took SYP pledge became concerned at the effect of the water fee increase in Shreveport. They had some strong feelings about the impact and wisdom of such an increase and went to talk to the mayor. They went, however, with the SYP principles in mind and approached the conversation with a respectful and open attitude. What they heard was solid reasoning for the implementation of the higher fees, which changed their position, but they were able to negotiate a compromised phasing-in of the increase.

Lindy says the hour-long discussion of the Speak Your Peace program sometimes begins with eye-rolling and impatience with the elementary tenets, yet as the audience members go

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forth and implement the program, they recognize its “strong truth.” Indeed, when Lindy was giving a national speech on this program a few days after the Ferguson, Missouri, incident, a man from that city came up to Lindy, and said “I needed to hear this.” Maybe we all do. Maybe then the atmosphere that existed in Ferguson prior to that incident, and the actions that occurred afterwards, can be prevented in other cities.

SPEAK YOUR PEACE-Nine Simple Principles

Today, I will...

Pay Attention

Listen

Be Inclusive

Don't Gossip

Show Respect

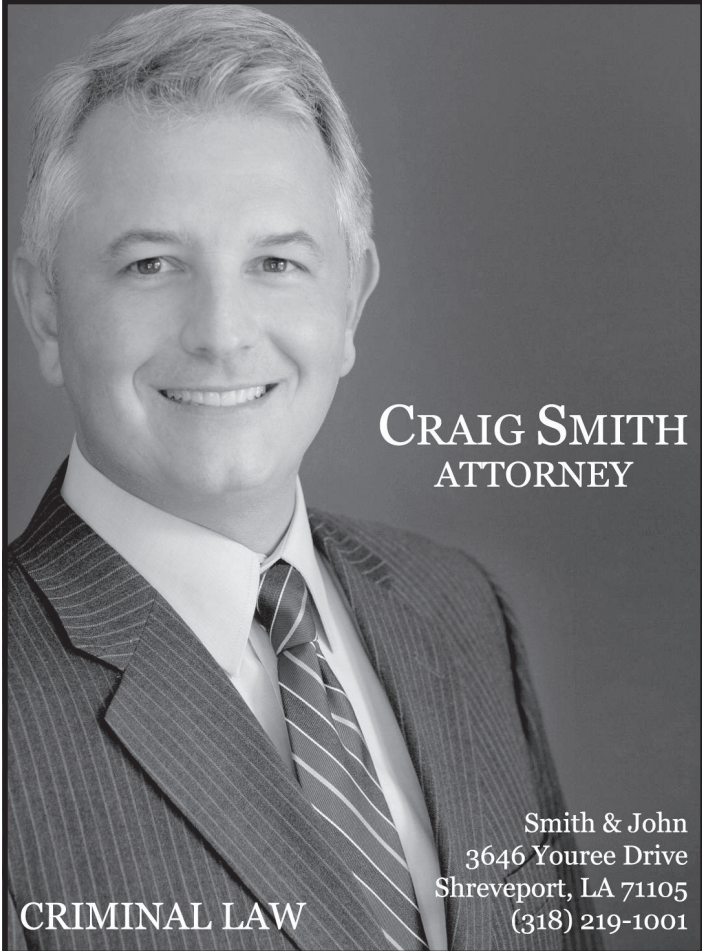
Be Agreeable

Apologize

Give Constructive Criticism

Take Responsibility

To learn more about the Speak Your Peace principles, go to the Greater Shreveport Chamber of Commerce webpage, www.shreveportchamber.org. Other Organizational Partners are the Community Foundation of North Louisiana, LSU-S Staff Senate, LSU-S Faculty Senate, Presbytery of the Pines, and the Shreveport-Bossier Port Commission.



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Marta-Ann Schnabel has joined the Patterson Resolution Group. Her practice areas include professional liability, business and commercial litigation, construction disputes, insurance coverage, and casualty litigation.

Her training as a mediator includes studies at the Straus Institute for Dispute Resolution, Pepperdine University. She is currently the Chair of the Louisiana Supreme Court's Judicial Oversight Committee and served as the first woman president of the Louisiana State Bar Association.



Thomas M. Hayes, III has also joined the Patterson Resolution Group. His practice has focused on product liability, redhibition, insurance coverage, industrial accidents, medical malpractice, lawyer's professional liability and professional responsibility,

construction, architect and engineering liability, successions, real estate disputes, realtor issues, employment law, and worker's compensation. He has been designated as a Louisiana SuperLawyer in civil litigation and has been appointed Special Master by the Fourth and Eighth Judicial Districts.

Contact Mike Patterson at 866-367-8620 or visit the group's website at www.pattersonresolution.com for more information.

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Stinsons announce retirement from 26th JDC



Judge Ford Stinson, chief judge of the 26th Judicial District Court, and his wife, Suzanne, court administrator for the same court, have announced their retirement from the court at the end of December 2014. They are leaving over 50 combined years of legacy with the 26th JDC.

Judge Stinson is a graduate of Benton High School, LSU and LSU Law School. After being admitted to the bar in 1977, he began

his career with the 26th Judicial District, serving as chief indigent defender from 1985 until 1996, the year he was elected district judge. During his legal career, he served as president of the Bossier Bar Association, on the board of directors of Northwest La. Legal Services and on the executive committee for the La. District Judges' Association. He is a member of the La. Bar Foundation, La. District Judges' Association, and La. and National Councils of Juvenile and Family Court Judges. Judge Stinson is an avid Benton and LSU Tigers fan, and has also been the public address announcer for Benton High School football games since 1986.

Judge Stinson is a sixth of now eight generations of the Stinson family to live in Bossier Parish. He is a direct descendant of several pioneer Bossier Parish families with many members having been involved in public service. Including his tenure as judge, the service of his family to the public has spanned parts of three centuries. His great-great-grandfather, Maj. R.E. Wyche, was sheriff of Bossier Parish from 1878-1889. His great-grandfather, Ford Edwards, was sheriff of Bossier Parish from 1904-1920. His grandfather, Robert T. Stinson, was Bossier Parish treasurer from 1913-1919. His father, Ford Edwards Stinson, served on the Benton Board of Aldermen from 1936-1940, in the Louisiana House of Representatives from 1940-1944 and 1952-1972, and was one of the two delegates elected from Bossier Parish to serve in the La. Constitutional Convention of 1973. Judge Stinson's mother, Edna Earle Richardson Stinson, was the first woman in the history of the parish to serve as foreman of a Bossier Parish grand jury.

Suzanne, also a Benton High graduate, earned an A.S. degree from La. Tech University in 1981 and began her career with the court in 1982, serving as official court reporter for Judge Graydon Kitchens. Working full time while pursuing her college studies, she graduated magna cum laude from La. Tech in 1988. She later received an MBA in 1992 and an M.A. in Industrial/Organizational Psychology in 1994, all from La. Tech. She became a Fellow with the Institute for Court Management in 2007. The 26th JDC created the court administrator position

in 1993; Suzanne served as deputy administrator until 1996 and then court administrator. She has been actively involved in a host of local, state and national organizations, including the La. State Court Rules Committee, the La. Judicial Compensation Commission and the National Association for Court Management.

Together Judge Stinson and Suzanne helped to create, with the grant-writing assistance of the district attorney's office, one of the first drug courts in Louisiana. Judge Stinson served as the first adult drug court judge in 2000 and continued in that capacity until 2004; Suzanne was the first drug court coordinator.

Judge Stinson and Suzanne are also veterans. Judge Stinson served as a captain in the U.S. Army Reserves, and Suzanne in the La. Army National Guard. They are active with their church, Asbury United Methodist Church, and the Krewe of Justinian, where Judge Stinson served as king in 2003, and Suzanne as duchess in 1999 and queen in 2006.

The Stinsons have four sons and their wives, Ford III and Susie, Brian and Rebecca, Doug and Lauren, and Eric and Katharine. They have six grandchildren, with the seventh due in January.

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Pro Bono Update

19 Nov 2014

Dear Mr. Ratcliff:

I apologize for the tardiness of this correspondence, but I wanted to thank you for helping me back in early October when I attended the "Ask-a-Lawyer" session sponsored by the Shreveport Bar Association and the Pro Bono Project.

You were so kind, patient, respectful, warm and professional. You really took the time to listen to my dilemma of having been terminated due to my disability

You very nicely provided me the names of both a disability attorney (Mr. Long) and an attorney who handles EEOC Cases (Mr. Broocks Greer).

Mr. Long will help me as soon as I have a concrete diagnosis. And, to my absolute delight, Mr. Greer agreed to represent me in my disability discrimination/termination case!!!

Had it not been for your kindness, compassion, the donation of your time, and guidance I would have never found Mr. Long and Mr. Greer.

I now have a valid chance at justice because of you, Mr. Ratcliff!

Please know how indebted I am to you for volunteering your time to help me...it has made ALL the difference in the world.

God Bless You. May you and your family have a joyous, blessed holiday season.

Sincerely and with Gratitude,

*Annoymous
Ask-A-Lawyer Attendee*

KREWE OF JUSTINIAN FLOAT RIDER APPLICATION

Centaur Parade Saturday, February 7, 2015
Highland Parade Sunday February 15, 2015

Name _____
_____ indicate if royalty by title and year

Spouse _____
_____ indicate if royalty by title and year

Home Address _____

Home Phone _____

Cell Phone _____

Office Phone _____

Fax No _____

Email _____

The floats are available on a first come, first served basis. Your payment must accompany this application to reserve your spots and throw packages. The payment in full will be due by January 23, 2015.

Centaur Riding Fee per person
Krewe members & family
_____ @ \$150.00 = \$ _____

Centaur Riding Fee per person
Non-Krewe/family members
_____ @ \$200.00 = \$ _____

Centaur Throw Packages
(must have at least one per couple)
_____ @ \$350.00 = \$ _____

Centaur Upgrade Throw Package
(includes two dozen Justinian specialty throws)
_____ @ \$50.00 = \$ _____

Highland Riding Fee per person
Krewe members & family
_____ @ \$75.00 = \$ _____

Highland Riding Fee per person
Non-Krewe/family members
_____ @ \$75.00 = \$ _____

All Highland riders are responsible for their own throws

Total \$ _____

Return this form and send checks to
Krewe of Justinian,
625 Texas Street, Shreveport, LA 71101



SBA Secret Santa Brings Holiday Cheer to Needy Children

by Kristi Gustavson, kristina.gustavson@regions.com
and by Chris Slatten, chris_slatten@lawd.uscourts.gov

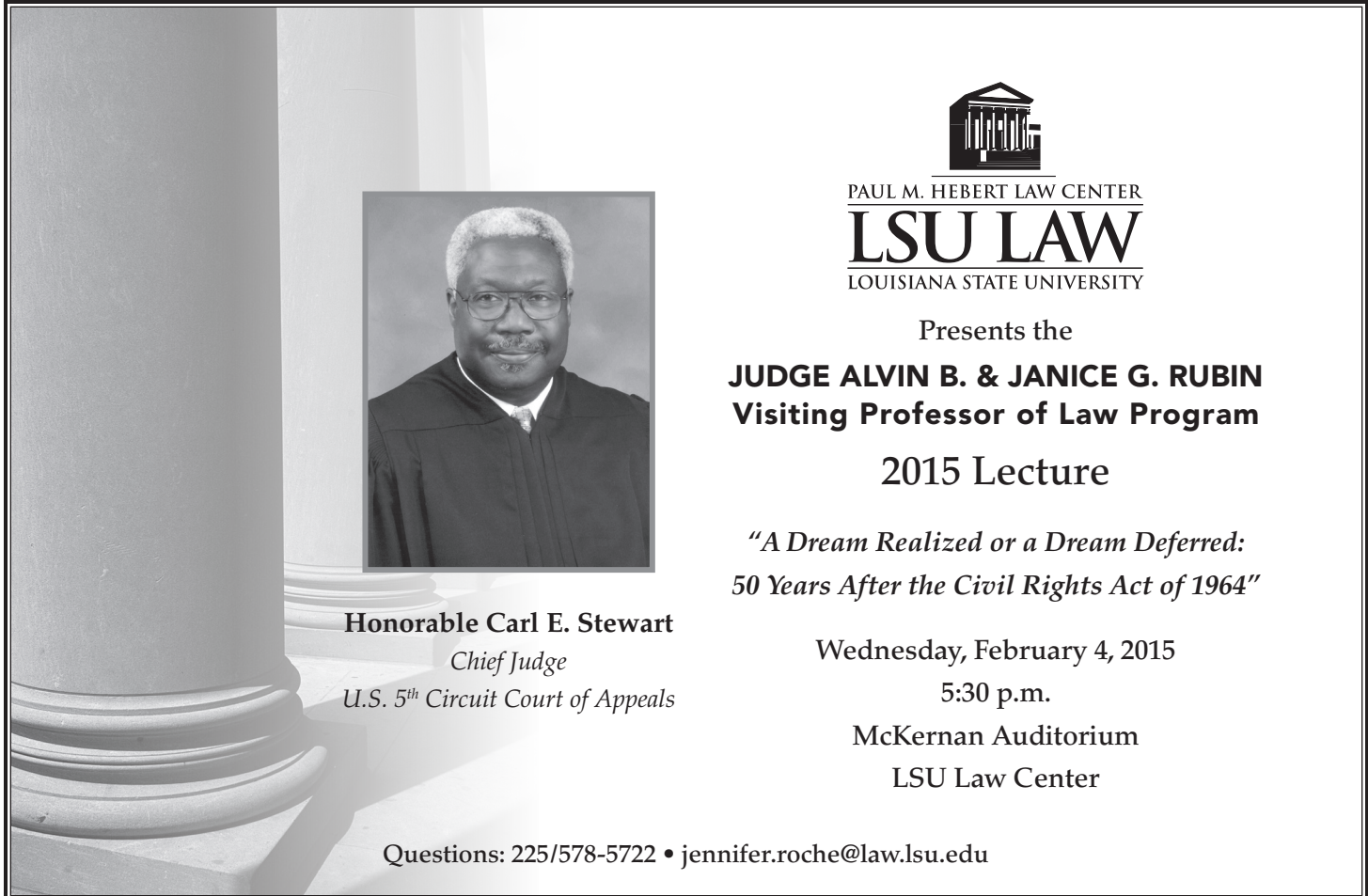
The SBA participated in 2014 for the third time in a Secret Santa project that delivered several truckloads of gifts to more than 70 needy children in our community. Generous attorneys, staff members, judges, chambers employees, and clerk of court employees from the U.S. Bankruptcy Court and District Court donated everything from Barbies to bicycles. The gifts were delivered to the parents of students at Atkins Elementary School who were selected based on need. Santa was then able to leave the gifts under the tree for the children.

We apologize that the wish lists were a bit late this year, but there were some wrinkles in working with a new school. Your patience is appreciated, and things will run more smoothly next year.

This is a great project that provides holiday cheer to the less fortunate, while also improving the image of the legal community by setting an example of generosity.

Thank you to the many, listed below, who participated. The parents were extremely grateful for your generosity and, as you read this, the children are enjoying your many gifts.

- | | | | |
|--------------------------|-------------------------------|---------------------------|--------------------------|
| Melissa Allen | Kathy Gerritsen | Ken Mascagni | JR Rodgers |
| Pam Allen | Amy Greenwald | Matt May | Marie Runyon |
| Stephanie Alvarez | Patti and Billy Guin | Robin McCoy | Logan Schroeder |
| Barry Barefield | Betty Gunter | Kevin McCrary | Mark Scott |
| Kim Bray | Kristi Gustavson | Cathy McGregor | Sidney Scott |
| Edmund Brown | David and Angie Hemken | Shannon McInnis | Michelle Shinault |
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| Tina Dunigan | John Kalmbach | Danny Perdue | Kim and David Tullis |
| Jennifer Eaton | William Kalmbach | Megan Poljak | Marie Curry Vanderlick |
| Teresa Ferguson | Katherine Kavanaugh | Maggie and Thomas Pressly | Bobby Walker |
| Bill and Carolyn Fleming | Kathy Keifer | Beth Prest | Jo Ann Walker |
| Judge Elizabeth Foote | Patrice Kendrick | Anna Putch | Dianna Weaver |
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The planners and speakers of the SBA December CLE By The Hour seminar are volunteers. Their gift of time and talent make this event successful. We acknowledge and greatly appreciate their work.

Melissa Benoit Allen

S. Price Barker

Sonia Peters Cassidy

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Mark Your Calendar



JANUARY 16

Justinian Bal 6:30 p.m.
Horseshoe Casino Riverdome

JANUARY 19

Martin Luther King, Jr. Day of Community
Service Event - 2 to 4 p.m. at
St. Paul United Methodist Church
1001 Pierre Ave, Shreveport

JANUARY 28

SBA Members Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
Speaker: Dr. T. Lamar Goree

FEBRUARY 7

Centaur Parade –
Krewe of Justinian participates

FEBRUARY 15

Highland Parade – Krewe of Justinian
participates

FEBRUARY 25

SBA Members Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
Speaker: Mayor Ollie Tyler

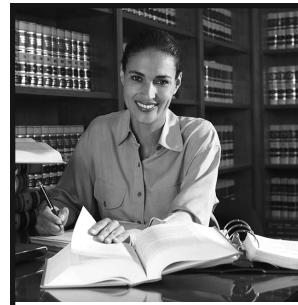


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**Duke
Yves Verret**



Princess Caroline Pearce



Prince Henry Byrd

*Laissez
Les Bons
Temps Rouler*

Scott Crichton Officially Joins Supreme Court

by Hal Odom Jr, rhodom@la2nd.org

Justice Scott J. Crichton received his commission and took the oath of office as the newest member of the Louisiana Supreme Court in a ceremony held at the First Judicial District Court on December 15, 2014. Nearly 250 people attended the induction in Courtroom G, with an overflow crowd in Courtroom J.

Chief Justice Bernette J. Johnson, of the Louisiana Supreme Court, administered the oath of office. She was joined on the bench by a panel of the court, having made the trip from New Orleans, and three retired justices, including former Chief Justice Catherine Kimball. Master of Ceremonies Sam N. Gregorio commented that this was, by his reckoning, only the third time the supreme court had sat in Shreveport.

Also present was the full panel of the First JDC, numerous elected officials, family, friends and members of the bar, all wishing Justice Crichton well in this new phase of his legal career.

Justice Crichton spoke briefly, acknowledging his predecessor on the bench, Justice Jeff P. Victory, who was unable to attend because of illness. Justice Crichton described his “calling” to run for the supreme court some two years ago, and the encouragement he received to answer that call. He thanked his seven-member committee (his wife, Susie, Carolyn Prator, Debbie Martin, Bruce Roberts, Sam Gregorio, Mary Bicknell and Susan Whitelaw) for their tireless work, even though he ultimately drew no opposition. He also thanked law enforcement officers for their strong support.

He gave special thanks to his wife, Susie, because, “I owe all my better qualities to her,” and gave her a large bouquet of flowers. He felt that he had also been blessed by extraordinary parents, Mary and Tom, who imbued him with the value of education and hard work. He regretted that they did not live long enough to see him enter his judicial career. He expressed great satisfaction that both his sons, Stuart and Samuel, had followed him into the legal practice. They also assisted him with the ceremonial robing.

Justice Crichton related that when he got his first job, in the D.A.’s office, longtime D.A. Paul Carmouche had “properly assessed my ability” and “assigned me a traffic case, failure to yield,” but he earned enough confidence that his last case as a prosecutor was a capital trial against a notorious serial killer, Nathaniel Code. He stated that he had loved every day of his 24 years on the First JDC bench, and was always guided by the principle that even though the law can be theoretical and abstract, all judicial decisions have practical consequences. “Each case is important, to the litigants, to the community, and to the system of justice,” he said.

Finally, he spoke proudly of his educational outreach to middle and high school students, “Don’t Let This Be You” and “Sexting, Texting and

Beyond,” programs that have now been presented to over 20,000 students, teachers and school administrators. Educating your people about the consequences of their actions “has to have a positive effect,” he added.

Before the administration of the oath, friends and supporters made remarks. Larry W. Pettiette Jr., 2014 president of the SBA, commended Justice Crichton’s work ethic and his outreach programs. Judge Brady O’Callaghan, a colleague on the First JDC, jocularly praised Justice Crichton’s “phenomenal mustache grooming” and his fondness for the word “outrageous,” but took a literary turn by citing Alfred, Lord Tennyson’s *Ulysses*, “How dull it is to pause, to make an end, / To rust unburnish’d, not to shine in use!” In other words, a person of his age and attainments could have chosen to retire, but Justice Crichton instead took his career to a higher level. Judge James E. Stewart Sr., of the Second Circuit, recounted that he had known Justice Crichton since 1982, and they joined the First JDC together in January 1991. He commented that drawing no opposition in his run for the supreme court was a “full tribute to his service.” Sheriff Steve Prator told a (clean) lawyer joke and presented Justice Crichton a special award, a statuette of an armchair quarterback, but offered sincere thanks for “real public service.”

The invocation was offered by Dean Alston B. Johnson, of St. Mark’s Episcopal Cathedral. The pledge of allegiance was led by former Justice E. Joseph Bleich, of the La. Supreme Court, who noted that 2014 was not only the year of Justice Crichton’s 60th birthday, but the 60th anniversary of the insertion of “under God” to the pledge. The benediction was given by Bishop L. Lawrence Brandon of Praise Temple Full Gospel Baptist Cathedral. A reception followed at Ernest’s Orleans Restaurant.

Justice Crichton was born in Shreveport in 1954, attended elementary and middle schools in Minden, and graduated from Webb School, a boarding prep school in Bell Buckle, Tennessee. He went to LSU in BR, earning a BS in 1976, and then worked a year before starting LSU Law School. Following his graduation in 1980, clerked for one year at the First JDC and then began his career with the D.A.’s office. He was elected to the First JDC in December 1990, began his term in January 1991, and was reelected to that

court three times. He begins service on the La. Supreme Court January 1, 2015.

Justice Crichton and Susie have two sons, Stuart and Samuel, who recently finished law school and are now attorneys in Shreveport. The Supreme Court Second District seat, which covers 11 northwest Louisiana parishes, was previously held by Jeff P. Victory.





Legal Hist

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

STARE DECISIS vs. JURISPRUDENCE CONSTANTE, or "If it Ain't Broke, Don't Fix It" (Willie Nelson, c. 1970)

Should a Louisiana lawyer be fortunate enough to have a case with no other Louisiana court case on point to guide her or him to the correct decision, but additional research also finds a host of cases from other states all factually identical and favoring the lawyer's position, then that lawyer might happily conclude that he or she or was holding four aces in a poker game and there was no way to lose. In truth, it is time to take a deep breath and remember that a straight flush trumps four of a kind and this windfall of favorable common-law cases that you have discovered clearly constitutes *stare decisis*, and no matter how enticing they appear, you must yield to the civil law principle of *jurisprudence constante*, which trumps *stare decisis*, and your reliance on the common law will end in defeat. In short, you should plead both doctrines, say they each apply, and the odds are that you will prevail.

First, some definitions. *Black's Law Dictionary* (9 Ed., 2009) states:

Stare Decisis – [Latin “to stand by things decided”] (18c) The doctrine of precedent, under which a court must follow earlier judicial decisions when the same points arise again in litigation. See PRECEDENT; NON QUIETA MOVERE. Cf. RES JUDICATA; LAW OF THE CASE; (in civil law) *jurisprudence constante* under JURISPRUDENCE. “The rule of adherence to judicial precedents finds its expression in the doctrine of *stare decisis*. This doctrine is simply that, when a point or principle of law has been once officially decided or settled by the ruling of a competent court in a case in which it is directly and necessarily involved, it will no longer be considered as open to examination or to a new ruling by the same tribunal, or by those which are bound to follow its adjudications, unless it be for urgent reasons and in exceptional cases.” William M. Lile et al., *Brief Making and the Use of Law Books* 321 (3 ed., 1914).

As to the concept of *jurisprudence constante*, *Black's* states:

Jurisprudence Constante – *Civil law*. The doctrine that a court should give great weight to a rule of law that is accepted and applied in a long line of cases, and should not overrule or modify its own decisions unless clear error is shown and injustice will arise from continuation of a particular rule of law. Civil-law courts are not bound by the common-law doctrine of *stare decisis*. But they

do recognize the doctrine of *jurisprudence constante*, which is similar to *stare decisis*, one exception being that *jurisprudence constante* does not command strict adherence to a legal principle applied on one occasion in the past. Cf. STARE DECISIS.

This paper will illustrate that for over 150 years of its existence, including all of the 1800s and the first half of the 20th century, the Louisiana Supreme Court and Courts of Appeal were well versed and familiar with the doctrine of *stare decisis* and applied it over a hundred times, without apology or qualification, using strong and positive language, in support of the doctrine such as “we are not disposed to depart from the principle of *stare decisis*”¹; “it should be adhered to”²; “the rule of *stare decisis* is applicable, and the question of law decided in those cases must be considered as settled”³; and the “rule of *stare decisis* should be particularly adhered to in a case like this where it is of infinitely less importance how the law is settled than that it should be settled.”⁴

The fact is that *jurisprudence constante* was not regularly applied, or even referred to, until early in the 20th century⁵; indeed it was essentially ignored for a century and a half until it was utilized by the supreme court in overturning existing case law – cases that most would agree needed to be reversed, i.e., the “locality rule” was trumped by the “national rule” in medical malpractice cases involving the applicable standard of care.

The interplay between these two concepts was perhaps best highlighted by Col. John H. Tucker Jr., a prominent Shreveport lawyer, soldier, scholar, SBA member and founder of a respected law firm which bore his name for over 50 years, as well as the founder and first president of the Louisiana Law Institute, in an article he wrote for the *Tulane Law Review*, *The Code and the Common Law in Louisiana* (Vol. 29, p. 739, 1955), in which he made these observations:

But the civil law of Louisiana is contained in the civil code and the code itself is its primary research book. The two



¹*City of New Orleans v. Hermann*, 31 La. Ann. 529 (1879).
²*Thibaut v. Kearney*, 45 La. Ann. 149, 12 So. 139, 18 L.R.A. 596 (1893).
³*Succession of Dolsen*, 129 La. 577, 56 So. 514 (1911).
⁴*Griffin v. His Creditors*, 6 Rob. 225 (1843) (on rehearing).
⁵*Succession of Lambert*, 210 La. 636, 28 So. 2d 1 (1946).

great forces by which the law has been developed have been *jurisprudence*, or as contained in the decisions of the courts, and doctrine contained in the philosophical writings of the scholar, both being a technique of interpretations, although jurisprudence at common law has a much larger destiny.

He also noted that there are many areas which are not addressed in the Civil Code, such as criminal law, evidence, trusts, negotiable instruments and the like in which our courts have generally followed common law precedents.

On these issues, two writers are often on opposite sides of the issue, one for saying that adhering to precedent was “the most intrusive element of the common law” and the other (the dean of the Tulane school) for declaring that Louisiana was “a common-law state.”

It is apparent that these two definitions, standing alone, do not cover their relationship in Louisiana’s two-plus centuries of legal history. A reading of some recent opinions of our appellate courts would indicate the two concerns are bitterly opposed to each other. But both are aimed at accomplishing the same goal: consistency, certainty, finality, reliability, all being the hallmarks of their commonality. It could be argued that they represent a distinction without a difference.

After posing the two contentions, Col. Tucker went on to write:

We have never adopted *stare decisis* and whatever chance it has of creeping into our system has been reduced to the vanishing point with the passage of time.

From a legalistic position, this is probably correct; but in reality, the *stare* principle is often applied, without comment, by our courts as illustrated by the cases below.

Illustrative is *Gugliuzza v. KCMC, Inc.*, 593 So. 2d 845 (La. App. 2 Cir. 1992), writ granted, 606 So. 2d 790 (1992). There, the district court in Benton upheld the defendant’s contention that the widow and son of a deceased had no right of action to sue for defamation based on a Shreveport television newscast which stated:

There is another possible motive for the death of Sammie Gugliuzza which officers are not talking about. It is rumored on the streets that Gugliuzza had gambling debts and ties to organized crime and that his murder is some sort of a pay-back.

Exceptions of no right and no cause of action were filed based on the proposition that the wife and child of a decedent had no legal standing to seek emotional damages for the death of a husband and father, as stated in the holdings of two early cases. *Coulon v. Gaylord Broadcasting Co.*, 433 So. 2d 429 (La. App.4 Cir.

1983), writ denied, 439 So.2d 1073 (1983), and *Pattison v. Gulf Bag Co.*, 116 La. 963, 41 So. 224 (1906), both were directly on point. On appeal, the Second Circuit reversed, holding that a new criminal statute, R.S. 14:47, relied on by plaintiffs, which made it a misdemeanor to defame the memory of one deceased, provided a proper basis for a civil suit.

The opinion, written by Chief Judge Marvin, acknowledged that “common tort law authority may enlighten us, but it should not, and does not, control tort law in Louisiana.” Judge Sexton, dissenting, stated it was an inappropriate and unnecessary extension of tort law and “this kind of change is better suited to the legislative arena.” Writs were applied for by defendant and granted; the case was argued before the supreme court in the fall of 1992.

By this time, the case had acquired a degree of national attention and eight amicus briefs were filed, including those by the Shreveport Chapter of Professional Journalists, the La. Press Association, Home Box Office, Time Inc., Jane and Ted Turner, and CBS Inc., largely based on the fact that *Coulon* and *Pattison* were squarely on point, followed the common law precedent in almost all the American states and, as such, should be affirmed by the high court.

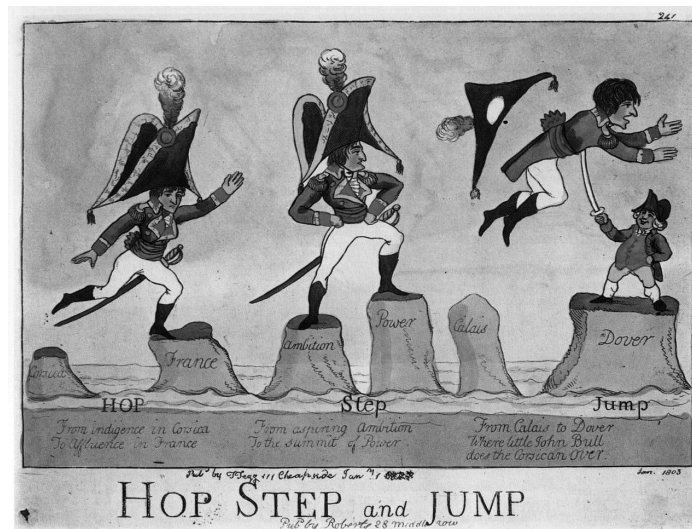
The final opinion, written by Judge Marcus, noted:

In the United States, the common law rule denying a cause of action for defamation of a dead person has been unanimously followed in every jurisdiction that considered this issue. Note: Dead, But not Forgotten: *Proposals for Imposing Liability for Defamation of the Dead*, 67 Tex.L.Rev. 1525 n.2 (1989); and B. Sanford, *Libel and Privacy* 4.4, at 101 n. 37 (2nd ed. 1991).

Thus the trial court was affirmed. A concurring opinion by Justice Jim Dennis took another road and stated the Second Circuit’s decision would have a “chilling effect” on freedom of speech and of the press, protected by Article I of the Constitution. He also warned that “whatever is added to the field of libel is taken from the field of free debate,” *New York Times Co. v. Sullivan*, 376 U.S. 254, 272, 84 S. Ct. 710, 721, 11 L. Ed. 2d 686 (1964). Collectively, these authorities supported defendants. Ultimately, the Louisiana Supreme Court concluded that R.S. 14:47, the misdemeanor statute, did not set a standard for civil liability and thus the decision of the court of appeal was reversed.

It is interesting to observe that Justice Dennis’s strong concurring opinion supports his view that the comments complained of did not rise to the level of defamation and were simply fair comment and appropriate freedom of expression under both the state and federal constitutions.

The thrust of the eight amicus briefs was that all courts, both



in England and this country, which had considered the issue, reached the same conclusion, i.e. that the right of protection against defamation expires at a person's death. Thus, the Louisiana high court followed the prevailing common-law rule in all American states without mentioning either *stare decisis* or *jurisprudence constante*, either of which could have been supplied to the ultimate result.

The nexus between the two terms goes back to the fact that the Civil Code establishes only two sources of law in Louisiana, legislation and custom, the former always being superior. Consequently, Louisiana courts, beginning in the early 1800s, have not hesitated to recognize and apply the rationale of *stare decisis*, often without referring to the principle.

In reversing case law, our Supreme Court has not hesitated to reverse well-established case law and adopt the prevailing standard fostered in common law states when it determined the time was ripe for that step to be taken. *Consider Ardoin v. Hartford Accident & Indem. Co.*, 360 So. 2d 1331 (1978). The issue was the reversal of medical malpractice case law to the effect that a physician should be judged by the standard present in his "locality" and not by a "national" standard. The "locality" standard had been the law in Louisiana for 25 years since the supreme court's decision in *Meyer v. St. Paul Indem. Co.*, 225 La. 618, 73 So.2d 781 (1953).

The setting was ideal for addressing the initial horrendous result which cried out for change. Plaintiff was a Lafayette widow whose husband died as the result of a heart bypass operation performed in that city, in which a new tubing device was utilized for insertion into the heart in the procedure. One of the tubes malfunctioned: instead of removing blood from the patient's heart it pumped air into the heart and caused immediate death – a tragic and unexpected result.

There were four heart specialists practicing in Lafayette at the time. Three testified at the trial – the fourth was a defendant. Collectively, they testified that in Lafayette it was not the custom or practice for the attending surgeon to inspect and test the tubing before it was inserted into the patient's heart. Plaintiff attempted to introduce the testimony of a Baton Rouge heart surgeon, who was not allowed to testify as to the standard in Baton Rouge, New Orleans or nationally, because he was not familiar with the local standard and practice in Lafayette. However, he was allowed to proffer testimony to the effect that the national standard required that the device be tested with either blood or water prior to its use. The jury returned a verdict against the manufacturers of the tubing, but absolved the operating physician of negligence – which provoked great interest in legal and medical circles. There were seven amicus briefs filed, about half advocating to hold on to the locality rule, the others contending it was time for a change. The high court, in an opinion by Justice Dennis, accepted the "time for a change" contention and did just that, citing dozens of common-law cases favoring the national standard, as it was in error not to allow the evidence. After the case was remanded, it was ultimately settled.

The weakness and dangers found in the locality rule were evident and the national trend showed a swift departure from that rule, which the court readily adopted. Despite dozens of common-law cases in the opinion, the court did not discuss

either *stare* or *constante* and let the opinion simply speak for itself.

The Second Circuit Court of Appeal has not hesitated to turn to common-law authority where there was no precedent in the Code. The case is *W. A. McMichael Const. Co. v. D&W Props.*, 356 So. 2d 1115 (La. App. 2 Cir.), *writ denied*, 359 So. 2d 198 (1978). The issue was the degree of duty owed by the managing partners to other partners – an area in which the Code is silent. The opinion, written by Judge Pike Hall Jr., cited dozens of cases from *Corpus Juris Secundum* (542-543) and *American Jurisprudence* 2d (47-48) to conclude that their duty was of "the highest standard" and must be "full and fair and the utmost good faith," and applied even when there was a conflict of interest between the partners. The decision was bolstered by a federal citation from the late Judge Ben Dawkins Jr., adopting a similar high fiduciary standard pertaining to corporate directors in a small, family-controlled corporation, *Mansfield Hardwood Lumber Co. v. Johnson*, 263 F. 2d 748, (5 Cir. 1959), *cert. denied*, 361 U.S. 885, 80 S. Ct. 156, 4 L. Ed. 2d 120 (1959).

Conclusions:

As we mull over how to play our four aces, we should recall the following maxims:

- (1) *Jurisprudence constante* and *stare decisis* are well established concepts in Louisiana law and will remain so for the foreseeable future.
- (2) The only courts "mandated" to follow the law are the district court and the five courts of appeal, who are required to follow and abide by the decisions and orders of the Louisiana Supreme Court.
- (3) Never, never represent to any court that it is obligated or mandated to follow either *stare* or *constante*.
- (4) Let the court know that you know and understand the difference, and that the court should be persuaded by, adhere to and respect prior holdings and tradition.
- (5) Remember that these two traditions are roughly two different formulas to reach the same goal – i.e., "getting it right" and, in the main for 250 years, our courts have accomplished that goal.
- (6) So, since it is working well in practice, as Willie says, "If it ain't broke, don't fix it." Amen.

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2015 SBA Dues Reminder

Please remember that your 2015 SBA dues are due now.
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Crossword Puzzle Answers

National Register Places

in Shreveport, marked with*
by Hal Odom Jr.

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G	O	L	E	E	O	A							
I	N	A	L	L	O	F	F	I	C	H	U		
L	L	T	O				O	L					
V	I	A		H	I	G	H	L	A	N	D	S	
I			U	S	E	U							
E	S	K	I	M	O		E	X	O	T	I	C	
	E	B	F	I			R						
M	I	S	A	S	S	I	G	N		F	R	Y	
A		T				S	G	L	S				
R		R		A	L		T	I	T	L	I	S	T
K		E		O		I		O		E		A	
S		E	L	M	A		C	E	N	T	R	A	L



Reason #1

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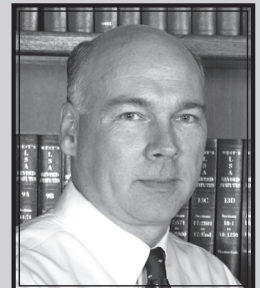
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Elizabeth W. Middleton



Charles D. Elliott

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

Contractions should not be painful.

From a recent per curiam opinion of the Louisiana Supreme Court: “The district court is ordered to provide this Court with a copy of *it’s* judgment.” And the Third Circuit referred to “a first-offender defendant convicted of vehicular homicide *who’s* blood/alcohol level was more than twice the legal limit[.]” These contractions are painful, and they shouldn’t be – either painful or contractions!

A contraction like *it’s* or *who’s* is a shortened form of a two-word expression. The apostrophe shows that one or more letters have been dropped. *It’s* is short for *it is* or *it has*. It’s never been a synonym for *belonging to it*. The district court must provide the supreme court with a copy of its judgment. If you would not write *it is* or *it has*, you would not write *it’s*.

The same applies to *who’s*. The word for *belonging to that person is whose*: a defendant *whose* BAC was more than twice the legal limit. No one would think of writing *who is BAC was more than twice*, unless the writer was seriously over the limit.

These contractions are painless if you simply remember they always stand for two words.

Undue emphasis. Underlining is a relic of the typewriter era, the bad old days when we had exactly one typeface and font size. The laborious process of backspacing and underlining was the only way to emphasize a word, phrase or case title. Book publishers, newspapers and magazines routinely translated underlined words into *italicized* ones, and that is what legal writers should do now. Don’t underline – use italics.

The same principle applies with twice the force to double underlining.

Boldface is a wonderful technique for setting off headings, but for emphasis within the text of your document, “The result is visually repulsive.” Antonin Scalia and Bryan A. Garner, *Making Your Case: The Art of Persuading Judges*, St. Paul, Minn.: Thomson/West, © 2008, 122.

“All caps” style is also unacceptable, as it connotes anger and screaming. It served its purpose back in the teletype and telegram days, but is now thought to be rude. In 2013, the U.S. Navy banished all caps from its in-house message system – a welcome recognition that we have enough loud talk already.

Exclamation points are useful, but know your audience! Be sure that your reader shares your sense of surprise, and presume that a court would rather read an objective, dispassionate brief or memo.

A federal district judge recently wrote that a certain group of defendants “have developed a rather tiresome habit of utilizing excessive bolding, underlining, capital letters, and exclamation points,” and advised counsel to “refrain from gratuitous punctuation in future briefing before this Court.” *In re Gulf States Long Term Acute Care of Covington LLC*, 2014 WL 1365950 (E.D.



La. 4/7/2014). In a more vintage case, Judge Per Curiam admonished, “This argument is unfortunately characteristic of the [appellants’] briefs, which are noteworthy for their excessive use of emotional overstatement, capital letters, underscoring, and exclamation points, and for their dearth of legal analysis and citation to apposite authority.” *King v. Fidelity Nat’l Bank of Baton Rouge*, 712 F. 2d 188 (5 Cir. 1983). Needless to say, the appellants received little relief in New Orleans.

A small caveat: some insurance policies use **boldface** for terms that are specifically defined in the definition or general provisions section. When you are quoting a passage from such a policy, you should copy the boldface but include an explanation in your text, “**Boldface** of defined terms as appears in the original.”

If you are quoting from an ancient document like a handwritten letter or olographic will that contains underlining, you can copy it as written but note in the text, “Underlining in original.”

Show some interest. It does not happen often, but occasionally legal writers confuse *disinterested*, which means *objective and unbiased*, with *uninterested*, which means *not concerned about or bored by talk of*. Consider the following:

“These accounts were supported by a number of *uninterested* witnesses, and the plaintiff merely denied the allegations of poor performance.” Those witnesses may have been *lacking in concern* about the plaintiff’s conduct, but from the context of this opinion, the court meant they were *disinterested*.

“She was laughing along with [defense counsel], as well. During the actual voir dire of this panel, she appeared *disinterested* and kind of had a – you know, slouched down in the chair, as if she didn’t want to be asked any questions.” The prosecutor obviously meant the prospective juror was *flippant* and *lackadaisical* about this serious homicide case; in other words, she was *uninterested*.

“His second appointed counsel provided ineffective assistance when she failed to prepare a defense, and appellate counsel was ineffective where he was ‘lax in filing issues’ and *disinterested* in the case.” This is a poor rephrasing of the inmate’s pro se brief, which actually claimed counsel “shows little, if any, interest in actively pursuing this case.” *State v. Castro*, 09-887 (La. App. 5 Cir. 2/25/10), 40 So. 3d 1036, 1050.

“His opinion would not change even if he took into account that the defendants were *uninterested* in developing the property and wanted only to retain it.” This one is right – the plaintiffs’ expert was theorizing that the defendants might *care nothing about* developing the tract, and thus they were *uninterested* in doing so. *Mitchell v. Cooper*, 48,125 (La. App. 2 Cir. 7/24/13), 121 So. 3d 736.

Get this distinction right and you will hold your reader’s interest.



Justice Victory Retirement Reception Highlights



December CLE by the Hour





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