

THE BAR REVIEW

PUBLICATION OF THE SHREVEPORT BAR ASSOCIATION Volume XXII, Number 9 • November 2015

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EVENTS AT A GLANCE

11/5	Memorial & Recognition Service- 2:00 p.m. – First United Methodist Church
11/11	SBA Membership Luncheon – (Veterans' Program) - 12:00 Noon - Petroleum Club
11/20	Lunch & Learn CLE Lunch & Learn CLE – 12:00 Noon – Shreveport Bar Center
12/15&16	December CLE by the Hour seminar at Petroleum Club
12/20	Area Law Student Holiday Reception - 3:00–5:00 p.m. - Wine Country



From The President

by Bennett L. Politz, SBA President, blp@blplaw.com

Booth Lockard Lawyers All!

On many occasions, addressing various law groups I say, “In the summer of 1970, I was running errands for the Booth Lockard Law Firm and now some 45 years later, I am still running errands for the Booth Lockard Law Firm!” People invariably chuckle. The recent death of my senior partner, Joe C. LeSage Jr., caused me to reflect on his remarkable 61 year career as a Booth Lockard lawyer and the local plaintiff’s trial lawyer tradition he royally represented.

The roots of that tradition began in 1931 when Leonard L. Lockard, an Ole Miss graduate, joined Harry V. Booth’s thriving trial practice. Booth and Lockard had a large trial practice in the 1930s during the Great Depression, which flourished during the second World War since many of the younger lawyers were called into military service. After the war, in 1947, veteran and West Point graduate (later Major General) Whitfield Jack joined the firm. John A. Dixon Jr. (later Louisiana Supreme Court Chief Justice) practiced law with the firm from 1949 to 1952. Robert K. Mayo (to be a SBA President) followed for a brief period in 1953. In February 1954, former Caddo District Judge John R. Pleasant and Joe C. LeSage Jr. joined the firm. The decade of the 1950s rounded out with notable local lawyers Robert U. Goodman, John Carpenter and Hank Politz. The 1960s brought Booth Lockard lawyers James J. Thornton, James A. Reeder, H.F. “Sock” Sockrider Jr., R. Perry Pringle and James E. Bolin Jr. Troy E. Bain joined the firm as a partner in the early 1970s. Other 1970s Booth Lockard lawyers were Fred H. Sutherland, Curtis W. Cary, John R. D’Anna and the Politz brothers. For a period in this century, we should add John O. Hayter III and Mark W. Odom to the mix.

From Booth Lockard’s rich tradition of lawyering in this community come 4 Louisiana Trial Lawyers (now Louisiana Association for Justice) presidents, 2 presidents of the Louisiana State Bar Association, 1 chief justice of the Louisiana Supreme Court, 1 chief judge of the U.S. Fifth Circuit Court of Appeals, 1 Louisiana State Senator, a twice member of the LSU Board of Supervisors, 2 Louisiana Outstanding Young Lawyer of the Year awards, 3 members of the prestigious International Academy of Trial Lawyers, and any number of presidents of the Shreveport Bar Association, among countless other professional accomplishments and recognitions. The local American Inn of Court is named after both Harry V. Booth and Judge Henry A. Politz.

Many of these Booth Lockard lawyers used their experience with the firm as a springboard to start new firms or successfully practiced either solo or in other local firms. This is an impressive group of lawyers over the decades.

I add no luster to this distinguished group, past and present, but I am nonetheless proud to be a small part of the local tradition of Booth Lockard lawyers all!

Remember, do good work!

Ben

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Secret Santa

Please make it a Merry Christmas for a needy child in our community by serving as an SBA Secret Santa. Email secretsanta.sba@gmail.com to sign up.

Last year, the SBA Secret Santa project delivered truckloads of gifts (footballs, clothes, dolls, bicycles, etc.) to dozens of needy children in our community. We want to help even more families in 2015.

If a firm, chambers, or government office volunteers, please include an estimate of the number of children you would like to help. Around Thanksgiving, volunteers will receive an email with the names of their children plus wish lists and information (age, gender, clothing size, hobbies, etc.). What you buy and how much you spend is up to you. Volunteers will deliver their gifts to the Bar Center, and we will take it from there.

Early volunteers make planning easier and ensure success, so please sign up now. Questions? Call Kristi Gustavson at 429-1206 or Chris Slatten at 934-4696.

Save the Date

The Shreveport Bar Association
Christmas Party

honoring

Area Law School Students

Will be held on

Sunday, December 20, 2015

3:00 p.m. to 5:00 p.m.

Wine Country

Invitations will be mailed mid-November



2015 Professionalism Award

by Marcus Edwards, marcus@msrlaw.com

CHARACTER. PREPARATION. AUDACITY. ZELDA TUCKER. PROFESSIONALISM.



Zelda Tucker is the recipient of the 2015 Professionalism Award given by the Shreveport Bar Association. That award is well deserved!

If you mention the name “Zelda” to anyone remotely connected to the practice of law in Shreveport-Bossier, you’ll be met with a smile. Only one name is necessary. Zelda is one of those people who has never met a stranger. She walks through

life collecting allies, talking to both young attorneys and experienced colleagues like old friends. Zelda is on a first-name basis with judges, paralegals and waitstaff alike, but she stoutly maintains that she stays out of politics. In 2009, Zelda became the first African American, and second female, president of the Shreveport Bar Association

Zelda was raised in the Stoner Hill neighborhood here in Shreveport. In retrospect, Zelda declares that growing up, her family was poor. At the time, however, that never occurred to Zelda because they never wanted for anything. Zelda has warm memories of family and working in her mother’s beauty shop, where, at 6:00 a.m. on Saturdays, it was her job to comb little girls’ hair. Zelda graduated from C. E. Byrd High School in 1979, then hopped on a Trailways bus to LSU with nothing but a trunk and warm wishes the following fall.

At LSU, Zelda met her future husband, James Britt, in the library. James is now a real estate investor, but he played football for LSU, where he has since been inducted into the LSU Hall of Fame, and he played professionally for the Atlanta Falcons. Zelda admits attending all the football games while at LSU, but she refused to date a football player. Obviously, James was a football player. The two married in 1992, and during autumn weekends, Zelda is often spotted flying in and out of Shreveport Regional Airport to attend professional football games. Zelda

graduated from LSU in 1983 with a BA in English Literature, and then graduated with honors from Southern University Law Center in 1986.

Zelda returned to Shreveport, where she became a law clerk for Judges Charles Scott and C. J. Bolin. Zelda credits Judges Scott and Bolin with teaching her about professionalism, and she fondly recalls that they were conscious of helping her maximize her experience as a law clerk. After her judicial clerkship, Zelda went into solo practice. Since then, she has been primarily an insurance defense attorney, who also does double duty as a Deputy City Attorney.

In 1990, she began her work in private practice handling City Court criminal defense through the Indigent Defender Board and varied civil cases. She was later hired by then-City Attorney Charles Grubb as a part-time prosecutor. Zelda now manages civil litigation for the City. She has also done work for the Louisiana Attorney General’s Office since 1988. Zelda is well known as a litigator.



John Frazier, Zelda Tucker and William Bradford

Zelda’s first trial, in which she represented the plaintiffs, involved a case of alleged false imprisonment by a retail establishment not far from Shreveport. Her opponent was a prominent and experienced attorney, still practicing in Shreveport today. At trial, once Zelda rested, the judge advised that he was ready to rule. Instead of moving for a directed verdict, opposing counsel announced that he would prefer to go ahead and put on one witness. Zelda ultimately lost when the ruling later came out, but she had done the best job possible – and her opponent called to tell her so. Later, Zelda’s former opposing counsel gave her name, along with his recommendation, to an insurance company who became her first major client.

Before cloud storage, Boolean search engines and electronic filing, when Zelda wanted a template for a filing, she’d go to the courthouse, check out a file, and teach herself how to properly prepare the pleading. If she needed to learn how to try a case, or some different area of the law, she would order and pay for

an entire trial transcript of a case on the legal issue, and absorb everything from voir dire to objections and closing statements. More recently, she simply shows up to watch trials from the gallery, while perhaps asking questions of the law clerk. Recounting these experiences, Zelda simply explained, "That was what you did."

Superior preparation and performance landed her one client, and her winning personality landed her another. Zelda's solo offices were next door to yet another insurance provider. One day, Zelda and her office neighbor began talking, and soon thereafter she had been hired to represent the insurance provider.

Zelda didn't stop there. When Zelda had questions about billing, she set up an appointment with the managing partner of a firm that was also representing one of her major clients. He took the meeting assuming that she'd be asking for a job. Instead, Zelda asked about the procedure of preparing bills for a major client. It never dawned upon Zelda that this would be in any way considered odd or off-putting. Moreover, the partner of the other firm, taken aback by her audacity and competence, responded favorably and went out of his way to help her. They have now been great friends for many years.

Naturally, Zelda's advice for young lawyers is "never be afraid to ask for help." Zelda had several mentors and believes that networking still has value. Because of the help she received, Zelda actively helps young attorneys to pay the favor forward. In practice, Zelda is solution oriented, always looking to protect her clients' interests efficiently and without unnecessary friction with other attorneys. That approach is one to which we should all aspire.

Recalling her experiences as a young lawyer, in one case, one of the other defense attorneys, whose client had settled along with all the other defendants, told her that she should consider retaining co-counsel who possessed expertise in that area of the law. Zelda took that advice, and thereafter, the "specialist" lawyer took the "second chair" position, and Zelda tried the case and won.

Zelda is also committed to contributing to the profession, having served in various roles for the Shreveport Bar Association and this year as the speakers' chair for a joint meeting of the Louisiana Judicial Council and the National Bar Association. She currently serves as a member of the Louisiana State Law Institute.

Whether from practicing with her in the City Attorney's Office, opposing her in civil litigation, or working with her in service to the bar, Zelda's colleagues describe her as a person who is easy to work with, professional, pleasant, ethical and capable. Zelda Tucker is the 2015 recipient of the SBA Professionalism Award because of her career of character, preparation and audacity. She is the first African American woman to receive this award from the SBA, and true to form, it never occurred to her that her pioneering career is a model of professionalism. That's just Zelda, and I suspect we all agree that Zelda's way is the way law should be practiced.



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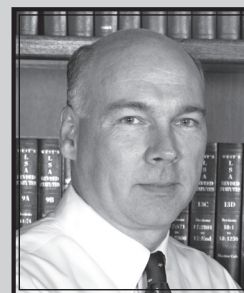
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Federal Bar Raises \$10,000 for The Wounded Warrior Project

The North Louisiana Chapter of the Federal Bar Association (FBA) hosted a sporting clays tournament on October 2 at the Los Paloma Sporting Range in Benton and raised \$10,000 for The Wounded Warrior Project. More than 90 shooters and 30 volunteers from Barksdale and the legal community enjoyed perfect weather and fun shooting. Dozer Reed, who served in Iraq, spoke passionately about the project and how it helped him recover from serious injuries and become an Ironman triathlete.

Members of the winning team were John Odom, Robbin Cassity, Jack McCrocklin, Dr. Tim Hart and Bill Hogg. The overall high scorer was Bill Hogg, who broke 97 of 100 birds. Richard Biernacki won top prize in the raffle and took home a Remington 1100 Sporting model shotgun.

The success of the tournament was aided by many generous volunteers and sponsors, and the FBA is grateful to them. Special thanks goes to Scott Chafin Jr. and Barbara Meyers, both of Gregorio, Chafin & Johnson, for organizing the event.



Richard Biernacki hosted Team Fire Tech and Biernacki was the lucky grand prize winner of the shotgun raffle. L-R: Col. Jon Ellis AFGSC, Col. Andy Thompson USAF (Ret) Rico Biernacki, Brian Hornback USAF (Ret) Master Chief and Col. Marty Anderson AFGSC.



Team Wells Fargo Advisors placed second at the fundraising shoot. L-R: Carlos Gipson, Tim Brown, Mark Heacock, Tommy Thigpen and Calvin Macy.



Special guest Dozer Reed, an Iraq War veteran and a member of the Wounded Warrior National Campaign Team poses with his service dog Leyna and the winning team, Five Gun Salute, along with Federal Judge Maurice Hicks and Fundraising Chair, Scott J. Chafin, Jr. L-R: Judge Maurice Hicks, Bill Hogg, Robbin Cassity, Jack McCrocklin, Dr. Tim Hart, John Odom, Dozer Reed and Scott Chafin. Bill Hogg was the highest shooter with a score of 97.



Barksdale Airmen and Airwomen and community volunteers worked to raise money for the Wounded Warrior Project at the clay shoot. L-R: Randi Sologaistoa, SSgt. USAF, Jay Meyers, Biomedical Research Foundation, Dylan Sowell, AIC USAF and Julie Payne Johnson, Gregorio, Chafin & Johnson.

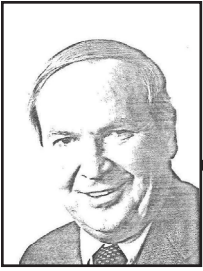


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Book Review

by Arthur R. Carmody, Jr.

Professor Paul Baier's Jewel of a Book entitled *Speeches*, of his Personal Heroes of the Law, Based on a Similar Book over 100 Years Ago by Chief Justice Oliver Wendel Holmes

I was requested to review Professor Baier's jewel of a book, and that review follows:

Review of *SPEECHES* by Prof. Paul R. Baier

Louisianians are indebted to the Louisiana Bar Foundation for sponsoring the publication of Professor Paul R. Baier's book, *SPEECHES*. The author is possessed of a fertile mind and a facile pen. A native of Ohio, product of Harvard Law School, then selected as a Judicial Fellow with the United States Supreme Court (1975-1976), introduced to Louisiana as Director of the National Appellate Judges Seminar, housed at the LSU Law School during the 1970's, who accepted Judge Eldon Fallon's invitation to become the first Scholar in residence of the Louisiana Bar Foundation, based at the LSU Law Center (1990-1992), then succumbing to the siren's call of Al Tate to join the faculty at the law school, where he serves today as the Judge Henry A. Politz Professor of Law. It is fitting that Professor Paul makes his initial remarks on this special book as the designated Judge Henry A. Politz Professor of Law at LSU as Shreveport and its environs was the home base of Hank Politz and this audience is the group that knew him best and loved him more.

Baier is a brilliant, perceptive writer in full command of the subjects of his book. His heroes of the law are readily apparent. Oliver Wendel Holmes, Jr., who in 1891 authored the first *SPEECHES* and Edward Douglas White, a product of Lafourche Parish and Georgetown, both strong, able Chief Justices of the United States Supreme Court, both soldiers but on opposite sides of the Civil War, but later blended the blue and the gray, developing a warm, personal friendship centered on a mutual respect for the court and at the forefront of the list, soon appears Al Tate, followed by William Rehnquist, Louis Powell, William Brennan, Hugo Black, John Marshal and William Redman.

From the mists of time come Justinian and the remarkable Francis Xavier Martin, who make way for the genial, but better friend than foe, Antonin Scalia, who makes a strong case for the doctrine of originalism now being recognized more frequently in federal and state courts throughout the country.

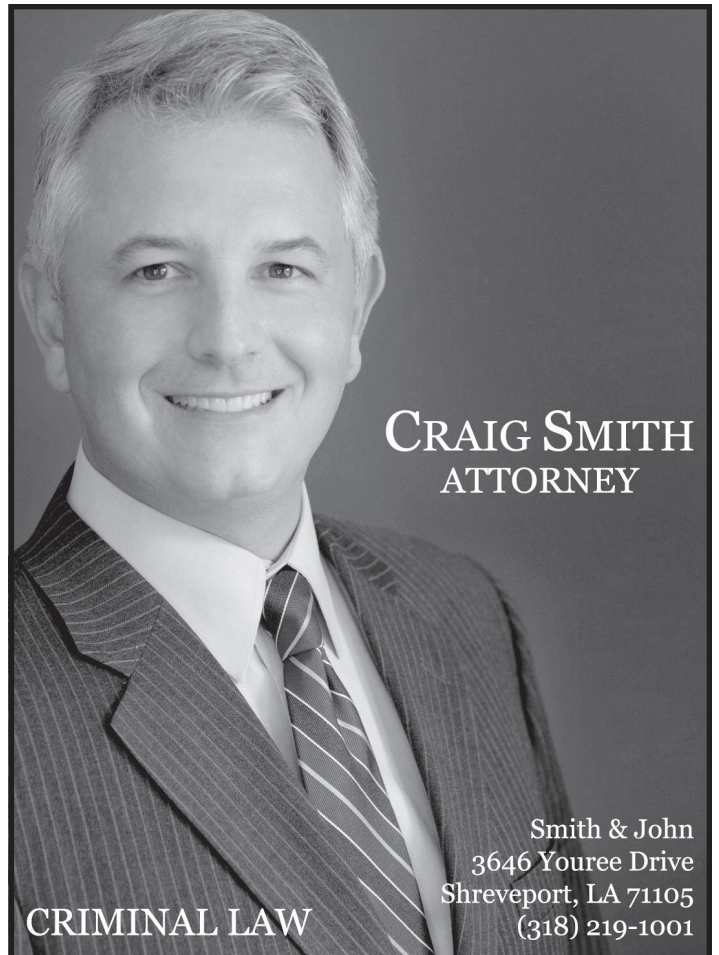
Throughout the short 261 pages of *SPEECHES*, it is apparent that Professor Baier is well versed in the mores of the common law, but since his sojourn in Louisiana, beginning in 1972, he has become a staunch advocate and defender of the civil law. This splendid book should be a welcome addition to the libraries

of all who are interested in the law and legal history. It is a delightful read and a credit to the Louisiana Bar Foundation for sponsoring this worthy book.

Copies, pp. vi, 261, paperback, perfect binding, \$24.30, including sales tax and postage, are available from Claitor's Publishing Division, Baton Rouge. Professor Baier will inscribe all copies if requested when ordering. 20% royalty to the LBF's Civil Justice Initiative with thanks to Professor Baier for his patronage.

Order here: <http://www.claitors.com>

Note: Those who missed Professor Paul Baier's presentation at the October 2015 SBA luncheon are encouraged to consider his latest authorial tour de force, *Speeches*. The preceding review of this remarkable book first appeared in *The Bar Review*, October 2014



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KREWE OF JUSTINIAN XXII MIDWAY TO MARDI GRAS 5K "RUN FOR THE BEADS"

*Supporting the Shreveport Bar Foundation
& the Krewe of Justinian*

**The first 500 finishers will receive
a specialty race bead!**

Date & Starting Time: Saturday, November 21, 2015, beginning at 8:00am.

Registration: Early Registration is \$25 through Friday, October 16, 2015 - November 20, 2015. Race day Registration is \$35. You may pay with a **Credit Card ONLINE ONLY** at www.sportspectrumusa.com or pay with cash, check, or credit card at Sportspectrum, 6970 Fern Avenue, 71105.

REGISTER EARLY! No shirts guaranteed to late registrants.

T-shirts & Race Packet Pick-Up: Every pre-registered participant will receive an original technical race t-shirt. Packet pick up will be held at Sportspectrum, Thursday, November 19th from 12 pm- 7 pm and Friday, November 20th from 10 am-5:30 pm. You may also pick up your packet on Race Day at the Race Site at 7:00am.

Awards: Overall Male & Female finishers in the 5k race will receive \$100. Additionally, overall M/F age group 1st place winners will also receive \$25.

Age Groups: <19, 20-29, 30-39, 40-49, 50-59, 60+

Post Party: Join us after the race for a special party including music, food, water and awards! More info coming soon!

Special Note: Strollers, wagons, baby joggers, and any hand pushed or pulled vehicle will be allowed on the course, but at a walk pace capacity only. Absolutely NO in-line skates, roller skates or runners with baby strollers will be allowed on run course. This rule is an RRCA regulation!

SIGN UP ONLINE at www.sportspectrumusa.com



Waiver & Release

In consideration of my being admitted to enter "Krewe of Justinian's Midway to Mardi Gras 5K Run For The Beads", I, for myself, my heirs, and assigns, executors and administrators, do hereby forever release and discharge Sportspectrum, RRCA, Sportspectrum Race Management, NWLRA, the Krewe of Justinian, Shreveport Bar Association, Shreveport Bar Foundation, their employees and agents, of and from any and all claims or demands for damages, injuries, or liability, in any manner arising out of participation in this event. I agree to indemnify and hold harmless the parties released above from any claims or demands for damages, for injuries or liability, in any way arising out of my participation in this event. I certify that I have prepared myself for this race and that I am in adequate physical condition to complete the event I have entered. I agree to follow all rules of this race and to permit myself be removed from the competition if in the opinion of Race Management that continuing would endanger my health.

The "Krewe of Justinian's Midway to Mardi Gras 5K Run For The Beads" Official Entry Form – "November 21, 2015"

Last Name _____ First Name _____

Address _____ City _____ Zip Code _____

Birth Date ___/___/___ Circle: Male or Female

T-Shirt Size (circle) YM YL S M L XL XXL (add \$2.00)

I understand and agree to all conditions of waiver. Signature _____

Parent/Guardian Signature for participant under 18 years old _____



The Captain Speaks

by: Susie O. Stinson, Captain XXII, susie.stinson@neilerwinlaw.com

"RUN (or walk!) WITH ROYALTY XXII"

The Krewe of Justinian continued its celebration of Hollywood cinema at its Midway To Mardi Gras Party on Friday, October 2, 2015, at the Chandler Event Center in Bossier City. The theme was "**Sports At The Movies,**" based on fun, Academy Award-winning, sports films such as **Moneyball, Blindside** and **Rocky**. Midway chairpersons Amy Bokenfohr and Jamie Huguet made sure everyone showed up in their favorite sports team attire and pulled off a casual, fun, tailgate-style evening. Special thank-you to Amy and Jamie!

I am very excited about our next Krewe event. As Justinian XXII's signature fundraising event for the year, the Midway to Mardi Gras 5K "**Run For the Beads**" will be held on Saturday morning, November 21, 2015, beginning at Madison Park Shopping Center (old El Chico's) off Fern Avenue and Gregg Street in Shreveport. Not only will preregistrants receive an original **long sleeve, technical t-shirt** and the first 500 finishers receive a **signature race medal**, our chairpersons are organizing a fun **post-race party at Marilyn's Place** next door. Cash prizes will be available for overall male and female winners as well as male and female age group winners. **Sponsorships are still available, with valuable advertising opportunities.** If you or someone you know may

be interested, please contact the SBA office, Melanie Johnson, Brenda Haines or me. You can register for the run online at <http://www.sportspectrumusa.com/events/midway-to-mardi-gras-5k/> or complete the enclosed form – submit to Sportspectrum. Come out and run (or walk!) with Justinian XXII Royalty as we raise funds for the Shreveport Bar Foundation!

With just over three months until the end of the 2015-2016 Mardi Gras year, our Grand Bal on January 22, 2016, is setting up to be the event of the season. One unexpected change has turned into an exciting opportunity – Justinian's Grand Bal has moved to the Shreveport Convention Center! We will celebrate the 1952 Academy Award Best Picture winner, The Greatest Show on Earth, with Justinian's Greatest Show on Earth under the big top! More information on this circus-style, fantastic event will be available to you soon. You will not want to miss it!

You can still join the Krewe online at www.kreweofjustinian.com/join-now or call Dana or Courtney at the SBA office. I hope to see you all at an upcoming event!

Susie O. Stinson

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Midway to Mardi Gras



OCTOBER LUNCHEON

Highlights



Mediation AND Arbitration OF COMPLEX DISPUTES

The Patterson Resolution Group offers dispute resolution services in complex cases to businesses and individuals across Louisiana and the Gulf South. Group members include five former presidents of the Louisiana State Bar Association and a retired district court judge. The members have substantive experience in disputes in areas such as:

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Contact Mike Patterson at 866-367-8620. Or visit the group's website at www.pattersonresolution.com for more information and the article, "Getting Your Client and Yourself Ready for Mediation."

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Shreveport Bar Association Lunch & Learn CLE

Shreveport Bar Center
625 Texas Street, Shreveport
Friday November 20, 2015
Registration 11:30 a.m.
1.0 Hour Louisiana CLE Credit

12:00 Noon -1:00 p.m.

Karen Tyler, *Karen Tyler Reporting*

Topic

I'm A New Lawyer! What Do I Do To Impress?

Lunch will be provided for all participants



Name _____

Address _____

City, State, Zip _____

Phone No. _____ Email Address _____

Registration Fee:

SBA Members - \$50.00

Non-SBA Members - \$60.00

Questions? Please contact Dana Southern at
318-222-3643, Ext.3 or email: dsouthern@shreveportbar.com

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Expiration Date _____ SIC: _____

Signature _____



Thank You

Roland Achee (deceased) - Navy Reserve LTJG
Michael Adams - Army Reserve - Captain
Matthew Bailey - Army National Guard - Specialist
John R. Ballard (deceased) - Army - Captain
Roy Beard - Army - Captain
Ed Blewer Jr. (deceased) - Army - 1st Lieutenant
John N. Bokenfohr - Army - E4
James E. Bolin Jr. - Army - 1st Lieutenant
Hon. Henry Brown - Army - 1st Lieutenant
Hon. Stephen V. Callaway - Marine Corps Reserve -
Sergeant
Nelson Cameron - Navy - Petty Officer 3rd Class
James H. Campbell - Army - 1st Lieutenant
Arthur R. Carmody Jr. - Army Reserve - 1st Lieutenant
Reginald Cassibry - Navy - Captain
Samuel W. Caverlee - Army Reserve - 1st Lieutenant
Merritt Chastain Jr. - Army Reserve - Captain
Hon. James E. Clark (deceased) - Marine Corps - Corporal
Air Force Reserve - Captain
Joseph M. Clark Sr. (deceased) - Navy - PO3
William Carey Clark (deceased) - Army - Captain
Ben E. Coleman - Army - Corporal
Air Force Reserve Staff Sergeant
Steven Cowel (deceased) - Army - Captain
H. T. (Ted) Cox - Army Reserve - Colonel
Jackson B. Davis - Navy - Lt. Commander
Robert M. Davis III - Army Reserve - Captain
S.P. Davis - Army Reserve - Colonel
Hon. Harmon Drew - Army Reserve - Captain
Robert Eatman Sr. (deceased) - Navy - Chief Petty Office
Stephanie A. Finley - Air Force - Lt. Colonel
Gary L. Fox - Army - 2nd Lieutenant
Hon. Andrew Gallagher - Army - Corporal
Sidney Galloway (deceased) - Air Force - Major
James C. Gardner (deceased) - Army - 1st Lieutenant
Twain K. Giddens Jr. - Navy - Lieutenant

Gaylon Kent Gill - Army - Specialist 4
Robert Gillespie - Army - Sergeant
Harold C. Gilley Jr. - Air Force - Lt. Colonel
Joseph R. Gilsoul - Army - E5
Rellis Godfrey - Army - Sergeant
James Godfrey (deceased) - Air Force Reserve - Colonel
Richard Goorley - Navy - Petty Officer 2nd Class
Norman R. Gordon - Air Force - Captain
James Graves - Air Force Reserve - Major General
Warren Graves (deceased) - Air Force - Colonel
A.J. Gregory Jr. - Army - Sergeant
David G. Griffith - Army - Acting Sergeant
Charles Grubb - Army Reserve - Command Sgt. Major
Hon. D. Whit Haigler Jr. - Air Force - Captain
Hon. Gayle K. Hamilton - Marine Corps - Corporal
Elizabeth A. Hancock - Air Force - E3
F. Stanton Hardee III - Army - 2nd Lieutenant
Quintin T. Hardtner, III - Marine Corps - Captain
Kenneth L. Hickman - Navy - Captain
W. James Hill, III - Army Reserve - Colonel
Elmon Holmes (deceased) - Army - Captain
John Hussey - Army - Captain
Val Irion (deceased) - Army National Guard - Lt. Colonel
Wellborn Jack Jr. - Army Reserve - Major
Whitfield Jack (deceased) - Army - Major General
Patrick R. Jackson - Army National Guard - Major
T. Haller Jackson Jr. (deceased) - Army - Captain
T. Haller Jackson III - Navy - Ensign
Robert A. Jahnke - Army Reserve - Lt. Colonel
Joseph G. Jarzabek - Navy - Petty Officer 2nd Class
James R. Jeter (deceased) - Army - Captain
Harry A. Johnson Jr. (deceased) - Army - Lt. Colonel
Tommy J. Johnson - Army National Guard - E4
Walter F. Johnson III - Air Force - 1st Lieutenant
Hon. Charles W. Kelly IV - Army - Colonel

TO OUR Veterans



Benjamin King, Sr. (deceased) - Air Force - Lt. Colonel
David Klotz (deceased) - Army - Tech Sergeant
Norman Lafargue - Marine Corps - Corporal
William H. Ledbetter Jr. - Army - Captain
Joe LeSage - Army - Captain
Hon. Charles Lindsay - Army - Brigadier General
Stuart D. Lunn - Army - Captain
Wilburn V. Lunn (deceased) - Army - Colonel
Paul Lynch (deceased) - Army - Major
Hal V. Lyons (deceased) - Navy - AM 3C
John M. Madison - Army - 1st Lieutenant
Winfred L. Martin (deceased) - Army - Lt. Colonel
Kenneth Mascagni - Air Force - Captain
Robert Mayo - Army - 1st Lieutenant
Lawrence McCollum (deceased) - Army Reserve - Lt. Colonel
Marshall McKenzie (deceased) - Army - Sergeant
Donald R. Miller (deceased) - Air Force - Captain
Garner R. Miller (deceased) - Army - Tech 5th Grade
C. Gary Mitchell - Army National Guard - Sergeant
J. Peyton Moore - Army - Captain
John B. Morneau (deceased) - Coast Guard Reserve - E5
Seth Moyers - Marine Corps - E-4
Harry R. Nelson (deceased) - Air Force - Lt. Colonel
Sydney B. Nelson - Navy - Lieutenant
Jeffrey S. Norris - Army - Major
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Cecil Ramey (deceased) - Army - Air Corps Sergeant
Elton Richey - Army National Guard - Lt. Colonel

C. Vernon Richie - Army National Guard - Specialist 4
Hon. John Robinson - Army National Guard - Staff Sergeant
Hon. Patrick Robinson - Army - Captain
Gordon Rountree - Army - 1st Lieutenant
Jennifer Sandusky - Air Force - Captain
Daniel C. Scarborough (deceased) - Army Reserve - Major
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Navy - Lieutenant
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Shreveport Bar Association

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Thursday, November 5, 2015

2:00 PM

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Thanks For Your Valuable Contribution!

The planners and speakers of the SBA Recent Developments by the Judiciary CLE seminar are volunteers. Their gift of time and talent make this event successful. We acknowledge and greatly appreciate their work.

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Monroe Inn of Court Update

by Hal Odom Jr., rhodom@la2nd.org

Domestic Violence and Louisiana Higher Education: A Bigger Role for Bystanders

The Judge Fred Fudickar Jr. AIC (Monroe, La.) held its second meeting of the 2015-'16 season at the Lotus Club on October 12, 2015. The topic was "Domestic Violence and Higher Education – Recent State and Federal Legislation & Louisiana Public Universities." The presenter was Wesley Eby Johnson, of the Monroe office of Escamilla & Poneck LLP, a San Antonio-based law firm with a practice that includes school law.

Wesley began with an introduction to the major federal laws concerning domestic violence on college campuses, including the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. § 1092(f), enacted in 1990; the Violence Against Women Reauthorization Act ("VAWA") of 2013; and the Campus Sexual Violence Elimination ("Campus SaVE") Act, effective March 7, 2014. The Campus SaVE Act notably expanded the requirements of hate crime reporting and added offenses of domestic violence, dating violence, sexual assault and stalking. Wesley also cited a White House task force to protect students from sexual violence, organized in January 2014, which resulted in enhanced involvement of the Department of Education's Office for Civil Rights ("OCR") and an initiative to get bystanders involved in reporting offenses.

She stated that an OCR claim is different from Title IX civil cause of action in that it allows damages only when the entity acts with "deliberate indifference to known acts of harassment in its programs or activities." She also showed a graphic of issues raised by Title IX complaints: harassment and sexual violence rank second only to athletics.

To help place this large administrative edifice in concrete terms, she discussed a few recent cases, such as *Esfeller v. O'Keefe*, 391 Fed. Appx. 337 (5 Cir. 2010), which affirmed an injunction against an LSU student for posting harassing messages against his ex-girlfriend on Facebook and MySpace (the court held that LSU's Code of Conduct was not overbroad), and *Roe v. St. Louis Univ.*, 746 F.3d 874 (8 Cir. 2014), showing the problems a claimant may encounter in alleging deliberate indifference. Wesley also cited *Thomas v. Hyatt*, 2012-1891 (La. App. 1 Cir. 8/6/13), 2013 WL 4007777, a case not arising in a college setting, but showing the state court's willingness to apply Louisiana's Protection from Dating Violence Act, La.

R.S. 46:2151, to stalking and cyberstalking.

Perhaps Wesley's strongest message was increased role of bystander intervention as a prevention strategy. The White House task force report found that men often overestimate their peers' acceptance of sexual assault and underestimate other men's willingness to intervene when a woman is in trouble. Wesley cited the current disapproval – bordering on revulsion – of smoking in public as a change in social norms that can also occur in the area of school-based sexual misconduct. When bystanders feel a sense of responsibility, the whole dynamic changes.

A modest crowd of 18 members was on hand for Wesley's presentation, which qualified for one hour of CLE credit. The Inn's next meeting is slated for November 9, 2015.



Wesley Eby Johnson, left, of the Monroe office of Escamilla & Poneck LLP, introduced members to the panoply of acts and agencies reporting and remedying sexual violence on college campuses. Walter Dunn, of Breithaupt, Dunn, DuBos, Shafto & Wolleson, was part of the relatively small audience. (Photo by Hal Odom Jr.)



December CLE By The Hour December 15 & 16, 2015

Petroleum Club, 15th Floor
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Presented by SBA CLE Co-Chairs Judge Frances J. Pitman and Judge Michael A. Pitman

(Please Circle All Classes Attending)

Tuesday, December 15, 2015

- 8:00 A.M. Registration
- 8:30 A.M. Family Law
60 Minutes Judge Kareila R. Stewart - First Judicial District Court
- 9:30 A.M. Sponsor Break
- 9:35 A.M. Professionalism
60 Minutes Judge Stephens Winters - Fourth Judicial District Court
- 10:35 A.M. Sponsor Break
- 10:45 A.M. Helpful Hints from A to Z from Fannin Street
60 Minutes Judge Jeanette Garrett - Second Circuit Court of Appeal
- 11:45 A.M. Lunch (included with all-day registration, or \$25)
- 12:45 P.M. Technology in the Courts
60 Minutes Melissa Allen - United States Fifth Circuit Court of Appeals
- 1:45 P.M. Sponsor Break
- 1:50 P.M. Appellate Practice and Procedure
60 Minutes Michael Collum - Second Circuit Court of Appeal
- 2:50 P.M. Sponsor Break
- 3:00 P.M. Torts Update
60 Minutes Jerry Edwards - Blanchard, Walker, O'Quin & Roberts

Wednesday, December 16, 2015

- 8:00 A.M. Registration
- 8:30 A.M. Practical Tips for Navigating Federal Court
60 Minutes Magistrate Judge Mark Hornsby - United States District Court, Western District
- 9:30 A.M. Sponsor Break
- 9:35 A.M. Ethics
60 Minutes Justice Scott J. Crichton - Louisiana Supreme Court
- 10:35 A.M. Sponsor Break
- 10:45 A.M. Psychological Issues Facing the Courts
60 Minutes Dr. Todd Lobrano
- 11:45 A.M. Lunch (included with all-day registration, or \$25)
- 12:45 P.M. Criminal Law for Court Appointed Civil Lawyers
90 Minutes Judge Michael Pitman - First Judicial District Court, Alan Golden - Former District Defender for First Judicial District and Donald E. Hathaway, Jr. - Sockrider, Bolin, Anglin, Batte & Hathaway
- 2:15 P.M. Sponsor Break
- 2:30 P.M. Successions
60 Minutes Ben Politz - Booth, Lockard, Politz & LeSage
- 3:30 P.M. Service Members Civil Relief Act-Overview and Practice
60 Minutes John S. Odom, Jr., Colonel, USAF (Ret.) - Jones and Odom, L.L.P.

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Second Circuit Highlights

by David Tullis, dtullis@la2nd.org

Dancing with the sparks

A Shreveport Police Department officer decided to investigate when he heard loud music while on patrol one afternoon (the particular tune that caught his attention was not mentioned in the record). Upon determining the source of the music, he observed a large man, Jessie Scott, dancing and working on a truck. Jessie allegedly became hostile when the officer approached. As the beat intensified, the officer decided he did not want to tango with Jessie, so the officer tased him. Down went Jessie, who was cuffed and then taken to the police station for processing. When Jessie began complaining of chest pain, EMTs were summoned and Jessie was transported to a hospital, where he was diagnosed with a heart attack and underwent a heart catheterization.

Jessie and his wife sued the City of Shreveport claiming that the prolonged tasing caused his heart attack. The City filed a motion for summary judgment asserting an absence of any medical evidence showing such a causal link. The City's motion was granted and the lawsuit was dismissed. The Second Circuit affirmed. *Scott v. City of Shreveport*, 49,944 (La. App. 2d Cir. 6/24/15), 169 So. 3d 770.

In opposition to the motion for summary judgment, the Scotts submitted an excerpt from the deposition of Dr. Jai Varma, the cardiologist who performed the heart cath, as well as an article about a study suggesting that being the victim of a tasing can trigger heart problems. The Scotts also claimed that a physician had told them the heart attack was the result of the tasing; more specifically, that the tasing caused arrhythmia, which led to the heart attack. The City argued that the mere possibility of a causal relationship between the tasing and the heart attack was not enough to defeat the motion for summary judgment.

Dr. Varma testified by deposition that Jessie's heart attack was the most severe kind and was caused by a 90% blockage in his right coronary artery. Dr. Varma added that it was not very clear whether electrical shock in general was a causative indicator for a heart attack. While Dr. Varma agreed that electrical shocking could cause arrhythmia, he added that this condition – a very slow or very fast heartbeat – usually does not trigger a heart attack. Most significantly, Dr. Varma never stated that Jessie experienced arrhythmia from having the Taser used on him. Moreover, the belief that Jessie even had an arrhythmia was unsupported anywhere in his medical records.

The Second Circuit noted that the only evidence tending to show causation between the tasing and the heart attack was Jessie's self-serving claim that a physician had told him as much. However, Dr. Varma never indicated that the tasing caused Jessie's heart attack, and was unclear about whether tasing could be the only cause of any heart attack, much less the one suffered by Jessie. Thus, Dr. Varma's testimony regarding causation was deemed to be speculative and inconclusive. Mere conclusory allegations, improbable inferences and unsupported speculation cannot support a finding of a genuine issue of material fact to defeat a motion for summary judgment. Therefore, summary judgment was properly granted when Jessie and his wife failed to come forward with any evidence establishing that Jessie's heart attack was caused by the tasing done by the Shreveport police officer.

Summary Judgment

In the medical malpractice case of *Estate of Blankenship v. Louisiana Home Care Group Inc.*, 49,856 (La. App. 2d Cir. 6/24/15), 166 So. 3d 461, the estate was on the losing end of a motion for summary judgment after testing the limits of the lower court's patience while trying to obtain an opinion from an expert medical witness.

The estate alleged that the decedent, a stroke patient, died in 2009 from blood loss caused by a procedure to replace a feeding tube. A Medical Review Panel ("MRP") was timely requested the following year against several health care providers, including two doctors. In 2012, the MRP found that those two doctors had not breached the standard of care in their treatment of the decedent.

The estate sued the two doctors in March 2013 for medical malpractice. One doctor filed a motion for summary judgment on November 18, 2013, that was set for hearing on December 5. Attached to the motion were the MRP's opinion and an affidavit from a physician member of the MRP. The estate's attorney complained at the hearing that the motion was premature because discovery had not been conducted, and that she had been served with the motion only a day earlier. The trial court granted a continuance and ordered the hearing refixed because of the untimely service.

On December 11, 2013, the second doctor filed his motion for summary judgment. In support, he attached the

MRP's opinion along with his own affidavit. He asserted that despite having adequate time, the estate had failed to produce any evidence or an expert witness showing a breach of the standard of care. The hearing on both motions for summary judgment was set for February 27, 2014.

The estate filed its opposition on February 19. The opposition included nothing from any expert medical witness and consisted only of the autopsy report on the decedent and an affidavit from a relative of the decedent who had observed the medical treatment received by the decedent. On that same date, the estate also propounded interrogatories and requests for admissions of facts and production of documents to the two doctors.

The estate's attorney presented a motion to continue at the February 27 hearing on the grounds that she needed additional time to conduct discovery. She acknowledged that she knew her client needed to retain an expert witness and that she was attempting to gather all the information about the case that the expert would need. The court granted a continuance in order to allow the estate 30 days to retain an expert and ordered the doctors to answer all discovery within 15 days. The court also told the estate's attorney that there would be no additional continuance or delay in the matter.

The doctors submitted their discovery responses in early March. Later that month the hearing on the motions for summary judgment was set for April 28. At this hearing, the estate's attorney made (another) oral motion to continue. She argued that while she had retained an expert witness, the expert still lacked what was needed in order to state an opinion in opposition to the motions. The estate's attorney blamed her predicament on the doctors' failure to adequately respond to discovery, which she contended entitled her to another continuance until discovery was satisfied. After noting that the estate's attorney had adequate time to file necessary motions including a motion to compel before coming to court, the court denied the motion to continue. The court granted the doctors' motions and rendered judgments dismissing the estate's claims without prejudice.

The estate argued on appeal that the motions for summary judgment were premature because it did not have a fair opportunity to complete discovery to oppose the motions. The Second Circuit was unmoved by this argument and found no abuse by the trial court in denying another continuance. The court cited jurisprudence that there is no absolute right to delay action on a motion for summary judgment until discovery is completed. It is only required that the parties have a fair opportunity to present their claims.

The Second Circuit concluded that the estate had more than a fair opportunity to present its claim: the matter was pending before the MRP for nearly two years, and the first motion for summary judgment was filed almost eight months after the medical malpractice lawsuit was filed. The Second

Circuit also noted that the estate made its discovery requests after both motions for summary judgment were filed, and there were five months between when the first motion for summary judgment was filed and when both motions were granted. The estate was well aware following the February 27 hearing that obtaining an expert opinion to oppose the doctors' motions was critical. If the estate found the doctors' discovery responses to be lacking and felt their expert needed additional information to formulate an opinion, then the estate should have filed a motion to compel. The doctors answered the appeal asserting that the judgments should have dismissed the claims against them with prejudice. After considering *Jackson v. State Farm*, 27,611 (La. App. 2d Cir. 12/6/95), 665 So. 2d 661, which held that it was error to grant the summary judgment without prejudice, the Second Circuit agreed with the doctors and amended the judgment to read the claims were dismissed with prejudice. As amended, the judgments dismissing the judgments dismissing the claims against the doctors were affirmed.

Mark Your Calendar



NOVEMBER 5

SBA Memorial & Recognition Ceremony
2:00 p.m. at First United Methodist Church

NOVEMBER 11

SBA Member Luncheon
12:00 Noon at the Petroleum Club (15th Floor)
Speaker: General Robin Rand, U.S. Air Force
(Veterans' Program)

NOVEMBER 20

Lunch & Learn CLE
I'm A New Lawyer! What Do I Do To Impress!
12:00 p.m. at Shreveport Bar Center

DECEMBER 15

Women's Section Christmas Party
Home of Amy Gardner

DECEMBER 15-16

December CLE By the Hour Seminar
Petroleum Club (15th Floor)

DECEMBER 20

Area Law Student Holiday Reception
3:00 p.m. to 5:00 p.m. at Wine Country

How Write You Are

by Hal Odom Jr., rhodom@la2nd.org

Make mine a subscription. A concurrence to a recent Louisiana Supreme Court opinion stated, “Instead, this court is required to recognize the ‘fully retroactive’ binding federal precedents, and I believe the majority opinion, to which I *ascribe*, has done so.” An appellate court echoed this unfortunate usage in a grandparent custody case: “Arkansas also *ascribes* to the doctrine of *in loco parentis*, which may overcome parental preference, even in the initial custody contest, elevating the nonparent to equal status with the parent.”

The word used, *ascribe*, means to *attribute* or *assign* a certain quality or value to something. It is properly used in a statement like “jurisprudence *ascribes* substantive weight to some evidentiary statutes,” *Michel v. State*, 2013-1419 (La. App. 1 Cir. 11/3/14), 167 So. 3d 654, and the prosecutor is not allowed to make reference to the defendant’s decision to remain silent “solely to *ascribe* a guilty meaning to his silence,” *State v. Lee*, 38,114 (La. App. 2 Cir. 3/3/04), 868 So. 2d 256. Readers will always ascribe great skill to legal writers who select the right word.

The word intended, *subscribe*, means (among other things) to *sign on*, *agree with* or *assent to*. Justice Per Curiam showed a deft grasp of the distinction in a recent opinion: “Louisiana *subscribes* to the general rule that the hearsay exception in La. C.E. art. 803(4) does not encompass statements *ascribing* fault in the cause of the injuries treated.” In other words, Louisiana *agrees* that hearsay is inadmissible if it purports to *attribute* fault to someone. *State v. Koederitz*, 2014-1526 (La. 3/17/15), 166 So. 3d 981.

I fully subscribe to this word choice.

What showing was that? A reader asks, What does it mean when the court of appeal denies a writ application with the ruling, “On the showing made, the exercise of the court’s supervisory jurisdiction is not warranted”? Was there something wrong with my showing? Would some other showing have done the trick?

In general, “on the showing made” is the court’s way of ruling without creating *res judicata* or law of the case. If the issue comes up again on full appeal, the court will reserve the right to consider it. *Wells v. Louisiana Dept. of Pub. Safety*, 46,428 (La. App. 2 Cir. 8/24/11), 72 So. 3d 910, *writ denied*, 2011-2637 (La. 2/10/12), 80 So. 3d 474, involved a motion in limine to exclude an expert witness from testifying. The district court had granted that motion, and the Second Circuit denied the plaintiff’s writ “on the showing made.” On appeal, the plaintiffs assigned as error the grant of the motion. The Second Circuit said that because its writ disposition was only “on the showing made,” it could reconsider the issue. It did, ultimately affirming the exclusion of the witness.

Sometimes the court denies, “on the showing made” and “adequate remedy on appeal.” This happened in *Lodwick LLC v. Chevron USA Inc.*, 48,312 (La. App. 2 Cir. 10/2/13), 126 So. 3d 544, *writ denied*, 2013-2898 (La. 2/28/14), 134 So. 3d 1176, when an insurer filed a motion for summary judgment urging it had *no duty* to



defend. The district court denied summary judgment, and the Second Circuit denied the insurer’s application. On full appeal, the court noted its earlier reference to an “adequate remedy” and then found no duty to defend. It granted the summary judgment. In other words, the insurer lost the writ but ultimately “won” on the merits.

For a fierce disapproval of inferring law of the case from the supreme court writ denial, see *Pitre v. Louisiana Tech Univ.*, 95-1466 (La. 5/10/96), 673 So. 2d 585, 109 Ed. Law Rep. 1398. Even though the writ denial was on denial of summary judgment, and the cited *Pitre* opinion was after a full trial, the plurality’s language is fairly strong and should give some comfort to people on the losing end of a writ application.

More generally, the court will grant supervisory relief only if the application satisfies the three-pronged test of *Herlitz Const. Co. v. Hotel Investors of New Iberia*, 396 So. 2d 878 (La. 1981): (1) the ruling is arguably incorrect, (2) reversal will terminate the litigation, at least as to the applicant, and (3) there is no dispute of facts. The first prong is where the “showing made” looms largest. The third prong explains why the ruling on an exception of prescription will virtually never result in supervisory relief.

The leading commentary on writ practice is somewhat old but still essentially valid. For a characteristically concise view, see Charles A. “Corky” Marvin, “An Appellate Judge’s Opinion: Supervisory Jurisdiction: Is Writ Practice a Mystery?,” 37 La. Bar J. 198 (October 1989). A more expansive discussion is found at Albert Tate Jr., *Supervisory Powers of the La. Courts of Appeal*, 38 Tul. L. Rev. 429 (April 1964). For current annotations on the Uniform Rules of Courts of Appeal (URCA), there is a paperback in the West’s Louisiana Practice Series, Roger A. Stetter, *La. Civil Appellate Procedure*, Thomson Reuters ©2015. In particular, § 10:26 lists cases in which writ rulings were found (or not found) to be binding on the court in the subsequent appeal.

On a lighter note. Readers might still chuckle at a list that circulated some years back, “Tips to Bad English.” The final item is paramount for legal writers:

- If you’ve heard it once, you’ve heard it a thousand times: Resist hyperbole; not one writer in a million can use it correctly.
- Puns are for children, not groan readers.
- Even if a mixed metaphor sings, it should be derailed.
- Who needs rhetorical questions?
- Proofread carefully to see if you any words out.

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DEADLINE FOR DECEMBER ISSUE: NOVEMBER 15, 2015

VETERANS APPRECIATION LUNCHEON – NOVEMBER 11

*Petroleum Club (15th Floor) – Buffet opens at 11:30 a.m. Program and Speaker 12:00 Noon to 1:00 pm
 \$20.00 for SBA members includes lunch with advance reservation
 \$25.00 for Late Reservations (after 5:00 pm the Monday prior to the luncheon) and Non SBA Members*



When: Wednesday, November 11, 12:00 Noon - 1:00 pm
Where: Petroleum Club (15th floor)

Since the 1920s, when members of the Shreveport Bar led the effort to create what became Barksdale Air Force Base, all of us in Shreveport/Bossier have known how important the Air Force and Barksdale are to us. In 2010, the Air Force chose Barksdale Air Force Base and Shreveport/Bossier as the host for its first major command in twenty years, Air Force Global Strike Command. This past summer, for the first time ever, the Air Force has elevated the status of Barksdale Air Force Base to the highest level.

The Air Force is statutorily authorized only a limited number of four-star generals who command Air Force staffs, major commands, and joint commands around the world. Since July of this year, one of those unique four-star commands is Air Force Global Strike Command, right here in our community at Barksdale Air Force Base.

Our keynote speaker for the 2015 SBA Veterans Day Program will be the first four-star general ever to be permanently assigned to Barksdale, General Robin Rand, Commander, Air Force Global Strike Command. He is responsible for organizing, training and equipping all U.S. intercontinental ballistic missile and bomber forces. The command's mission is to provide combat-ready forces for nuclear deterrence and global strike operations. The command comprises more than 31,000 professionals operating at nine wings that control the nation's inventory of Minuteman III international ballistic missiles, B-1, B-2 and B-52 bomber aircraft.

General Rand was commissioned in 1979 after graduating from the U.S. Air Force Academy. He's had multiple flying tours; served as an air liaison officer with the U.S. Army; and has staff tours on the Joint Staff, Office of the Secretary of Defense, and Air Staff. General Rand's previous commands include the 36th Fighter Squadron, USAF Weapons School, 8th Fighter Wing, 56th Fighter Wing, 332nd Air Expeditionary Wing at Balad Air Base, Iraq, 12th Air Force (Air Forces Southern), and prior to this assignment, Air Education and Training Command.

General Rand is a command pilot with more than 5,080 flying hours, including more than 470 combat hours.

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

I plan to attend the November luncheon. Attorney: _____

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

**YES, I'M
 ATTENDING**